

August 11, 2025

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 Crossover Project (“the Project”) published on June 12, 2025,¹ by the responsible official, J. Brian Browning, the District Ranger for the Cheoah-Tusquitee Ranger District of the Nantahala National Forest. This Objection is timely.

Objectors submitted timely, substantive comments² regarding the Crossover Project during designated opportunities for public comment and are eligible to object pursuant to 36 C.F.R. § 218.5(a).

I. Introduction

We are grateful for the District’s work to improve the Project and to address many of our most pressing concerns about its impact on stands with old growth or rare and exemplary habitats and risks like steep slopes and non-native invasive species. Most of the objections we raise here are fundamentally problems with the new Forest Plan (“Plan”), including the failure to allocate the Ash Cove Mountain Treasure Area to an appropriate Management Area (“MA”) and the failure to adopt a pacing mechanism to ensure that forests are not cumulatively degraded by overharvesting in mesic ecozones in multiple projects over time. We also remain concerned, however, about specific aspects of this project, such as the amount of harvest set to occur on steep slopes greater than 40% and even over 70% in many stands. To be clear, we could likely live with the vast majority of this Project (outside of the Ash Cove area, that is) 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, avoid outsized impacts, and reduce the harm caused by the road system. And, if the Forest Service were to commit to initiate a Plan

¹ U.S. Forest Serv., Nantahala National Forest, Crossover Project: Draft Decision Notice and Finding of No Significant Impact (June 2025) (“Draft Decision Notice & FONSI”).

² Comment Letter from S. Env’tl L. Ctr., MountainTrue, Wilderness Soc’y, & Defs. of Wildlife, to Andrew Gaston, District Ranger Cheoah/Tusquitee Ranger District, Nantahala Nat’l Forest (June 16, 2021), re: Crossover Project scoping letter; Comment Letter from S. Env’tl L. Ctr., MountainTrue, Wilderness Soc’y & Defs. of Wildlife to Andrew Gaston (Nov. 14, 2022), re: Draft Environmental Assessment for Crossover Project. These comment letters are combined and attached as Attachment 1.

amendment addressing our Plan-related concerns here, we may withdraw this Objection. In the meantime, however, we object to the Project for the following reasons.

This Project illustrates fundamental flaws in the Plan. First, 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 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 from the natural range of variation in the first place. Specifically, we object to the Project's emphasis on large openings in cove and other mesic 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 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, which are in tension with on-the-ground restoration needs. This Project—the second routine commercial timber project to be finalized under the new Plan—illustrates what will happen in the absence of binding, plan-level direction.

Specifically, 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.

The Project will also involve the construction of new roads (although largely disguised as "temporary"), 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 from building more roads without the 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 the two overarching problems identified above as well as other discrete issues with the Plan, including restrictions on old growth surveys and a failure to designate special ecological areas to protective management status. 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.

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

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).

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.

III. The Forest Service’s NEPA Obligations

Notwithstanding the Department of Agriculture’s recently promulgated Interim Final Rule (“IFR”), the Forest Service must apply its former NEPA regulations to finalize the Project.¹¹ We note that this Project, flawed as it may be, demonstrates the benefits of the Forest Service’s historical approach to NEPA. At each juncture since scoping, the Forest Service has meaningfully altered aspects of the Project in line with public input. These changes have improved the Project and moved it successively closer to having widespread public buy-in. These benefits are directly attributable to the scoping and the public comment processes for draft EAs. We sincerely hope that the objection process will yield similar improvements. We note, however, that notice and comment are no longer required by the IFR, and the loss of these steps would create significant risk to the environment, harm to the public, and damage to the agency’s mission.¹²

Under NEPA, regardless of which regulations are in play, the Forest Service must take a “hard look” at the likely impacts of implementing forest plans and projects under those forest plans.¹³ To meet this basic requirement, the scope of NEPA analysis must correspond to the 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 on a resource, the accompanying NEPA analysis is insufficient if it only analyzes a scenario where the agency chooses the action with the best-case, lowest impact scenario. This “hard look” must also extend to the cumulative effects of successive actions over time.¹⁴

¹⁰ *Id.*

¹¹ On July 3, 2025, the United States Department of Agriculture issued the IFR, which rescinded and replaced existing Forest Service regulations. However, the IFR “[has] no effect on ongoing NEPA reviews.” 90 Fed. Reg. at 29,634. Thus, the Forest Service’s former NEPA regulations, codified at 36 C.F.R. § 219, continue to be binding on the Forest Service’s analysis and finalization of the Project which was initially scoped in 2021.

¹² Notably, the elimination of these steps also conflicts with the Forest Service’s present regulations, codified at Part 218, which govern the administrative objection process. Those regulations clearly state that only those who “have submitted timely, specific written comments regarding a proposed project or activity . . . during any designated opportunity for public comment” may file an objection. 36 C.F.R. §§ 218.5(a), 218.8(c)-(d). Under the prior regulations, as applicable here, this was not an issue since the Forest Service (1) required scoping for all projects, and (2) acknowledged that Part 218 required the agency to offer at least one designated comment period.

¹³ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

¹⁴ 40 C.F.R. § 1508.1(g)(3) (2020); *see also, e.g., Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (holding that when multiple proposals for related actions “that will have cumulative or synergistic environmental impact upon a

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.¹⁵ 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. Timber Targets

NEPA requires an agency to prepare a NEPA study “early enough so that it can serve practically as an important contribution to the decisionmaking process.”¹⁶ A NEPA study may “not be used to rationalize or justify decisions already made.”¹⁷

Here, however, the Forest Service had already locked itself into an alternative that will provide timber volume to meet mandated timber targets before it finalized its NEPA decision. According to internal agency documents,¹⁸ the National Forests in North Carolina are counting on timber volume from the Project to satisfy timber targets in fiscal years 2025 to 2027.¹⁹ We are aware, furthermore, that before it began to refine the Project through scoping and collaboration, the Forest Service had already determined how much timber volume it is expected to produce.²⁰

region are pending concurrently before an agency, their environmental consequences must be considered together.”); *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 106–07 (1983) (“NEPA requires an EIS to disclose the significant health, socioeconomic, *and cumulative* consequences of the environmental impact of a proposed action.”) (emphasis added); *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”).

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

¹⁶ *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000).

¹⁷ *Id.*

¹⁸ Objectors obtained these documents via (1) several related FOIA requests, the last of which concluded in October 2023 (FOIA tracking number 2024-FS-R8-00312-F); and (2) June 2025 administrative record productions in *Chattooga Conservancy v. U.S. Forest Serv.*, No. 1:24-cv-00518 (D.D.C.).

¹⁹ See Attachment 2.A.

²⁰ See Attachment 2.B (planning document from fiscal year 2019 noting the Project is expected to produce 10,000 ccf in total).

Those targets may have had a profound impact on the Project. For example, the need to meet mandated timber targets may have influenced the range of reasonable alternatives the agency was willing to consider. For example, though members of Conservation Groups proposed omitting Ash Cove Wilderness Inventory Area from the Project, the agency rejected this request—likely because it was inconsistent with the Forest Service’s predetermined need to generate timber volume from this Project.

That volumetric expectation also certainly skewed harvest toward mesic stands, steep slopes, and less developed areas where the logging and associated access will be harmful—like Ash Cove. Yet the Final EA does not disclose the relationship of the Project to timber targets, nor how project-specific volume targets may have influenced Project design or development. Under NEPA, however, agencies must disclose the purpose and need of their actions. Because the evidence shows that mandated timber volume targets was indeed a Project “need,” that need should have been addressed in the Final EA. The failure to do so violated NEPA.

Indeed, the primary purposes of NEPA are to (1) force agencies to carefully consider their proposals before they make decisions; and (2) allow the public to participate in the decision-making process. Both of those aims are frustrated if the Forest Service has already decided that it will use the Project to satisfy timber-volume-sold targets before completing the NEPA process.

V. Large-Patch ESH Creation in Ecozones where Inconsistent with NRV

The goals of the Project are driven by inconsistent assumptions regarding early successional habitat. At the Plan level, the Forest Service failed to examine the impacts of (1) replacing small-scale natural disturbances with large-scale logging, and (2) overshooting NRV for early successional habitat. As a result, it failed to take a “hard look” at the 2023 Forest Plan’s effects on early successional habitat as required by NEPA. 5 U.S.C. § 706(2); 42 U.S.C. § 4332.

The Forest Service’s errors in assessing NRV for early successional habitat are especially pronounced in moist ecozones like the cove and mesic oak ecozones. Here, the Final EA for the Project explains that the 2023 Plan “primarily guide[s] the objectives of this project” including Geographic Area goals to “[i]ncrease variable size openings in rich cove, mesic oak, northern hardwoods, and high elevation red oak forests” and to “[c]onduct stand improvement and other restoration projects on forest communities degraded by past management.”²¹ More than 60% of the 1,348 acres of ESH creation approved under the Project would occur in the rich cove ecozone.²² By contrast, only 44% 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

²¹ U.S. Forest Serv., Nantahala National Forest, Final Environmental Assessment Crossover Project (June 2025) (“Final EA”) at 6.

²² *Id.* at 71–72.

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 process, only a small amount of large-patch ESH occurs in mesic forests within their natural range of variation.²³ 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.”²⁴ 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.”²⁵ But the Project will create 1,012 acres of large patches that should be “rare” in the cove ecozones.²⁶ In the meantime, the Project proposes creating *zero* acres of regeneration through ESH gaps (i.e., 1/8 of an acre or less) that should be dominant 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,”²⁷ it nevertheless defined its reference conditions for ecological communities in the plan area based on NRV.²⁸ 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. Instead, it represents one of the first—of many to come—steps away from ecological integrity based on the Plan’s flawed goals.²⁹

²³ 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[.]”).

²⁴ U.S. Forest Serv., Final Environmental Impact Statement for the Revised Land Management Plan, Nantahala & Pisgah National Forests (2023) (“NPNF FEIS”), at 3-162.

²⁵ U.S. Forest Serv., Revised Land Management Plan, Nantahala & Pisgah National Forests (2023) (“NPNF Forest Plan (2023)”), at 57, 58.

²⁶ Final EA at 71-72.

²⁷ See NPNF FEIS 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”).

²⁸ 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).

²⁹ See Final EA at 12 (“Silvicultural treatments are intended to promote age class and structural diversity across the project area, as young forest conditions are lacking across all ecozone types based on NRV departure analysis for all GAs present in the project area. Proposed treatments are designed to increase variable size openings in rich cove,

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.³⁰ 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. Second, the Forest Service stated that it would not exceed NRV for any ecozone at the landscape scale during the life of the Plan.³¹ 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 already] more disturbed than their reference models.”³² 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.”³³ 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% of the landscape’s total.³⁴ The use of that cap prevented the EIS from showing the worst-case effects of the Plan’s open-ended

mesic oak, northern hardwoods, and high-elevation red oak forests within the project area, and in turn, within all Project GAs.”).

³⁰ See *id.* at 51, ECO-DC-03 (“Locally, young forest patch size will frequently exceed average natural disturbance gap size ...”).

³¹ 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”).

³² 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>.

³³ NPNF FEIS, App’x A at 36.

³⁴ *Id.*, App’x D at D-49.

discretion. Meanwhile, this Project, typical of others on the District, shows exactly how that discretion will be exercised (as does the table below).

Contrary to the 30% 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 the 30% cap—70% of the total.³⁵ 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. Indeed, the Project acknowledges that it is following Plan direction to target these ecozones.³⁶

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 Ecozones³⁷
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 ³⁸	1348	0	940	208	69.73%	15.43%	85.16%
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%

³⁵ The model undergirding the Forests’ NEPA analysis of the revised forest plan lumped acidic coves and rich coves together in a single analytic unit.

³⁶ Final EA at 6.

³⁷ 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.

³⁸ Crossover Project acreages were derived from Final EA tables.

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.

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).

VI. The Road Network

To implement the Project, the Forest Service plans to construct an “estimated . . . 11 miles of temporary road” as well as conduct maintenance on “existing permanent Forest Service road prisms.”³⁹ Also, assuming the Forest Service is able to acquire access from private landowners, the Project will involve the creation of “two segments of Level 1 road” totaling “approximately 2.5 miles.”⁴⁰ There is no road decommissioning. Our objection to the Project is based on the agency’s failure to conduct a legitimate cumulative effects analysis, at either the Plan level or the Project level, reflecting the impacts of these or any other road system additions. We also object to the Forest Service’s failure to proscribe adequate design features and best management practices (“BMPs”) sufficient to mitigate harmful effects at either level.

³⁹ EA at 17.

⁴⁰ *Id.*

First, the Plan’s cumulative effects analysis is inadequate.⁴¹ 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”⁴²

During the plan revision process, the Forest Service acknowledged that roads were the greatest threat to water quality on the forests.⁴³ 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 or poorly engineered, 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.⁴⁴ We recognize that post-Helene funding may help to alleviate the backlog in some areas in the short term, but the unsustainability of the road system is a long-term problem and disaster funding is not a long-term solution.

The Forest Plan authorizes both the expansion of the forests’ logging footprint and a quintupling of logging levels.⁴⁵ 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.”⁴⁶ It was similarly inappropriate for the Forest Service to “not disclose the extent of the backlog or attempt to characterize the degree to which the current road system is negatively impacting environmental resources.”⁴⁷

Second, and relatedly, the Forest Service failed to require adequate BMPs to mitigate the harmful ecosystem impacts of an expanding road system at either the plan or project level. The Forest Service justifies this, in part, by saying that roads across the Forests are currently adequately maintained, and it pointed to BMP monitoring data from 2009–2013 purportedly showing that road BMPs were 93.1 and 94.7% effective on the Nantahala and Pisgah, respectively.⁴⁸ This is seriously misleading, though. To start, the agency’s sample was admittedly “small”: it sampled only 3% of locations where roads cross streams in the planning

⁴¹ NPNF FEIS, at 3-521.

⁴² *Id.*

⁴³ *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.”).

⁴⁴ *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)).

⁴⁵ *See* NPNF FEIS, 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).

⁴⁶ *Id.* at 3-521.

⁴⁷ S. Env’tl L. Ctr. et al., Objection to the Revised Land Management Plan, Nantahala & Pisgah National Forests (March 22, 2022) (“SELC Plan Objection”), at 144, Attachment 3.

⁴⁸ NPNF FEIS at 3-58.

area.⁴⁹ More importantly, the Forest Service’s road BMP monitoring data was collected only in connection with recently implemented timber sales, during which roads are actively maintained or improved, just as the Forest Service proposes—and likely will do—here. The agency did not collect data from older roads, including roads originally intended to be “temporary,” that have not been maintained to schedule—even though these roads are “often not designed to current standards,”⁵⁰ and may be contributing to water-quality impairments far downstream.⁵¹

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 draft EIS 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.⁵² 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.⁵³ Planners appear to have 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.

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.”⁵⁴ 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.).”⁵⁵ 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.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 3-55.

⁵² *Id.*, 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.”).

⁵³ *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.”).

⁵⁴ 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).

⁵⁵ *Id.* at 254.

Indeed, despite acknowledging that “[t]here would be a slight increase in the overall system road density across the project area,” the Project EA concluded “it is unlikely that new road segments would result in any lasting, cumulative, and significant effects.”⁵⁶ The Project thus lacks its own analysis of cumulative impacts of expanding the road system, and there is no competent programmatic analysis to tier to. For that reason, we object.

Finally, the Forest Service cannot hide the effects of road construction by calling these roads “temporary.” Thirteen and a half miles of road construction is a major increase to the extent of the road network for any single project. While only 2.5 miles are acknowledged as permanent, even the temporary road prisms will not go away after the Project is over; they will be reused to access these same stands and nearby stands. In the meantime, they will not be maintained and will contribute to pervasive water quality problems. These are not “temporary” roads; they are investments in future logging. Even if they were truly temporary, we note that temporary roads are not subject to engineering oversight (as system roads are). They also utilize smaller culverts that are not resilient to flooding. For both reasons, actual temporary roads create much more risk than system road construction. As a result, treating these as temporary roads makes the problem *worse*, not better.

As a remedy, the Forest Service must (a) disclose where “temporary” road prisms will likely be reused and must therefore be analyzed as system roads, then undertake a full analysis of cumulative impacts of road construction and road system expansion in the Project’s NEPA analysis; or (b) 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.

VII. The Prohibition on Old Growth Network Additions

The Project Area contains a high concentration of old growth resources. Though they were once abundant, old growth is exceptionally rare in the Eastern United States, and only roughly 100,000 acres exist in all the Nantahala-Pisgah. Old growth is critical for many reasons including maintenance of biodiversity and carbon storage and sequestration capabilities. Despite its importance, old growth is one of the deficit structural classes that prevents the Nantahala National Forest from being within the NRV as described in the 2023 Plan. Taking the issue one step further, the 2023 Forest Plan actually *removed* plan standards that previously limited logging to protect sensitive values like old growth. For example, under the 1994 Forest Plan, the Forest Service was required to survey for old growth forests and prioritize high quality areas for addition to a protected network of old growth patches.⁵⁷ In contrast, for the 2023 Forest Plan, the Forest Service admitted its primary interest was ensuring that logging projects could move forward whether or not old growth would be affected. To that end, the Forest Service chose to

⁵⁶ Final EA at 84-85.

⁵⁷ 1994 Forest Plan at III-26, III-28.

eliminate any project-level requirement to protect or even to survey for old growth when present in timber project areas.⁵⁸

Here, the impact of that decision has come to bear. Throughout the Project's analysis, the Forest Service has become increasingly aware of important old growth resources within the project area. Unfortunately though, in the Forest Service's own words, "[t]his [P]roject will not add additional small patch old growth to the Designated Old Growth Network" *because* "[t]he 2023 forest plan does not allow for additional small patches to be added to the Designated Old Growth Network at the project level."⁵⁹ The Forest Service admits, though, that stands 86/24 and 86/26 were "modified to exclude acreage of concern related to potential old growth forest conditions."⁶⁰ Again, we both appreciate and applaud the Forest Service's decision to modify these stands and drop other stands flagged in scoping comments which implicated non-Designated old growth. However, these concerns were apparently only on the Forest Service's radar because of the scoping process. Going forward, under the IFR, there will be no opportunity for the public to perform its own old growth surveys or explain to the agency why any old growth they find should be excluded from management. Indeed, the very resources contained in stands 53/23, 54/3, 86/26, 86/24, and 109/20, which were surveyed and avoided in this Project, have no lasting protection to spare them from the chopping block in subsequent projects. It is thus critical that the agency change course from the 2023 Plan to allow additions of small-patch newly inventoried old growth resources.

VIII. Impacts to the Ash Cove Wilderness Inventory and Mountain Treasure Area

While we appreciate the exclusion of a portion of Stand 56/22 from the final Project proposal, we remain concerned about impacts to the Ash Cove Mountain Treasure Area in stands 56/23 and 57/15. North Carolina Mountain Treasure Areas are priority conservation areas that are among the most important landscapes for conservation in the lower 48 states.⁶¹

All Mountain Treasure areas possess wilderness and roadless characteristics that require special consideration under both NFMA and NEPA.⁶² National Forest lands that are unroaded

⁵⁸ 2023 Forest Plan at 84-86 (not requiring surveys for old growth and prohibiting the addition of old growth to the protected network).

⁵⁹ Final EA at 11.

⁶⁰ Final EA at 24-25.

⁶¹ The Wilderness Society, *North Carolina's Mountain Treasures: The Unprotected Wildlands of the Pisgah and Nantahala National Forests* (2012) (Attachment 4); Belote and Irwin, *Quantifying the National Significance of Local Areas for Conservation Planning: North Carolina's Mountain Treasures* (2017) (available online at https://www.researchgate.net/publication/345154448_Quantifying_the_National_Significance_of_Local_Areas_for_Regional_Conservation_Planning_North_Carolina%27s_Mountain_Treasures).

⁶² See 16 U.S.C. § 1604(e)(1) (NFMA); FSH 1909.12 Ch. 70; *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1078 (9th Cir. 1997) (holding that, under NEPA, the "the possibility of future wilderness classification triggers . . . an obligation . . . to disclose the fact that the development will affect a 5,000 acre roadless area."); *Lands Council v. Martin*, 529 F.3d 1219, 1231 (9th Cir. 2008) (also holding that "the Forest Service was required to discuss the effects of the proposed logging on the roadless character" of an area.").

and undeveloped are relatively rare, and they attract intense public interest. Activities in these areas that threaten wilderness or roadless characteristics or the potential for future protective designations will continue to be controversial. Unfortunately, the 2023 Plan allocated relatively few deserving Mountain Treasure areas to management areas protective of their notable attributes.

The Ash Cove area, in particular, possesses significant remote recreation and scenic values and was recommended for Backcountry management by the Nantahala–Pisgah Forest Partnership during Forest Plan revision. While improperly downplaying and minimizing wilderness values in Ash Cove, the wilderness evaluation in the Plan does not deny that the area has wilderness values and characteristics.⁶³ The area has “recovered from past logging,” is natural appearing, and offers many opportunities for primitive and unconfined recreation.⁶⁴ The Plan’s evaluation for the Area feints at a rationale that surrounding private lands make the area unmanageable, but Congress has made clear that non-wilderness uses on surrounding lands do not disqualify areas from wilderness designation.⁶⁵ At any rate, the Forest Service provides no example of any threat to wilderness characteristics created by surrounding private lands.⁶⁶ Ultimately, the Forest screened out Ash Cove and as a result failed to disclose or consider adverse impacts of road construction and timber production on its character. To be sure, the Forest Service did include Ash Cove as Backcountry and Ecological Interest Area in Plan Alternative C, but nowhere did the agency disclose the different effects of the competing management area allocations on this area’s character in the long term. Having been skipped in the Plan EIS, that work must now be done at the project level.

Under the relevant agency regulations, an EIS is required whenever a project would substantially impact an inventoried roadless area or potential wilderness area.⁶⁷ Attributes that qualify an area as potential wilderness “possess independent environmental significance.”⁶⁸ In addition, the potential for designation as wilderness areas is an independent factor of significance.⁶⁹ Impacts that would make an area ineligible for inventory in the future are likely to

⁶³ Nantahala and Pisgah National Forest, Final Environmental Impact Statement for the Land Management Plan, App’x E at E259-E263.

⁶⁴ *Id.*

⁶⁵ *See, e.g.*, Tennessee Wilderness Act of 1986, PL 99-490 (designating the Little Frog Wilderness, which abuts the exact same highway that the Forest Service here argued was disqualifying).

⁶⁶ 16 U.S.C. 1131(c)(2).

⁶⁷ 36 C.F.R. § 220.5(a)(2) (2024). Although this regulation specifically addresses impacts to “potential wilderness areas,” the terminology used for inventory at the time it was adopted, these terms are functionally equivalent. *Compare* FSH 1909.12, Ch. 70 (2007) *with* FSH 1909.12, Ch. 70 (2012).

⁶⁸ *Lands Council v. Martin*, 529 F.3d 1219, 1230 (9th Cir. 2008) (EIS that provided “a three-page analysis on ‘roadless character’” was “cursory” and therefore insufficient); *Or. Natural Desert Ass’n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1116–22 (9th Cir. 2010) (effects on “wilderness values” and/or “roadless character[istics]” in the planning area must be evaluated under NEPA).

⁶⁹ *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1078–79 (9th Cir. 1994).

be “significant,” requiring full consideration in an EIS.⁷⁰ Development of this area for timber production would make it ineligible for future designation, and it would also destroy the underlying characteristics that make the area eligible in the first place—its unroaded character, its opportunities for primitive recreation away from roads, and its natural appearing forests. Indeed, contrary to the Final EA’s conclusions, it is very likely that the proposed silviculture will *degrade* species composition in these stands. Thus, an EIS would be required if the Forest Service continued to pursue roadbuilding and logging in Mountain Treasure areas like Ash Cove with wilderness characteristics.

IX. The Logging in Stand 57/15 is Inconsistent with the Forest Plan

In addition to the failure to adequately consider the impacts to the Ash Cove area’s wilderness and backcountry characteristics, the Forest Service has also proposed action in this area that is inconsistent with the Plan. Ash Cove is one of few tract areas allocated to the Ecological Interest Area management area (“MA”). This MA anticipates active management but only to “restor[e] and improv[e] the unique values present.”⁷¹ The MA is unsuitable for timber production and “[t]he need for balancing successional age classes at the landscape scale w[ill] not drive stand-level prescriptions.”⁷² In other words, if a lighter prescription will better serve the project’s needs, then the Forest Service cannot use a heavier prescription in order to meet other goals to create ESH or produce timber. This makes the EIA MA very different from the suitable lands on the other side of the ridge.

Specific management direction for this area includes a prohibition on timber harvest “except when it does not result in departure from the desired community composition.”⁷³ Further, regeneration harvests (like those in the Project) “shall only be used to restore species composition,” such as treatments to remove “offsite” species and regenerate characteristic species.⁷⁴

The Forest Service claims that the purpose of the treatments in stand 57/15 is to restore species composition, but it will not have that effect and will almost certainly degrade species composition. The proposed harvest method for 57/15 is a “shelterwood with reserves”, though it is probably better described as a clearcut with reserves. This harvest method is very unlikely to improve the species composition of the stand. Currently, the stand is poplar dominated. Poplar outcompetes all other species on productive sites in a high-light environment. Removing 80–90% of the canopy will only maintain, or even increase, poplar dominance. Shade tolerant species are characteristic of rich cove and slope forests such as those represented by 57/15. Because of this, methods such as thinning, group selection, and variable retention systems would

⁷⁰ See 36 C.F.R. § 220.5(a)(2) (2024) (“Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area” will ordinarily require an EIS.).

⁷¹ NPNF Forest Plan (2023) at 224.

⁷² *Id.*

⁷³ *Id.* at 225.

⁷⁴ *Id.*

be a better silvicultural technique for increasing the canopy diversity of the stand. The proposed action is very likely to either perpetuate poplar dominance for the long term or even make the species composition worse through the introduction of non-native species such as garlic mustard and tree of heaven. As such, the project is incompatible with the Ecological Interest Management Area and the Forest Plan. To illustrate the point, the very same treatment is being applied in the EIA as in timber production management areas. The Ecological Interest MA requires a more subtle approach, and the chosen harvest method does nothing to foster the development of diverse species composition or to accelerate the development of late and old growth characteristics.

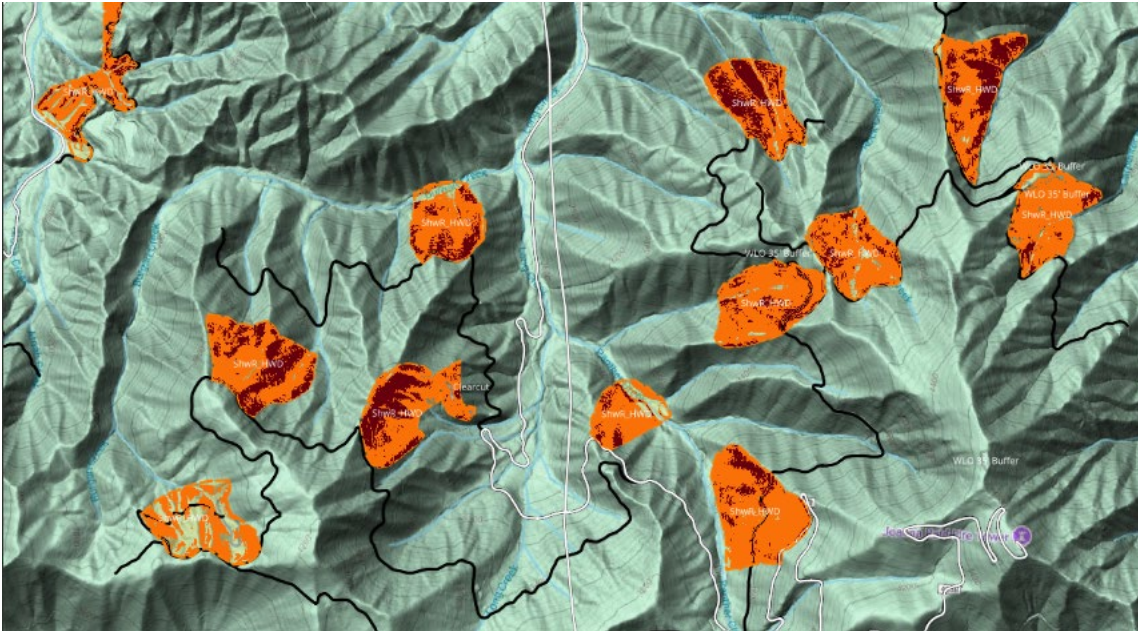
To be sure, the Final EA acknowledges that the treatment will be ineffective without “intensive subsequent stand improvement activities,” but we are concerned that those kinds of follow-up treatments will not be carried out as needed. Indeed, the kind of gardening that would be required to have the stated effect would likely be more expensive than the timber is worth. To support the proposed action, the Forest Service should at least attempt to point to other similar locations where it has implemented a regeneration harvest and then has demonstrably improved the species composition in the future stand. If it has any such examples, what differentiates those examples from the much more common stands where this treatment has degraded species composition? If the Forest Service cannot answer that question and commits to doing what is necessary to reach the desired future condition, it cannot carry out this treatment consistent with EIA requirements.

To remedy this issue, the Forest Service should drop the stand or modify the prescription consistent with the discussion above.

X. Steep Slopes and Water Quality Impacts

The stands in this project are exceptionally steep. As the figure below shows, many stands are over 40%, and large portions of stands are over 70%. As a result, logging in this area poses exceptional risk. Several legal and analytical responsibilities flow from this risk, and although the Forest Service has improved its analysis from the draft stage, it has not met all its obligations.

Figure: Slopes over 40% (orange) and over 70% (red)



First, we argued in our comments that the Forest Service should specify harvest method and clarify access implications of the chosen methods for each stand. The Final EA improves upon the Draft by specifying the harvest type for each stand and commits to cable yarding for stands with steep slopes—for all but one stand. The Final EA does not carry this site-specific analysis through, however, to update its water quality determination.

The Forest Service determined that while all other stands with a sustained slope of over 40% will utilize cable yarding, a ground-based system is more appropriate for Stand 113/10. While we appreciate the Forest Service's attempt to minimize access road building and other resource concerns, deciding between ground or aerial logging methods was the wrong question to ask here. If the cable yarding method required for such steep slopes is unfeasible, the stand should simply be ineligible for commercial harvest, at least to the extent that ground-based harvest would require stacking of skid trails (which of course the Plan and its analysis assume will be avoided). The Forest Service's vague reference to soil disturbance modeling and blind faith in BMPs does not sufficiently demonstrate that ground-based logging will be as protective as aerial methods. When steep slope stands require treatment to promote desired future composition, such as Stand 113/10, other less impactful, non-commercial treatment options like slash/burn/plant are available.

The Plan's requirement for cable yarding for commercial harvest on steep slopes cannot be merely a suggestion inviting a work-around. If it is unworkable, the stand cannot be commercially harvested. We would like further discussion during the objection process about whether stacked skid trails can be prohibited in this stand, perhaps with non-commercial inclusions to cut white pine that cannot be reached by ground-based equipment subject to that limitation.

In our previous scoping and draft EA comments, we have emphasized the need for the Forest Service to determine the specific logging method for each stand. First, NEPA requires it. NEPA requires that agencies undertake and disclose site-specific analysis before making decisions with site-specific impacts.⁷⁵ In other words, whenever an agency proposes to choose among options that have different site-specific environmental consequences—like ground-based logging versus cable logging—the agency must provide site-specific analysis of those environmental consequences during the NEPA process before making a final decision.⁷⁶ A site-specific analysis must include “a reasonably thorough discussion of the distinguishing characteristics and unique attributes of each area affected by the proposed action.”⁷⁷ Logging methods, road placement, and watershed characteristics are all material site-specific characteristics that require analysis under NEPA.

Second, the Project is inconsistent with the Plan because it includes the harvest of timber on slopes where technology to harvest timber is not currently available without causing irreversible damage.⁷⁸ During the planning process, the Forest Service found that slopes over 70% are “unsuitable” for timber production because they cannot be harvested without causing irreversible damage that would be unlawful under NFMA.⁷⁹ The maps of “suitable” lands that the Forest Service made available to the public likewise exclude slopes over 70%. Accordingly, under the Plan, timber harvest cannot occur on those slopes unless necessary for one of several narrow purposes not present here *and* accompanied by a site-specific finding that the harvest will not cause irreversible damage.⁸⁰ This is a serious problem for this project because the Forest

⁷⁵ *E.g.*, *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (holding that site-specific impacts must be “fully evaluated” when an agency proposes to make an “irreversible and irretrievable commitment” of resources to a project at a particular site). Congress alone may make exceptions to this rule. *E.g.*, 16 U.S.C. §§ 6591a(b)(2), 6591b(a)(1), 6591(d) (allowing the Forest Service to skip NEPA for site-specific actions that otherwise would require an EA or EIS, provided that all the requirements for eligibility are met. Such exceptions are narrow and rare).

⁷⁶ *See, e.g.*, *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1049 (9th Cir. 2013) (internal citation omitted) (holding that BLM has a “critical duty to ‘fully evaluate[]’ site-specific impacts” even after issuing a programmatic EIS); *City of Tenakee Springs v. Block*, 778 F.2d 1402, 1407 (9th Cir. 1985) (finding that “NEPA requires both a programmatic and a site-specific EIS,” and that agencies do not have discretion “to determine the specificity required by NEPA” in a site-specific EIS but must instead adhere to the statute); *Wilderness Soc’y v. U.S. Forest Serv.*, 850 F. Supp. 2d 1144, 1150, 1157 (D. Idaho 2012) (holding that the U.S. Forest Service was required to “take a ‘hard look’” at the impact of 94 miles of roads under NEPA “before making them a part of the designated route system in the area” despite the roads having been used unofficially for years); *Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv.*, No. 2:05-CV-0299, 2006 WL 1991414, at *9–10 (E.D. Cal. July 14, 2006) (invalidating the use of an EA without site-specific analysis for project locations).

⁷⁷ *Stein v. Barton*, 740 F. Supp. 743, 749 (D. Alaska 1990); *see Klamath-Siskiyou Wildlands Ctr.*, 2006 WL 1991414, at *9–10.

⁷⁸ *See* 16 U.S.C. 1604(g)(3)(E); 36 C.F.R. 219.11(d)(2); FSH 1909.12.61.12.

⁷⁹ Plan App’x B at B-47 to B-49.

⁸⁰ TIM-S-02 (allowable purposes for harvest on unsuitable lands); TIM-S-04 (site-specific finding requirement). Note that a site-specific finding that irreversible damage would not occur is not enough, by itself, to demonstrate consistency with the Plan. Harvesting for the purposes that this project is designed to meet—i.e., including timber

Service's purpose for the project is to manage *suitable* lands as anticipated in Plan direction. It was not designed to meet the very different needs for which harvest is allowed on unsuitable lands. This problem is even worse because it will be impossible to harvest the 40%+ portions of the stands (which require skyline methods) with the 70%+ inclusions in the way. All this to say, the Project appears to be impossible to carry out without violating the Forest Plan.

Third, a site-specific analysis (in light of the new information about which stands will be harvested with which methods) is required to adequately assess the Project's impacts to water quality.⁸¹ Now that the Forest Service has determined the precise types of causes in each stand, it must complete its analysis regarding the effects. The agency hasn't done this yet. In fact, it is not clear that the Forest Service has even considered the effects of additional access needed to implement skyline logging methods. The water quality analysis with regards to impacts from silvicultural activities is the same now as it was before the Forest Service refined its choice of harvest methods. When the Forest Service updates its analysis, it must also consider the special qualities and associated water quality standards for each of the affected waters. *See* Attachment 1, Table 2. Without this site-specific analysis of water quality impacts, taking into account both the logging method chosen and the given Surface Water Classification at issue, the Project's EA is incomplete.

Lastly, the Final EA perpetuates the Forest Service's misplaced reliance on BMPs, inflating the performance of ordinary BMPs to minimize the impact of management activities on water quality.⁸² For example, mitigating ground disturbance by seeding, mulching, and working during dry periods are three measures described in the EA to minimize sediment impacts to streams.⁸³ We support these measures, but they do not guarantee zero impacts as suggested by the EA. The possibility of rainfall (including heavy storms and microbursts) exists at any time of year, and visible sediment could easily result, particularly if it occurs close in time to the ground disturbance, before stabilizing measures have been performed or have time to take effect. And, as noted above, the use of "temporary" roads all but guarantees that culverts will not be adequately sized to deal with strong storms unless additional BMPs are adopted.

production—would require a plan amendment. *See* 36 C.F.R. 219.11(a)(2) (requiring a plan amendment to change suitability determinations).

⁸¹ Under the federal Clean Water Act, the Forest Service is obligated to meet the requirements of state water quality protection laws, including North Carolina's Water Quality Protection Act and Sedimentation Pollution Control Act. 33 U.S.C. § 1323. The NC Water Quality Protection Act prohibits pollution (from any source, including forestry) that violates state water quality standards. NCGS § 143-215.1(a)(6); *see also* 15 NCAC 2B .0211(12). The use of BMPs is not a shield to liability if the activity is not in full compliance with the Forest Practice Guidelines, which prohibit the introduction of visible sediment to streams.

⁸² *See e.g.* Final EA at 57, 60 – 63.

⁸³ *Id.* at 60.

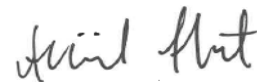
Our Objection to the Revised Forest Plan describes our concerns with the Forest's pattern of relying on 100% BMP efficacy at both the forest planning and the project levels.⁸⁴ We incorporate these comments by reference here. In summary, incomplete and skewed monitoring results are improperly used to bolster BMP performance, allowing the Forest to downplay the impacts of management activities on soil and water resources. For example, BMPs have only been monitored in a tiny fraction of past projects, and such monitoring excluded both short-term impacts (by failing to measure impacts during implementation and prior to closure) and long-term effects (by failing to measure impacts more than once after project closure).⁸⁵ As we describe in the attached Objection, available data from similar projects shows that in truth, the risk to soils and water quality is much greater than disclosed.⁸⁶ The failure to grapple with these problems in the Plan EIS means that concerns must either be mitigated or further analyzed at the project level. The Project EA, here, does no such grappling.

XI. Conclusion

We sincerely appreciate the District's efforts to respond to public input and avoid old growth resources while mitigating other harmful impacts from this Project. Again, if not for the 2023 Plan's enduring and impactful failures, we likely would not have objected to this Project. Under the reality of the 2023 Plan, however, we must.

In short, the Project will cause inappropriate species composition, inappropriate disturbance patch sizes, enduring impacts to soil and water quality. It will contribute to a poorly maintained, bloated road system. The Project is predicated on the Plan's wrongful denial of protection to special attributes such as unroaded character and old growth communities. Each of these flaws can be entirely attributed to the Plan, just as they will continue to be in all future projects implemented under it. The Forest deserves better. And the stakeholder relationships which the Forest Service meaningfully engaged in and benefited from for decades prior to the plan deserve better. We hope that this objection illuminates our fundamental concerns with the Plan and can lead to productive communication and compromise going forward.

Sincerely,



Abigail Hunt
Associate Attorney
Southern Environmental Law Center

⁸⁴ Attachment 3 at 129–131.

⁸⁵ *Id.*

⁸⁶ *Id.*

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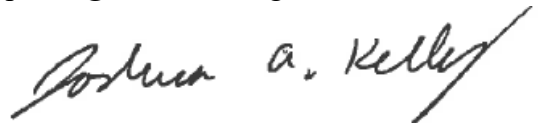
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