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Via Electronic Submission to CARA and Email

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Re: Comments on Red Spruce Restoration Project Scoping Letter

Dear Ms. Howard,

Thank you for the opportunity to comment on the scoping letter ("Scoping Letter") for the Red Spruce Restoration Project ("the Project" or "Red Spruce Project"). The Southern Environmental Law Center submits these comments on behalf of Cherokee Forest Voices, the Center for Biological Diversity, Defenders of Wildlife, Friends of Blackwater, MountainTrue, Sierra Club, The Clinch Coalition, The Wilderness Society, Virginia Wilderness Committee, and Wild Virginia ("Conservation Groups").

We begin by reiterating our strong support for the Project purpose and need. Red spruce forests are a globally imperiled ecosystem home to hundreds of rare and endemic species.[1] These forests are under threat from a variety of stressors, including impacts from prior and proposed logging, invasive species, low genetic diversity, and climate change. Restoring the red spruce ecosystem and enhancing its resiliency is not only key to protecting the species it currently supports but also is critical to providing pathways of migration for high-elevation species shifting in response to climate change.

Because restoring the red spruce ecosystem will require a landscape-level effort, we appreciate the Forest Service's willingness to look at National Forest System lands across the Southern and Central Appalachians. To be clear, we support a cross-boundary project. Thinking holistically will help the agency be better able to fill in gaps and respond to regional trends. In addition, a well-designed landscape-level Project and process could help the Forest Service maximize its scant resources.

We also support and appreciate the collaborative, science-based foundation of the Red Spruce Project. We are especially appreciative of the contributions made by partners on the Red Spruce Technical Advisory Board ("RSTAB"), including The Nature Conservancy, the Central

[1] Scoping Letter at 1.

Appalachian Spruce Restoration Initiative, and the Southern Appalachian Spruce Restoration Initiative. As we explain below, we believe that the Forest Service should closely follow the consensus recommendations provided by RSTAB. We also believe that aspects of the Project will go a long way toward fulfilling the Project purpose and need. Specifically, we support limited non-ground disturbing releases in appropriate areas, as well as plantings in open fields and legacy mine lands, to name a few.[2]

We understand that the Project is not fully developed, and that the National Environmental Policy Act ("NEPA") process will provide additional clarity on acreage affected, potential treatment locations, and more. However, we are concerned that the forthcoming NEPA study will not contain the site-specific analysis required by law. Specifically, we are concerned by the Forest Service's (partial) embrace of condition-based management, an unlawful pseudo-NEPA process that defers true site-specific decisions and analysis to the implementation phase. Because it pushes the tough decisions to a non-NEPA process, condition-based management frustrates NEPA's twin aims of promoting informed agency decision-making and public participation. It is also unnecessary, because appropriate spruce restoration sites are spatially limited and already known. We are also concerned with the Forest Service's decision to fold in an unspecified amount of hardwood forests and ground-disturbing logging into the Project—despite RSTAB's recommendations to the contrary. These and other issues noted below must be addressed in the forthcoming NEPA study.

Thank you for the opportunity to provide these comments. We look forward to discussing these issues with you further.

I. Project Background

The Red Spruce Restoration Project is a landscape-level ecosystem restoration project that will take place on six different national forests—the Cherokee, George Washington, Jefferson, Monongahela, Nantahala, and Pisgah. The purpose of the Project is to "create favorable conditions for red spruce in suitable habitat locations or former red spruce locations" across these six Forests.[3]

According to the Scoping Letter, the Project will accomplish this purpose by engaging in a mix of restoration and vegetation management techniques. For example, Project implementation may involve one of three different planting scenarios: (1) underplanting in hardwood forests; (2) planting in open fields or legacy mine lands; and (3) planting in riparian and floodplain corridors around natural and created wetlands.[4] Project implementation may also involve both (1) non-ground disturbing and (2) ground-disturbing release treatments in red spruce forests and "neighboring hardwoods."[5]

[2] We caution, however, that NEPA requires that all treatments, including non-ground-disturbing releases, be supported by a careful site-specific analysis, as explained below.
[3] Scoping Letter at 2.
[4] *Id.*
[5] *Id.*

The Scoping Letter does not disclose where these treatments may occur specifically,[6] even though much more site specificity should be possible at this stage of project development. Worse, the Forest Service also does not promise to identify specific treatment areas and site-specific management strategies in the forthcoming NEPA analysis. Instead, it proposes two different scenarios for adoption by each Forest "as appropriate": (1) direct implementation of a "site-specific project that is identified within" the agency's NEPA analysis as an area "needing treatment" and that has "been ground truthed for necessary field surveys" or (2) a "condition-based management"[7] approach that will implement future, as-yet-unidentified site-specific activities "utilizing an implementation checklist" to ensure compliance with the agency's NEPA analysis. For treatments authorized under the condition-based management approach, the forthcoming Project-level NEPA study will apparently provide the last opportunity for the public to weigh in on these activities, which will still be unidentified at that point in time.

During a virtual public meeting for the Project, the Forest Service suggested that certain forest units have preferences for which approach they will select. For example, the Monongahela National Forest will apparently embrace option #1 (direct implementation) because it has already "identified the highest acres of potential red-spruce-fir restoration"[8] and has "completed" "heritage and biological survey work" for these areas.[9] In contrast, the Nantahala and Pisgah National Forests seem to prefer the "phased implementation approach" of option #2.[10]

The Scoping Letter for the Project also does not disclose or estimate the number of acres that could be affected across the six Forests. The Scoping Letter and accompanying maps suggest the Project will fold in all red spruce forests on these Forests plus an unspecified amount of hardwood forests. Current land management documents for each Forest suggest that they contain the following amounts of spruce or spruce-fir forests:

- Cherokee National Forest: 642 acres;[11]
- George Washington National Forest: 582 acres;[12]
- Jefferson National Forest: 4,130 acres;[13]

[6] The Scoping Letter is accompanied by a series of maps that identify red spruce forests on the six affected national forests. However, these maps do not identify where specific treatments may occur.
[7] U.S. Forest Serv., Red Spruce Scoping Virtual Public Meeting (Aug. 21, 2024), *available at* https://www.fs.usda.gov/project/?project=66548 [hereinafter "Public Meeting"].
[8] Scoping Letter at 3.
[9] *See* Public Meeting.
[10] *Id.*
[11] U.S. Forest Serv., *Final Environmental Impact Statement for the Revised Land and Resource Management Plan - Cherokee National Forest* 107 (2004).
[12] U.S. Forest Serv., *Environmental Impact Statement for the Revised Land and Resource Management Plan – George Washington National Forest* 3-133 (2014).
[13] U.S. Forest Serv., *Final Environmental Impact Statement for the Revised Land and Resource Management Plan – Jefferson National Forest* 3-68 (2004).

- Monongahela National Forest: 46,000 acres.[14]
- Nantahala and Pisgah National Forests: 16,604 acres;[15]

But as explained in the Scoping letter and at the virtual public meeting, Project activities will not be limited to just these acres of spruce-fir forests. The agency is also planning on planting and logging in "neighboring hardwoods"—potentially including northern hardwoods, cove forests,[16] high elevation red oak, and other high-elevation ecozones. In total, these high-elevation ecozones cover hundreds of thousands of acres across the six affected national forests and provide vital habitat for numerous rare species.

During the virtual public meeting, a representative from the Monongahela National Forest estimated that the Project could involve around 30,000 acres of non-commercial spruce restoration in that Forest. A representative from the National Forests in North Carolina said that the Nantahala and Pisgah National Forests "were probably in the same neighborhood"[17] (30,000 acres)—even though these Forests only contain about 16,000 acres of red spruce forests. This suggests the agency may be planning extensive management in neighboring hardwood forests.

II. Legal Background

a. NEPA

NEPA was enacted in 1969 "to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man."[18] Federal agencies must fulfill NEPA's mandates "to the fullest extent possible."[19] NEPA has twin aims: "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process."[20]

NEPA's objectives are "realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look'" at the environmental consequences of major federal actions.[21] If an agency concludes that a proposal for major federal action " will or *may*" have significant effects on the quality of the human environment, it must prepare an Environmental Impact Statement

[14] U.S. Forest Serv., *Final Environmental Impact Statement for Forest Plan Revision – Monongahela National Forest* 3-124 (2006).
[15] U.S. Forest Serv., *Final Environmental Impact Statement for the Land Management Plan – Nantahala and Pisgah National Forests* App'x D-8 (2023) [hereinafter "NPNF FEIS"].
[16] During the virtual public meeting for the Project, a representative from the National Forests in North Carolina specifically mentioned the possibility of Project activities in "cove hardwoods."
[17] *Id.*
[18] 42 U.S.C. § 4321.
[19] *Id.* § 4332.
[20] *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (internal citation and quotation marks omitted).
[21] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citation omitted).

("EIS").[22] This "detailed statement" must disclose the "reasonably foreseeable environmental effects of the proposed agency action" and consider "a reasonable range of alternatives to the proposed agency action," among other things.[23]

If the need for an EIS is unclear—i.e., if it is uncertain whether the major federal action will significantly affect the quality of the human environment—an agency may first prepare an Environmental Assessment ("EA").[24] If the EA concludes that the proposal is likely to have significant effects, the agency must prepare an EIS.[25] If the EA reveals that the action would not have significant effects, then the action could proceed with a Finding of No Significant Impact.[26] But if the evidence before the agency is inadequate to conclude that a major federal action will not have a significant effect on the environment, the agency must prepare an EIS.[27] A decision not to prepare an EIS is unreasonable "[i]f substantial questions are raised regarding whether the proposed action may have a significant effect upon the human environment."[28]

When completing an EA or EIS, agencies are obligated to analyze the "environmental impacts of the proposed action" as well as any "reasonable alternatives."[29] Environmental impacts or effects include reasonably foreseeable direct, indirect, and cumulative effects.[30] "Direct effects . . . are caused by the action and occur at the same time and place."[31] "Indirect effects . . . are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems."[32] Cumulative effects "result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time."[33]

Site-specific NEPA analysis is not optional. When an agency is preparing to make a decision affecting environmental values, it is no excuse that the agency lacks the resources or capacity to gather the information necessary to make that decision in an informed manner (and to inform the public about its potential effects). To the contrary, "[e]ach agency *shall* be capable (in

[22] 42 U.S.C. § 4332(C); 40 C.F.R. § 1508.1(b) (emphasis added).
[23] 42 U.S.C. § 4332(C).
[24] 40 C.F.R. § 1501.5(a).
[25] *Id.* § 1501.3(a)(3).
[26] *Id.* § 1501.6.
[27] *See id.* § 1508.1(b).
[28] *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) (internal citations omitted).
[29] 40 C.F.R. §§ 1501.5(c), 1502.16(a)(1).
[30] *Id.* § 1508.1(g).
[31] *Id.* § 1508.1(g)(1).
[32] *Id.* § 1508.1(g)(2).
[33] *Id.* § 1508.1(g)(3).

terms of personnel and other resources) of complying with the requirements of [the NEPA statute and regulations]."[34]

III. Discussion

We appreciate the Forest Service's desire to restore red spruce communities on a landscape level. We also understand that the planning for the Project is still in a preliminary phase. However, we are deeply concerned by several aspects of the proposed Project, especially the agency's plans to engage in an unlawful condition-based management scheme and log an unspecified amount of hardwood forest. To ensure that the Project complies with NEPA, the National Forest Management Act, and several other statutes and regulations, we recommend that the Forest Service make the following changes to the Project and its forthcoming NEPA study.

a. The Forest Service must reject a condition-based management approach.

NEPA requires federal agencies to "carefully weigh environmental considerations and consider potential alternatives to the proposed action *before* the government launches any major federal action."[35] Forest Service regulations implementing NEPA require the same: "before making a decision on the proposal," the agency must "[c]onsider[] the alternatives" and "[c]omplet[e] [its] environmental document review."[36] At the project level, this means completing a "site-specific analysis" of potential effects.[37] Agencies cannot avoid the necessity of conducting a site-specific NEPA analysis by promising to consider these effects later in a non-NEPA document.[38]

For example, a "condition-based analysis"—where the agency provides a "*process* for making site-specific determinations" in a future non-NEPA document—"violates NEPA."[39] That is because "NEPA requires that environmental analysis be specific enough to ensure informed decision-making and meaningful public participation."[40] Because a condition-based analysis, by its very nature, "reserves actual siting decisions for the future" and thus fails "to identify where specific harvest activities" or other management "will occur," such an analysis "does not comply with the procedural requirements of NEPA."[41] Neither the public nor the agency can meaningfully

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[34] *Id.* § 1507.2 (emphasis added).
[35] *Powell*, 395 F.3d at 1026 (emphasis added).
[36] 36 C.F.R. § 220.4(c).
[37] *N. Alaska Env't Ctr. v. U.S. Dep't of the Interior*, 983 F.3d 1077, 1086 (9th Cir. 2020) (NEPA requires site-specific review when "the agency proposes to make an 'irreversible and irretrievable commitment of the availability of resources' to a project at a particular site").
[38] *S. Fork Band Council Of W. Shoshone Of Nev. v. U.S. Dep't of Interior*, 588 F.3d 718, 726 (9th Cir. 2009) ("A non-NEPA document . . . cannot satisfy a federal agency's obligations under NEPA."); *see also Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 998 (9th Cir. 2004) ("A NEPA document cannot tier to a non-NEPA document.").
[39] *Se. Alaska Conservation Council v. U.S. Forest Serv.*, 443 F. Supp. 3d 995, 1002–14 (D. Alaska 2020) (emphasis added).
[40] *Id.* at 1009.
[41] *Id.* at 1009–10, 1014.

compare alternatives if the Forest Service has not decided where, how, and when it will conduct vegetation management.[42]

Unfortunately, the Forest Service proposes an illegal condition-based approach for a portion of the Red Spruce Project. According to the Scoping Letter, future projects will be implemented using an "implementation checklist" that assesses consistency with the forthcoming EA and "applicable Decision Notice."[43] As the Forest Service confirmed during a virtual public meeting for the Project, this is a "condition-based management" approach.[44] Conservation Groups maintain that the Forest Service must abandon such an approach or run afoul of NEPA. We are aware that the Forest Service may believe that condition-based management was authorized by the Tenth Circuit.[45] However, the court in that case merely held that the effects that the agency failed to study at the site-specific level were not *material* to the decision—i.e., even in an worst-case scenario they were too insubstantial to matter to the agency's decision.[46] That would not be the case here, where the choice between whether to follow the RSTAB's recommendations or to conduct commercial, ground-disturbing logging in hardwood forests is highly consequential. The agency cannot reserve to itself the discretion to make that choice outside of the NEPA process.

As we recently explained to the agency during the public comment period on the Pisgah National Forest's GAP Project, the Forest Service has a choice. If it wishes to prepare a single NEPA study for the Red Spruce Project, that study must contain a site-specific analysis adequate to support a finding of no significant impact and to address unresolved conflicts in the use of available resources. At a minimum, this means spatially identifying the places where different treatments will occur. Where, for example, would specific treatments occur in hardwood forests?

Alternatively, if the Forest Service wishes to defer said site-specific decisions (and analysis), it must adopt a two-tiered programmatic NEPA approach.[47] Under that approach, the agency would prepare a programmatic NEPA study with sideboards, then tier narrower, site-specific EAs to this larger document. Those site-specific EAs would be streamlined and would not need to address the cumulative or broad-scale impacts covered by the programmatic EA, and the public's role in providing site-specific input would be preserved. This approach has already been embraced on the Cherokee National Forest for its "Goal 17" projects, where it has resulted in (1) efficiency gains and (2) social buy-in from affected community members. The Forest Service risks sacrificing both benefits here by continuing with its selected unlawful approach—preparing a single NEPA study with no site-specific analysis for portions of the Project in contravention of clear statutory and regulatory directives.

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[42] *Id.* at 1014.
[43] Scoping Letter at 4.
[44] *See* Public Meeting.
[45] *WildEarth Guardians v. Conner*, 920 F.3d 1245, 1258 (10th Cir. 2019).
[46] *Id.* (finding that site-specificity "was not *material* to determining whether the Project would adversely affect the lynx" (emphasis added)).
[47] Scoping Letter at 18.

The Forest Service's proposal to use an unlawful condition-based approach is doubly perplexing here because there is no need for such an approach. Aside from the more extensive forests found on the Monongahela, red spruce forests in the remaining five Forests are geographically constrained and limited in scope.[48] For example, the Cherokee and George Washington National Forests contain only a few hundred acres of isolated spruce-fir forests; the Jefferson and Nantahala/Pisgah each contain only a few thousand acres. The Forest Service already has a good idea of what sorts of treatments will be appropriate in these limited areas.[49] Given this knowledge and the limited acreage at issue, there is simply no need for a condition-based approach that eschews site-specific analysis and shuts the public out of important decisions in a globally imperiled ecosystem.

For evidence of the feasibility of an appropriate site-specific approach, look no further than the Monongahela. Even though the Monongahela contains more than *double* the amount of spruce-fir acreage found in the remaining five Forests *combined*, that Forest has already "identified the highest acres of potential red spruce-fir restoration"[50] and apparently plans to conduct a site-specific analysis of these proposed treatments.[51] If the Monongahela can do this across 46,000 acres of spruce-fir forest, there is no reason why the remaining Forests cannot do the same.

We appreciate the difficulty of the task before the Forest Service. Describing site-specific impacts across six national forests is no small task. "The scope of the undertaking here, however, was the Forest Service's choice and not [Conservation Groups']."[52] Having decided to simultaneously manage tens of thousands of acres across a diverse forested landscape, "the Forest Service may not rely upon forecasting difficulties or the task's magnitude to excuse the absence of a reasonably thorough site-specific analysis of the decision's environmental consequences."[53] The agency must abandon its condition-based management plans or it will violate NEPA.

b. <u>The Forest Service should more closely align its Project with the Red Spruce Technical Advisory Board's recommendations.</u>

In its Scoping Letter, the Forest Service favorably references the RSTAB, a grouping of twenty-nine different nonprofit organizations, universities, and state and federal agencies. Together, these entities submitted a set of (largely) consensus recommendations to the Forest Service for consideration and use during Project development. By referencing the RSTAB, the Scoping Letter implies that its proposal is consistent with the RSTAB's recommendations. Yet the Project as currently designed is at odds with at least four key recommendations.

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[48] *Id.* at 1 ("In Tennessee and North Carolina, red spruce is restricted to isolated mountain-top sites above 4,500 feet with favorable topography and moisture.").
[49] *See, e.g.*, U.S. Forest Serv., *Final Land Management Plan – Nantahala and Pisgah National Forests* 54, 71–72, 281–83 (2023); *see also* S. Appalachian Spruce Restoration Initiative, *Southern Appalachian Spruce Restoration Plan* (2015).
[50] Scoping Letter at 3.
[51] *See* Public Meeting.
[52] *California v. Block*, 690 F.2d 753, 765 (9th Cir. 1982).
[53] *Id.*

First, the RSTAB recommends that the Forest Service's forthcoming NEPA study contain a "thorough environmental baseline assessment" that analyzes, among other things, local "soil properties, hydrologic integrity, terrestrial and aquatic habitat and biota."[54] But as explained above, the Forest Service has no intention of including a "thorough environmental baseline assessment" in its NEPA study for the condition-based management portions of the Project. Instead, the agency is planning on deferring any meaningful site-specific analysis—including its analysis of local baseline conditions—to the implementation phase. But this information must be available during NEPA, because what we learn during baseline information gathering will determine the benefits and risks of alternative treatments, and cumulatively will determine whether the Project has significant adverse impacts. As explained above, the Forest Service's condition-based approach is inconsistent with NEPA; it is also inconsistent with the RSTAB's recommendation. If the agency is unwilling to gather baseline data and identify its proposed treatments in light of that data during the NEPA process, then it must at least create a *fully prescriptive* implementation plan that accounts for all the risks and benefits that are material to the decision and its environmental consequences. We believe this will be impossible as a practical matter unless the Forest Service adheres to the RSTAB recommendation to prohibit ground-disturbing harvest in the Southern Appalachians.

Second, a subgroup of the RSTAB focused on the Southern Appalachians[55]—the Southern Appalachian Spruce Restoration Initiative ("SASRI")—proposes the following:

> **SASRI partners do not recommend including restoration activities with ground disturbance (i.e., use of heavy equipment)** on S Apps NFs. This recommendation was agreed upon during the in-person SASRI group meeting where partners had a robust discussion covering the use of ground disturbance to achieve desired restoration goals. Given the marginal opportunity (estimated at 4-10% across S Apps NFs) with little practical opportunity for using ground disturbance on the remote, isolated Sky Islands exists, and the potential ecosystem damage should be avoided. The potential damage from new roads and heavy equipment include new pathways for non-native invasive species in remote locations, significant impacts to rare species, and soil disturbance and erosion in headwaters. Partners recommend using hand crews with mechanical and chemical methods to accelerate red spruce canopy release. No new roads should be built for crews on foot. If any trees are to be removed, such as red spruce for tonewood, partners recommend not using heavy equipment, harvesting only on a small scale (<1 ac), use BMPs to address any NNIS issues, and having expert oversight on selection.[56]

[54] Red Spruce Tech. Advisory Bd., *Red Spruce Restoration Recommendations* § 1.4 (2024) [hereinafter "RSTAB"].
[55] This includes the Cherokee, George Washington, Jefferson, Nantahala, and Pisgah National Forests.
[56] RSTAB § 4.1; *see also id.* § 4.5.3 ("[T]his section covering ground disturbance is relevant to the C Apps as the S Apps participants have recommended against ground disturbance as a tool for restoration.").

The Scoping Letter does not incorporate this recommendation. Instead, it appears to expressly reserve the possibility for ground-disturbing activities—including commercial timber harvest and road-building—in the Southern Appalachians.[57] The Forest Service must adjust its proposal to align with this critical recommendation.

Third, the RSTAB recommends "[a]void[ing] areas outside of [red spruce] occurrence," "rare habitats that were not historically spruce influenced," and "other ecosystems near the ecotone, such as High Elevation Red Oak forests."[58] In the Scoping Letter, the Forest Service does not describe an intent to adhere to this recommendation. To the contrary, it appears that the agency expects and intends to go outside of this recommendation in order to log (including through commercial methods) in hardwood forests, and to obscure that highly consequential choice from the public by using a condition-based management framework. To the extent that the Project is intended to authorize vegetation management outside of the current and historic spruce-fir ecozone or within rare habitats, it would be inconsistent with the RSTAB's recommendation. The Forest Service must clarify whether it intends to conduct management (and what types) in neighboring high-elevation ecozones or rare habitats disconnected from historic spruce restoration. And it must provide site-specific analysis of the impacts of those treatments.

Fourth, the RSTAB recommends that for ground-disturbing treatments in the Monongahela,[59] "[i[f there are no existing roadbeds (inclusive of any legacy linear features such as old skid roads and trails) sites should be left roadless."[60] The Scoping Letter suggests that agency should "*focus*[] on areas with existing access,"[61] but does not commit the agency to no road construction in these areas. The Forest Service's forthcoming NEPA study should clarify that it is formally adopting the RSTAB's roadless recommendation. If it is unwilling to do so, then it must identify the locations where unroaded areas will be newly roaded, and it must understand that this is a potentially significant impact likely requiring an EIS.[62]

We also recommend that the Forest Service formally adopt several other of the RSTAB's recommendations for tree-cutting and associated activities carried out for red spruce release activities, including but not limited to the following:

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[57] Scoping Letter at 3 ("Focusing on areas with existing access consistent with Forest Plan direction, heavy equipment would be used to accomplish forest structural improvements and to remove neighboring hardwoods that are suppressing red spruce growth in red spruce-fir forests and those areas historically supporting such communities.").
[58] RSTAB § 3.2
[59] Again, as noted above, the RSTAB did not recommend allowing ground-disturbing restoration activities in the Southern Appalachians.
[60] RSTAB § 4.5.3.
[61] Scoping Letter at 3 (emphasis added).
[62] *See generally Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1078 (9th Cir. 1994) (finding that "decision to harvest timber" in a "roadless area is environmentally significant"); *Lands Council v. Martin*, 529 F.3d 1219 (9th Cir. 2008); *Cascadia Wildlands v. U.S. Forest Serv.*, 937 F. Supp. 2d 1271, 1284 (D. Or. 2013); *Mountaineers v. U.S. Forest Serv.*, 445 F. Supp. 2d 1235 (W.D. Wash. 2006); *see also* 36 C.F.R. §§ 220.5(a)(2), 294.45.

- Avoid areas with steep slopes (>35–40%), erosive soils, shallow groundwater, riparian zones, and "other fragile ecological features."[63]

- "Avoid impacts to viewsheds."[64]

- Permanent stream crossings should provide full aquatic organism passage.[65]

- Treatment for non-native invasives must take place before any ground disturbance and should continue for one to two growing seasons after each ground-disturbing activity.[66]

- "No commercial release should take place within 100' of streams and waterways in order to maintain a healthy riparian buffer."[67]

- "[P]rioritizing stands that have low soil carbon and therefore little to lose, and limit [ground-disturbing activities] where release would damage the forest soils water holding capacity."[68]

c. The Forest Service cannot give itself a blank check to log hardwood forests.

As explained above, Conservation Groups wholeheartedly endorse the purpose of the Project—to "create favorable conditions for red spruce in suitable habitat locations or former red spruce locations" across six national forests. We recognize that this will entail, in part, release treatments in historic red spruce forests that are now dominated by hardwoods. However, we are concerned that the Forest Service's condition-based management approach will essentially hand the agency a blank check to conduct commercial logging in hardwood forests with no public input or site-specific NEPA review. This could have profound impacts. Northern hardwood forests, for example, while not globally imperiled like red spruce forests, themselves provide valuable high-elevation habitat for numerous rare and listed species like the West Virginia and Carolina northern flying squirrels. These and other valuable forests should not be put on the chopping block unless (1) it is necessary to advance spruce-fir restoration in a meaningful manner and (2) detrimental impacts to mature forest values (like the provision of essential squirrel habitat) can be mitigated or avoided.

We anticipate that the Forest Service's forthcoming NEPA study will suggest that all treatments—including those in hardwood forests—will be beneficial because they will be crafted to accomplish the Project purpose and need. Such a statement would be easy to double-check if the Forest Service were proposing site-specific activities in its forthcoming NEPA study. But since

[63] RSTAB § 4.5.3.
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.* § 4.5.3, 5.4.
[68] *Id.* § 5.3.

the Forest Service plans on adopting a condition-based management scheme (in part), there will be no way for the public to verify via the NEPA process whether the Forest Service's treatments advance the Project purpose and need—nor will there be a formal opportunity for the public to weigh in if those treatments do not.

More fundamentally, even if treatments are aimed at fulfilling the Project purpose and need, that doesn't mean they won't have adverse impacts. Added up cumulatively, there is a potential for significant harm that the current proposal doesn't adequately avoid. At bottom, the Forest Service's condition-based management approach boils down to "trust us, we will do the right thing somewhere at some point in the future when no one is looking and no one is around to double-check our work." To be frank, the Forest Service has not earned this kind of trust. This sort of blank check is also directly contrary to NEPA, which requires "informed decision-making and meaningful public participation" *before* decisions are made.[69]

Put simply, if the agency intends to log hardwood forests to create opportunities for red spruce restoration, it must disclose these locations and the agency's treatment plans in the forthcoming NEPA document, or adopt the two-tiered NEPA approach described above. And, as explained below, if the agency's plans to log in hardwood forests are being motivated by a hidden purpose and need—such as the requirement to meet timber targets—that must be disclosed in the forthcoming programmatic or site-specific NEPA study.

d. <u>The NEPA study must disclose the influence of timber targets on Project design.</u>

Each year, the Forest Service sets national, regional, and unit-level timber targets that are binding on subordinate staff. According to Forest Service staff, these targets can have a profound impact on project design. For example, agency staff have acknowledged that timber targets force them to "prioritize ecological restoration [alternatives] that result in timber volume sold" over alternatives with potentially more critical restoration needs but lower timber volume to "ensure they meet" the timber target.[70] In a similar vein, other staff have stated that volumetric targets push them to shun "small-almost-no volume time wasting" projects and alternatives in favor of "more commercially viable and worthwhile" timber-focused projects so they can meet mandated targets.[71] Staff have even gone so far as to acknowledge that timber targets drove them to shift funds allocated for wildlife habitat improvements to timber projects that admittedly had "no benefit to wildlife."[72]

The Scoping Letter does not disclose the influence of timber targets on Project design. Many of the proposed treatments—such as plantings and noncommercial release treatments—

[69] *Se. Alaska Conservation Council*, 443 F. Supp. 3d at 1009.
[70] Email from Alyson Warren, Region 6 Assistant Director of Natural Resources, to Jose Castro, Region 8 Director of Forest and Timber Management (Nov. 15, 2019).
[71] Email from Travis Pruitt, Deputy District Ranger, to Brian Emerson, Daniel Boone Nat. Res. Staff Officer (May 25, 2023).
[72] Email from Michael Joyce, Biologist, to Brian Jackson, Silviculturist (Nov. 13, 2014).

cannot be used to satisfy timber-volume-sold targets, and thus would not be driven by the need to meet said targets. However, Conservation Groups are concerned that timber targets *may* be driving some of the Forest Service's planned activities, especially ground-disturbing logging in hardwood forests. For instance, though the relevant portion of the RSTAB recommends not allowing ground-disturbing restoration activities in the Southern Appalachians, the Forest Service appears to have reserved the right to do so anyway. This would be consistent with Forest Service plans to use the ground-disturbing portions of the Project to help meet its mandatory targets.

Ultimately, NEPA requires the Forest Service to disclose its timber-volume expectations for the Project, along with all the other factors influencing the Project's development already mentioned in the Scoping Letter.[73] If meeting timber targets is influencing Project design, then it is a Project "need," and the Forest Service must state so plainly. If not, the agency must seriously consider reasonable alternatives that can meet the Project's *stated* purpose and need but which might produce less volume. The Forest Service cannot, however, screen out otherwise reasonable alternatives based on a hidden purpose and need.

e. <u>The Forest Service must carefully consider whether the Project will be consistent with the National Old Growth Amendment.</u>

Among other things, the Scoping Letter proposes "ground-disturbing" logging in "old forest[s]," presumably including old-growth conditions.[74] This implicates the Forest Service's forthcoming National Old Growth Amendment ("NOGA").[75] The NOGA—which is expected to be finalized before Project implementation can occur—is designed to "conserve and steward existing old-growth forest conditions."[76] Surprisingly, the Scoping Letter does not mention the NOGA, much less provide a basis for a future conclusion that the Project will be consistent with the proposed standards and guidelines contained in the agency's NOGA proposal.[77]

During the virtual public meeting for the Project, the Forest Supervisor for the National Forests in North Carolina suggested that the Project would be consistent with the NOGA because one of the intentions of the Project is to "enhance . . . old-growth conditions."[78] To the extent that the agency is suggesting that the NOGA is satisfied so long as one overarching "intent" of the Project is to benefit old growth, it is mistaken. The NOGA will apply at the site-specific level and requires a determination, among other things, that the proposed treatment will promote one of

[73] *See N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 604–05 (4th Cir. 2012) ("When relevant information "is not available during the [NEPA] process and is not available to the public for comment[,] . . . the [NEPA] process cannot serve its larger informational role, and the public is deprived of [its] opportunity to play a role in the decision-making process.").
[74] Scoping Letter at 3.
[75] 88 Fed. Reg. 88,042 (Dec. 20, 2023).
[76] *Id.* at 88,402.
[77] *See* U.S. Forest Serv., *Draft Environmental Impact Statement – Amendments to Land Management Plans to Address Old-Growth Forests Across the National Forest System* 19-36 (2024), *available at* https://www.fs.usda.gov/project/?project=65356 [hereinafter "NOGA DEIS"].
[78] *See* Public Meeting.

several enumerated "proactive stewardship" purposes.[79] The agency cannot avoid this site-specific analysis by noting that a project is intended to be beneficial to old-growth generally.

This Project provides a clear example of why such side-stepping is inappropriate. While the agency may be correct that portions of the Project are intended to benefit *red spruce* old growth, these appear to be aimed at increasing structural heterogeneity in even-aged forests that currently lack old-growth structural characteristics. Other portions of the Project, however, may negatively affect existing *hardwood* old growth. As explained above, the Forest Service is effectively giving itself a blank check to conduct logging in "neighboring hardwood[]" forests—potentially including old growth. It is doubtful that this practice would comply with the NOGA. And the Forest Service cannot paper over this issue (logging old-growth hardwoods) by pointing to its efforts in other locations to restore old-growth conditions for a different ecozone (red spruce). To ensure it is building a record that shows the Project will be consistent with the NOGA, the Forest Service's forthcoming NEPA study must disclose any plans to log in hardwood old-growth conditions and explain how these plans are consistent with the NOGA's proposed—and soon to be finalized—standards and guidelines.

f. <u>The Forest Service must consider whether the Project is consistent with the Wilderness Act, the Roadless Rule, and any applicable regulations.</u>

Conservation Groups cannot tell from the Scoping Letter whether the Forest Service is planning on conducting management in designated Wilderness areas and Inventoried Roadless Areas ("IRAs"). However, during the virtual public meeting, the Forest Service acknowledged that it has not ruled out conducting management in those areas. If the Forest Service is considering activities within Wilderness or IRAs, it must disclose these plans; conduct a site-specific analysis of potential impacts; and consider whether the proposed actions are consistent with the Wilderness Act, the Roadless Rule,[80] and any applicable regulations or guidance. We caution that even if the proposed management is consistent with these statutes and regulations, management in Wilderness, potential wilderness, or IRAs is a potentially significant effect that would likely trigger the need to prepare an EIS.[81]

g. <u>The Forest Service must impose sideboards to protect rare and listed species.</u>

The Scoping Letter acknowledges that spruce-fir forests are "home to hundreds of rare and endemic species including the federally listed Carolina northern flying squirrel, spruce-fir moss spider and Cheat Mountain salamander."[82] The agency's forthcoming NEPA decision must include specific conservation measures—informed by Section 7 consultation, as explained

[79] NOGA DEIS, *supra* note 77, at 29.
[80] 66 Fed. Reg. 3244 (Jan. 12, 2001).
[81] *See supra* note 62; *see also* 36 C.F.R. § 220.5(a)(2).
[82] Scoping Letter at 1.

below[83]—to protect these and other rare species. To that end, we recommend adopting many of the measures proposed by the RSTAB, as well as a few others listed below.

i. Northern flying squirrel

The Carolina northern flying squirrel is listed as endangered under the ESA; the West Virginia northern flying squirrel, though no longer listed, is still protected by the Monongahela Forest Plan. These species are found in high elevation, mixed red spruce-northern hardwood and spruce-fir forests.[84] In the course of scientific research, squirrels have been captured in stands of varying age, understory, and composition, but most have been taken from moist forest with at least some widely spaced, mature trees—ideally old-growth forest.[85] In fact, the Forest Service itself has recognized that squirrels appear to prefer cavities in *mature* trees as den sites.[86] Though these squirrels are commonly associated with spruce-fir forests, they do not rely exclusively on conifer forests. In fact, numerous studies have found that northern hardwoods provide critical roosting and foraging habitat for northern flying squirrels.[87]

Many of the Project's proposed activities—including the ground-disturbing logging proposed in northern hardwood forests—thus have the potential to adversely affect northern flying squirrels. To guard against negative impacts, the Forest Service should:

- Survey for squirrels and look for dreys or cavities before felling trees;
- Commit to not felling trees between March 15 and August 31;[88]
- Avoid felling trees >8" dbh in occupied habitat, and instead use girdling or targeted herbicide if necessary for the release of spruce;[89]
- Retain yellow birch trees that have shaggy bark (except where shaggy bark yellow birch is locally abundant), suitable squirrel cavities, or both except where trees may pose a safety hazard, or it interferes with the goal of the treatments;
- When found, leave soft-mast species such as mountain ash;

[83] *See infra* Pt. III(j).
[84] U.S. Fish and Wildlife Serv., *Carolina northern flying squirrel, Glaucomys sabrinus coloratus*, https://www.fws.gov/southeast/wildlife/mammals/carolina-northern-flying-squirrel/.
[85] U.S. Fish and Wildlife Serv., *Appalachian Northern Flying Squirrels Recovery Plan* 7 (1990).
[86] NPNF FEIS at 3-259.
[87] P.D. Weigl, *The Northern Flying Squirrel (Glaucomys Sabrinus): A Conservation Challenge*, 88 J. of Mammalogy, 897–907 (2007); S.E. Trapp et al*., Diet and food availability of the Virginia northern flying squirrel (Glaucomys sabrinus fuscus): Implications for Dispersal in a Fragmented Forest*, 98 J. of Mammalogy 1688–96 (2017); W.P. Smith, *Ecology of Glaucomys sabrinus: Habitat, Demography, and Community Relations*, 88 J. of Mammalogy 862–81 (2007).
[88] RSTAB § 4.5.1.
[89] *Id.*

- Provide conservation measures that protect food sources such as truffles and other fungi;

- Canopy cover should not be reduced below 60% in potential habitat;

- Provide a 50-foot buffer from vegetation management in currently used or occupied habitat.

ii. Spruce-fir moss spider

The spruce-fir moss spider is an endangered spider restricted to six geographically isolated mountain ranges in western North Carolina and eastern Tennessee. Spruce-fir moss spiders live in high-elevation spruce-fir forests on moist but well-drained moss mats growing on rocks and boulders in well-shaded locations.[90] Because the spider has such narrow habitat requirements, it is highly vulnerable to local extirpations "from a single event or activity," including well-intentioned timber harvest.[91]

Many of the Project's proposed activities—especially ground-disturbing logging—thus have the potential to adversely affect the spider. To guard against negative impacts, the Forest Service should:

- Survey for potential spider habitat prior to vegetation management;

- Maintain a 100' canopy tree buffer around rock outcrops and boulders in appropriate habitat for spruce-fir moss spider and rock gnome lichen;

- Prohibit ground-disturbing activities in stands with rock outcrops;

- Prohibit vegetation management in known occupied spider habitat.

iii. Cheat Mountain salamander

The Cheat Mountain salamander is a threatened salamander species that is found in five counties in West Virginia, mostly inside the Monongahela National Forest. During the active spring, summer, and fall months, the salamander takes refuge under decaying logs, rocks, or leaf litter during the day and emerges at night to feed. Because the salamander is lungless, it requires microhabitats with high relative humidity or moisture and acceptable temperatures to survive.[92] "Although typically present in areas with red spruce, the [salamander] also occur[s] in areas with eastern hemlock and overall high canopy closure associated with mature forests."[93] In general,

[90] U.S. Forest Serv., *Biological Assessment for Threatened, Endangered, and Proposed Species for the Nantahala and Pisgah National Forests Revised Forest Plan* 14 (Mar. 16, 2022).
[91] *Id.*
[92] U.S. Fish & Wildlife Serv., *Cheat Mountain Salamander 5-Year Review: Summary and Evaluation* 12 (2009).
[93] *Id.*

old-growth conditions are more likely to provide the "dense litter layers, abundant woody debris, and stratified canopies" that the salamander needs to thrive.[94]

Many of the Project's proposed activities—especially ground-disturbing logging—thus have the potential to adversely affect the salamander. To guard against negative impacts, the Forest Service should:

- Survey restoration activities above 3,200' in elevation prior to vegetation management;
- Prohibit logging activities in known salamander habitat;
- Maintain a 300' buffer around known salamander habitat;
- Prohibit logging activities in areas identified by Rucker, et al.[95] as "medium" or "high" probabilities for occurrence;
- Survey for and prohibit harvesting in old-growth conditions within areas that may be occupied by the salamander;
- Prohibit broadcast herbicide use and bark treatments using an oil surfactant in occupied salamander habitat.

h. <u>The NEPA study must consider a range of reasonable alternatives.</u>

Federal regulations require the Forest Service to "[e]valuate reasonable alternatives to the proposed action," including the "no action alternative."[96] What "constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case," but must "cover[] the full spectrum of alternatives."[97] At a minimum, the agency must include alternatives that address "unresolved conflicts concerning alternative uses of available resources."[98] Failure to consider a "viable but unexamined alternative" will render a NEPA analysis inadequate.[99]

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[94] *Id.*
[95] L.E. Rucker et al., L.E., *Potential Impacts of Climate Change on the Geographic Distributions of the Threatened Plethodon nettingi (Cheat Mountain Salamander) and its Primary Competitor Plethodon cinereus (Eastern Red-backed Salamander)*, Manuscript in review.
[96] 40 C.F.R. § 1502.14(a), (c).
[97] Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026 (Mar. 23, 1981) [hereinafter "Forty Questions"]. According to the Council of Environmental Quality, this guidance is still current except to the extent it conflicts with newly promulgated NEPA regulations.
[98] 40 C.F.R. § 1507.2(h).
[99] *Dubois v U.S. Dep't of Agric.*, 102 F.3d 1273, 1289 (1st Cir. 1996) (quoting *Res. Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1994)).

The Scoping Letter does not identify which alternatives may be considered in the forthcoming EA. Assuming the Forest Service maintains its current proposal, we recommend that the Forest Service consider the following in addition to its action alternative:

- An alternative that includes no ground-disturbing logging;
- An alternative that strictly adopts the recommendations of the RSTAB, including the prohibition on ground-disturbing restoration activities in the Southern Appalachians;
- An alternative that prohibits commercial logging in spruce-fir forests;
- An alternative that prohibits commercial logging in northern hardwood ecozones;
- An alternative that requires no new road construction;
- An alternative that excludes Wilderness areas from vegetation management;
- An alternative that excludes units on steep slopes (>35%).

i. <u>The NEPA study must explain how long it will govern activities on the Forests.</u>

NEPA analyses do not have an explicit expiration date. But at some point, all NEPA analyses become "too stale to carry the weight assigned to [them]."[100] For that reason, the Council on Environmental Quality ("CEQ") has explained that, "[a]s a rule of thumb," NEPA studies "that are more than 5 years old should be carefully reexamined to determine if the criteria in [40 C.F.R. §] 1502.9 compel preparation of an [EA or] EIS supplement."[101]

The Scoping Letter does not explain how long the Forest Service plans to rely on its forthcoming NEPA study. Without a site-specific description of baseline conditions and an analysis of whether and how those baseline conditions will change during the life of the Project, there is a high risk of the Project going stale quickly. For example, it is likely that the Project area contains numerous stands of mature red spruce approaching old-growth conditions.[102] Depending on how long the Project drags on, these stands may become old growth before Project

[100] *N. Plains Res. Council*, 668 F.3d at 1086.
[101] *See* Forty Questions. According to the Council of Environmental Quality, this guidance is still current except to the extent it conflicts with regulations promulgated on September 14, 2020. *See also Friends of Animals v. U.S. Bureau of Land Mgmt.*, No. 3:15-CV-0057-LRH-WGC, 2015 WL 555980, at *3 (D. Nev. Feb. 11, 2015) (rejecting agency reliance on a five-year-old EA after circumstances changed); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 184 F. Supp. 3d 861, 936 (D. Or. 2016) ("Notably, the Council of Environmental Quality, which promulgates the NEPA regulations, has emphasized that NEPA documents more than five years old should be 'carefully reexamined' for supplementation.").
[102] *See* U.S. Dep't of Agric., *Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management* 50 (Apr. 2024) (specifying threshold for old-growth conditions in spruce-fir forest as 120 years old).

implementation and maintenance is completed. Therefore, the forthcoming NEPA study must articulate: (1) how long Project implementation will last and (2) how it will adapt its management to eventualities like the natural development of additional old growth.

j. The NEPA study must incorporate the results of Endangered Species Act consultation and allow for public comment on any conservation measures adopted pursuant to that consultation.

According to the Scoping Letter, the Forest Service will "consult under Section 7 of the Endangered Species Act."[103] However, it does not say precisely when this consultation will occur, merely that the ultimate decision notices will "incorporate" the results of consultation "into each Forest's decision."[104] At the virtual public meeting for the Project, the agency intimated that consultation would be completed before Decision Notices are issued.

Federal regulations provide that "[c]onsultation, conference, and biological assessment procedures under section 7 *may* be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA)."[105] However, "[w]here the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA or FWCA, *the results should be included in the documents required by those statutes*."[106] Thus, while there is no explicit requirement to consolidate Section 7 consultation and the NEPA process, when the former informs the latter—as is the case here—the results of that consultation should be included in the NEPA process.

Failing to include the results of consultation in the NEPA process risks invalidating the NEPA documents. Under NEPA, the Forest Service is required to disclose impacts to listed species and develop mitigation for site-specific and cumulative impacts to those species. However, until the agency conducts Section 7 consultation, it often does not know what the full scope of effects might be or what mitigation measures are required to protect listed species. NEPA does not allow the Forest Service to defer these tasks to a post-NEPA process—like post-NEPA Section 7 consultation. Therefore, to comply with both statutes, the Forest Service generally must complete Section 7 consultation before it completes its NEPA study. And because NEPA mandates that the public be allowed to comment on anticipated effects and proposed mitigation measures, Section 7 consultation should be completed *before* the end of the public comment period. Otherwise, if consultation reveals information needed by the public or the decision-maker to understand the project's risks (which is highly likely for this particular Project), or if it changes analytical assumptions, then the Forest Service will be obligated to supplement its NEPA analysis.

It is unclear if the Forest Service intends to wrap up Section 7 consultation before the end of the NEPA comment period for the Project. If it does not, then the public will be unable to

[103] Scoping Letter at 4.
[104] *Id.*
[105] 50 C.F.R. § 402.06(a) (emphasis added).
[106] *Id.* § 402.06(b) (emphasis added).

comment on the analysis and mitigation measures developed pursuant to that consultation process—as required by NEPA. To avoid this unlawful result, we strongly encourage the Forest Service to complete formal consultation before the end of the NEPA comment period and release the results of that consultation to the public.

k. The NEPA study must apply CEQ's significance factors.

Current NEPA regulations require federal agencies to assess the significance of their proposed action by examining "both the context of the action and the intensity of the effect."[107] Agencies assess context by "consider[ing] the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns. Depending on the scope of the action, agencies should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects."[108]

Agencies must analyze the "intensity of effects" by considering ten factors, "as applicable to the proposed action and in relationship to one another," including the following:

- "The degree to which the action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas."

- "Whether the action may violate relevant Federal, State, Tribal, or local laws or other requirements or be inconsistent with Federal, State, Tribal, or local policies designed for the protection of the environment."

- "The degree to which the potential effects on the human environment are highly uncertain."

- "The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973."

- "The degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders."

These regulations went into effect on July 1, 2024.[109] They apply to "any NEPA process begun after July 1, 2024."[110] Because the Forest Service had yet to begin its NEPA process for the Project (and indeed issued its Scoping Letter more than a month after the new regulations went into effect) it must apply the new regulations to the forthcoming NEPA study for the Project. We

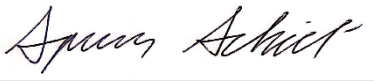
[107] 40 C.F.R. § 1501.3(d).
[108] *Id.*
[109] Council on Env't Quality, National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35,442, 35,442 (May 1, 2024).
[110] 40 C.F.R. § 1506.12.

note that the degree to which the Project will implicate these factors depends largely on whether the Forest Service adopts the sideboards identified above in our comments.

IV. Conclusion

We appreciate the need for landscape-level prioritization of opportunities to restore red spruce ecosystems. While we are cautiously optimistic about the Red Spruce Project's potential to fulfill this need, we remain concerned about aspects of the Project, particularly the condition-based-management approach the Forest Service has chosen to accomplish its goals. Fundamentally, the blank-check approach is a *refusal* to prioritize where and how to get the most benefit from red spruce restoration treatments. Leaving those decisions to future implementation is not an improvement on the status quo of random acts of conservation. We expect and hope that the Forest Service will abandon this approach in its forthcoming NEPA study and conduct the site-specific analysis required by law.

Thank you for consideration of this letter. Please contact Spencer Scheidt (828-258-2023; sscheidt@selcnc.org) if you have any questions regarding these comments.



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