

October 9, 2025

*Via online submission at <http://cara.fs2c.usda.gov/Public/CommentInput?project=66727>*

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**Re: Draft Environmental Assessment Comments on Forest-Wide Open Lands  
Vegetation Management Project**

Dear Supervisor Timm:

Thank you for the opportunity to comment on the Draft Environmental Assessment (“Draft EA”) for the proposed Forest-Wide Open Lands Vegetation Management Project (“Open Lands Management Project” or “Project”). Please accept the following comments on behalf of The Clinch Coalition, Virginia Wilderness Committee, and the Southern Environmental Law Center.

Given the large scope of this proposal—clearing vegetation on up to approximately 70,000 acres of the George Washington and Jefferson National Forests (“GWJNF”), including with herbicides, for each of the next ten years—we are very interested in ensuring adequate National Environmental Policy Act (“NEPA”) analysis occurs for the Project. We also want to ensure that sufficient sideboards, mitigation measures, and monitoring requirements are in place. As it stands, we are concerned the Draft EA fails to adequately analyze the environmental impacts of the Project in contravention of NEPA. We also believe that, without substantial changes to the proposed action, the Project may have significant effects on the human environment, triggering the need to prepare an Environmental Impact Statement (“EIS”).

To comply with NEPA, we highly recommend the Forest Service restructure the Project as a landscape-scale EA to which future projects can tier their own NEPA analysis. The Implementation Checklist as currently structured does not provide adequate site-specific analysis or an opportunity for the public to comment on the Project and its potential impacts and therefore violates NEPA. If implemented, this Project would likely also violate the National Forest Management Act, Endangered Species Act, and potentially the Clean Water Act.

If the Forest Service chooses to proceed with the current structure of the Project and wishes to avoid the need to prepare an EIS, we recommend the Forest Service make the following changes to the action alternative:

1. Exclude open lands management in the following management prescription areas in the George Washington National Forest:
  - a. 2C2 – Eligible Scenic Rivers
  - b. 4B – Little Laurel Run Research Natural Area
  - c. 4C1 – Geologic Areas
  - d. 4D – Botanical-Zoological Areas (Special Biological Areas)
  - e. 4F – Mount Pleasant National Scenic Area
  - f. 4FA – Shenandoah Mountain Recommended National Scenic Area
  - g. 8E4a – Indiana Bat Primary Cave Protection Area
  - h. 8E4b – Indiana Bat Secondary Cave Protection Area
  - i. 8E7 – Shenandoah Mountain Crest
2. Exclude open lands management in the following management prescription areas in the Jefferson National Forest:
  - a. 1.B – Recommended Wilderness Study Areas
  - b. 4.D – Botanical / Zoological Areas
  - c. 4.E.1 – Cultural / Heritage Areas
  - d. 4.F – Scenic Areas
  - e. 4.K.1 – North Creek Special Area
  - f. 4.K.3 – Mount Rogers Crest Zone Special Area
  - g. 4.K.4 – Whitetop Mountain Special Area
  - h. 4.K.5 – Whitetop Laurel Special Area
  - i. 4.K.6 – North Fork Pound Special Area
  - j. 6.C – Old Growth Forest Communities Associated with Disturbance
  - k. 8.E.2.b – Peaks of Otter Salamander Secondary Habitat Conservation Area
  - l. 9.A.1 – Source Water Protection Watersheds
  - m. 9.A.4 – Aquatic Habitat Areas
  - n. 9.F – Rare Communities
  - o. 12.C – Natural Processes in Backcountry Remote Areas
3. Exclude open lands management in the following sensitive areas in both the George Washington and Jefferson National Forests:
  - a. Areas with federally listed threatened or endangered species, designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
  - b. Congressionally designated wilderness, wilderness study areas, and national recreation areas;
  - c. Inventoried roadless areas and potential wilderness areas (“PWAs”);
  - d. Native American or Indigenous religious and cultural sites; and
  - e. Archaeological sites and historic areas.
4. Explicitly prohibit commercial timber harvest as part of Project implementation;
5. Narrow the “extended” road corridor from 76 feet on either side of the road centerline;
6. Increase limitations on herbicide application, including setting time-of-year restrictions, re-committing to Forest Plan Standards for buffers around sensitive and non-target species, and prohibiting herbicide use within 100 feet of water resources; and
7. Require robust and ongoing monitoring, tracking, and adjustment of Project implementation to ensure treatment is effective and not causing significant environmental impacts

We note, however, that even if the Forest Service makes these changes to the Project, the sheer scope of management the agency proposes here may inherently have significant impacts that require an EIS.

Further, to comply with NEPA, we recommend the Forest Service make the following changes to its current analysis:

1. Reassess the assumptions and environmental analysis underpinning the 2010 Forest-Wide Non-Native Invasive Plant Control EA (“2010 NNIP EA”) to ensure the scientific and landscape information relied upon remains accurate;
2. Supplement the analysis from the 2010 NNIP EA to adequately analyze the environmental impacts of treating native plants with herbicides;
3. Incorporate a discussion of the Travel Analysis Processes (“TAPs”) for the GWJNF and how they may impact management under the Project;
4. Further assess the Project’s potential impacts on riparian corridors and waterways; and
5. Analyze the Project’s cumulative impacts on carbon storage and the compounding effects of climate change.

Critically, the Forest Service needs to take practical limitations on budget and staff into account when setting the scope and timeline for implementation of this Project. Regrettably, agency capacity is at an all-time low. Given the large annual scale of this Project and the multi-year timeline, this Project must be planned and implemented well, which requires a significant investment by an over-burdened agency. We caution the agency against approving more than it can implement adequately.

**I. The Forest Service must restructure the Project and Implementation Checklist in order to comply with NEPA.**

We understand and appreciate the Forest Service’s interest in effectively coordinating management of open lands across the Districts of the GWJNF. We support the agency’s desire to provide uniform criteria for determining the appropriate method of maintenance based on site-specific conditions. However, the Forest Service remains obligated under NEPA to conduct site-specific analysis of the impacts any proposed management may have on the human environment. Under the Project’s current structure, the Forest Service has not completed its site-specific analysis, and instead defers substantial portions of that analysis to some later stage that does not include additional NEPA review or public input. The Forest Service cannot simply bypass NEPA in this manner.

**A. NEPA requires the Forest Service to conduct a site-specific analysis of a project, which the agency has not done in this EA.**

NEPA famously has “twin aims”: It obligates a federal agency to consider the environmental impacts of a proposed action and consider potential alternatives *before* it commences the action, and it requires the agency to inform the public that it has, in fact, considered those environmental impacts in its decision-making process.<sup>1</sup> Forest Service regulations implementing NEPA require the same: “*before* making a decision on the proposal,”

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<sup>1</sup> *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983); *see also Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005) (requiring federal agencies to “carefully weigh environmental considerations and consider potential alternatives to the proposed action *before* the government launches any major federal action”) (emphasis added).

the agency must “[c]onsider[] the alternatives” and “[c]omplet[e] [its] environmental document review.”<sup>2</sup>

Through the NEPA process, the agency must provide the public with enough information about a project, its components, and its impacts “to permit members of the public to weigh in with their views and thus inform the agency decision-making process.”<sup>3</sup> This includes completing a site-specific analysis of the potential effects of a proposed action.<sup>4</sup> And whenever an agency proposes to choose among options that have different site-specific environmental consequences—like conducting mechanical treatment in one area versus another, or conducting manual treatment only—the agency must provide site-specific analysis of those environmental consequences through the NEPA process before making a final decision.<sup>5</sup> When preparing such a site-specific analysis for a project, the agency must include “a reasonably thorough discussion of the distinguishing characteristics and unique attributes of each area affected by the proposed action.”<sup>6</sup> Agencies cannot avoid the necessity of conducting a site-specific NEPA analysis with public disclosure and comment by promising to consider these effects later in a non-NEPA document.<sup>7</sup>

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<sup>2</sup> 36 C.F.R. § 220.4(c). We note that the U.S. Department of Agriculture reorganized its NEPA regulations in an Interim Final Rule published July 3, 2025, including significant changes to the Forest Service’s regulations. *See* 90 Fed. Reg. 29632 (July 3, 2025). However, the Department’s Interim Final Rule confirms that the NEPA review for projects that began prior to the publication of the Interim Final Rule will proceed under the agency’s previous regulations. *See* 90 Fed. Reg. 29632, 29634 (July 3, 2025) (“[R]evised agency procedures will have no effect on ongoing NEPA reviews, where USDA, following CEQ guidance, has held it will continue to apply existing applications.”). And conversations with GWJNF staff during our meeting in June 2025 support this interpretation. As such, these comments focus on the Forest Service’s NEPA regulations as they stood on July 2, 2025.

<sup>3</sup> *Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng’rs*, 524 F.3d 938, 953 (9th Cir. 2008); *see also Ohio Valley Env’t Coal. v. U.S. Army Corps of Eng’rs*, 674 F. Supp. 2d 783, 809–10 (S.D.W. Va. 2009) (failing to adhere to this obligation to provide information to the public “deprives the public of its procedural right to an adequate opportunity to participate in the [NEPA] process”); *State of Cal. v. Block*, 690 F.2d 753, 770–71 (9th Cir. 1982) (concluding that since it is “[o]nly at the stage when the draft EIS is circulated [that] the public and outside agencies have the opportunity to analyze a proposal and submit comment,” withholding information at this stage illegally “insulates [an agency’s] decision-making process from public scrutiny”).

<sup>4</sup> *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”).

<sup>5</sup> *See, e.g., Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1049 (9th Cir. 2013) (holding that BLM has a “critical duty to ‘fully evaluate[]’ site-specific impacts” even after issuing a programmatic EIS); *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).

<sup>6</sup> *Stein v. Barton*, 740 F. Supp. 743, 749 (D. Alaska 1990); *see also 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”).

<sup>7</sup> *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.”).

The Open Lands Management Project Draft EA neither sufficiently describes the Forest Service's proposed action nor adequately analyzes the potential environmental effects of that action.

First, as it stands, it is impossible to know from the Draft EA what management activities the Forest Service is proposing in what areas of the GWJNF. The Draft EA allows any number of the 25 proposed treatments to be layered in a particular area, several of which may be done repeatedly.<sup>8</sup> These management activities are to be used in a variety of open and semi-open lands across the entire GWJNF in at least 60 management prescriptions.<sup>9</sup> Further, the Draft EA does not and cannot describe several elements of the Project in sufficient detail due to the scope of the management proposed, including:

- **The acreage of the “roadside corridors” included in the Project area:** “Because the actual roadside width of similar roads can vary due to differences in topography, line-of-sight, drainage needs, and other factors, it was not practical to calculate a standard roadway or roadside width across the entire project area and remove that amount from the estimated resources area acreage.”<sup>10</sup>
- **The Management Prescription Areas impacted by the Project:** “Forest Service Roads occur across a wide variety of Management Prescription Areas. Activities implemented under the Open Lands project would align with individual MA objectives and activities prohibited within Forest-wide or Management Prescription Area Standards & Guidelines would not be considered.”<sup>11</sup>
- **The number and acreage of wildlife openings eligible for management under the Project:** “New wildlife openings created through separate future projects could then be maintained under this project. Wildlife openings in the current project area that have undergone significant succession and are effectively no longer openings would not be eligible for re-treatment under this project, as treatment would constitute establishment of a new opening.”<sup>12</sup>
- **The extent of management proposed in any given area of the Project:** “The Forest Service is proposing to maintain early successional vegetative conditions in permanent open and semi-open lands and extended road corridor buffers using a suite of proposed activities, *either singly or in combination*, to maintain early successional habitat conditions and quality in established early successional habitat or open areas.”<sup>13</sup> “Proposed treatments will differ according to the objective for a particular open area . . . .”<sup>14</sup>

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<sup>8</sup> U.S. FOREST SERV., FOREST-WIDE OPEN LANDS VEGETATION MANAGEMENT PROJECT GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS ENVIRONMENTAL ASSESSMENT 17 (Sept. 2025) [hereinafter Draft EA] (“Activities may be used coincident with one another or in a particular order to achieve desired conditions”); *see also* Draft EA at Table 7 (noting that 15 of the 25 proposed management activities will simply occur “as needed” and allowing other management activities to occur up to annually “depending on area objectives”).

<sup>9</sup> Draft EA at Tables 2–7.

<sup>10</sup> Draft EA at 10.

<sup>11</sup> Draft EA at 11.

<sup>12</sup> Draft EA at 13.

<sup>13</sup> Draft EA at 16 (emphasis added).

<sup>14</sup> Draft EA at 47.

- **The current condition of areas proposed for treatment:** “Site visits would be conducted prior to treatment to ensure on-the-ground conditions are as predicted and that no new resource concerns have been identified since previous activity implementation.”<sup>15</sup>
- **The management objectives of the areas proposed for treatment:** “Forest cover retention would vary based upon site-specific management objectives and Forest Plan standards . . . .”<sup>16</sup>

Second, by its inherent structure, the Implementation Checklist bypasses the site-specific review and public consideration required under NEPA. We appreciate that the Forest Service took the suggestion from our scoping comments that the Implementation Checklist apply to all proposed management under the Project rather than just management that includes herbicide application.<sup>17</sup> That said, the Implementation Checklist and its current planned use do not provide adequate site-specific analysis or an opportunity for the public to comment on the Project and its potential impacts. Instead, the Forest Service aims to convert the required site-specific analysis into a unilateral box-checking exercise. This violates NEPA and, if implemented, this Project would likely violate the National Forest Management Act, Endangered Species Act, and potentially the Clean Water Act.

The Forest Service openly acknowledges that it has not completed the site-specific review that would be necessary for implementation of this Project.<sup>18</sup> But nowhere in the Draft EA for the Open Lands Management Project does the Forest Service suggest the Implementation Checklist will be part of a later, tiered NEPA analysis. Instead, the checklist provides selective conditions under which site-specific review by specialists will be conducted.<sup>19</sup> The specialists’ assessments of potential impacts to the human environment would post-date the Project decision and would thus be insulated from the public involvement required by NEPA. For example, the Draft EA defers assessments of:

- The site-specific impacts of herbicide treatments;<sup>20</sup>

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<sup>15</sup> Draft EA at 17.

<sup>16</sup> Draft EA at 18.

<sup>17</sup> *Compare* Letter from Joby P. Timm, Forest Supervisor, to interested parties regarding Public Input on the 2024 Forest wide Maintenance of Open and Semi-Open Lands, Roadside Corridors, and Utility Rights-of-Way Project at Appendix A (Oct. 25, 2024) *with* Draft EA at Appendix B – Implementation Checklist; *see also* Letter from Kristin Davis and Katherine Coffey, Southern Environmental Law Center, Sharon Fisher, The Clinch Coalition, and Ellen Stuart-Haëntjens, Virginia Wilderness Committee, to Joby P. Timm, Forest Supervisor, regarding Scoping Comments on 2024 Forest wide Maintenance of Open and Semi-Open Lands, Roadside Corridors, and Utility Rights-of-Way (Nov. 25, 2024).

<sup>18</sup> *See* Draft EA at 17 (“Any ground disturbing management actions would be subject to additional site-specific review by relevant district and/or forest level staff in the areas of botany/ecology, wildlife biology, aquatic biology, hydrology/soils, heritage, and recreation resources prior to any treatments.”).

<sup>19</sup> *See* Draft EA at Appendix B – Implementation Checklist.

<sup>20</sup> Draft EA at 15 (“An Implementation Checklist would be used to ensure that an interdisciplinary review is conducted regarding herbicide application at each specific site, and would also ensure that potential environmental impacts are within the scope of the predicted impacts.”).

- The site-specific impacts of ground-disturbing management;<sup>21</sup>
- Potential impacts to threatened, endangered, and sensitive species;<sup>22</sup>
- Potential impacts to rare and unique ecological communities;<sup>23</sup>
- Potential impacts to soils, water quality, and aquatic species;<sup>24</sup>
- Potential impacts to sites of historical or cultural significance;<sup>25</sup>
- Potential impacts to recreation sites and/or dispersed recreation activities;<sup>26</sup>

The agency cannot purport to have fulfilled its obligations to perform site-specific analysis and public disclosure under NEPA and still defer such substantial analysis to the implementation stage of the Project.

B. The Draft EA fails to consider the full range of reasonable alternatives

NEPA requires the Forest Service to evaluate “a reasonable range of alternatives to the proposed agency action,” including the “no action alternative.”<sup>27</sup> The range of what is considered a reasonable alternative is “dictated by the nature and scope of the proposed action” and must be “sufficient to permit a reasoned choice.”<sup>28</sup> Failure to consider a “viable but unexamined alternative” will render a NEPA analysis inadequate.<sup>29</sup>

There are several viable alternatives to the action alternative considered in the Open Lands Management Project Draft EA that could achieve the Forest Service’s stated purposes of (1) “maintain[ing] early successional conditions” in existing areas by “integrating the use of a suite of proposed activities in an efficient manner” and (2) “allow[ing] targeted road corridor-related vegetation management to improve driver safety and wildfire response.”<sup>30</sup> The Draft EA only examines two alternatives: the action alternative and the no-action alternative.<sup>31</sup> Under the no-action alternative, much of the management proposed in the Project would still be able to occur under current maintenance authorizations and future project-level decisions.<sup>32</sup>

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<sup>21</sup> Draft EA at 17.

<sup>22</sup> Draft EA at 17.

<sup>23</sup> Draft EA at 17.

<sup>24</sup> Draft EA at 17.

<sup>25</sup> Draft EA at 17.

<sup>26</sup> Draft EA at 17.

<sup>27</sup> 42 U.S.C. § 4332(C)(iii).

<sup>28</sup> *Alaska Wilderness Recreation and Tourism Ass’n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995) (quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992)).

<sup>29</sup> *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)).

<sup>30</sup> Draft EA at 12.

<sup>31</sup> See Draft EA at 16–20 (outlining the proposed action and the no-action alternative).

<sup>32</sup> Draft EA at 19–20.

There remains middle ground between the Forest Service's proposed action, which as it stands would greenlight broad swaths of management without sufficient NEPA documentation, and the no-action alternative. As we discuss in greater detail below, we recommend the Forest Service study and adopt the following reasonable alternatives in place of the action alternative:

- An alternative that avoids management in sensitive areas of the GWJNF, including Wilderness Areas, Potential Wilderness Areas, Inventoried Roadless Areas, and particular management prescriptions on both forests, and instead requires individual project-level analyses to expand open lands management activities in these areas;
- An alternative that prohibits commercial timber harvest as an avenue for implementation;
- An alternative that reduces the size of the “extended road corridor”; and
- An alternative that imposes additional guardrails on herbicide application, such as time-of-year restrictions and larger buffers around water resources.

## **II. The Forest Service must modify the Project to avoid significant effects to the George Washington and Jefferson National Forests.**

The sheer scope of the Open Lands Management Project as presently outlined in the Draft EA likely requires preparation of an Environmental Impact Statement. An agency must prepare an EIS if “substantial questions are raised as to whether a project . . . *may* cause significant degradation of some human environmental factor.”<sup>33</sup> It is not necessary to show “that significant effects *will in fact occur*.”<sup>34</sup> 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,” or if the agency fails to “supply a convincing statement of reasons why potential effects are insignificant.”<sup>35</sup>

As noted above, the Project currently encompasses 25 management activities—eight of which involve ground disturbance—to maintain early successional habitat in at least 60 management prescription areas across both the George Washington and Jefferson National Forests.<sup>36</sup> And implementation of the Project could include nearly 19,500 acres of management annually, over 7,000 acres of which could involve ground-disturbing activities, over the course of a decade.<sup>37</sup> At present, the Project area encompasses the entirety of the 1.8 million acres that make

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<sup>33</sup> *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir. 1992) (internal citations omitted) (emphasis in original).

<sup>34</sup> *Id.*

<sup>35</sup> *Save the Yaak Committee v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) (internal citations omitted).

<sup>36</sup> Draft EA at Tables 2–7.

<sup>37</sup> See Draft EA at 19 (proposing treatment of 4,000 acre of open and semi-open lands, 774 acres of daylighting or fuel break treatments, 2,600 acres of mowing, brush cutting, or mastication activities, and up to 12,000 acres of hand-applied herbicide treatment annually); Draft EA at 17 (“The treatments are expected to begin in 2026 and continue for 10 years . . .”).



up the GWJNF.<sup>38</sup> Without narrowing the scope of the Project, it almost certainly will have significant effects on the human environment that require preparation of an EIS.

- A. The Forest Service should exclude particularly sensitive areas of the GWJNF from management under the Project and instead manage these areas under standalone decisions.

In order to avoid significant impacts to the George Washington and Jefferson National Forests that would require the preparation of an EIS, the Forest Service should exclude areas with sensitive resources or special designations. The Draft EA currently proposes management under the Project in at least 60 management prescription areas.<sup>39</sup> At least 24 of these management prescriptions have extraordinary or unique resources that could be significantly affected by Project activities, including but not limited to:

George Washington National Forest

- **2C2 – Eligible Scenic Rivers:** The emphasis in this management prescription is on “protect[ing] and enhanc[ing] the outstandingly remarkable scenic and geologic values . . . [and] undeveloped setting and non-motorized access” of these special areas.<sup>40</sup> This management prescription heavily discourages soil disturbance<sup>41</sup> and limits vegetation management activities to those that maintain or enhance remarkable values and scenery or provide for public health and safety.<sup>42</sup> Road construction is not allowed in this management prescription.<sup>43</sup>
- **4B – Little Laurel Run Research Natural Area:** This prescription area is “[m]anage[d] for scientific research *in an undisturbed state* as a baseline for comparison with other forest environments.”<sup>44</sup> Roads that do not contribute to the goal of preserving the natural ecosystem in the area are to be closed and allowed to naturally revegetate.<sup>45</sup>
- **4C1 – Geologic Areas:** The management focus in these areas is on protecting and showcasing the unique geologic resources they contain.<sup>46</sup> A primary goal in these areas is to “[p]rotect sensitive karst areas from human-caused detrimental hydrologic and habitat change.”<sup>47</sup>
- **4D – Botanical-Zoological Areas (Special Biological Areas):** The primary goal in management of this prescription area is “to perpetuate or increase existing individual plant or animal species and communities that are of national, regional, or state

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<sup>38</sup> Draft EA at 2.

<sup>39</sup> Draft EA at Tables 2–7.

<sup>40</sup> U.S. FOREST SERV., MANAGEMENT BULL. R8-MB 143A, GEORGE WASHINGTON NATIONAL FOREST REVISED LAND AND RESOURCE MANAGEMENT PLAN 4-35 (Nov. 2014) [hereinafter GW Forest Plan].

<sup>41</sup> Forest Plan Standard 2C2-002, GW Forest Plan at 4-36.

<sup>42</sup> Forest Plan Standard 2C2-010, GW Forest Plan at 4-37.

<sup>43</sup> Forest Plan Standard 2C2-021, GW Forest Plan at 4-37.

<sup>44</sup> GW Forest Plan at 4-48 (emphasis added).

<sup>45</sup> Forest Plan Standard 4B-010, GW Forest Plan at 4-49.

<sup>46</sup> GW Forest Plan at 4-50.

<sup>47</sup> Forest Plan Standard 4C1-001, GW Forest Plan at 4-50.

significance and identified as threatened, endangered, sensitive, or locally rare.”<sup>48</sup> Wildlife habitat and existing openings must be maintained in a manner “compatible with the rare communit[ies]” present here.<sup>49</sup>

- **4F – Mount Pleasant National Scenic Area:** This National Scenic Area was designated in 1994 to protect “the area’s scenic quality, water quality, natural characteristics, and water resources.”<sup>50</sup> Wildlife openings may not be expanded or newly created in this area.<sup>51</sup>
- **4FA – Shenandoah Mountain Recommended National Scenic Area:** This management prescription is intended to protect the outstanding qualities of the area, with an emphasis on protection of Cow Knob salamander habitat.<sup>52</sup> The National Scenic Area is currently proposed for Congressional designation, and the Forest Plan acknowledges that such designation would impact management allowed in the area.<sup>53</sup>
- **8E4a – Indiana Bat Primary Cave Protection Area:** This prescription area contains “caves known to contain the Indiana bat” and related primary protection areas.<sup>54</sup> The Forest Plan prohibits any disturbance that will result in the potential take of an Indiana bat, including tree cutting and road maintenance.<sup>55</sup>
- **8E4b – Indiana Bat Secondary Cave Protection Area:** These areas are designated to “maintain and enhance swarming, roosting, and foraging habitat” and “mid- to late-successional” forest types that support various life stages of the Indiana bat.<sup>56</sup> These areas allow for more management than the primary cave protection areas, but only “following evaluation to determine the direct, indirect, and cumulative effects on Indiana bats and the hibernacula.”<sup>57</sup>
- **8E7 – Shenandoah Mountain Crest:** This area “is managed to protect and/or enhance habitat for the Cow Knob salamander and for other outstanding biological values.”<sup>58</sup> Wildlife habitats may be maintained “except for those activities that would negatively impact Cow Knob salamander habitat.”<sup>59</sup>

#### Jefferson National Forest

- **1.B – Recommended Wilderness Study Areas:** These areas of the forest are “managed to protect their wilderness characteristics” pending Congressional designation as

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<sup>48</sup> GW Forest Plan at 4-53.

<sup>49</sup> Forest Plan Standards 4D-002, 4D-003, GW Forest Plan at 4-50.

<sup>50</sup> GW Forest Plan at 4-67.

<sup>51</sup> Forest Plan Standard 4F-001, GW Forest Plan at 4-68.

<sup>52</sup> GW Forest Plan at 4-70.

<sup>53</sup> *See, e.g.*, Forest Plan Standard 4FA-002, GW Forest Plan at 4-71 (allowing new wildlife openings to be created only prior to the passage of enabling legislation).

<sup>54</sup> GW Forest Plan at 4-105.

<sup>55</sup> Forest Plan Standard 8E4-002, GW Forest Plan at 4-107.

<sup>56</sup> GW Forest Plan at 4-106.

<sup>57</sup> Forest Plan Standard 8E4-006, GW Forest Plan at 4-108.

<sup>58</sup> GW Forest Plan at 4-113.

<sup>59</sup> Forest Plan Standard 8E7-002, GW Forest Plan at 4-114.

wilderness.<sup>60</sup> Roads in these areas are to be decommissioned and, prior to that, managed as closed.<sup>61</sup>

- **4.D – Botanical / Zoological Areas:** The primary goal in management of this prescription area is “to perpetuate or increase existing individual plant or animal species and communities that are of national, regional, or state significance and identified as threatened, endangered, sensitive, or locally rare.”<sup>62</sup> “Ideally, natural processes within these areas proceed unencumbered,”<sup>63</sup> and any vegetation management activities must be compatible with the particular species present in the area and their habitat needs.<sup>64</sup>
- **4.E.1 – Cultural / Heritage Areas:** This management prescription emphasizes protection of unique historical resources and promoting safe public access and education.<sup>65</sup> Some areas are considered suitable for timber production and others are not, but all management “must be compatible with the protection and interpretation” of the specific cultural resource.<sup>66</sup>
- **4.F – Scenic Areas:** This management prescription on the Clinch Ranger District is designed to “protect and enhance the scenic qualities and natural beauty” of the area.<sup>67</sup> All existing “old fields, wildlife openings, and other habitat improvements . . . are not maintained, and succeed to forest, deteriorate over time, or are removed.”<sup>68</sup>
- **4.K – Special Areas (including 4.K.1 – North Creek Special Area, 4.K.3 – Mount Rogers Crest Zone Special Area, 4.K.4 – Whitetop Mountain Special Area, 4.K.5 – Whitetop Laurel Special Area, 4.K.6 – North Fork Pound Special Area):** These special areas “contain a variety of unique natural resources” and are designated as special areas “[b]ecause of their unique features, *complexity*, and degree of interest.”<sup>69</sup> Because the features and needs of each of these management areas are so specific, they require their own site-specific analyses.
- **6.C – Old Growth Forest Communities Associated with Disturbance:** This management prescription “emphasizes protection, restoration, and management of old growth forests” and their associated values.<sup>70</sup> The creation and maintenance of any early successional conditions in these areas must be “specifically designed to restore the old growth forest community.”<sup>71</sup>
- **8.E.2.b – Peaks of Otter Salamander Secondary Habitat Conservation Area:** Management in this prescription area requires additional “[r]esearch and monitoring to determine the effects of multiple use management activities on the Peaks of Otter

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<sup>60</sup> U.S. FOREST SERV., MANAGEMENT BULL. R8-MB 115A, JEFFERSON NATIONAL FOREST REVISED LAND AND RESOURCE MANAGEMENT PLAN 3-10 (Jan. 2004) [hereinafter Jefferson Forest Plan].

<sup>61</sup> Forest Plan Standard 1B-012, Jefferson Forest Plan at 3-11.

<sup>62</sup> Jefferson Forest Plan at 3-27.

<sup>63</sup> Jefferson Forest Plan at 3-27.

<sup>64</sup> Forest Plan Standard 4D-006, Jefferson Forest Plan at 3-29.

<sup>65</sup> Jefferson Forest Plan at 3-30–3-31.

<sup>66</sup> Forest Plan Standard 4E-001, Jefferson Forest Plan at 3-32.

<sup>67</sup> Jefferson Forest Plan at 3-34.

<sup>68</sup> Forest Plan Standard 4F-001, Jefferson Forest Plan at 3-35.

<sup>69</sup> Jefferson Forest Plan at 3-39 (emphasis added).

<sup>70</sup> Jefferson Forest Plan at 3-81.

<sup>71</sup> Forest Plan Standard 6C-003, Jefferson Forest Plan at 3-82.

salamander.”<sup>72</sup> This management area also includes significant tree retention requirements and time of year restrictions on timber harvest to minimize impacts to the Peaks of Otter salamander.<sup>73</sup>

- **9.A.1 – Source Water Protection Watersheds:** This management prescription is designed to protect both surface and ground water sources of drinking water, and any activities must ensure that these resources are not contaminated.<sup>74</sup>
- **9.A.4 – Aquatic Habitat Areas:** These areas are managed with a focus on “protect[ing] the habitats of specific threatened, endangered, sensitive, or locally rare aquatic species,” and any maintenance of open areas must be “compatible with [this] objective[.]”<sup>75</sup>
- **9.F – Rare Communities:** This management prescription protects rare plant and animal communities that “contribute significantly to plant and animal diversity” in the forest.<sup>76</sup> These areas require “periodic monitoring” that informs any management activities, and “[s]ite-specific analysis of proposed management actions” must be done to “[p]rotect rare communities from any detrimental effects caused by management actions.”<sup>77</sup> Any “[e]xisting openings or old fields are only maintained . . . if they are compatible with the rare community.”<sup>78</sup>
- **12.C – Natural Processes in Backcountry Remote Areas:** These areas aim to “retain a natural forested appearance shaped primarily by natural processes.”<sup>79</sup> As such, “wildlife openings and old fields *are not maintained*.”<sup>80</sup> Despite this restriction, the Draft EA notes 147 acres of wildlife openings in this management prescription.<sup>81</sup>

Outside of these management prescriptions, there may also be occurrences of the following extraordinary circumstances or sensitive resources that the Forest Service has determined may warrant detailed NEPA analysis:

- Areas with federally listed threatened or endangered species, designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
- Congressionally designated wilderness, wilderness study areas, and national recreation areas;
- Inventoried roadless areas and potential wilderness areas (“PWAs”);
- Native American or Indigenous religious and cultural sites; and

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<sup>72</sup> Jefferson Forest Plan at 3-132.

<sup>73</sup> See Jefferson Forest Plan at 3-136.

<sup>74</sup> Jefferson Forest Plan at 3-151.

<sup>75</sup> Jefferson Forest Plan at 3-164–3-165.

<sup>76</sup> Jefferson Forest Plan at 3-166.

<sup>77</sup> Jefferson Forest Plan at 3-167.

<sup>78</sup> Forest Plan Standard 9F-003, Jefferson Forest Plan at 3-167.

<sup>79</sup> Jefferson Forest Plan at 3-194.

<sup>80</sup> Forest Plan Standard 12C-001, Jefferson Forest Plan at 3-195 (emphasis added).

<sup>81</sup> Draft EA at Table 3.

- Archaeological sites and historic areas.<sup>82</sup>

As discussed above, the Draft EA does not analyze the particular impacts the Project could have on these special areas, but instead defers site-specific analysis to the implementation phase via the Implementation Checklist. This violates NEPA. Given the breadth of management proposed under the Project, there may be situations where proposed treatment would adversely affect these special or sensitive resources. This would warrant further site-specific analysis *that must comply with NEPA's "hard look" and public disclosure requirements.*<sup>83</sup>

For example, under the July 29, 2015 letter of clarification for the George Washington National Forest Plan, the Forest Service expressly committed to conducting site-specific analyses of impacts “[b]efore a decision is made to conduct activities in a PWA.”<sup>84</sup> And “[i]f possible impacts to a PWA [are] identified, the agency’s site-specific NEPA analysis must include consideration of (1) the effects on the PWA’s characteristics and on the PWA’s status for inventory and evaluation in the future, . . . and (2) alternatives . . . that could avoid or mitigate adverse effects on these characteristics.”<sup>85</sup> The Draft EA assures that the “[p]roposed activities within the Open Lands project would not affect the ability of any area to be included in a future inventory.”<sup>86</sup> We appreciate that the Forest Service includes these assurances, but what analysis is this based on? This assertion does not absolve the agency of its responsibility to perform *site-specific* analyses of potential impacts on PWAs—a responsibility that the Draft EA does not fulfill. Absent an expanded EA or EIS that includes the site-specific analysis for these and other special areas, or a change in the Project’s structure that allows future site-specific NEPA analyses to tier to the present proposal, the Forest Service has not met its NEPA obligations.

**B. The Forest Service should explicitly prohibit commercial timber harvest as an avenue for implementation.**

We recognize that the Open Lands Management Project “would not authorize the creation of any new wildlife openings” and “expansion of existing openings is not allowed under the current project.”<sup>87</sup> But as we discussed in our scoping comments, we are concerned that allowing commercial harvest of trees in the “extended road corridors” proposed under the Project could create an incentive for widening or enlarging these areas to the maximum extent possible. These road corridors, as with the rest of the open or semi-open areas and utility corridors proposed for management, should not be available for commercial harvest without the preparation of an individual project-level NEPA analysis and the opportunity for public comment. Commercial

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<sup>82</sup> See 36 C.F.R. § 220.6(b) (listing resource conditions that might require analysis in an EA or EIS and thus disqualify a proposed action from proceeding under a Categorical Exclusion).

<sup>83</sup> See, e.g., *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989) (reiterating NEPA’s “hard look” and public disclosure requirements).

<sup>84</sup> Letter from H. Thomas Speaks, Jr., Forest Supervisor, to Record regarding Clarification of the 2014 George Washington National Forest Revised Land and Resource Management Plan 1 (July 29, 2015) [hereinafter Clarification Letter].

<sup>85</sup> Clarification Letter at 1.

<sup>86</sup> Draft EA at 36.

<sup>87</sup> Draft EA at 13.

logging would be outside the purported purpose of road corridor management to “improve driver safety and wildfire response.”<sup>88</sup>

In certain circumstances, the Draft EA already requires that any timber removed for maintenance be cut-and-leave only. For example, under the “feathering” treatment proposed to “provide a more gradual transition of forest structure” between wildlife openings and nearby forest, all trees cut “would be left on site to provide wildlife cover and avoid ground disturbance.”<sup>89</sup> The Forest Service should extend this to all trees cut under this Project, with very limited exceptions where the Forest Service can demonstrate that fuel loading is a serious concern and requires tree removal or on-site chipping. Otherwise, commercial tree harvest may incentivize the maximum removal of timber permitted under the Project in a manner that could have significant effects on the environment.

C. The Forest Service should reduce the size of the extended road corridor in which management is permitted.

To decrease the likelihood that the Project will have significant impacts requiring an EIS, the Forest Service should reduce the scope of permitted management within road corridors. The Draft EA currently permits management within a 76-foot “extended road corridor” on each side of a given road’s centerline.<sup>90</sup> This buffer is larger than the “roadside” corridor defined in the Forest Service Handbook, which includes space for elements such as drainage structures, berms, and guardrails and varies depending on the traffic type and volume expected on the road.<sup>91</sup> The Draft EA provides no scientific evidence or support for why the 76-foot buffer is necessary, merely stating that “[t]he 76-foot buffer width was used because the daylighting activity may require tree removal that far away from the road centerline to produce the desired result.”<sup>92</sup> Depending on the width of the actual roads being managed under the Project, this extended buffer could allow for road-related management on somewhere around 60,000 acres of the GWJNF.<sup>93</sup>

Management in this “extended road corridor” could have significant impacts. Activities the Forest Service proposes in these roughly 60,000 acres include: daylighting; fuel break treatments; mowing; brush cutting/clearing; mastication/mulching; uprooting; planting; drill seeding; manual/mechanical broadcast seeding; and herbicide application to both native plant species and non-native invasive plant species.<sup>94</sup> The proposed daylighting treatment provides a

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<sup>88</sup> Draft EA at 12.

<sup>89</sup> Draft EA at 18.

<sup>90</sup> Draft EA at 10.

<sup>91</sup> Draft EA at 10–11; Forest Service Handbook 7709.56, Chapter 40 §§ 42, 42.42.

<sup>92</sup> Draft EA at 10.

<sup>93</sup> See Draft EA at Table 2. We say “somewhere around” because the Draft EA acknowledges that the total number of acres listed in Table 2 for Roadside Corridor management includes the roadway and roadside area and is therefore an overestimate of the actual acreage. Draft EA at 10. The Forest Service explains in the Draft EA that “[b]ecause the actual roadside width of similar roads can vary due to differences in topography, line-of-sight, drainage needs, and other factors, it was not practical to calculate a standard roadway or roadside width across the entire project area and remove that amount from the estimated resources area acreage.” Draft EA at 10. We again note that this does not provide sufficient information to inform the public of the actual scope of the Project.

<sup>94</sup> Draft EA at Table 7.

prime example of the potential for significant impacts under this Project. The Draft EA states that under the daylighting treatments proposed, “[f]orest cover retention will vary . . . but would always exceed approximately 30% of stand full stocking, or 30 square-feet of basal area per acre – whichever is higher.”<sup>95</sup> These stocking levels fall below the proposed thinning treatments in recent projects on the GWJNF, and could even constitute a regeneration harvest.<sup>96</sup> Again, the Draft EA would allow this level of timber removal on roughly 60,000 acres of the GWJNF—over 12 times more than the largest recent commercial timber project on the George Washington National Forest.<sup>97</sup> Such expansive timber removal is likely to have a significant impact on the environment that would require an EIS.

We understand and appreciate the need to ensure that roads through the George Washington and Jefferson National Forests are safe for public and agency use. This goal likely can be achieved while containing proposed management under the Project to a narrower roadside corridor. The Forest Service Handbook suggests that road design “[p]rovide the minimum clearing widths consistent with [road management objectives].”<sup>98</sup> Further, U.S. Department of Agriculture Conservation Practice Standards for Access Roads recommend maintaining vegetation to protect road shoulders from erosion.<sup>99</sup> Absent concrete evidence suggesting the Forest Service must clear vegetation up to 76 feet from the road centerline, the Draft EA should contain management to the roadside corridor contemplated in the Forest Service Handbook.

D. The Forest Service should incorporate more limitations on herbicide application.

We appreciate that the Forest Service took our suggestion to exclude aerial application of herbicides under the Project.<sup>100</sup> To decrease the potential for significant environmental impacts from the Project, we suggest the Forest Service also incorporate the limitations detailed below on herbicide use. We also note here that the Forest Service must ensure all risk assessments and related documentation for herbicides included in the Project are available for public review. The link in the Draft EA does not include documents related to the herbicide fosamine ammonium.<sup>101</sup>

1. *Time-of-year restrictions*

The Draft EA should limit herbicide application during certain times of year. Chemical treatments can cause impacts to important pollinator species and other wildlife that use

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<sup>95</sup> Draft EA at 18.

<sup>96</sup> See, e.g., U.S. FOREST SERV., ARCHER KNOB PROJECT ENVIRONMENTAL ASSESSMENT 8 (Sept. 2024) (stating that variable thinning treatments would retain “stocking levels of approximately 30 to 60 [square feet] per acre basal area” and regeneration “[h]arvesting would retain approximately 15 to 45 [square feet] of basal area per acre”); U.S. FOREST SERV., DUNLAP CREEK VEGETATION MANAGEMENT PROJECT ENVIRONMENTAL ASSESSMENT 7 (Aug. 2024) (“Regeneration harvests would typically retain 15 to 45 square feet of basal area per acre.”).

<sup>97</sup> U.S. FOREST SERV., ARCHER KNOB PROJECT ENVIRONMENTAL ASSESSMENT 7 (Sept. 2024) (proposing 2,142 acres of regeneration harvest and 2,610 acres of thinning).

<sup>98</sup> Forest Service Handbook 7709.56, Chapter 40 § 42.48.

<sup>99</sup> See U.S. DEP’T OF AGRIC., NATURAL RESOURCES CONSERVATION SERVICE CONSERVATION PRACTICE STANDARD – ACCESS ROAD (560) (Sept. 2020).

<sup>100</sup> See Draft EA at 19.

<sup>101</sup> See Draft EA at 18; *Pesticide-Use Risk Assessments and Worksheets*, U.S. FOREST SERV., <https://www.fs.usda.gov/science-technology/forest-health-protection/integrated-pest-management/pesticide-use-risk-assessments-and-worksheets> (last visited Oct. 8, 2015).

forestland openings at different times of the year, and an herbicide application during one time of year may have significantly more impacts than the same application at another time. For example, applying herbicides when plants are flowering can increase exposure for bees and other pollinators.<sup>102</sup> Exposure can even vary based on the time of day that chemical treatments are applied.<sup>103</sup> This is especially critical in light of collaborative efforts between the Forest Service and public and private partners to create pollinator-friendly habitat in wildlife openings via native plant restoration.

While the Draft EA briefly acknowledges that general management activities during peak wildflower blooming season may impact pollinators, it only limits management during this time in areas “where rare pollinators . . . are known to occur.”<sup>104</sup> It does not consider the impacts of or limit specific management activities like herbicide treatment on less rare—but still ecologically significant—pollinators that may be more widely dispersed in the Project area. The Forest Service must conduct site-specific analysis of the potential impacts of herbicide use on pollinators and other species, inform the public, and receive feedback before making a decision about where and how to use herbicides. Without site-specific information on where *and when* herbicides will be applied, the public is in the dark about what the Forest Service is planning for this Project. And without limitations on the time of year in which herbicides may be used, the Project may have significant impacts requiring analysis under an EIS.

## *2. Buffer herbicide use near sensitive and non-target species and near waterways*

To prevent significant impacts that would require analysis under an EIS, the Forest Service should impose buffers restricting herbicide use in certain areas that protect important resources. To that end, the Draft EA should (1) explicitly commit to following Forest Plan standards restricting herbicide application near threatened, endangered, proposed, sensitive, and non-target plants; and (2) restrict herbicide application within 100 feet of water resources.

Currently, the Draft EA relies heavily on the NEPA analysis underpinning the 2010 Non-Native Invasive Plan Control EA to support the Project’s proposed use of herbicides on native plants. As detailed below in Section III.A, this violates NEPA’s restriction on agencies relying on NEPA documents completed more than five years ago without additional analysis. But regardless of whether the Forest Service’s reliance on the 2010 NNIP EA is proper, it creates uncertainty around the standards the agency is actually committed to following in the Open Lands Management Project that the agency must resolve.

The 2010 NNIP EA included Forest Plan amendments that exempted project activities from Forest Plan Standards restricting ground-applied herbicides within 60 feet of any known threatened, endangered, proposed, or sensitive plant and restricting soil-active herbicides within

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<sup>102</sup> Helen M. Andrews & Mary Ann Rose, *Protecting Pollinators While Using Pesticides*, OHIO STATE UNIV. EXTENSION (Dec. 28, 2018), <https://ohioline.osu.edu/factsheet/anr-68>.

<sup>103</sup> See Arrian Karbassioon & Darah A. Stanley, *Exploring relationships between time of day and pollinator activity in the context of pesticide use*, 72 BASIC & APPLIED ECOLOGY 74 (2023), <https://doi.org/10.1016/j.baae.2023.06.001>.

<sup>104</sup> Draft EA at 28.



30 feet of the drip line of non-target vegetation.<sup>105</sup> This amendment was project-specific, as the Forest Service determined it “could not meet the objective of protecting these plants without treating NNIPs inside the limits of the current Plan standards.”<sup>106</sup> Since the 2010 NNIP EA was finalized, the Forest Service revised the George Washington National Forest Plan, which included changes to Plan standards regarding herbicide application.<sup>107</sup>

The Draft EA for the Open Lands Management Project commits to following both the Forest-Wide Management Requirements included in the GWJNF Forest Plans and the conditions and limitations described in the 2010 NNIP EA.<sup>108</sup> The Forest Service does not acknowledge or resolve the current discrepancies between the two documents. We recommend the Forest Service explicitly commit to following the Forest Plan standards for herbicide treatment, including the prohibition on ground-applied herbicide treatment within 60 feet of any known threatened, endangered, proposed, or sensitive plants included in George Washington Plan Standard FW-110 and Jefferson Plan Standard FW-99.<sup>109</sup> These Forest Plan Standards should supersede any less-restrictive requirements in the 2010 NNIP EA.

Additionally, we continue to recommend that the Forest Service protect lakes, wetlands, and perennial or intermittent springs, and streams to the same extent that it protects public or domestic water sources by providing a 100-foot buffer for herbicide application.

- E. The Forest Service must incorporate robust and ongoing monitoring requirements that allow the agency to adjust implementation to ensure that treatment is effective and not causing significant environmental impacts.

The Draft EA indicates the Open Lands Management Project will be “adaptive” in nature and the Forest Service intends to conduct a comprehensive review of Project implementation after five years.<sup>110</sup> We strongly support this approach but do not think that the Draft EA provides the framework to accomplish this. Given the geographic and temporal scale of this Project, the Forest Service must do this planning now and document it in the EA. This is particularly critical in this era of leadership demanding the agency accomplish more management faster and without inadequate staff and support. In this (horrible and unfair) environment, it is unlikely this work will happen later.

Forest Service regulations and the Handbook make it clear that the NEPA document for an adaptive management project must: (1) describe the monitoring that will take place during project implementation to ensure whether the project is having its intended effect; (2) clearly

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<sup>105</sup> U.S. FOREST SERV., FOREST-WIDE NON-NATIVE INVASIVE PLANT CONTROL GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS ENVIRONMENTAL ASSESSMENT 19 (Dec. 2010) [hereinafter 2010 NNIP EA], at 19.

<sup>106</sup> 2010 NNIP EA at 19.

<sup>107</sup> Compare 2010 NNIP EA at 19 (discussing current Plan standards from which the proposed activities would be exempt) with GW Forest Plan at 4-11–4-12 (providing updated forest-wide standards for herbicide use).

<sup>108</sup> Draft EA at 15–16.

<sup>109</sup> See GW Forest Plan at 4-11; Jefferson Forest Plan at 2-29.

<sup>110</sup> Draft EA at 17.

identify any adjustments that will be made when monitoring indicates the action is not having its intended effect; and (3) disclose the effects of both the proposed action and the adjustment.<sup>111</sup>

Unfortunately the Draft EA falls short. For example, it contemplates two types of monitoring: (1) non-native invasive plant infestations in areas that had daylighting and fuel break treatment activities, and (2) the degree to which water Best Management Practices effectively prevent impacts to water quality.<sup>112</sup> What tracking will be done to examine these? Who will do this and when? Effective monitoring is ongoing. It is not a one-time event at the halfway mark. What are the benchmarks that will signal success or a need for change? What adjustments might be made if adverse impacts are shown? Without providing this information in the EA, the Forest Service has not met its NEPA obligations for adaptive management.

### **III. The Forest Service must expand its environmental analysis in the Draft EA to comply with NEPA.**

The Forest Service must provide enough information about the potential environmental effects of a project that members of the public can effectively weigh in and inform the agency's decision-making process.<sup>113</sup> With the current structure of the Project deferring such a substantial portion of the necessary site-specific analysis, it is already difficult for us to effectively contribute comments with enough specificity to be helpful to the agency. However, there are specific areas where it is apparent the Forest Service must provide more analysis.

#### **A. The Draft EA improperly relies on and extends the scope of the 2010 Forest-Wide Non-Native Invasive Plant Control EA without the reasonable support or additional analysis needed to do so.**

The Draft EA's heavy reliance on the Forest Service's previous environmental analysis in the 2010 Forest-Wide Non-Native Invasive Plant Control EA, without assessing whether the underlying analysis remains valid, violates NEPA. At some point, all NEPA analyses become "too stale to carry the weight assigned to [them]."<sup>114</sup> For that reason, as part of the Fiscal Responsibility Act of 2023, Congress codified the Council on Environmental Quality's long-standing recommendation that agencies "reevaluate[] the analysis" in NEPA documents they continue to rely on "and any underlying assumption[s] to ensure reliance on the analysis remains

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<sup>111</sup> See 36 C.F.R. § 220.7(b)(2)(iv); 36 C.F.R. § 220.7(b)(3)(ii) ("The EA . . . [s]hall disclose the environmental effects of any adaptive management adjustments"); Forest Service Handbook 1909.15, Chapter 10 § 14.1 ("When using adaptive management, display the proposed action as an initial management action and a collection of possible adjustments or acceptable tools to be used to modify the initial action to achieve the intended effects. Disclose the site-specific effects of all of these actions, adjustments, or use of acceptable tools in the analysis along with the monitoring methods to be used to determine the effectiveness of each.").

<sup>112</sup> Draft EA at 34, 43. We note that the proposed annual monitoring of Best Management Practice efficacy is merely "recommended" under the Draft EA. Draft EA at 43.

<sup>113</sup> *Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng'rs*, 524 F.3d 938, 953 (9th Cir. 2008).

<sup>114</sup> *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1086 (9th Cir. 2011).

valid” if the underlying NEPA documents were prepared and subject to judicial review five or more years prior.<sup>115</sup>

The Open Lands Management Project leans wholesale on the 2010 NNIP EA to support its use of herbicides for native plant control.<sup>116</sup> But the Draft EA does not include sufficient analysis to justify extending the treatments proposed under the 2010 NNIP EA to native plants. Nowhere does the Draft EA reevaluate any of the environmental analysis performed as part of the 2010 NNIP EA. The Draft EA does not so much as provide general assurances that the environmental analysis and its underlying assumptions remain scientifically sound, though such assurances would still be insufficient under NEPA. And the 2010 NNIP EA relies on the now 15-year-old “current conditions” of the GWJNF to support its proposed actions.<sup>117</sup> Conditions on both forests have undoubtedly changed since this analysis was completed, perhaps in part due to the 2010 NNIP EA’s implementation. Unless the Forest Service revises the Draft EA to include an assessment of the 2010 NNIP EA’s continued validity, it can neither rely on nor expand the application of the 2010 NNIP EA for this Project.

Further, as indicated by its name, the 2010 Non-Native Invasive Plant Control EA applies only to non-native plants. That was the explicit, limited purpose of that EA. Yet now the Forest Service seeks to extend that EA to also include native plants—without analyzing the environmental impacts of doing so.<sup>118</sup> The Forest Service can’t simply “adopt” a finding of no significant impact from an EA that analyzed something totally different. The distinction between native and non-native species is significant, and the Forest Service cannot pretend it is not. The agency must analyze the impacts of using herbicides on native species also. Without doing so, the agency will violate NEPA.

Again, even with additional analysis, this vast forest-wide, multi-year project could plausibly have significant effects on the environment that would require an EIS. For example, what are the impacts of using herbicides on native plants forest-wide? The 2010 NNIP EA and the

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<sup>115</sup> Fiscal Responsibility Act of 2023, Pub. L. No. 118-5 (2023), *codified in relevant part at* 42 U.S.C. § 4336b; *see also* Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18026, 18036 (Mar. 23, 1981) (“As a rule of thumb . . . [NEPA analyses] that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an [EA or] EIS supplement.”).

<sup>116</sup> *See, e.g.*, Draft EA at 12 (allowing herbicide application on native plant species in utility corridors “under the conditions and guidance described in the 2010 NNIP EA”); Draft EA at 16 (noting that the Project would modify the Implementation Checklist in the 2010 NNIP EA to “add activities for open lands management” under the present project “and the review process would extend to covered activities within project areas”); Draft EA at 18 (“Herbicide application on native species would occur under the same conditions as analyzed within the 2010 NNIP EA.”); Draft EA at 19 (incorporating the same “typical annual treatment acreage” of 12,000 acres from the 2010 NNIP EA); Draft EA at 27 (incorporating “[e]xisting design criteria related to herbicide application from the 2010 NNIP EA” into the current project); Draft EA at 37 (concluding that “this project would not produce any cumulative effects within project areas beyond those identified in the 2010 NNIP EA”); Draft EA at 47 (“[E]xposure amounts and risk [of herbicide applications] would not eclipse the levels analyzed in [the 2010 NNIP EA].”).

<sup>117</sup> *See, e.g.*, 2010 NNIP EA at 19 (“Due to current conditions, NNIPs are already within or immediately adjacent to these habitats and individual TES species.”).

<sup>118</sup> Per the Draft EA, “[h]erbicide application on native species would occur under the same conditions as analyzed within the 2010 NNIP EA.” Draft EA at 18.

present Draft EA both rely on a “typical annual treatment acreage’ of up to 12,000 acres of hand-applied herbicide application.<sup>119</sup> Does the agency think it can treat *more than* 12,000 acres of native and non-native plants if it has the capacity and interest to do so? What are the impacts of such an increase in herbicide usage on water quality and other resources? This analysis must happen. Without it, the Forest Service can neither rely on nor extend the NEPA analysis underpinning the 2010 NNIP EA, and it surely cannot justify a finding of no significant impact from the Open Lands Management Project.

B. The Forest Service has not adequately considered and disclosed potential impacts of the Project in the Draft EA, and must provide more analysis on several issues.

As previously stated, to comply with NEPA, the Forest Service must “carefully weigh environmental considerations and consider potential alternatives to the proposed action *before* the government launches any major federal action.”<sup>120</sup> Here, not only has the Forest Service impermissibly deferred substantial portions of its site-specific analysis to the implementation phase of the Project, but the agency has wholly omitted important components that NEPA and the GWJNF Forest Plans require it consider. To list a few examples, the Draft EA fails to adequately consider:

1. *Current road and wildlife opening conditions and maintenance needs*

The Draft EA does not adequately assess the current conditions of roads and wildlife openings that it proposes to manage under the Project. Such analysis is either missing or deferred to the implementation phase.

First, the Draft EA includes no discussion of the Travel Analysis Processes (“TAPs”) conducted for both the George Washington and Jefferson National Forests and how road designations in this system will impact implementation. The Forest Service’s Travel Management Rule requires each unit of the National Forest System to “identify the minimum road system needed for safe and efficient travel” and “identify the roads . . . that are no longer needed . . . and that, therefore, should be decommissioned or considered for other uses.”<sup>121</sup> TAPs are to be implemented “through the extensive use of project level roads analysis for decisions regarding changes to the road system” and help provide the data upon which managers can make informed decisions.<sup>122</sup>

The GWJNF completed its TAPs and published a TAP Report in September 2015,<sup>123</sup> but there is no mention in the Draft EA of such. It remains unclear whether roads recommended for decommissioning under the TAPs are included for management under the Open Lands Management Project. Maintenance of roads above their recommended level, including

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<sup>119</sup> Draft EA at 19.

<sup>120</sup> *Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005) (emphasis added).

<sup>121</sup> 36 C.F.R. § 212.5(b).

<sup>122</sup> U.S. FOREST SERV., MANAGEMENT BULL. R8-MB 143D, ENVIRONMENTAL IMPACT STATEMENT FOR THE GEORGE WASHINGTON NATIONAL FOREST REVISED LAND AND RESOURCE MANAGEMENT PLAN 3-366 (Nov. 2014).

<sup>123</sup> U.S. FOREST SERV., GEORGE WASHINGTON & JEFFERSON NATIONAL FORESTS TRANSPORTATION SYSTEM ANALYSIS PROCESS (TAP) REPORT (Sept. 24, 2015).

decommissioning, may result in an over-commitment of Forest Service resources that could be better used elsewhere. To prevent this, the Draft EA should confirm that any road maintenance conducted as part of the Project will be consistent with the TAPs. The Forest Service should also detail the means by which roads are assessed on the ground and the circumstances in which a particular road may be removed from proposed management under the Project.

Second, the Draft EA does not sufficiently assess the maintenance of wildlife openings or other open areas that may exist in a desktop inventory of open lands but are unmaintained and overgrown in practice. The Draft EA contemplates this situation: “Wildlife openings in the current project area that have undergone significant succession and are effectively no longer openings would not be eligible for re-treatment under this project.”<sup>124</sup> We are glad to see the Forest Service excluding such areas from management under the Project, but the Draft EA provides no information on when and how Forest Service staff will determine what constitutes “significant succession” and what other factors may be taken into account when determining whether or not to maintain a particular wildlife opening. Without this, the public lacks important information it needs to consider the impacts of the Project and provide meaningful comments.

## *2. Riparian corridors and water resource impacts*

Similarly, the Draft EA does not address how and when the Forest Service will identify open lands in riparian corridors that are causing environmental damage and thus should be either mitigated or closed and restored. Both the George Washington and Jefferson Forest Plans provide that permanent wildlife openings in riparian corridors that are causing environmental degradation due to erosion and sedimentation will be “mitigated or closed and restored.”<sup>125</sup> This determination requires site-specific analysis that the Forest Service simply has not done. As with wildlife openings undergoing “significant succession,” the agency must detail how such determinations will be made and what factors will be taken into account.

## *3. Climate change effects and cumulative impacts on carbon storage*

NEPA requires agencies to consider the cumulative effects of their actions over time, including consideration of the reasonably foreseeable effects of climate change.<sup>126</sup> It also includes the effects “from individually minor but collectively significant actions taking place over a period of time”<sup>127</sup>—such as the impacts of this Project in conjunction with the Forest Service’s other vegetation management and timber harvest activities on carbon storage.

While the Draft EA contains some brief consideration of cumulative impacts, there is no assessment of the compounding effects of climate change. Available evidence suggests the Project could act synergistically with climate change. For example, the Draft EA notes that “vegetation management can be a contributor of non-point source sediment and its constituents, TDS, and TSS” and that “certain activities discussed in [the Draft EA] could potentially contribute

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<sup>124</sup> Draft EA at 13.

<sup>125</sup> GW Plan Standard 11-013; Jefferson Plan Standard 11-010.

<sup>126</sup> *Appalachian Voices v. U.S. Dep’t of Interior*, 25 F.4th 259, 271 (4th Cir. 2022) (holding that “[i]t is clear . . . that climate change typically must form part of the [cumulative-effects] analysis in some way”).

<sup>127</sup> *Id.*

other pollutants of concern” to waterways, including those identified as impaired by Virginia’s Department of Environmental Quality.<sup>128</sup> We also know that climate change may exacerbate these effects, as it is “expected to increase the frequency and intensity of flooding, and thus sedimentation.”<sup>129</sup> Considering these impacts together across the GWJNF shows that the Project’s effects on things like sedimentation and water quality will be made worse by the compounding effects of climate change. But the Draft EA fails to acknowledge this possibility, and this failure violates NEPA.

There is also no assessment of the Project’s cumulative effects on carbon storage across the GWJNF, which are potentially significant. Again, the Forest Service is proposing almost 75,000 acres of management across the GWJNF over the course of a decade, an indefinite amount of which will involve tree cutting and other mechanical treatment methods.<sup>130</sup> Approximately 60,000 acres could be thinned to as little as 30 square-feet of basal area per acre.<sup>131</sup> As it stands, Forest Service data shows that in the Southern Region, timber harvest already accounts for approximately two-thirds of carbon emissions on national forest lands.<sup>132</sup> The Draft EA must consider the cumulative effects of tree removal under this Project *and* current and reasonably foreseeable timber harvests on carbon stocks in the GWJNF.

**IV. Even if it proceeds with the Implementation Checklist model, the Forest Service may not have adequate funding or staff to fulfill the requirements of the Project.**

Cost and funding have been part of many of our discussions regarding proposed vegetation management and wildlife projects across both the George Washington and Jefferson National Forests. We understand economic realities and the need to focus discussion on realistic ideas. We appreciate that the Forest Service has previously encouraged stakeholders to brainstorm and get ideas on the table for discussion rather than quickly dismissing them because of potential funding constraints.

But it remains important for the Forest Service to keep in mind how budgetary constraints may impact the agency’s ability to fully implement the Project as proposed. The sheer scale of this Project’s proposed activities, in conjunction with other projects the agency is currently analyzing or implementing, may not be realistic on the time frames the Forest Service presently has in mind. As it stands, the Open Lands Management Project contemplates implementation on over 19,000 acres annually, with over 7,000 acres potentially involving ground-disturbing activities.<sup>133</sup> Further, the Project could add treatment acreage to the current total as new open or semi-open

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<sup>128</sup> Draft EA at 41.

<sup>129</sup> *Appalachian Voices v. U.S. Dep’t of Interior*, 25 F.4th 259, 278 (4th Cir. 2022).

<sup>130</sup> Draft EA at 3.

<sup>131</sup> Draft EA at 18.

<sup>132</sup> RICHARD BIRDSEY ET AL., U.S. FOREST SERV., ASSESSMENT OF THE INFLUENCE OF DISTURBANCE, MANAGEMENT ACTIVITIES, AND ENVIRONMENTAL FACTORS ON CARBON STOCKS OF U.S. NATIONAL FORESTS 39 (2019).

<sup>133</sup> See Draft EA at 19 (proposing treatment of 4,000 acre of open and semi-open lands, 774 acres of daylighting or fuel break treatments, 2,600 acres of mowing, brush cutting, or mastication activities, and up to 12,000 acres of hand-applied herbicide treatment annually).

lands are added to the GWJNF through vegetation management projects in the coming years.<sup>134</sup> This adds a significant amount of proposed treatment to the GWJNF's ongoing vegetation management portfolio.

We suggest the Forest Service remain realistic about its funding opportunities for the Project and adjust its proposal accordingly. As mentioned above, the Forest Service could narrow the Project to only include treatment within certain management prescriptions or exclude management in particularly sensitive areas of the Forests. We also suggest the Forest Service take maintenance needs and budget and staffing considerations into account before proposing the creation of new open or semi-open lands within the GWJNF.

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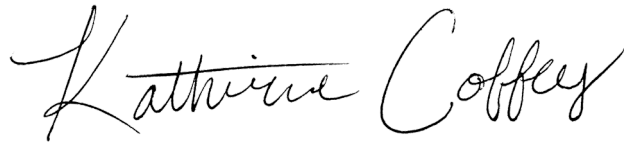
<sup>134</sup> Draft EA at 2 (“New wildlife openings may be created through future projects subject to separate environmental analysis and decision, and once established, they would be managed in accordance with this project, including the proposed annual acreage limits described below.”).

## V. Conclusion

The Forest Service's Draft EA fails to adequately assess the impacts of the Forest-Wide Open Lands Maintenance Project in contravention of NEPA. The agency must revise the Draft EA to correct the deficiencies listed above before resubmitting a NEPA document for public comment. Without significant changes, the proposed action will require preparation of an EIS.

We thank you for considering our comments. Please contact Katherine Coffey or Kristin Gendzier if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Katherine Coffey". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

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