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Via CARA portal

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Re: Comments on the Magazine Forest Health Project Draft Environmental Assessment

Dear Ms. Book,

Thank you for the opportunity to comment on the proposed Magazine Forest Health Project (the “Project”) and the accompanying draft Environmental Assessment (“Draft EA”). The Southern Environmental Law Center submits these comments on behalf of the Center for Biological Diversity (collectively, “Conservation Groups”).

While there are aspects of the Project that we support (namely prescribed fire treatments in appropriate areas), we are deeply concerned about the amount of logging proposed. If the agency’s annual harvest projections are to be believed, the Forest Service would essentially log the entire Mount Magazine district over the next twenty years. In the process, the agency would destroy valuable old growth, habitat for listed species, and important recreation zones. To protect the outstanding biological and recreational resources on the Mt. Magazine District, the agency must dramatically downsize its logging proposal.

The Forest Service also must craft a proposal that is more than a blank check. Right now, the agency has not decided where or how to specifically manage vegetation on the Mt. Magazine District. Instead of disclosing these plans, the agency reserves the right to decide later where, how, and how much to log and burn over the next few decades. Critically, the agency will make these site-specific decisions *without any public involvement*, meaning that the public will be cut out of the critical, site-specific decisions that actually affect the resources they care about. But the National Environmental Policy Act (“NEPA”) requires more than a blank check—it requires site-specific review of specific proposals that the public can meaningfully weigh in on. By cutting the public out of vegetation management of the Mt. Magazine District for the next several decades, the Forest Service is violating both the spirit and letter of NEPA.

At bottom, the agency has a choice. If it wishes to prepare a single NEPA study for the Project as proposed, that study must contain a site-specific analysis. At a minimum, this means spatially identifying the places where different treatments will occur or otherwise removing the future discretion to make these environmentally consequential decisions outside of NEPA. Alternatively, if the Forest Service wishes to defer environmentally consequential decisions (and site-specific analysis), it must adopt a two-tiered programmatic NEPA approach. Under that approach, the agency would prepare a programmatic NEPA study with sideboards, then tier narrower, site-specific environmental assessments to this larger document. Those site-specific assessments would be streamlined and would not need to address the cumulative or broad-scale impacts covered by the programmatic assessment. However, they would preserve the public's role in providing site-specific input on public-lands management.

The public's ability to provide input is also frustrated by another aspect of the Project, namely the decision to invoke the Secretary of Agriculture's Emergency Situation Determination (the "Determination"). That Determination purported to declare that "emergency" conditions exist across nearly 60% of the National Forest System, including the entire Mt. Magazine District. Invoking this Determination allows the agency to curtail its NEPA review of the Project and eliminates the public's opportunity to administratively object to the final NEPA decision. But for the reasons explained below, the Determination is arbitrary, capricious, and contrary to the law. The Project itself illustrates why—there is no indication that the Project is responding to a legitimate emergency. Instead, the agency is proposing run-of-the-mill logging treatments on an annual basis for ten to twenty years. Because the public deserves to be fully involved in the management of public lands, the Forest Service should decline to apply the Determination to the Project and instead proceed under the typical NEPA and administrative objection process.

These and other issues are described more fully below. Thank you for the consideration of these comments. We would be happy to discuss any of these matters with you in greater detail.

I. A fourteen-day comment period is inadequate.

We wish to state at the outset that a fourteen-day comment period is inadequate to review and meaningfully comment on a Project that will manage more than 100,000 acres of National Forest System lands for ten to twenty years. Forest Service regulations generally require a thirty-day comment period for projects analyzed in an environmental assessment;¹ the agency has not explained why it has departed from this standard. If the agency believes that invoking the Secretary's Emergency Situation Determination allows it to cut its comment period short, it is mistaken—for the reasons described below, the Determination is self-evidently arbitrary and capricious. Moreover, there is no reason why a 30-day comment period would not work here; according to the Project webpage, the agency does not anticipate making a final decision until

¹ 36 C.F.R. §§ 218.24(b)(4); 218.12(a)(1)(i).

June 2027—nearly a year from now.² That timeline certainly allows for a longer public comment period. So would the timeline spelled out in the Draft EA, which anticipates Project approval by the end of the calendar year, some four months from now.³

The fourteen-day period that the public has received instead is inadequate to meaningfully comment on the Project. In order to meaningfully comment, the public must: (1) review the agency’s Draft EA; (2) review the agency’s use of the Determination; (3) review the Determination itself; (4) identify potential problems with the agency’s analyses; (5) identify species, recreational resources, water resources, and other environmental resources that may be affected by the Project; (6) gather scientific data about these resources; (7) identify potential legal issues with the Project; and (8) formulate detailed written comments. Fourteen days is not enough time to do all of that, even if Conservation Groups focused solely on the Project during that time.

We wish to emphasize that, even though the Forest Service often treats public comment as a box to check, the public has meaningful input to offer to the Forest Service. Many members of the public are biologists, policy experts, foresters, and recreationists with familiarity with National Forest System lands. In many cases, these members of the public spend more time in the project areas than the Forest Service officials themselves. They know where the rare species can be found, where the old-growth stands are located, and where the best vistas to preserve occur. And the public, by definition, has a vested interest in public-lands management. That includes management of the Mt. Magazine District.

II. The Forest Service’s analysis of the Project is arbitrary and capricious and contrary to NEPA.

Because the Forest Service arbitrarily relied on the Determination, its Draft EA only examines two alternatives in detail: the preferred alternative and the no-action alternative. That fails to satisfy the agency’s obligation to fully consider a range of reasonable alternatives. At any rate, the Forest Service’s analysis of the two alternatives it did study is lacking in several respects.

a. The Forest Service cannot write itself a blank check.

NEPA requires an agency to conduct its analysis “at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, *and can meaningfully evaluate its effects.*”⁴ Here, the Forest Service has decided to pursue

² U.S. Forest Serv., Magazine Forest Health, <https://www.fs.usda.gov/r08/ozark-stfrancis/projects/304281> (last visited Aug. 20, 2026).

³ Draft EA at 8.

⁴ 42 U.S.C. § 4336e(12) (emphasis added).

a “phased implementation of this [P]roject,” in which specific activities would be proposed *after* the project decision.⁵ In other words, the agency does not yet know *what* it will be doing, much less *where* or *when*. Because the Forest Service “reserves actual siting decisions for the future” and thus fails “to identify where specific harvest activities” or other management “will occur,”⁶ the Forest Service does not yet have a “proposal” for which it can “meaningfully evaluate” the likely environmental effects.⁷

Instead of analyzing the site-specific effects of its actions—as required by NEPA—the Forest Service sketches out a range of hypothetical effects.⁸ Actual, on-the-ground impacts will apparently be assessed outside of the NEPA process as part of the agency’s “Pre-Treatment Assessment Framework.”⁹ This Framework directs agency staff to “make decisions on the appropriate treatment or set of treatments to prescribe and implement” at a later date.¹⁰ At that time, the “characteristics of each stand would be considered, and treatments would be prescribed according to the desired conditions described in the Forest Plan for each community type.”¹¹ Public comment would not be offered on these site-specific decisions; the public would therefore have no opportunity to “influence the projects that would be implemented, or the methods used.”¹² In other words, the Framework cuts the public out of the actual decisions about where, how, and when to manage the Mt. Magazine District.

Under NEPA, the Forest Service cannot simply write itself a blank check to make whatever decisions it thinks best with zero public input—especially at the stage where the rubber actually hits the road.¹³ Yet that is exactly what the agency appears to be doing with the Project. According to the Forest Service, it will use some undisclosed combination of “regeneration” logging (clearcutting or similarly heavy logging practices) as well as “prescribed burning, thinning, planting, and herbicides” to improve “desired forest conditions” across the entire Mt. Magazine District. “In addition, if a weather event, wildfire, or other unplanned situation affects acres requiring immediate attention, those would be treated under this project as well.”¹⁴ These treatments “would continue until the existing threats to forest health and human safety no longer exist.”¹⁵ In effect, the Forest Service is claiming that this single NEPA document gives it the authority to shut the public out of *all* management of the Mt. Magazine District *indefinitely*. That cannot be reconciled with NEPA.

⁵ Draft EA at 28.

⁶ *Se. Alaska Conservation Council v. U.S. Forest Serv.*, 443 F. Supp. 3d 995, 1009–10, 1014 (D. Alaska 2020).

⁷ 42 U.S.C. § 4332(2)(C).

⁸ Draft EA at 28 (“Because of the phased implementation of this project, in which specific activities would be proposed after the project decision, only general effects expected from the activity types can be analyzed here.”)

⁹ Draft EA at App’x B6.

¹⁰ *Id.* at B1.

¹¹ *Id.* at 9.

¹² *Id.* at 36.

¹³ *Se. Alaska Conservation Council*, 443 F. Supp. 3d at 1009–10, 1014.

¹⁴ Draft EA at 9.

¹⁵ *Id.* at 8.

We appreciate the difficulty of the task before the Forest Service. The agency is seeking to undertake a broad suite of vegetation management activities across more than 100,000 acres of the Ozark-St. Francis National Forest. Identifying where and how the agency plans to act on this broad landscape will be challenging, to say the least. “The scope of the undertaking here, however, was the Forest Service’s choice and not [Conservation Groups’].”¹⁶ Having decided to simultaneously manage 100,000 acres across a diverse forested landscape, “the Forest Service may not rely upon forecasting difficulties or the task’s magnitude to excuse the absence of a reasonably thorough *site-specific* analysis of the decision’s environmental consequences.”¹⁷

Put simply, the agency has a choice. If it wishes to prepare a single NEPA study for the Project as proposed, that study must contain a site-specific analysis adequate to support a finding of no significant impact and to address unresolved conflicts in the use of available resources. At a minimum, this means spatially identifying the places where different treatments will occur or otherwise removing the future discretion to make these environmentally consequential decisions outside of NEPA.

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

b. The Draft EA’s analysis of the action alternative suffers from several flaws.

In addition to refusing to consider site-specific aspects of the Project, the agency’s “general” analysis of the Project’s impacts also suffers from several flaws.

First, the agency refuses to assess the impacts of the Project as a whole. According to the agency, it “will not be analyz[ing] [the Project] as a whole” because the agency’s treatments are spaced out on an annual basis.¹⁸ Specifically, because the agency intends to conduct an “average

¹⁶ *California v. Block*, 690 F.2d 753, 765 (9th Cir. 1982).

¹⁷ *Id.* (emphasis added).

¹⁸ Draft EA at 12.

[of] 3,000 - 5,000 acres of vegetation treatments” and “20,000” acres of prescribed burning each year, it decides it only needs to analyze *those* effects. But that is not how a landscape-level NEPA analysis should work. The agency cannot avoid assessing the full impacts of its activity—which here comprises logging an estimated 60,000 to 100,000 acres over the next twenty years—by choosing only to look at a snapshot of each Project year in isolation. Because the Project authorizes logging and burning projects indefinitely, the agency must account for the aggregate impacts of these activities *now*.

At times, the agency seems to suggest that assessing aggregate impacts is unnecessary because activities implementing the Project will be spread out over time. According to the Forest Service, because the Project activities would “be spread out over several years, the effects would actually be *amortized* over that time period, decreasing the effects in any one year.”¹⁹ But managing natural resources is not macro-economics—repeated logging entries have *aggregate* effects. That is because the effects of the proposed actions will last longer than one year; they will not magically be undone on January 1. To see this, consider effects to old growth. Pockets of old growth or stands approaching old-growth conditions are scattered throughout the Mt. Magazine District. Logging any one of these stands would appreciably reduce the amount of old growth, though other stands would remain.²⁰ However, old growth does not regenerate in a year. It will take decades or even centuries to recruit more old growth to replace the ecological values lost. If the agency follows its plan to log 60,000 to 100,000 acres across the Mt. Magazine District over the next twenty years, then essentially *all* old growth could disappear from the Mt. Magazine District, not just the amount cut in any single year. Similar concerns apply to rare and listed species, water resources, and recreation. These *aggregate* effects cannot be captured by artificially segmenting the Forest Service’s analysis into annual chunks.²¹ At bottom, the agency cannot dodge its obligation to analyze the “whole” Project, including aggregate effects.

Second, NEPA does not allow the agency to authorize an open-ended “forever” project. NEPA decisions have a life expectancy; they eventually become stale.²² But according to the Forest Service, the Project will authorize all vegetation management on the Mt. Magazine District, including emergency actions, “until the existing threats to forest health and human safety *no longer exist*.”²³ These threats and forest health issues apparently include oak decline, overstocking, and a departure from “desired conditions.”²⁴ These are issues that will likely last as

¹⁹ Draft EA at 22 (emphasis added).

²⁰ The Forest Service does not commit to preserving old growth when it finds it. Instead, it gives itself the “flexibility” to log in old growth “to improve the existing species composition and structure.” *Id.* at 24.

²¹ *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (“An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”).

²² *Friends of Animals v. U.S. Bureau of Land Mgmt.*, 514 F. Supp. 3d 290, 303 (D.D.C. 2021) (“The length of time that passes between an agency’s conduct of a NEPA analysis and the contemplated action may bear on the adequacy of that analysis, particularly if conditions have changed in material respects.”).

²³ Draft EA at 8 (emphasis added).

²⁴ *Id.* at 2, 4.

long as humans manage the Ozark-St. Francis National Forest. In other words, the Forest Service is claiming the Draft EA gives it the authority to manage the Mt. Magazine District however it wants indefinitely. That cannot be reconciled with NEPA, especially when the agency has not fully articulated the downsides of indefinite, intensive Forest Service management of the District.

Third, the Draft EA's general analysis of soils and water quality impacts is arbitrary and capricious for a few reasons. To start, the Forest Service argues that impacts to soils will be minimized by Forest Plan Standard 85, which "states that the organic layer, topsoil, and root mat will be left intact over at least 85 percent of an activity area."²⁵ This so-called 85/15 standard has no basis in science, however. In the past, this standard was assumed to reflect the best available science for preventing cumulative soil impairment. However, the Forest Service's own scientific research now recognizes that, contrary to previous guidance using the 15% disturbance threshold, "there is little or no documented evidence of any connection between disturbance thresholds and [soil] productivity."²⁶ Instead, more recent research suggests that site-specific expertise and data should be used "[f]or making judgments on impaired productivity."²⁷

The Forest Service also fails to adequately justify its reliance on best management practices ("BMPs") to prevent sedimentation. According to the Forest Service, "when BMPs are utilized," studies from more than thirty years ago show "nutrient concentrations will not exceed water quality standards."²⁸ However, BMPs are not always "utilized." In fact, one national study published by the Forest Service found that, across 998 agency projects, BMPs were fully implemented only 32 percent of the time.²⁹ Another study for a different time range found BMPs were only "fully" or "mostly" implemented 61 percent of the time.³⁰ The Draft EA, however, seems to assume that BMPs will be fully implemented 100% of the time.³¹ That is arbitrary and capricious.³²

Moreover, even when BMPs are "fully" implemented, they do not have a 100% success rate. One of the same studies evaluated BMP "effectiveness" and found that overall, BMPs were

²⁵ *Id.* at 17.

²⁶ U.S. Forest Serv., *Scientific background for soil monitoring on National Forests and Rangelands: workshop proceedings*, April 29-30, 2008; Denver, CO (fsfed.us) at 21.

²⁷ *Id.*

²⁸ Draft EA at 18 (emphasis added).

²⁹ U.S. Forest Serv., *Analysis of USDA Forest Service National BMP Monitoring Results for Fiscal Years 2015 Through 2018: Wildland Fire Management, Recreation Management, and Water Uses Management* (Mar. 2024), https://www.fs.usda.gov/nrs/pubs/gtr/gtr_nrs233.pdf.

³⁰ U.S. Forest Serv., *National Best Management Practices Monitoring Summary Report Program Phase-In Period Fiscal Years 2013–2014*, https://www.fs.usda.gov/naturalresources/watershed/pubs/FS-1070BMP_MonitoringSummaryReport2015_reduced.pdf

³¹ Draft EA at 21 ("Through the use of forest plan standards and the use of Arkansas BMPs the activities proposed for implementation should not pose additional risks to water quality, soil productivity, or designated uses.").

³² *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 174 (4th Cir. 2018), *rev'd and remanded on other grounds*, 590 U.S. 604 (2020) (holding that the Forest Service's arbitrary reliance "on the very mitigation measures it previously found unreliable" was "insufficient to satisfy NEPA").

only “effective” around 53% of the time.³³ Around 15% of vegetation management BMPs were “not effective” or “marginally effective”; for road management projects, this number was nearly 50%.³⁴ In short, the Forest Service cannot assume that (1) BMPs are always implemented; and (2) that when they are implemented, they are effective. Yet that is exactly what the Draft EA assumes.

The Forest Service also appears to overlook sediment impacts from temporary roads and skid trails. According to the agency, the Project will add “no roads” to the agency’s transportation system.³⁵ In fact, the agency finds that, “due to the possibility that roads will be repaired or maintained to facilitate product removal, the amount of sediment introduced by the road system *would likely be reduced*.”³⁶ This conclusion is plainly arbitrary and capricious. It may be true that the Forest Service is not adding to its *permanent* road system. However, the agency will be constructing dozens if not hundreds of miles of *temporary* roads and skid trails to access stands over the next few decades. Temporary roads often have more serious impacts than system roads, because they are not subject to engineering oversight. In addition, they are often not returned to resource production as required by the National Core BMPs because they are often reused in successive entries. In other words, temporary roads are anything but “temporary.” The Forest Service does not discuss the impacts of so-called temporary roads and skid trails anywhere in its soils and water quality analysis. That oversight is arbitrary and capricious.

Fourth, the Draft EA entirely failed to consider impacts to scenery and recreation. According to the agency, it did not need assess impacts to “scenery resources” or “recreation resources” because the “proposed activities are not expected to modify current impacts on recreation from forest management.”³⁷ In other words, because the Forest Service was already planning on modifying scenery and recreation resources via small-scale projects, it does not need to assess the Project’s aggregate effects on scenery and recreation resources. That just does not follow. Even if piecemeal projects were the appropriate comparison, the agency cannot avoid looking at the aggregate effects of the Project. The Project will undoubtedly affect recreational and scenic resources—logging and burning tens of thousands of acres over the next few years will negatively affect scenery and will inevitably require numerous trail and recreational closures. These negative aggregate effects must be fully accounted for in the final NEPA document.

Fifth, the Forest Service repeatedly discounts the Project’s landscape-level effects by arbitrarily comparing it to the agency’s current project-by-project approach. According to the

³³ U.S. Forest Serv., *National Best Management Practices Monitoring Summary Report Program Phase-In Period Fiscal Years 2013–2014* at 13.

³⁴ *Id.*

³⁵ Draft EA at 20.

³⁶ *Id.* (emphasis added).

³⁷ *Id.* at 13.

agency, if it did not authorize the Project, it would continue authorizing projects like it does currently, watershed by watershed. Under this approach, “individual watersheds are analyzed for treatment on a schedule,” and the agency generally doesn’t return to that watershed “for as many as 10-20 years.”³⁸ During these treatments, the agency apparently conducts “more” management “in a smaller area,” thus “concentrat[ing]” effects.³⁹ Activities conducted under the Project, by contrast, will be “spread out across the Forest,” thereby “decreasing effects to any single watershed.”⁴⁰ A landscape-level approach will also purportedly allow the Forest Service to more easily pivot “if an area has an immediate need for a particular treatment,” instead of waiting “until the watershed that it is within is up on the schedule for analysis.”⁴¹ In effect, the Forest Service is claiming that the landscape-level approach allows it to (1) dilute effects across a larger area and (2) more easily pivot to other projects if the need arises.

Both conclusions ring hollow. To start, the agency provides no evidence that management effects will be “more evenly” distributed across the Mt. Magazine District under the Project. In fact, the agency acknowledges that “traditional order of entry will also still be used at the watershed level to identify treatment needs for each watershed.”⁴² This makes sense—as a practical matter, loggers will still be incentivized to concentrate their operations in a specific area to reduce costs. The idea that management activities will be spread evenly across the District thus appears to be a fiction. In addition, the agency’s “increased flexibility” argument is baffling. There is nothing that requires the Forest Service to continue with its rigid watershed-by-watershed approach, in which specific areas are not revisited for ten to twenty years, no matter what occurs in the interim. If there is “an immediate need for a particular treatment,” the agency always has the flexibility to ignore its watershed-by-watershed “schedule” and proceed with a targeted project. So, it is not clear what flexibility the Forest Service hopes to gain. The agency must explain these gains more clearly in its final NEPA document.

c. The Forest Service’s analysis of species impacts is arbitrary and capricious.

The Forest Service’s Draft EA and Biological Assessment and Evaluation (“BAE”) acknowledge that the Project’s proposed activities “may affect, and [are] likely to adversely affect” two federally endangered bat species, the Indiana bat and northern long-eared bat.⁴³ The agency also acknowledges that felling occupied roost trees is likely to injure or kill individual Indiana bats, northern long-eared bats, and the proposed-endangered tricolored bat.⁴⁴ Additionally, the Draft EA concludes that the Project “may affect, but is not likely to adversely

³⁸ *Id.* at 8.

³⁹ *Id.* at 23.

⁴⁰ *v* at 19, 23.

⁴¹ BAE at 6.

⁴² *Id.*

⁴³ Draft EA at 35.

⁴⁴ BAE at 16.

affect” two federally endangered bat species, the gray bat and Ozark big-eared bat, as well as the American burying beetle.⁴⁵ The Forest Service also determined that the Project would have “no effect” on the endangered piping plover and would not jeopardize the proposed threatened alligator snapping turtle.⁴⁶

The agency’s recognition that the Project activities will likely kill individuals of endangered species already facing extinction is inconsistent with its Draft Finding of No Significant Impact’s (“Draft FONSI”) determination that the Project’s effects are “not significant.”⁴⁷ The Draft EA and BAE raise substantial questions regarding significant environmental effects on listed species. Accordingly, the Forest Service should prepare an Environmental Impact Statement (“EIS”) and address the deficiencies in its listed-species analysis as discussed below.

i. The Forest Service’s analysis of impacts to bats is lacking.

The federally listed and proposed listed bat species living within the Mt. Magazine Ranger District include the endangered Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), the gray bat (*Myotis grisescens*), the Ozark big-eared bat (*Corynorhinus townsendii ingens*), and the proposed endangered tricolored bat (*Perimyotis subflavus*).

The Project would authorize landscape-scale vegetation management across approximately 100,000 acres, including commercial thinning, regeneration harvest, midstory and understory removal, prescribed burns, herbicide application, and eastern redcedar removal, together with construction of temporary roads, skid trails, and firelines.⁴⁸ As noted above, implementation is expected to average between 3,000 to 5,000 acres of vegetation treatments and roughly 20,000 acres of prescribed burning annually for at least ten years.⁴⁹

These activities involve the removal of roost trees and alteration of foraging habitat for several bat species; the BAE acknowledges that tree removal during the active season, between March and November, and especially during the pup season in June and July, may result in the felling of occupied roost trees containing non-volant young.⁵⁰ It is likely that these actions will result in the injury or death of individual Indiana bats, northern long-eared bats, and tricolored bats.⁵¹ Furthermore, the BAE recognizes that white-nose syndrome has caused catastrophic population declines of 90–100% range-wide for the tricolored bat and similar collapses for the

⁴⁵ Draft EA at 35.

⁴⁶ *Id.* at 34.

⁴⁷ Draft FONSI at 1.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ BAE at 16.

⁵¹ *Id.*

northern long-eared bat, which has gone from being one of the most abundant bat species to one of the rarest.⁵² The BAE does not acknowledge the combined effect of white-nose syndrome and stress due to habitat modification, but the Forest Service elsewhere has admitted that protecting occupied habitat is critical for bats imperiled by white-nose syndrome.⁵³

Despite these scientific realities, the Draft EA argues the risk of mortality to endangered bat species is nonetheless consistent with a FONSI. The agency characterizes habitat disturbances from vegetation management as “short-term” and the localized effects to species are described as “temporary.”⁵⁴ However, the BAE finds that these species exhibit diverse and variable roosting preferences and rely on a range of forest conditions for foraging and reproduction, and that activities affecting the forest structure greatly affects foraging conditions for bats.⁵⁵

Roosting and foraging availability will have direct impacts on bat survival and reproduction. Most species of bats produce just one pup annually, which limits their ability to rebound from population declines caused by mortality, habitat loss, or reduced reproductive success. The eventual regrowth of a forest stand after the prescribed vegetation management activities does not help their case. “It is not enough that the [listed bats’] habitat will recover in the future if there is a serious risk that when that future arrives the species will be history.”⁵⁶ “Restoration of a habitat cannot resurrect the dead.”⁵⁷ When endangered species, such as the northern long-eared bat or Indiana bat, already face the possibility of extinction and suffer from widespread disease like white-nose syndrome, potential impacts at the local population level should not be dismissed as temporary or insignificant.

ii. The Forest Service arbitrarily downplays impacts to the American burying beetle, piping plover, and alligator snapping turtle.

The American burying beetle (*Nicrophorus americanus*) is a federally threatened species following being downlisted from endangered status under a 2020 Section 4(d) rule.⁵⁸ The BAE suggests that certain Project vegetation management activities that open up the forest canopy could be beneficial to the species but also contends that these same actions “may directly impact

⁵² *Id.* at 19–20.

⁵³ U.S. Fish & Wildlife Serv., *Comments on Nantahala-Pisgah Biological Assessment* (Nov. 9, 2021) (“Important to note that part of mitigating threat of [white-nose syndrome] is protecting survivors from other threats.”).

⁵⁴ Draft EA at 26–36; FONSI at 1.

⁵⁵ BAE at 14–16.

⁵⁶ *Miccosukee Tribe of Indians of Fla. v. United States*, 566 F.3d 1257, 1271 (11th Cir. 2009).

⁵⁷ *Id.* at 1270.

⁵⁸ BAE at 3.

some individuals.”⁵⁹ The agency also acknowledges that the American burying beetle requires large, contiguous areas of habitat, the same habitat that the Project activities will alter.⁶⁰

The BAE indicates that only seven occurrences of the American burying beetle have been documented within the Project area during the most recent twenty-five-year sampling period.⁶¹ This limited information shows the uncertainty surrounding the species’ local status and distribution. Given the scarcity of occurrence data for the beetle and the species’ dependence on extensive habitat, the agency should not minimize the proposed activities’ effects. The risk of individuals’ injury or death resulting from the Project’s activities could be disastrous to the local population and pose risk of extirpation. This underscores the problems with the “blank check” approach to project design. The future decisions about where, when, and how to implement this Project are the ones that will matter for the beetle. And those are precisely the decisions for which the Forest Service is avoiding analysis.

The piping plover (*Charadrius melodus*) bird is listed as a threatened species for its Atlantic Coast and Northern Great Plains populations.⁶² The Draft EA included the piping plover in its list of Threatened, Endangered, and Sensitive Species, though determined the project would have “no effect” on the species and also gave it an Occurrence Analysis Result (OAR) code of “1” which indicates the species is unlikely to be present *and* the “known range or occurrences of the species are outside of the affected area of the project.”⁶³ The BAE’s five-sentence analysis of the piping plover attempts to explain the “no effect” determination on the basis that the species would be a “rare visitor” within the Project area and that no potential habitat would be affected.⁶⁴ However, piping plover are known to forage along stream habitat and its current range includes both Logan and Yell counties in Arkansas.⁶⁵ This information appears to contradict the OAR code given to the species in the Draft EA and also does not follow the logic of the BAE’s no-effect analysis.

The alligator snapping turtle (*Macrochelys temminckii*) is a proposed threatened species typically found in larger rivers and deep-water habitats, which the BAE acknowledged and used in its very brief analysis of the species.⁶⁶ The Forest Service concluded that the Project “would not jeopardize the existence of this species” because it has “not been discovered on the Forest” and there is no “appropriate habitat” in the Project area.⁶⁷ What the BAE failed to include in its short analysis of this species is any concrete sampling data for the species’ occurrence in the Forest, as

⁵⁹ *Id.* at 22.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² U.S. Fish and Wildlife Serv., *Environmental Conservation Online System: Piping Plover Charadrius melodus*, <https://ecos.fws.gov/ecp/species/6039>.

⁶³ Draft EA at 34.

⁶⁴ BAE at 14.

⁶⁵ U.S. Fish and Wildlife Serv., *Environmental Conservation Online System: Piping Plover Charadrius melodus*, <https://ecos.fws.gov/ecp/species/6039>.

⁶⁶ BAE at 13.

⁶⁷ *Id.*

well as the fact that alligator snapping turtles can also be found in “a variety of habitats, including small streams,” according to the Fish & Wildlife Service’s Species Status Assessment (“SSA”) Report, conducted for the alligator snapping turtle’s proposed listing rule.⁶⁸ Importantly, the SSA specifically states that both juvenile and adult alligator snapping turtles have been found in small stream habitats with mud and gravel bottoms in Arkansas throughout the year.⁶⁹ The report also identifies that the species’ current and historical range include both Logan and Yell counties, the same ones the Project encompasses.⁷⁰ Yet the BAE completely ignores this data in its analysis and arbitrarily concludes there is no “appropriate habitat” for the alligator snapping turtle in the Project area on the sole basis that no large bodies of water are present.⁷¹ The agency’s conclusion is inconsistent with the available scientific data, and fails to meaningfully show that the species is absent from the entire Project area.

d. The Forest Service must account for climate change.

The Draft EA mentions “climate change” a single time, when describing how the Project will provide increased flexibility to address “sudden and gradual changes in forest conditions,” including changes driven by “climate change.”⁷² Apart from this singular reference, the agency does not discuss the effects of climate change at all. Nor does the agency acknowledge how the Project may contribute to climate change via carbon emissions. These failures were arbitrary and capricious.

There are two distinct failures here. First, the Forest Service has failed to consider the effects of the Project when *added* to the compounding effects of climate change. Climate change makes “extreme events unprecedented in the observed record” more likely to repeat themselves in the same places with greater frequency.⁷³ Climate change is also expected to exacerbate “outbreaks of damaging forest pests,” including non-native invasive species;⁷⁴ as well as “to increase the frequency and intensity of flooding, and thus sedimentation.”⁷⁵ It is likely, therefore,

⁶⁸ U.S. Fish and Wildlife Serv., *Species Status Assessment Report – Alligator Snapping Turtle* (Mar. 2021), <https://iris.fws.gov/APPS/ServCat/DownloadFile/206831> at 7.

⁶⁹ *Id.*

⁷⁰ *Id.* at 141.

⁷¹ BAE at 13.

⁷² Draft EA at 25.

⁷³ The Intergovernmental Panel on Climate Change has consistently predicted changes in weather and climate extremes such as droughts, storms, and compound events and found “[h]uman-caused climate change is already affecting many weather and climate extremes in every region across the globe.” Intergovernmental Panel on Climate Change, AR6 at 46 (2023). “The occurrence of extreme events unprecedented in the observed record will rise with increasing global warming, even at 1.5°C of global warming. Projected percentage changes in frequency are higher for the rarer extreme events.” *Id.*, *Contribution of Working Group I, Chapter 11 (Weather and Climate Extreme Events in a Changing Climate)*.

⁷⁴ EPA, *Climate Impacts in the Southeast*, https://19january2017snapshot.epa.gov/climate-impacts/climate-impacts-southeast_.html; see also U.S. Geological Survey, *Assessing Climate-Sensitive Ecosystems in the Southeastern United States* (2016), <https://pubs.usgs.gov/of/2016/1073/ofr20161073.pdf>.

⁷⁵ *Appalachian Voices v. U.S. Dep’t of Interior*, 25 F.4th 259, 278 (4th Cir. 2022).

that the Project’s impacts on non-native-invasive spread and sedimentation—among other things—will be made *even worse* by the compounding effects of climate change. Because the Forest Service failed to consider these compounding effects, it failed to take the hard look required by NEPA.

Second, the Forest Service failed to consider the Project’s effects on carbon storage. In Region 8, reductions in carbon storage from logging are twice as high as the reductions caused by insects, storms, and wildfire *combined*.⁷⁶ Logging causes carbon emissions on several different time scales. During the logging operation itself, tree limbs, stumps, and other slash are often incinerated or left to decompose, which immediately adds carbon to the atmosphere. At the same time, logging releases large amounts of stored soil carbon into the atmosphere.⁷⁷ Even if logged wood makes it off the logging site, most logging products, such as paper, are short-lived and quickly disposed of either by burning or shipment to landfills—both of which result in carbon emissions. Finally, long-lasting wood products (like housing framing) can store carbon for decades before the product is disposed of and the carbon is released to the atmosphere, but only a fraction of harvested wood ends up as a long-lived, end-use wood product.⁷⁸

The Forest Service does not wrestle with the Project’s carbon emissions at all. Given the scale of the Project (and the unknowns associated with it), these carbon effects may be significant. Because the Forest Service has nowhere considered these climate effects, it must address them in its final NEPA document.

e. The Draft EA reveals that the Project may have significant effects.

NEPA requires the Forest Service to prepare an EIS for any action “that has a reasonably foreseeable significant effect on the quality of the human environment.”⁷⁹ Under NEPA, the Forest Service may issue a FONSI only after taking a “hard look” at the Project’s environmental consequences and making a “convincing case that the impact was insignificant.”⁸⁰ If there are substantial questions about whether a project could have a significant effect on the environment, an EIS is required.⁸¹ Several significance factors are present here, and taken either individually or together, support the preparation of an EIS.

⁷⁶ Richard Birdsey et al., U.S. Forest Serv., *Assessment of the Influence of Disturbance, Management Activities, and Environmental Factors on Carbon Stocks of United States Forests* (2019).

⁷⁷ See Steven Hamburg et al., *Losses of Mineral Soil Carbon Largely Offset Biomass Accumulation 15 Years After Whole-Tree Harvest in a Northern Hardwood Forest*, 144 *Biogeochemistry* 1 (2019) (finding timber harvest reduced mineral soil carbon by 15% relative to pre-harvest levels by year eight, with no recovery in soil carbon stocks by year fifteen); Jason James & Rob Harrison, *The Effect of Harvest on Forest Soil Carbon: A Meta-Analysis*, 7 *Forests* (2016) (concluding timber harvest reduced soil carbon, on average, by 11.2%).

⁷⁸ See Tara Hudiburg et al., *Meeting GHG Reduction Targets Requires Accounting for All Forest Sector Emissions*, 14 *Env’t Rsch. Letters* (2019).

⁷⁹ 42 U.S.C. § 4336(b)(1).

⁸⁰ *Heartwood, Inc. v. U.S. Forest Serv.*, 380 F.3d 428, 431 (8th Cir. 2004).

⁸¹ *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 937 F. Supp. 2d 1140, 1154 (N.D. Cal. 2013).

Start with just the raw numbers. The Project proposes 3,000 to 5,000 acres of logging and 20,000 acres of prescribed burning each year across more than 100,000 acres of forest for decades. These activities may adversely affect dozens of rare or listed species, including several endangered bats;⁸² thousands of acres of designated old growth;⁸³ and dozens to hundreds of streams and waterbodies. By any measure, these are significant impacts.

In addition, the Project is expected to adversely affect multiple federally listed species. The BAE concludes that the Project “may affect, and is likely to adversely affect” endangered bat species including the Indiana bat and northern long-eared bat, and acknowledges the Project activities are likely to “injure or kill” individual bats.⁸⁴ The presence of listed species and risk of mortality to individual animals weigh in favor of significance.

Moreover, substantial uncertainty surrounds the Project’s effects on listed species. The analysis relies on assumptions regarding occupied bat roost trees that are largely undetectable, very limited occurrence data for the American burying beetle, and hardly any discussion on the relationship between white-nose syndrome and habitat disturbance.⁸⁵ The BAE also cites questionable data on the range of piping plover and alligator snapping turtle. These uncertainties point towards significance under NEPA. An EIS would provide for additional data collection and a more comprehensive assessment of the risks posed by the Project, thereby removing this uncertainty.

The Project’s geographic scope and long-term duration also raise significant cumulative-effects concerns. The Project encompasses a vast land area and authorizes invasive activities over an extended time, increasing the likelihood of chronic impacts to listed species. Yet the Draft FONSI concludes that the proposed activities “will not have a reasonably foreseeable significant impact on the quality of the human environment.” That conclusion is difficult to understand as the agency’s own findings in the Draft EA and BAE point to adverse effects to listed species, data limitations, and scientific uncertainty.

III. The Emergency Situation Determination is arbitrary, capricious, and contrary to law.

On June 16, the Forest Service approved the use of the Emergency Situation Determination for the Project. If it were lawful and lawfully applied, that Determination would allow the agency to ignore reasonable alternatives during the NEPA analysis⁸⁶ and would

⁸² Draft EA at 33–34.

⁸³ *Id.* at 7.

⁸⁴ *Id.* at 35; BAE at 16.

⁸⁵ BAE at 16, 19, 22.

⁸⁶ 16 U.S.C. § 6592c(c).

eliminate the public’s ability to submit a pre-decisional objection to the Project.⁸⁷ It would also curtail the remedies available to plaintiffs suing over the Project.⁸⁸ However, the Determination⁸⁹ itself is arbitrary, capricious, and contrary to law in multiple respects, and the Forest Service therefore erred by relying on it.

a. The Determination is not responding to a legitimate emergency.

To start, the Determination is not responding to a legitimate emergency and is therefore “substantively unreasonable.”⁹⁰ The governing statute (passed as part of the Infrastructure, Investment, and Jobs Act, or “IIJA”) allows the Secretary of Agriculture to declare an “emergency situation” on National Forest System land “for which *immediate* implementation of 1 or more authorized emergency actions is *necessary* to achieve” (1) “[r]elief from hazards threatening human health and safety”; or (2) “[m]itigation of threats to natural resources on National Forest System land or adjacent land.”⁹¹ However, the threats that the Secretary of Agriculture identified in the Determination—“wildfire risk” and “insect and disease risk”—do not require immediate intervention. In fact, the materials and statutes that the Secretary cited to support her Determination state the exact opposite.

Start with wildfire risk. According to the Determination, areas designated as “very high or “high” fire risks in the 2023 Wildfire Hazard Potential (“WHP”) map qualify for emergency treatments.⁹² But the Forest Service has explained that, “[o]n its own, WHP is not an explicit map of wildfire threat or risk.”⁹³ Instead, its “primary purpose is to highlight places where vegetation treatments *may* be needed to reduce the intensity of future wildfires.”⁹⁴ Specifically, the map “quantifies the relative potential for high-intensity wildfire that *may be difficult to manage*,” so as “to help prioritize where fuel treatments may be needed.”⁹⁵ Put simply, the WHP map “is a tool for long-term strategic planning, but *it is not a forecast or wildfire outlook for any particular season*, as it does not include any information on current or forecasted weather or fuel moisture conditions.”⁹⁶

⁸⁷ *Id.* § 6592c(d).

⁸⁸ *Id.* § 6592c(e).

⁸⁹ U.S. Dep’t of Agric, *Secretary Memorandum 1078-006: Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands* (Apr. 3, 2025) [hereinafter “Sec. Memo”].

⁹⁰ *Multicultural Media, Telecom & Internet Council v. Fed. Comm’n Comm’n*, 873 F.3d 932, 936 (D.C. Cir. 2017).

⁹¹ 16 U.S.C. § 6592c(a)(2) (emphasis added).

⁹² Sec. Memo at 2.

⁹³ U.S. Forest Serv., *Wildfire Hazard Potential*, <https://research.fs.usda.gov/firelab/products/dataandtools/wildfire-hazard-potential> (June 17, 2024).

⁹⁴ *Id.* (emphasis added).

⁹⁵ U.S. Forest Serv., *Wildfire Hazard Potential for the United States (270-m), version 2023*, fs.usda.gov/rds/archive/products/RDS-2015-0047-4/_metadata_RDS-2015-0047-4.html (emphasis added).

⁹⁶ U.S. Forest Serv., *Wildfire Hazard Potential*, <https://research.fs.usda.gov/firelab/products/dataandtools/wildfire-hazard-potential> (June 17, 2024) (emphasis added).

In other words, the WHP does not identify areas requiring “*immediate*” intervention to prevent wildfires. It does not incorporate any “spatial data” on the location of “highly valued resources and assets such as structures or powerlines” that merit protection.⁹⁷ It does not incorporate any data on current weather or fuel moisture conditions. And it does not incorporate any data on likely ignition sources. Instead, it merely identifies where wildfires “may be difficult to manage” for “long term planning purposes.” That cannot be the basis for a valid “emergency” designation—much less an emergency designation predicated on the need for “immediate” action to save lives or resources.⁹⁸

If anything, the Secretary’s decision to incorporate “insect and disease risk” areas into the Determination is even more baffling. According to the Determination, these areas were designated under Section 602 of the Healthy Forest Restoration Act. That Section allowed state governors to request that the Secretary of Agriculture designate “landscape-scale” “treatment areas” in their states to combat the spread of insects and disease.⁹⁹ To be designated, an area had to be (1) “experiencing declining forest health”; (2) “at risk of experiencing substantially increased tree mortality over the next 15 years due to insect or disease infestation”; or (3) “in an area in which the risk of hazard trees poses an imminent risk to public infrastructure, health, or safety.”¹⁰⁰

Plainly, these three statutory categories do not all identify areas requiring “*immediate*” intervention. Areas “at risk of experiencing substantially increased tree mortality *over the next 15 years*” can hardly be said to require “*immediate*” action to preserve human lives or natural resources. The same is true of areas “experiencing declining forest health.” Nothing about this category communicates that there is an acute risk to forest resources. To qualify for this last category, the area need only be experiencing some level of “dieback due to infestation or defoliation by insects or disease.”¹⁰¹ That does not rise to the level of an emergency requiring “immediate” attention.

Indeed, the Forest Service has consistently stated that areas designated under Section 602 do not necessarily qualify for “immediate[]” treatment.¹⁰² “[N]or are the designations a commitment to treat all acres within designated areas.”¹⁰³ Instead, the designations are merely

⁹⁷ U.S. Forest Serv., *Wildfire Hazard Potential for the United States (270-m)*, version 2023, [fs.usda.gov/rds/archive/products/RDS-2015-0047-4/_metadata_RDS-2015-0047-4.html](https://www.fs.usda.gov/rds/archive/products/RDS-2015-0047-4/_metadata_RDS-2015-0047-4.html) (emphasis added).

⁹⁸ 16 U.S.C. § 6592c(a)(2).

⁹⁹ *Id.* § 6591a.

¹⁰⁰ *Id.* § 6591(c).

¹⁰¹ *Id.* § 6591a(a)(2).

¹⁰² U.S. Forest Serv., *Insect and Disease Area Designations*, <https://www.fs.usda.gov/managing-land/farm-bill/area-designations>; see also Ltr. From Chief Tony Tooke to Regional Forester, Southern Region (Feb. 7, 2018), https://www.fs.usda.gov/farmbill/documents/additional/R8/Designation_Letter_R8_OZSF_AR_20180207.pdf (explaining that designations under Section 602 in Arkansas “will allow us to further evaluate these landscape areas for potential treatments to reduce the risk or extent of, or increase resilience to, insect or disease infestation”).

¹⁰³ *Id.*

intended to help “plan insect and disease treatment projects more efficiently.”¹⁰⁴ They were not intended to “exempt the Forest Service from complying with any other existing law, regulation and policy such as the National Environmental Policy Act.”¹⁰⁵ Yet that is exactly what the Secretary claims to do via the Determination.

Moreover, using the insect and disease potential risk maps as a basis for the Determination is explicitly at odds with Congressional direction. Congress carefully created a system, using collaborative project development, to determine whether *actual* risks exist within the landscapes designated as potentially at risk and to treat them methodically, up to 3,000 acres at a time, while also protecting old and mature forests.¹⁰⁶ The Forest Service’s attempt to use the same designations as a backdoor to *evade* those Congressional safeguards is contrary to law.

In case there were any doubt that the Designation is unlawfully overbroad, this Project dispels it. According to the 2023 WHP, the Mt. Magazine District does not contain areas with “very high or “high” fire risk. It is covered by the Determination maps only because the majority of the Mt. Magazine District was designated as an “insect or disease” area under Section 602. According to the Forest Service, there was a need for this designation because (1) oaks were declining across the Ozark-St. Francis National Forest; (2) southern pine beetle “has the *potential* to infest shortleaf pine across the southern portion of the” Forest; and (3) emerald ash borer “is *present*” on the Forests.¹⁰⁷ These hardly qualify as “emergencies” justifying immediate intervention.

Indeed, the treatments that the agency is proposing for the Project speak to no urgency whatsoever. According to the Draft EA, the Project is designed to “accomplish restoration goals as specified in the 2005 Ozark-St. Francis National Forests Land and Resource Management Plan,” including “achiev[ing] desired conditions for each of the forest types found on the Mt. Magazine Ranger District.”¹⁰⁸ To accomplish these broad goals, the agency plans on conducting standard logging and burning practices “over the next 10-20 years.”¹⁰⁹ These treatments do not appear targeted at any emergency situation in particular. For instance, the Draft EA does not identify any acute insect or disease outbreaks or particularized risks. Nor does the Draft EA identify any conditions creating an elevated risk of wildfire. Instead, the Draft EA repeatedly cites the need to bring the Mt. Magazine District in line with “desired conditions” spelled out in

¹⁰⁴ *Id.*

¹⁰⁵ U.S. Forest Serv., *Insect and Disease Area Designations*, <https://www.fs.usda.gov/managing-land/farm-bill/area-designations>

¹⁰⁶ 16 U.S.C. § 6591b.

¹⁰⁷ Ltr. From Ken Arney, Acting Regional Forester, to Deputy Chief (Nov. 13, 2017), https://www.fs.usda.gov/farmbill/documents/additional/R8/Designation_Request_R8_OZSF_AR_20171113.pdf (emphasis added).

¹⁰⁸ Draft EA at 1.

¹⁰⁹ *Id.* at 8.

the Forest Plan.¹¹⁰ But achieving the desired conditions articulated in a 20-year-old forest plan can hardly be described as an “emergency” requiring “immediate” implementation. In short, if this Project is covered by the Determination, then it proves that the Secretary’s purported “emergency” is a farce.

b. The Secretary failed to “reasonably explain” the Determination.

In addition to being substantively unreasonable, the Secretary also failed to “reasonably explain[]”¹¹¹ her Determination or connect it to her “examination of the relevant information.”¹¹² For example, the Secretary supposedly reviewed the WHP map before making her determination. But she entirely failed to explain why the Determination applies to areas with *both* “high” and “very high” WHP designations. Why not just “very high” areas? Why use the WHP designations at all, given the limitations described above? Why didn’t the Secretary incorporate data about where structures are located, or potential ignition vectors like roads? Why didn’t the Secretary use the best available science to identify where fires might actually occur, rather than just where they would be hard to manage *if* they occurred? The Secretary did not say.

Nor does the Determination explain why it applies to areas where a “risk of hazard trees poses an *imminent* risk” to the public as well as areas that are merely “at risk of experiencing substantially increased tree mortality over the next 15 years” or that have “declining forest health.” Why is it necessary to have “immediate” implementation on areas that are only *at risk* of more mortality over the next fifteen years? If declining forest health is an emergency, what isn’t? Again, the Secretary did not say.

Nor did the Secretary bother to explain some of the Determination’s nuances. What, for example, is the reasoning behind the decision that an area qualifies for emergency treatment so long as “50 percent” of the project area falls under the designation? How will logging projects that are known to introduce invasive species help address the “invasive species” crisis? How will logging treatments, which, as explained below, tend to *increase* fire risk, actually help contain the “wildfire” crisis? And did the Secretary consider the impacts of all the roadbuilding that will be needed to “increase[e] timber production,” and how these roads make it easier for wildfire ignitions to occur, as discussed below? Again, the Secretary did not say. These and other failures of explanation were arbitrary and capricious.

¹¹⁰ *Id.* at 2 (“Unfortunately, the amount of these treatments applied remains insufficient to restore wildlife populations and habitat to the extent desired.”).

¹¹¹ *Multicultural Media, Telecom & Internet Council*, 873 F.3d at 937.

¹¹² 16 U.S.C. § 6592c.

c. The Determination arbitrarily extends beyond designated areas.

The Determination also arbitrarily allows emergency treatments to extend beyond areas that fall within the actual “emergency” designation. According to the Secretary, so long as “at least 50 percent of the treatment areas supporting this authorized emergency action” fall within the “designated [emergency] areas”—i.e. areas of high or very high wildfire risk or areas designated under Section 602—then the activity qualifies for emergency authorization.¹¹³ In other words, so long as half of a treatment area falls in a designated emergency area, the entire treatment is eligible for fast-track authorization. That means the Secretary is authorizing emergency action in areas that *not even the Secretary* believes qualify for emergency treatment.

That is flatly inconsistent with the governing statute. Again, the IIJA requires the Secretary to make a determination that “a situation on National Forest System land” requires “immediate implementation” of an “emergency action” necessary to relieve a threat to human health or safety or forest resources.¹¹⁴ Yet here, the Secretary is extending her emergency authority to potentially millions of acres where the Secretary has never made such a determination. That is arbitrary, capricious, and contrary to law.

d. The Secretary failed to consider important aspects of the problem.

The Secretary also failed to consider important aspects of the problem. According to the Secretary, the authorized “actions will improve the durability, resilience, and resistance to fire, insects, and disease within national forests and grasslands across the National Forest System.”¹¹⁵ However, the Secretary apparently failed to consider contrary scientific evidence showing that the logging and roadbuilding the Determination is intended to accelerate¹¹⁶ will actually worsen the wildfire crisis it purports to address.

To start, numerous studies have found that logging can actually *increase* fire risk, especially in the short term.¹¹⁷ In fact, the Draft EA itself recognizes that “Recently harvested stands can pose a risk of increased fire intensity.”¹¹⁸ Unless the agency is engaging in “intensive, whole-tree removal approaches”—which can be hugely ecologically damaging—logging can

¹¹³ Sec. Memo at 2 (emphasis added).

¹¹⁴ 16 U.S.C. § 6592c(a)(2).

¹¹⁵ Sec. Memo at 3.

¹¹⁶ See *id.* at 2 (greenlighting “salvage of dead or dying trees” and “commercial” timber harvests, including associated roadbuilding).

¹¹⁷ See, e.g., Alexandro Leverkus et al., *Does Salvage Logging Mitigate Subsequent Forest Disturbances?*, 481 Forest Ecology Mgmt. 118721 (2021) (review encompassing mediterranean, temperate and boreal forests); Shawn Fraver et al., *The Efficacy of Salvage Logging in Reducing Subsequent Fire Severity in Conifer-Dominated Forests of Minnesota, USA*, 21 Ecological Applications 1895 (2011); D.C. Donato et al., *Post-Wildfire Logging Hinders Regeneration and Increases Fire Risk*, 311 Science 352 (2006) (salvage “logging significantly increased both fine and coarse downed woody fuel loads” and increased “short-term fire risk”).

¹¹⁸ Draft EA at 25.

“increase fine fuels via mechanical abrasion during tree removal and the accumulation of slash (branches, tops and bark) during initial on-site log processing.”¹¹⁹ Logging can also enhance fire risk by drying out soils¹²⁰ and introducing nonnative invasive species,¹²¹ which not only “alter fuel levels and promote future fires” but also “slow the recovery of native plants.”¹²²

In addition to potentially increasing fire risk, logging has serious adverse effects that impede recovery and degrade forest health.¹²³ Though the Forest Service often pitches logging as a restoration tool, the notion that “logging assists the ecological recovery of naturally disturbed forests is fundamentally incorrect.”¹²⁴ In fact, “there is abundant theoretical and empirical evidence . . . [that] logging *interferes* with natural ecological recovery” and has negative effects on species composition, species richness, nonnative species spread, and ecosystem services.¹²⁵ The Secretary’s contrary conclusion—that increased logging will improve “forest health”¹²⁶—is directly contradicted by this evidence.

The Secretary also apparently failed to consider that the roadbuilding that accompanies logging also *increases*, rather than decreases, fire risk. It is well established that fire ignition density falls steadily with increasing distance from roads. Indeed, a 30-year Forest Service dataset shows ignition density is lowest in forested areas that lack roads, and highest within 50 meters of roads.¹²⁷ That association is “easy to explain”: roads provide access to humans, who

¹¹⁹ Leverkus (2021), *supra*.

¹²⁰ *Id.*

¹²¹ David Foster & David Orwig, *Preemptive and Salvage Harvesting of New England Forests: When Doing Nothing Is a Viable Alternative*, 20 *Conservation Biology* 959, 964 (2006).

¹²² Lindenmayer et al. (2008), *supra* at 64.

¹²³ Sarah Cooper Ellis, et al., *Forest Response to Experimental Hurricane*, 80 *Ecology* 2693 (1999) (finding that salvage logging “kills the aboveground portions of the trees, eliminates leaf and woody biomass, decreases evapotranspiration, scarifies the soil surface, increases insolation, and damages many soil and organic structures created by disturbance” and that these impacts “reduce biotic control over microenvironments, increase the potential for biogeochemical and hydrological change and nutrient loss, enhance the role of seedling establishment in regeneration, and promote compositional change”).

¹²⁴ David Lindenmayer, Philip Burton & Jerry Franklin, *Salvage Logging and Its Ecological Consequences* (Island Press 2008); David Lindenmayer et al., *Salvage Logging Policies After Natural Disturbance*, 303 *Science* 1303 (2004) (“Salvage harvesting activities undermine many of the ecosystem benefits of major disturbances.”); David Lindenmayer and R.F. Noss, *Salvage Logging, Ecosystem Processes, and Biodiversity Conservation*, 20 *Conservation Biology* 949 (2006) (“The word salvage implies that something is being saved or recovered, whereas from an ecological perspective that is rarely the case.”).

¹²⁵ Lindenmayer et al. (2008), *supra* at 13 (emphasis added); see also J. Stephen Brewer et al., *Do Natural Disturbances or the Forestry Practices that Follow Them Convert Forests to Early-Successional Communities?*, 22 *Ecological Applications* 442 (2012) (finding salvage logging following tornados in Mississippi “prevented positive responses of several forest and open-woodland species to tornado damage” and contributed to “biotic homogenization”); David Lindenmayer and K. Ough, *Salvage Logging in the Montane Ashe Eucalypt Forests of the Central Highlands of Victoria and Its Potential Impacts on Biodiversity*, 20 *Conservation Biology* 1005 (2006) (finding the environmental “impacts of salvage logging may exceed those associated with conventional (nonsalvage) logging practices” and “last for hundreds of years into the future”).

¹²⁶ Sec. Memo at 2.

¹²⁷ Gregory H. Aplet et al., *Three-decade record of contiguous-U.S. national forest wildfires indicates increased density of ignitions near roads*, 22:8 *Fire Ecology* (2026).

then engage in “recreational negligence (hot catalytic converters, discarded cigarette butts, unattended camp fires, etc.) or arson.”¹²⁸ Put simply, the best available science shows that “[b]uilding new roads is likely to increase fire ignitions.”¹²⁹ The Secretary apparently failed to wrestle with this fact when authorizing a suite of emergency activities that necessarily require roadbuilding.

Because the Secretary has not provided the public with the “relevant information” underlying her Determination¹³⁰ or bothered to explain her reasoning, it is difficult to assess whether she considered other important aspects of the problem. For example, the public has no idea if the Secretary considered the Determination’s potential impacts to endangered or threatened species, the potential for logging to introduce invasive species, negative effects on water resources, or the influence of climate change, to name just a few factors. If these issues were considered, the Secretary has yet to provide the “relevant information” disclosing as much. For reasons explained above, that failure is also arbitrary and capricious.

e. The Secretary inappropriately relied on a directive to “increase domestic timber production.”

The Secretary also inappropriately relied on factors that Congress did not intend for her to consider, namely President Trump’s directive to increase timber production. According to the Secretary, the “purpose” of the Determination is to “respon[d]” to Executive Order 14225,¹³¹ *Immediate Expansion of American Timber Production*.¹³² As its name implies, that Order directed federal agencies to “increase domestic timber production to protect our national and economic security.”¹³³ Specifically, the Order directed the Secretary of Agriculture to take action within thirty days to “facilitate increased timber production,” “reduce time to deliver timber,” and “decrease timber supply uncertainty.”¹³⁴ It also directed the Secretary to take steps to immediately “eliminate . . . all undue delays within their respective permitting processes related to timber production.”¹³⁵ The Determination is the Secretary’s explicit response to these directives.

The problem is that “domestic timber production” and “economic security” were not factors that Congress intended for the Secretary to consider when making an emergency situation determination. The IIA requires the Secretary to make a determination based *solely* on whether there is an “immediate” need for emergency action “necessary” to protect “human health and

¹²⁸ *Id.* at 6.

¹²⁹ *Id.*

¹³⁰ 16 U.S.C. § 6592c(b)(1)(C).

¹³¹ Sec. Memo at 1.

¹³² 90 Fed. Reg. 11365 (Mar. 6, 2025).

¹³³ *Id.* at 11365.

¹³⁴ *Id.*

¹³⁵ *Id.* at 11366.

safety” or mitigate threats to forest resources.¹³⁶ If Congress had wanted “economic security” and a desire to increase “domestic timber production” to factor into the Secretary’s emergency determination calculus, it would have said so. Because it did not, and because the Determination makes clear that these economic factors not only factored into the Secretary’s decision, but actually *animated* that decision,¹³⁷ the Secretary arbitrarily “relied on factors which Congress has not intended [her] to consider.”¹³⁸

f. The Secretary arbitrarily extended the Determination to other statutory contexts.

Finally, the Secretary arbitrarily extended the Determination’s reach beyond NEPA and the administrative objection process to illegally curtail other statutory procedures. According to the Secretary, within areas “designated” by the Determination, the Forest Service also must “deploy, or continue to deploy, other emergency authorities” including “[e]mergency consultation to comply with the Endangered Species Act” and “[e]mergency procedures to comply with the Clean Water Act,” among others.¹³⁹ In effect, the Secretary is claiming her designation of “emergency” areas under the IIJA allows her to automatically trigger emergency procedures for separate statutes. That is not the case.

Take emergency Endangered Species Act consultation, for example. According to federal regulations, emergency consultation may only be conducted “through alternative procedures that the Director [of the U.S. Fish & Wildlife Service or the Assistant Administrator for Fisheries for the National Marine Fisheries Service] determines to be consistent with the requirements of sections 7(a)-(d) of the Act.”¹⁴⁰ In addition, emergency consultation only “applies to situations involving acts of God, disasters, casualties, national defense or security emergencies.”¹⁴¹ In other words, only the Fish & Wildlife Service and the National Marine Fisheries Service may approve the use of emergency consultation, and only in very limited circumstances involving genuine emergencies. The Secretary of Agriculture has absolutely no authority to make this determination for the Department of Interior. By trespassing on this authority, the Secretary acted arbitrarily, capriciously, and contrary to law.

In short, the Determination is unlawful. As a result, the Forest Service cannot rely on it to authorize the Project. Instead of deploying the Determination, the agency should conduct a full

¹³⁶ 16 U.S.C. § 6592c.

¹³⁷ Indeed, the title of the Secretary’s Memorandum is “Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands.” Sec. Memo at 1.

¹³⁸ *Motor Vehicle Manufacturers Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹³⁹ Sec. Memo at 4.

¹⁴⁰ 50 C.F.R. § 402.05(a).

¹⁴¹ *Id.*

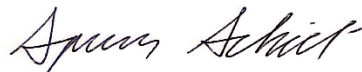
NEPA study of a range of reasonable alternatives and resubmit a draft NEPA study for public review.

IV. Conclusion

While we are not opposed to some aspects of the Project in principle, the Project plainly lacks sufficient site specificity or sideboards to protect sensitive resources, and it therefore runs afoul of NEPA in several ways. The Project also reveals the legal shortcomings in the Secretary of Agriculture's Emergency Situation Determination. We recommend that the agency adjust its proposal in the manner described above to avoid these legal issues and to protect the Mt. Magazine District's outstanding biological resources.

Thank you for your consideration of this letter. Please contact Spencer Scheidt (828-258-2023; sscheidt@selc.org) or Laurel Jobe (423-441-8558; ljobe@biologicaldiversity.org) if you have any questions regarding these comments.

Sincerely,



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