



May 11, 2022

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RE: Standing Trees' and the Lake Tarleton Coalition's joint comments on the Lake Tarleton Integrated Resource Project, submitted via certified U.S. mail (#7020 3160 0001 6335 9262) and electronically via <https://cara.fs2c.usda.gov/Public//CommentInput?Project=56394>.

Dear District Ranger Brown:

These comments are submitted on behalf of Standing Trees and the Lake Tarleton Coalition (collectively "Standing Trees") on the U.S. Forest Service's ("Forest Service" or "Service") April 2022 revised Draft Environmental Assessment ("DEA") for the Tarleton Integrated Resource Project (the "Project" or "Tarleton IRP") located in the White Mountain National Forest in the Pemigewasset Ranger District.

Standing Trees submits these comments via certified U.S. mail and electronically. The certified mail copy includes a thumb drive containing electronic copies of all of the exhibits cited below in these comments. Those exhibits are too large to submit along with the electronic version of these comments. A list of those exhibits is included at the end of this comment.

As detailed below, in order to comply with the National Environmental Policy Act ("NEPA"), the National Forest Management Act ("NFMA"), and the Endangered Species Act ("ESA"), an Environmental Impact Statement ("EIS") is required for the proposed project. The Forest Service erred when it initially completed only a draft Environmental Assessment ("EA") for the Project in July of 2021 ("2021 DEA") and again in April of 2022 ("2022 DEA"), along with each EA's Finding of No Significant Impact ("FONSI"). The environmental harms of the Project are significant, or at the very least uncertain, because of the unique nature of the land involved, the intensity of potential impacts, the recent proposal by the U.S. Fish and Wildlife Service ("USFWS") to classify the Northern Long-eared Bat as endangered under the ESA, and the 2022 DEA's failure to adequately analyze Project impacts in sufficient detail, among other things.

To comply with its statutory and regulatory obligations, the Forest Service must complete an EIS for the Project, or at the very least complete supplemental NEPA analysis in the form of a new or supplemental EA – including necessary public outreach and another public comment period – to correct the deficiencies identified in the comments below. Standing Trees emphasizes the need for the Forest Service to carefully review and address these issues because despite the Service having had the benefit of obtaining numerous comments from the public during the prior scoping and 2021 DEA comment periods, comments raising a number of public concerns have so far gone unacknowledged and unaddressed.

The Tarleton IRP is a major federal action that is likely to significantly affect the quality of the human environment and harm New Hampshire’s treasured Lake Tarleton area within the White Mountain National Forest, an area that, as described in detail below, the public fought to protect from harmful projects such as this. NEPA requires that before undertaking such a project, the Forest Service must gather sufficient information to make an informed decision, and provides for public involvement in this decision-making process. Nevertheless, the Forest Service’s 2022 DEA failed to provide adequate analysis of the impacts of the Project, sometimes failing to provide any analysis at all for certain impacted resources. This failure not only violated NEPA’s requirement that agencies take a “hard look” at environmental impacts, but also made it impossible for the public to fully and meaningfully participate in the public review process because the document was not written in plain language so that decisionmakers and the public could readily understand potential impacts.

The Forest Service is required to prepare an EIS for the Project because, in light of the deficient 2022 DEA, the environmental impacts of the Project are at the very least uncertain. The Service’s deficient analysis aside, it is clear that the project will result in significant impacts, thus triggering the need to evaluate these impacts in an EIS. In the 2022 DEA the Forest Service failed to establish a baseline for numerous resources, explain impacts to those resources, establish consistency with relevant standards, values, and desired future conditions, and explain how it will avoid impacts to project area resources. Without these required analyses, the Forest Service cannot conclude that the impacts of the Project are certainly not significant. The Forest Service has thus failed to explain how the facts found in the record justify its conclusion that no significant impacts will result from the Project. *See Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 105 (1983) (courts will uphold an administrative action if the agency “considered the relevant factors and articulated a rational connection between the facts found and the choice made.”); *Strahan v. Linnon*, 967 F. Supp. 581, 602 (Mass. Dist. Ct. 1997) (an agency decision must be “fully informed and well-considered” to be entitled to judicial deference).

Additionally, in light of the recent proposed reclassification of the Northern Long-eared Bat from “threatened” to “endangered” and the potential removal of the species’ ESA §4(d) Rule, the Forest Service must reinstate ESA Section 7 consultation with USFWS and complete an EIS to address this new information and changed circumstance. To correct these many errors and bring itself to a properly informed decision in which the public is adequately involved and can have confidence, the Forest Service must complete an EIS.

Founded in the fall of 2021, the Lake Tarleton Coalition is a group of local business owners, scientists, frequent users of the WMNF, and concerned citizens united for permanent

protection of Lake Tarleton and surrounding lands on the White Mountain National Forest. Many of the Coalition's members have been involved in efforts to protect Lake Tarleton since before it was threatened by resort development in the 1990s, prompting its purchase by the Trust for Public Land and subsequent transfer to the White Mountain National Forest.

Standing Trees is a grassroots community non-profit founded by volunteers in 2020 for the purpose of advancing policy and legal solutions that protect and restore New England's native forests, with a focus on Vermont and New Hampshire. The organization came together, in part, as a response to concerns over logging on the White Mountain National Forest ("WMNF"). Standing Trees works, inter alia, to ensure that New England's public lands are managed using just and equitable policies and practice to support the region's citizens and natural ecosystems alike. This includes managing public lands and waters to maximize carbon storage and protect clean water, clean air, public health, and intact habitat for the region's native biodiversity. Standing Trees has many members who regularly visit and recreate throughout WMNF, including in the areas that would be impacted by the Tarleton IRP.

INTRODUCTION

Imagine dipping your canoe paddle into the clear, cold waters of a quiet mountain lake, surrounded by undisturbed forests sloping to the shoreline, loons calling through the mist, and the alpine tundra-topped Mt. Moosilauke looming in the distance. You land your canoe to hike a narrow trail that follows the rocky, undeveloped shoreline, surrounded by massive hemlocks, stately white pines, and a variety of hardwoods. Songbirds call from the branches, and a Bald Eagle soars overhead.

This is what you can experience today on Lake Tarleton in Piermont and Warren, NH. Thousands of visitors each year come to the lake to boat, fish, swim, hike, camp, ski, snowshoe and birdwatch in this spectacular natural environment – a true gem of the White Mountains and the largest lake in the White Mountain National Forest. Nearby, the Appalachian Trail traverses babbling brooks and rugged ridgelines, climbing to the breathtaking view from Webster Slide over Wachipauka Pond.

The U.S. Forest Service's founding motto implores us to manage our public forests for the benefit of *the greatest good for the greatest number for the longest time*. In this iconic corner of the White Mountain National Forest, the public interest is best served by protecting Lake Tarleton's exceptional water quality and maintaining the ecological integrity of the wild Appalachian Trail corridor.

President Johnson once wrote, "If future generations are to remember us with gratitude rather than contempt, we must leave them more than the miracles of technology. We must leave them a glimpse of the world as it was in the beginning, not just after we got through with it." We have a chance to do just that in the forests surrounding Lake Tarleton.

The Tarleton Integrated Resource Project puts a long history of community-led conservation at risk. In 1994, developers proposed a massive resort surrounding Lake Tarleton. The proposal inspired a multi-year conservation effort, led by the Trust for Public Land, to

preserve Lake Tarleton and the surrounding landscape in its natural state. A dozen organizations, 600 individuals and businesses, the State of New Hampshire and the US Congress worked in partnership to raise \$7.5 million to purchase 5,300 acres around the lake, securing public ownership forever as part of the nearly one-million-acre White Mountain National Forest.

In making its case to the Piermont and Warren Selectboards, the Trust for Public Land (“TPL”) made it clear that its vision was for a wild Lake Tarleton. According to the September 5th, 2001 edition of the Bradford *Journal Opinion* (Exhibit 1):

Under the motto "Less is More," the plan as presented by [TPL representative Rodger] Krussman "will protect and conserve the 'wilderness' quality of the Lake Tarleton area," stressing low impact recreational activities. Some of the proposals set forth in the plan include a visitors center in the former Santucci house with a small crushed stone parking lot serving both the center and the beach area; a handicapped accessible trail with an overlook onto the lake and access to the beach; a foot trail loop around the lake with spurs to Lake Constance, Piermont Mountain and a spur connecting to the Appalachian Trail. The plan also calls for lobbying the NH legislature for a horsepower limit of five or less on the lake and a banning of the use of jet skis[.]

Conservation partners gathered to celebrate the protection effort in August 2000. At the ceremony, Senator Judd Gregg commented, “Many of us here today have worked hard for a number of years to reach the point we are at today where we can proudly say that this pristine New Hampshire wilderness has been saved.”

In the twenty-two years that have elapsed since this small “w” “wilderness” was transferred to public ownership, has the White Mountain National Forest forgotten why these lands and waters were so important to protect, and how much they mean to the surrounding community? Few recreation-related components of the Lake Tarleton vision have been realized. Many Lake Tarleton stakeholders who helped to lead the protection campaign in the 1990s feel as though the WMNF turned its back on the lake for two decades, only to reappear with an out-of-touch logging proposal that treats one of New Hampshire’s largest, cleanest, and least developed lakes as a woodlot instead of a scenic treasure.

The White Mountain National Forest again showed little regard for Lake Tarleton-area stakeholders when it pressed ahead with the Tarleton IRP initial Draft EA comment period in the summer of 2021, despite the ongoing Covid-19 pandemic. Indeed, throughout much of the Tarleton IRP NEPA process, the public has had justifiable reasons (some would say a civic responsibility) to avoid in-person gatherings or even to visit town offices where information was posted about the project. What’s more, in rural New Hampshire, broadband internet remains a luxury item that is inaccessible to many citizens, whether due to geographic isolation or economics. According the U.S. Census’ American Community Survey, an estimated 40% of households in Warren and 25% in Piermont do not have high-speed internet. These statistics effectively prohibited a significant percentage of the local population from participating in the NEPA process for the Tarleton Integrated Resource Project.

Although we are grateful for the second comment opportunity afforded by the White Mountain National Forest, it seems that little has changed from the initial Draft EA to the current, revised version. In the time since the Tarleton IRP's initial Draft Environmental Assessment comment period concluded, over 1,600 concerned citizens have signed a petition requesting that the WMNF revise the project to live up to the spirit of the Lake Tarleton protection campaign of two decades prior. And yet, the Tarleton IRP continues to present an all-or-nothing proposition: 900 acres of logging along with relatively modest recreation improvements, or nothing at all. This is a false choice. We demand better from the federal agency that was entrusted as caretaker of Lake Tarleton.

The Granite State is home to many treasures that are best left as nature intended. The White Mountain National Forest protects nine of these treasures as Scenic Areas, including Mt. Chocorua, Pinkham Notch, Lincoln Woods, and Greeley Ponds. The White Mountain National Forest has never designated a Scenic Area west of I-93. For the benefit of the local tourism and recreation economy, and for the integrity of this treasured landscape, including Abenaki and early colonial historical resources, it's past time to permanently remove the threat of logging and development from Lake Tarleton, as intended with the lake's protection in 2000. The best way the White Mountain National Forest can honor the effort that added Lake Tarleton to the public domain is to drop current logging plans, and instead conduct a Forest Plan amendment that designates a Lake Tarleton-Webster Slide Scenic Area.

LEGAL BACKGROUND

1. National Environmental Policy Act ("NEPA")¹

Under NEPA, federal agencies must assess the environmental impact of any major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). If the action will significantly affect the quality of the human environment, the federal agency must complete an EIS. 40 C.F.R. § 1502.3. If the action is not likely to significantly affect the quality of the human environment, or the significance of the effects are unknown, the agency must complete an EA. 40 C.F.R. § 1501.5(a). Under the statute's implementing regulations, a NEPA analysis must include several specific components, including an analysis of the cumulative impacts of the proposed project and a discussion of reasonable alternatives. 40 C.F.R. §§ 1502.14, 1508.7.5.

¹ The Council on Environmental Quality ("CEQ") promulgates regulations to implement NEPA that are binding on all federal agencies. Those regulations are found at 40 C.F.R. §§ 1500–1508. The CEQ amended its regulations effective September 14, 2020. *See* 40 C.F.R. § 1506.13 (2020) (effective date). This Project, however, was developed and analyzed under the prior 1978 (as amended) version of the CEQ regulations. *See* 2022 DEA at 4. We will refer to that prior version here as the "2019" version. Because the 2020 regulations are not retroactive and the Service's NEPA analysis followed the 2019 version of the regulations, all references to these regulations throughout these comments are to the 2019 version. *See Bair v. California Dep't of Transp.*, 982 F.3d 569, 582 n.20 (9th Cir. 2020).

The agency's NEPA responsibilities do not, however, end with the conclusion of the initial NEPA process. Following the completion of the initial NEPA review process, if the agency makes "substantial changes to the proposed action" or "new circumstances or information" arise that are "relevant to environmental concerns and bear[] on the proposed action or its impacts," and "a major Federal action remains to occur," the agency must prepare supplemental NEPA documentation. 40 C.F.R. § 1502.9(d). The agency must at least take a "hard look" at the environmental impacts of the planned action, even after a proposal has received initial approval. *Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 374 (1989).

2. National Forest Management Act ("NFMA")

NFMA requires the Forest Service to develop long-term land and resource management plans ("Forest Plans") for the nation's National Forests. National Forest Management Act of 1976, 16 U.S.C. § 1600 et seq. The Forest Plan for WMNF was developed in 2005 ("WMNF Plan") and includes "Goals and Objectives" for the WMNF.

Forest Plan goals are "broad statements of intent, other than desired conditions, that are usually related to process or interaction with the public." USDA FOREST SERV., CITIZEN'S GUIDE TO NATIONAL FOREST PLANNING, 21 (2016) (hereinafter "Forest Planning Citizen's Guide"), attached as Exhibit 2. Objectives are measurable statements of a "desired rate of progress toward a desired condition." *Id.* The WMNF Plan also includes "Standards and Guidelines" for the forest.

Standards and guidelines are the specific, technical direction for managing resources. A **standard** is a course of action that *must be followed*, or a level of attainment that *must be reached*, to achieve management goals and objective, and can only be changed through an amendment to the Plan. A **guideline** also is a *required course of action* or level of attainment, but permits operational flexibility to respond to variations in conditions. Guidelines can be modified or not implemented, but *the rationale for doing so must be documented* in a project-level analysis and signed decision.

WMNF Plan at 2-3 (emphasis added).

The WMNF Plan includes numerous *forest-wide* standards and guidelines, including relevant standards and guidelines for Heritage Resources (WMNF Plan at 2-6 to 2-8), Lands (WMNF Plan at 2-8 to 2-11), Native American Relationships (WMNF Plan at 2-11), Non-Native Invasive Species (WMNF Plan at 2-11 to 2-12), Rare and Unique Features (WMNF Plan at 2-13 to 2-16), Recreation (WMNF Plan at 2-17 to 2-24), Riparian and Aquatic Habitats (WMNF Plan at 2-24 to 2-26), Scenery Management (WMNF Plan at 2-26 to 2-27), Vegetation Management (WMNF Plan 2-29 to 2-30), Water Resources (WMNF Plan at 2-30 to 2-32), Wildlife (WMNF Plan at 2-33 to 2-36), among others.

The WMNF Plan also includes management direction for *specific management areas*, including the lands designated as General Forest Management (MA 2.1), as well as designated for use as part of the Appalachian Trail (MA 8.3). According to the WMNF Plan, the

Appalachian Trail (“AT”) designation was established for the purpose of “[p]rovid[ing] for the conservation and enjoyment of the nationally significant scenic, historic, natural, and cultural qualities of the land through which the trail passes[,]” as well as to “[p]rovide opportunities for high quality outdoor recreation experiences, including a sense of remoteness and solitude[,]” among other things. WMNF Plan at 3-45.

The desired future condition of the AT emphasizes “a remote backcountry recreation experience in a predominately natural or natural-appearing landscape” and management that will “protect cultural and natural resources and to minimize visual disturbance” making specific note that stands in the management area will be “visually dominated by mature trees.” *Id.* at 3-45 to 3-46. The Standards and Guidelines for MA 8.3 (Appalachian Trail) lands most relevant to the Tarleton IRP are the following:

General

- **Standard S-2:** Consistent with existing agreements, the White Mountain National Forest will consult with the Appalachian Trail Conservancy, the Appalachian Mountain Club, and Dartmouth Outing Club (local Appalachian Trail clubs) on management actions that affect AT values.

Rare and Unique Features

- **Guideline G-1:** Vegetation manipulation may be implemented to protect or improve habitat for threatened, endangered, or sensitive species.

Scenery Management

- **Standard S-1:** The AT is a Concern Level 1 Travelway, and middleground and background areas on the National Forest Lands seen from the AT must be managed for scenery in accordance with Scenic Integrity Objectives identified through the Scenery Management System.
- **Standard S-2:** All management activities will meet a Scenic Integrity Objective of High or Very High.

Vegetation Management

- **Standard S-1:** On all National Park Service (NPS) acquired corridor lands, commercial timber management and salvage operations are prohibited.
- **Guideline G-1:** Where the AT management area adjoins MA 2.1, commercial timber management and salvage operations are allowed in that portion of the Appalachian Trail MA between the trail footpath and the 2.1 Management Area, but only outside the foreground area as defined in the Scenery Management System (SMS). The foreground zone is determined by site-specific analysis of the area as seen from the AT. Everywhere else in the AT management area, commercial timber management and salvage sales are prohibited.

Wildlife

- **Standard S-1:** Creation of regeneration forest habitat must occur only through natural disturbance events, except for areas adjacent to Management Area 2.1, in

that portion of the Appalachian Trail MA between the trail footpath and the 2.1 Management Area outside of the foreground zone.

WMNF Plan 3-47 – 3-53.

3. Endangered Species Act (“ESA”)

Congress passed the Endangered Species Act in 1973 for the purpose of conserving endangered and threatened species and the ecosystems upon which they rely. 16 U.S.C. § 1531(b). According to the Supreme Court, the “plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978). The ESA requires the Secretary of the Interior to determine whether any species is “endangered” or “threatened.” The Secretary of the Interior has delegated this listing authority to the USFWS. An “endangered species” is one “which is in danger of extinction throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6). A “threatened species” is one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20). Whether a species is threatened or endangered is evaluated based on several factors, including “the present or threatened destruction, modification, or curtailment of its habitat or range,” disease or predation, and “other natural or manmade factors affecting its continued existence.” *Id.* § 1532(a)(1). USFWS makes its listing determination based on the “best scientific and commercial data available.” *Id.* § 1533(b)(1)(A).

Section 4 of the ESA provides for the listing of species as either endangered or threatened. *Id.* § 1533. When a species is listed as threatened, the Secretary must issue regulations “to provide for the conservation of such species.” *Id.* § 1533(d). Such regulations are commonly referred to as the species’ “4(d) Rule.” *See, e.g.*, 4(d) Rule for the Northern Long-Eared Bat, 81 Fed. Reg. 1900 (Jan. 14, 2016). Section 9 of the ESA broadly prohibits the “take” of any listed species. 16 U.S.C. § 1538(a). “Take” is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.* § 1532(19). Section 7 of the ESA requires every federal agency to consult with USFWS to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.” 16 U.S.C. § 1536(a)(2). To assist in the completion of this statutory requirement, the agency undertaking the action (“action agency”) must complete a Biological Assessment (“BA”). *Id.* § 1536(c)(1). The purpose of the BA is to “evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat.” 50 C.F.R. § 402.12. USFWS reviews the BA, and if the agency determines that the proposed action may affect listed species or critical habitat, USFWS must formally consult with the action agency. 50 C.F.R. § 402.14. USFWS then produces a Biological Opinion (“BiOp”) to determine whether the agency action is likely to jeopardize the continued existence of a listed species. *Id.* § 402.14(h). If the action is likely to jeopardize listed species, the BiOp must include reasonable and prudent alternatives to the action as proposed. *Id.* § 402.12(h)(2).

The action agency must reinstate consultation under four circumstances: (1) if the amount of take contemplated in the incidental take statement is exceeded; (2) if new information shows that the action may affect listed species or critical habitat “in a manner or to an extent not previously considered”; (3) if the action is modified such that it causes an effect to the listed species or critical habitat not previously considered; or (4) “if a new species is listed or critical habitat designated that may be affected by the identified action.” 50 C.F.R. § 402.16(a).

DISCUSSION

I. The 2022 DEA is inadequate under NEPA and new analysis must be conducted.

“Federal agencies shall to the fullest extent possible... [u]se all practicable means, consistent with the requirements of [NEPA] and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(f).

The overarching flaw for this “integrated resource project” is the Forest Service’s failure to provide more than mere conclusory statements to support its finding of no significant impact. The analysis is sparse, and sometimes non-existent, for a number of impacted resources. As a result, it is nearly impossible for the public to meaningfully engage with agency’s data and analysis presumably underlying the 2022 DEA.

a. Public Involvement Process

Public participation is a critical aspect of the NEPA process. *See* 40 C.F.R. § 1500.1(b) (“[P]ublic scrutiny [is] essential to implementing NEPA.”); § 1500.2(d) (“Federal agencies shall to the fullest extent possible... [e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.”); 40 C.F.R. § 1506.6(a) (“Agencies shall . . . [m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.”).

Here, public involvement has been impeded by the unavailability of relevant supporting documents, the failure of the 2022 DEA to clearly identify other supporting documents, and the failure to include sufficient detail in the DEA to allow the public to engage the substantive analysis underlying the agency’s review of project impacts on relevant resources, and its subsequent finding of no significant impact.

For example, although the 2022 DEA was made available to the public on April 12, 2022, supporting documentation such as the Soils Specialist Report and the New Hampshire SHPO concurrence letter were not made available to the public until weeks later. Although the Soils Specialist Report was specifically referenced in the 2022 DEA (page 20), it was only posted to the Forest Service’s project page after Standing Trees requested that it do so. The SHPO letter, which was referenced but not incorporated into 2022 DEA (page 24), was provided directly to Standing Trees after it requested this document, but to our knowledge it has not yet been made

available to the general public. *See* Exhibits 3 (email chain requesting report and letter) and 4 (SHPO concurrence letter).

In addition, numerous references are made to other unspecified authorities to support conclusions advanced by the Forest Service in the 2022 DEA. For example, the DEA states that “[a]n analysis of the current habitat conditions indicates that the Tarleton HMU is not meeting the MA 2.1 Habitat Composition and Age Class Objectives.” 2022 DEA at 6. It then references the section of the WMNF Plan that contains these objectives, but no reference or citation is provided for where the public can review this “analysis of current habitat conditions.” If an analysis was already conducted it could have been included in the 2022 DEA, or at least cited so that the public could review it. Instead, we are left to wonder if this analysis is contained in one of the other documents provided on the Forest Service project webpage. This does not appear to be the case. The closest contender would appear to be the USDA Forest Service 2019 Terrestrial Habitat Management Reference Document, but that document makes no mention of the Tarleton HMU, and thus could not be said to be an analysis of current habitat conditions in the project area. A member of the Lake Tarleton Coalition requested a stand age class map on November 15, 2021 for the areas proposed for harvest in the Tarleton IRP and was refused such map by the WMNF. *See* Exhibit 5.

Further, the 2022 DEA makes repeated reference to similar, unspecified past projects to support its conclusions of no impact, yet no references or citations are provided so that the public can verify these claims. *See* 2022 DEA at 20, 21, 22, 23. The above are merely illustrations of the types of documents that were not timely provided to the public, and it is possible that others were not provided as well.

The public is not able to properly scrutinize agency decisions and analysis when relevant documentation is not made available or when available documents do not actually contain the analysis necessary to support the Service’s conclusory statements. The overall effect is to impede public participation, in violation of NEPA’s clear mandate to “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. § 1506.6(a). In addition, the failure to provide clear analysis, or sometimes any analysis, violates NEPA’s mandate that NEPA documents “shall be written in plain language . . . so that decisionmakers and the public can readily understand them.” 40 C.F.R. § 1502.8. The public cannot understand what it is not told.

Without providing actual analysis, it is impossible to gauge the actual anticipated impact to project-area resources, the significance of those impacts, and whether they violate WMNF Plan standards and guidelines. “[T]he public should not be required to parse the agency’s statements to determine how an area will be impacted[.]” *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 761 (9th Cir. 2014). Instances of this persistent defect are identified throughout these comments.

Finally, but importantly, the 2022 DEA does not describe any outreach to potentially affected Tribes. Whether Federally recognized or not, affected Tribes deserve advanced notification of the action, and it is unclear whether Tribes or Tribal organizations have been notified at all. Not only should the Tribes be included in NEPA outreach, they should be

included in project development ahead of NEPA so we strongly recommend a return to the planning phase with proper and complete engagement. We further recommend explaining the nature and scope of this engagement as part of any future NEPA analysis.

b. Purpose and Need

The reasonableness of a purpose and need statement is assessed by considering the “statutory context of the federal action.” *League of Wilderness Defenders v. U.S. Forest Serv.*, 689 F.3d 1060, 1069–70 (9th Cir. 2012). In this case, the 2022 DEA defines its objectives in unreasonably narrow terms by ignoring key standards from the WMNF Plan. As a result of this unreasonably narrow purpose and need statement the Forest Service necessarily considered a narrower range of alternatives than it should have. Indeed, as described below, the Forest Service did not consider any alternatives to the proposed Project. Both the unreasonably narrow purpose and need statement and the resulting lack of alternatives analysis violate NEPA. *Nat’l Parks & Conservation Ass’n v. BLM*, 606 F.3d 1058, 1070-72 (9th Cir. 2010).

As explained by the court in *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997), under NEPA, “the first thing an agency must define is the project purpose.” The court further explained the importance of properly defining a project’s purpose:

The ‘purpose’ of a project is a slippery concept, susceptible of no hard-and-fast definition. One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence). The federal courts cannot condone an agency’s frustration of Congressional will. If the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy [NEPA].

Id.

The 2022 DEA describes the primary purpose of the proposed project as “to implement the management direction in the Forest Plan by comparing the existing conditions in the project area with the desired conditions as established in the Forest Plan.” 2022 DEA at 5. As an initial matter, the WMNF Plan is nearly 17 years old. Prior to undertaking any projects to “implement the management direction in the Forest Plan,” the Forest Service should update the WMNF Plan as it is required to do under NFMA. 16 U.S.C. § 1604(f)(5). Further, there is no need to undertake the Project in order to compare existing conditions in the project area with the Forest Plan’s desired conditions. That analysis can be done separate and apart from the project activities proposed. Finally, this purpose fails to demonstrate a need for the action at the current time.

A properly crafted purpose and need statement would integrate purposes of the Forest Plan with current executive orders, *see* Exhibit 6 (Executive Order 14072), to identify the best management approaches for current stand conditions. Instead, the 2022 DEA states the purpose of the proposed action is to implement the Forest Plan. This inherently structures the 2022 DEA to presuppose that the Forest Plan could only be implemented by the proposed action and fails to explain the management context (i.e., is the management needed and is this the most appropriate

management for the subject stands) to demonstrate the need component of the purpose and need statement. In order to demonstrate the need for the action, the Forest Service must do more than simply state a preference for “open forest conditions[,]” 2022 DEA at 6, but must actually connect stand conditions, best science, and desired future conditions to this supposed need. Without this, the purpose and need statement in the 2022 DEA is an insufficient approach to NEPA.

A more accurate purpose and need statement would promote exploration of other forest management prescriptions that could better implement the Forest Plan, better avoid significant impacts on scenic and cultural resources and mature forests, and better support wildlife. A more accurate purpose and need statement would also promote detailed evaluations of current natural and cultural resources lacking in the current 2022 DEA, and other reasonable alternatives.

c. Range of Alternatives

For the proposed Project, the Forest Service issued a 2022 DEA and Preliminary Finding of No Significant Impact. An Environmental Assessment must include a “brief discussion[]” of reasonable alternatives to the proposed action. *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1323 (D.C. Cir. 2015) (quoting 40 C.F.R. § 1508.9(b)). “An alternative is reasonable if it is objectively feasible as well as ‘reasonable in light of [the agency's] objectives.’” *Id.* (quoting *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 72 (D.C. Cir. 2011)). Although the obligation to consider reasonable alternatives in an EA is a lesser one than in an EIS, the obligation nevertheless exists. *See Nw. Bypass Grp. v. U.S. Army Corps of Eng'rs*, 470 F. Supp. 2d 30, 62 (D.N.H. 2007) (Woodcock, J.) (quoting *Native Ecosystems Council v. U.S. States Forest Serv.*, 428 F.3d 1233, 1246 (9th Cir. 2005)). The 2022 DEA fails to even meet its lesser obligation for an alternatives analysis under an EA for several reasons.

First, the Forest Service in the EA only included a discussion of the proposed Project. Rather than discuss any number of reasonable alternatives to the Project, including a No Action alternative, the Forest Service chose to add to its updated EA a section called “Consequences of No Action.” 2022 DEA at 7–8. This is not the equivalent to a No Action Alternative, which is the bare minimum alternative analysis an agency should undertake. One of the most critical purposes of a No Action alternative is to establish a baseline against which the proposed Project can be measured. In framing the “no action” discussion in the way that it did, the Forest Service made no attempt to establish such a baseline.

Further, by labeling its analysis as “Consequences,” the Forest Service inappropriately put a qualitative thumb on the scale against that outcome. The negative connotation of the “Consequences” label was reinforced by the Forest Service’s discussion, which was not an analysis, but rather a list of potential detrimental effects of not moving forward with the Project. But NEPA requires agencies consider both the detriments *and benefits* of proposed projects, which would include considering the benefits of reasonable alternatives as well. There are numerous benefits of not moving ahead with the Project (i.e., taking No Action), including, but not limited to, climate benefits of retaining older, mature trees, habitat benefits for the Northern Long-eared Bat and other species that benefit from mature or interior forests or are sensitive to harvest impacts, avoiding potential detrimental impacts to water quality due to runoff,

sedimentation, and potential herbicide contamination, avoiding loss or damage to historic and cultural resources located within the project area, avoiding visual impacts to the recreating public, and potential violation of Forest Plan standards to maintain very high visual quality standards for MA 8.3 (Appalachian Trail) lands, among many others. Accordingly, the Forest Service cannot rationally claim the “Consequences” section of the 2022 DEA is an analysis of a no-action alternative.

Second, even if the “Consequences of No Action” is considered the equivalent to a No Action Alternative, the Forest Service’s consideration of alternatives is still insufficient. CEQ regulations mandate that federal agencies “*shall to the fullest extent possible . . . [u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.*” 40 C.F.R. § 1500.2(e) (emphasis added). It is also incumbent upon federal agencies to “[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* § 1501.2(c); *see also* 42 U.S.C. § 4332(2)(E). Given the many different facets of the Project and the broad primary purpose articulated in the 2022 DEA—“to implement the management direction in the Forest Plan by comparing the existing conditions in the project area with the desired conditions as established in the Forest Plan”—it is inconceivable that there was only one way to achieve that purpose. This is especially true for the logging portions of the Project. While reasonable alternatives may not be available for certain recreational enhancement portions of the Project (for example, improvements to the Lake Katherine boat launch), the logging activities are different in kind. The sheer number of different silviculture prescriptions for the proposed action demonstrates that even if logging is needed—which Standing Trees asserts it is not—there is a wide variability in how the logging can achieve desired conditions. This variability necessarily implies additional reasonable alternatives exist that the Forest Service either did not identify, or, at a minimum, did not consider.

A recent case in the federal district court in New Hampshire is instructive on this issue. In *Conservation L. Found. v. U.S. Army Corps of Eng’rs*, 457 F. Supp. 3d 33 (D.N.H. 2019), a recent preliminary injunction opinion regarding the range of alternatives considered in an EA, the Court emphasized 40 C.F.R. § 1502.14, quoting from the regulation that agencies must:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, *briefly discuss* the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

Conservation L. Found., 457 F. Supp. 3d at 56 (emphasis in original). The Court went on to hold that the agency was likely to succeed on the merits “because the EA provided reasonable, common-sense explanations for rejecting alternatives.” *Id.* In that case the agency considered five alternatives, including a true no-action alternative. *Id.* at 57. The agency assessed the alternatives in quantitative terms, and for each alternative, the agency provided a rationale for why it was rejecting it in favor of the proposed action. *Id.* at 57–58.

By contrast, here, the Forest Service did not analyze *any* alternatives to the Project, much less provide any rationale, quantitative or otherwise, for why it rejected them. To be sure, numerous reasonable alternatives exist – alternatives apparent to the agency and the public alike – and the Forest Service could have analyzed any of them, but failed to do so. Below, Standing Trees provides suggested reasonable alternatives the Forest Service could and should have considered. As stated elsewhere in this comment, to the extent the Forest Service intends to move forward with the Project, it must complete an Environmental Impact Statement, and as part of that EIS, it must consider all reasonable alternatives, including a true no-action alternative.

Reasonable Alternatives Not Considered by the Forest Service

As stated in the previous section, the White Mountain National Forest presents the Tarleton IRP as an all or nothing proposition. In addition to a No Action alternative, the Lake Tarleton Coalition suggests the following as one of several possible combinations of project components:

- Alternative 3. Combine improvements to recreation resources with small-scale habitat restoration and a Forest Plan amendment designating the Lake Tarleton-Webster Slide Scenic Area while omitting the unnecessary harvest and treatment activities included in the current proposed action. In this alternative, the WMNF could consider small-scale habitat restoration and recreation improvements including:
 - Natural woody debris inputs into Lake Katherine to improve fish habitat;
 - Restoration of natural buffer along the shore of Lake Katherine through removal of non-native species, tree planting, etc.;
 - Restoration of historic apple orchards;
 - Restoration of non-native tree plantations on former Mt. Sentinel State Forest if and where project goals do not conflict with standards and guidelines for MA 8.3 (Appalachian National Scenic Trail);
 - Conduct a narrowly-focused, geographically-explicit Forest Plan amendment to designate the Lake Tarleton-Webster Slide Scenic Area according to WMNF Plan Management Area 8.5. Like the nine other Scenic Areas on the WMNF, this one would be managed to prohibit timber management, maintain outstanding scenic integrity, and promote well-managed, low-impact recreation in balance with protection of the Appalachian Trail corridor and cultural and natural resources including archaeological sites, fish and wildlife, and water quality.

Since early 2022, over 1,600 concerned citizens have petitioned the White Mountain National Forest to permanently protect Lake Tarleton from logging and development as was intended and envisioned at the time that the land was acquired for public ownership in 2000.

A process to consider alternatives for the Lake Tarleton acquisition other than the current Management Area allocations should have taken place during revision of the 2005 WMNF Plan. However, to the best of our knowledge, this analysis never occurred. All four alternatives considered in the 2005 Forest Plan Final EIS contain identical Management Area allocations for Lake Tarleton and surrounding lands. This is difficult to comprehend, considering how recently

the 5,300 acres surrounding Lake Tarleton had been acquired, and how clear the intent was to put this landscape into management for outstanding scenic integrity. Further, according to Ch. 70 of the 1992 Directives for the 1982 Planning Rule, the forest block stretching from Lake Tarleton to Webster Slide and Wachipauka Pond should have been identified as an Inventoried Roadless Area and evaluated for its potential for wilderness designation by Congress. Exhibit 23.

The Tarleton IRP presents an opportunity to modify the 2005 WMNF Plan to match the reasons why Lake Tarleton was protected. Forest Plan Management Area 8.5, Scenic Areas, are managed to:

“meet the objectives for which each has been designated. Most have been recognized as having ‘outstanding natural beauty.’ They will exhibit late successional vegetation with related wildlife species. Others have been identified for their recreation potential. As a result, evidence of human activity will range from substantially unnoticeable to very evident, and road networks vary from none to high density.”

WMNF Plan at 3-61.

Scenic Areas on the White Mountain National Forest include Gibbs Brook, Greeley Ponds, Lafayette Brook, Lincoln Woods, Mount Chocorua, Pinkham Notch, Rocky Gorge, Sawyer Pond, and Snyder Brook. All of these are located east of I-93. As recreational focal-points, Scenic Areas are important economic drivers for nearby communities. Lake Tarleton and Webster Slide are located along the Appalachian Trail corridor at the westernmost end of the White Mountain National Forest. Although this is a relatively quiet region of the WMNF, it is within a short distance of the Hanover/White River Junction area, and the most easily-accessed portion of the WMNF from points south along I-91, including large metropolitan areas in western Massachusetts and central Connecticut. Scenic Areas are underrepresented in the western WMNF, a situation that can easily be corrected with a Forest Plan amendment.

The Forest Service’s own 2015 Planning Rule Directives outline the reasons why Forest Plan amendments are an important tool for keeping plans up to date, especially those that continue beyond a plan’s 15-year intended lifespan as outlined in the National Forest Management Act. See Exhibit 55. According to the 2015 Directives:

“Plan amendments are intended to be an adaptive management tool to keep plans current, effective, and relevant between required plan revisions (every 15 years). Amendments help Responsible Officials adapt an existing plan to new information and changed conditions. Maintaining plans through amendment also may reduce the workload for subsequent plan revisions.

Amendments may be broad or narrow in scope, depending on the need to change the plan. An assessment for a plan amendment is not required, but may be developed at the discretion of the Responsible Official[.]”

FSH 1909.12 Land Management Planning Handbook Chapter 20. The Forest Service’s NEPA-implementing regulations echo this, providing that “[a] plan may be amended at any time...and

should be used to keep plans current and help units adapt to new information or changing conditions. The responsible official has the discretion to determine whether and how to amend the plan and to determine the scope and scale of any amendment.” 36 C.F.R. § 219.13(a). Section 219.13 provides further instruction regarding the amendment process. *See also* 16 U.S.C. § 1604(f)(4)-(5) (identifying when and how forest plan revisions and amendments may be completed).

d. The DEA fails to take a “hard look” at numerous project-area environmental resources

NEPA requires agencies to take a “hard look” at their actions by considering all foreseeable direct, indirect impacts and cumulative impacts.² *Earth Island Inst. v. Forest Serv.*, 442 F.3d 1147, 1159 (9th Cir. 2006); 40 C.F.R. §§ 1508.7, 1508.8 (2019); *see also Klamath Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 993–97 (9th Cir. 2004) (applying NEPA’s hard look requirement to EAs); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“The sweeping policy goals . . . of NEPA are . . . realized through a set of ‘action-forcing’ procedures that require that agencies take a ‘hard look at environmental consequences,’ and that provide for broad dissemination of relevant environmental information.” (internal citations omitted)).

The hard look requirement includes “both a complete discussion of relevant issues as well as meaningful statements regarding the actual impact of proposed projects.” *Earth Island*, 442 F.3d at 1172. An agency may not rely on future remedial measures to avoid taking the necessary “hard look” in its NEPA analysis. *Nat’l Parks Conservation Ass’n v. Babbitt*, 241 F.3d 722, 733–36 (9th Cir. 2001) (“A perfunctory description, or mere listing of mitigation measures, without supporting analytical data, is insufficient to support a finding of no significant impact.”).

Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

40 C.F.R. § 1508.8. The Service’s NEPA analysis failed to take a hard look at impacts to nearly all of the resources in the project area, including providing only sparse detail of these resources and conclusory statements of no impact. The discussion below highlights merely some of the issues with the DEA’s impacts analysis for the selected resources. It is not possible or practicable for Standing Trees to address every issue with the DEA’s impacts analyses, and thus we reserve the right to raise additional concerns regarding the adequacy of its analysis at a later time.

² As noted by the CEQ NEPA-implementing regulations, “effects” and “impacts” are synonymous in the context of NEPA discussion. 40 C.F.R. § 1508.8.

i. Federally Listed and Regional Forester Sensitive Species

On March 23, 2022, the USFWS announced a proposed rule to reclassify the northern long-eared bat from threatened to endangered and remove the bat's species-specific 4(d) rule. *Endangered Species Status for Northern Long-Eared Bat*, 87 Fed. Reg. 16,442 (March 23, 2022). Exhibit 7. Even though the 2022 Draft EA was released after the proposed up-listing of the Northern Long-Eared Bat and removal of the 4(d) rule, the Draft EA does not address this significant event. This status change is new information that requires both re-initiation of ESA Section 7 consultation between the Forest Service and USFWS, and an EIS.

According to the ESA implementing regulations, consultation must be reinitiated “where discretionary Federal involvement or control over the action has been retained” and “new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered,” among other reasons. 50 C.F.R. § 402.16. The proposed up-listing of the Northern Long-eared Bat and the revocation of the 4(d) rule for the bat constitutes such new information and demands the re-initiation of consultation.

The Biological Evaluation for the Project acknowledged that “project activities may affect the Northern Long-eared Bat,” but concluded that “[a]ny taking that may occur incidental to this project is not prohibited under the final 4(d) rule.” USDA FOREST SERV., TARLETON INTEGRATED RESOURCE PROJECT BIOLOGICAL EVALUATION, at 10 (February 2021) (hereinafter “BE”). The Northern Long-eared Bat occurs throughout the project area, and the BE observed that timber harvests could impact the species by removal of roost trees. BE at 10. However, the BE concluded that the Project's actions would not violate the ESA in regards to the Northern Long-eared Bat because they would be shielded by the 4(d) Rule.

But the up-listing of the bat, if finalized, will remove its species-specific 4(d) Rule and make all take of the bat unlawful. 87 Fed. Reg. 16,442. The BE suggests that at least some bats may be taken, especially under its cumulative impacts analysis³, but the Forest Service has never evaluated the impacts of such take on the species in the absence of the 4(d) Rule. The proposed up-listing and removal of the 4(d) rule is thus new information that warrants re-initiation of consultation.

The proposed up-listing itself also provides new information that demands the re-initiation of consultation. The up-listing was, by definition, motivated by an increased likelihood that the Northern Long-eared Bat is in danger of extinction throughout all of its range. *See* 87 Fed. Reg. 16,449. The bat's abundance “has and will continue to decline substantially under current demographic and stressor conditions;” extant winter colonies have declined range-wide by 81%; and range-wide abundance is projected to decline by 95% from historical conditions by 2030. *Id.* at 16,446. Further, there has been a 96–100% decline in the number of large hibernacula. *Id.* Such low population sizes “exacerbate the effects of current and future declines

³ “The USFWS estimates up to 1.0 percent of the New Hampshire NLEB population will be disturbed and 0.1 percent of the pup population and less than 0.05 percent of the adult population will be harmed annually from the combination of timber harvest, prescribed fire, forest conversion, and wind turbine operation.” BE at 10.

due to continued exposure to [white nose syndrome], mortality from wind turbines, and impacts associated with habitat loss and climate change.” *Id.* at 16,447.

Northern Long-eared Bat habitat requirements are the opposite of the type of habitat that will be generated from the Project. According to the USFWS Species Status Assessment Report for the Northern Long-eared Bat (“NLEB Report”), dated March 22, 2022, the bat depends on mature and old forests for roosting and foraging. Exhibit 8. Preferred roosting habitat is large diameter live or dead trees of a variety of species, with exfoliating bark, cavities, or crevices. Bats change roosts approximately every two days. Preferred foraging habitat is old forest with complex vertical structure on hillsides and ridges.

The WMNF, including the Lake Tarleton project area, contains extensive mature forests that are beginning to acquire the characteristics of an old forest, likely providing some of the highest-quality Northern Long-eared Bat habitat in New England. Some of the silviculture treatment prescriptions involve the removal of mature trees.⁴ In combination with recently-approved projects (including Bowen Brook Integrated Resource Project, Deer Ridge Integrated Resource Project, Wanosha Integrated Resource Project, and others), and anticipated logging projects (including the Sandwich Vegetation Management Project and Peabody West Integrated Resource Project), WMNF is set to eliminate or degrade thousands of acres of Northern Long-eared Bat habitat across a large region. As discussed in further detail below, the Forest Service failed to evaluate the cumulative impact of these combined and geographically proximate projects.

In light of this new information that Northern Long-eared Bat populations have become so decimated that the species is now in danger of extinction throughout all of its range and has thus been proposed for up-listing to endangered status, the Forest Service must reinstate consultation with USFWS. 50 C.F.R. § 402.16; *see also Turtle Island Restoration Network v. U.S. Dep’t of Commerce*, 672 F.3d 1160 (9th Cir. 2012) (potential status change of loggerhead turtles from threatened to endangered was a sufficient factual basis for revision of Biological Opinion). The failure to do so would not only be a violation of the ESA, but of NEPA, which holds an independent obligation that agencies continue to take a “hard look” at project impacts. Where “new circumstances or information” arise that are “relevant to environmental concerns and bear[] on the proposed action or its impacts,” and “a major Federal action remains to occur,” the agency must prepare supplemental NEPA documentation. 40 C.F.R. § 1502.9(d). *See Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 374 (1989) (An agency must at least take a “hard look” at the environmental impacts of the planned action, even after a proposal has received initial approval).

ii. Historic and Cultural Resources

The 2022 DEA gives woefully short shrift to the discussion of project impacts on historic and cultural resources. The DEA initially obfuscates this issue by failing to make clear whether historic and cultural resources even exist within the project area. The scant discussion of this

⁴ For example, an estimated 115 acres will be clear-cut with reserves, which “would result in an immediate change from mature to regeneration age structure.” Draft EA at 10. Overstory removal also removes “the majority of the mature overstory within a stand.” *Id.* at 12.

resource merely indicates that “archeologists completed a cultural resource review” and “[n]o historic properties will be affected by the proposed project activities.” 2022 DEA at 19. It is not made clear whether no properties will be affected because none exist in the project area, or whether they do exist, but the Service anticipates that potential impacts would be mitigated. This ambiguity persists until the DEA’s subsequent mention of historic properties in its “significance” discussion that states “[a]s a result of project design, the project would not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places.” *Id.* at 24. Here, the reader must infer the existence of historic and cultural resources, but again, no details are provided regarding what resources are actually present in the project area. Further, no analysis is provided to explain how impacts to project-specific resources would be mitigated. The lack of any detail or analysis is yet another example of this DEA’s failure to provide clear NEPA documentation to allow for public review and scrutiny.

To be certain, historic and cultural resources *do* exist within the project area, as known by local citizens, including members of the Lake Tarleton Coalition, and as documented by the recent Cultural Resource Reconnaissance Report (“CRRR”) prepared for the Tarleton IRP. Exhibit 9 (CRRR); Exhibit 30 (public comment regarding these resources). It is also possible that the project area may contain significant Abenaki resources that would have been discovered through more rigorous consultation and research.⁵ This document, which to our knowledge has still not been made available to the general public⁶, reveals that the project area contains at least 29 known cultural resources, including 19th century farmstead sites, cellar holes, building foundations, wells, stone walls, historic roads, and pre-contact lithic scatter, among others. CRRR at 4. That same document concluded that the project had potential to directly impact these cultural resources. *Id.* The failure of the Forest Service to even mention these resources in the DEA, much less analyze potential impacts and actually explain how direct impacts may be avoided is so egregious it almost appears to intentionally mislead the public regarding cultural resources in the project area.

⁵ The CRRR indicated that it entailed only a “sample” field survey instead of a “complete” one, thus a more thorough review may yield the discovery of numerous additional cultural and historic resources. CRRR at 3.

⁶ In fact, Standing Trees was only able to obtain a copy of this report through a FOIA request submitted by one of its members. Members of the public should not be required to submit FOIA requests in order to view project documents. The Tarleton IRP Cultural Reconnaissance Report was decidedly prepared to evaluate the Tarleton IRP, and as such, it should be considered part of the Project Record. The DEA states that “the project record is incorporated by reference and contains all relevant data, methods, analyses, references, and other technical documentation used in this assessment.” 2022 DEA at 18. Firstly, this general incorporation does not fulfill NEPA’s requirement that “incorporated material shall be cited in the statement and its content briefly described[.]” 40 C.F.R. § 1502.21, and thus the project record is not properly incorporated by reference. Secondly, even if it was properly incorporated, “[n]o material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.” *Id.* The Cultural Resources Reconnaissance Report was not reasonably available for inspection during the comment period because the only reason it was available for review is because a member of Standing Trees had the forethought to request this report months prior to the opening of the comment period. Had they not done so, Standing Trees may not have even been made aware of this report and its ability to review this document and fully participate in the public comment process would have been prejudiced.

iii. Climate Change

Climate change is driving and exacerbating a range of threats to New Hampshire, the New England region, and the globe. The 2009 New Hampshire Climate Action Plan notes that climate change is already “Increasing the frequency and severity of heavy, damaging precipitation events and the associated major economic impacts of cleanup, repair, and lost productivity and economic activity.” In addition, climate change is “Increasing the frequency of short-term (i.e., one to three month) summer droughts from every two to three years to annually, resulting in increased water costs, and agricultural and forestry stress.” Exhibit 10. Although perhaps not a primary driver of the spread of invasive species, ticks, and disease, climate change can amplify these threats.

The [Intergovernmental Panel on Climate Change Report](#) released in February 2022 found, “Safeguarding biodiversity and ecosystems is fundamental to climate resilient development . . . and to [climate] mitigation and adaptation.” Exhibit 11. On November 12th, 2021, the US joined 140 other nations in signing a commitment at the COP 26 UN Climate Change Conference in Glasgow, Scotland. The “Glasgow Leaders’ Declaration on Forests and Land Use” promised to “to halt and reverse forest loss and *land degradation* by 2030” (emphasis added). Exhibit 12.

On the global scale, forest protection represents approximately *half or more* of the climate change mitigation needed to hold temperature rise to 1.5 degrees Celsius.⁷ New Hampshire may be a relatively small state, but its temperate deciduous forests are among the planet’s most effective carbon sinks. In the US, New England’s in-situ carbon storage potential is second only to that of the Pacific Northwest, but carbon storage levels remain artificially low due to timber harvest frequency and intensity. Across the Northeast US and Upper Midwest, timber harvest accounts for 86% of annual forest carbon loss. In comparison only 9% of forest carbon in the same geographic area is lost annually from insect damage, and 3% from conversion to other land uses.⁸ Other recent studies show that among land uses in New England, timber harvest is the leading cause of tree mortality⁹ and has the greatest impact on aboveground carbon storage.¹⁰

The WMNF is an insurance policy against a changing climate and increasing extinction rates. The WMNF contains many of the oldest and most carbon-dense ecosystems in New England, much less New Hampshire, supporting native biodiversity and protecting critical headwaters. Its management should reflect its unique values in the broader landscape, serving the greatest good for the greatest number by maximizing carbon and water storage, water quality, and habitat for species that require old and unfragmented forests.

⁷ Erb et al., UNEXPECTEDLY LARGE IMPACT OF FOREST MANAGEMENT AND GRAZING ON GLOBAL VEGETATION BIOMASS (2018) [Exhibit 13]

⁸ Harris et al., ATTRIBUTION OF NET CARBON CHANGE BY DISTURBANCE TYPE ACROSS FOREST LANDS OF THE COTERMINOUS UNITED STATES (2016) [Exhibit 14]

⁹ Brown et al., TIMBER HARVEST AS THE PREDOMINANT DISTURBANCE REGIME IN NORTHEASTERN U.S. FORESTS: EFFECTS OF HARVEST INTENSIFICATION (2018) [Exhibit 15].

¹⁰ Duveneck and Thompson, SOCIAL AND BIOPHYSICAL DETERMINATIONS OF FUTURE FOREST CONDITIONS IN NEW ENGLAND: EFFECTS OF A MODERN LAND-USE REGIME (2019) [Exhibit 16] (hereinafter “Duveneck and Thompson (2019)”)

The 2018 Vermont Conservation Design Natural Community and Habitat Technical Report, jointly produced by the Vermont Departments of Forests, Parks and Recreation and Fish and Wildlife, puts it this way:

“As a result of the persistent structural and vegetative complexity above ground and the diverse biome belowground and associated complex biotic and abiotic relationships that develop over time, old forests also protect water quality, and sequester and store carbon, provide opportunities for adaptation of species and community relationships to climate and other environmental changes, and an ecological benchmark against which to measure active management of Vermont’s forests.”¹¹

There is a common misconception that young forests are better than old when it comes to removing carbon in the atmosphere. First of all, old forests store much more carbon than young forests, and they continue to accumulate carbon over time.^{12,13,14} What’s more, the rate of carbon sequestration also increases as trees age.¹⁵

Today, despite tree cover across 84% of New Hampshire, the state’s forests do not produce high levels of ecosystem services due to current management practices, including harvest frequency and intensity, and are still recovering from extensive clearing in the eighteenth and nineteenth centuries. A 2019 paper by Harvard Forest researchers found that:

“Among land uses, timber harvesting [has] a larger effect on [aboveground carbon] storage and changes in tree composition than did forest conversion to non-forest uses... Our results demonstrate a large difference between the landscape’s potential to store carbon and the landscape’s current trajectory.”¹⁶

Northeast secondary forests have the potential to increase biological carbon sequestration 2.3–4.2-fold.¹⁷ A 2011 paper by UVM Professor Bill Keeton found that:

“...there is a significant potential to increase total carbon storage in the Northeast’s northern hardwood-conifer forests. Young to mature secondary forests in the northeastern United States today have aboveground biomass (live and dead) levels of 107 Mg/ha on average (Turner et al. 1995, Birdsey and Lewis 2003). Thus, assuming a maximum potential aboveground biomass range for old-growth of approximately 250–450 Mg/ha, a range consistent with upper thresholds in our data set and the lower

¹¹ Zaino et al., VERMONT CONSERVATION DESIGN – NATURAL COMMUNITY AND HABITAT TECHNICAL REPORT (2018) [Exhibit 17] (hereinafter “Zaino et al. (2018)”)

¹² Keith et al., RE-EVALUATION OF FOREST BIOMASS CARBON STOCKS AND LESSONS FROM THE WORLD’S MOST CARBON-DENSE FORESTS (2009) [Exhibit 18]

¹³ Luyssaert et al., OLD-GROWTH FORESTS AS GLOBAL CARBON SINKS (2008) [Exhibit 19]

¹⁴ Masino et al., OLDER EASTERN WHITE PINE TREES AND STANDS SEQUESTER CARBON FOR MANY DECADES AND MAXIMIZE CUMULATIVE CARBON (2021) [Exhibit 20]

¹⁵ Stephenson et al., RATE OF TREE CARBON ACCUMULATION INCREASES CONTINUOUSLY WITH TREE SIZE (2014) [Exhibit 21]

¹⁶ Duveneck and Thompson (2019)

¹⁷ Keeton et al., LATE-SUCCESSIONAL BIOMASS DEVELOPMENT IN NORTHERN HARDWOOD-CONIFER FORESTS OF THE NORTHEASTERN UNITED STATES (2011) [Exhibit 22] (hereinafter “Keeton et al. (2011)”)

threshold observed at Hubbard Brook, our results suggest a potential to increase in situ forest carbon storage by a factor of 2.3–4.2, depending on site-specific variability. This would sequester an additional 72–172 Mg/ha of carbon. ¹⁸

Forests in temperate zones such as in the Eastern U.S. have a particularly high untapped capacity for carbon storage and sequestration because of high growth and low decay rates, along with exceptionally long periods between stand replacing disturbance events, similar to the moist coastal forests of the Pacific Northwest. Further, because of recent recovery from an extensive history of timber harvesting and land conversion for agriculture in the 18th, 19th, and early 20th centuries, median forest age is about 75 years,¹⁹ which is only about 25–35% of the lifespan of many of the common tree species in these forests.²⁰ Because of our remarkable forest ecosystems here in Northeastern North America, several global studies have highlighted the unique potential of our temperate deciduous forests to contribute on the global stage to climate stabilization and resilience.^{21,22}

Old forests are also the most resilient to changes in the climate, producing the highest outputs of ecosystem services like clean water, and reducing the impacts of droughts and floods. These ecosystem services protect downstream communities from flooding, purify drinking water at low cost, and maintain base flows and low temperatures in rivers during hot summers for the benefit of fish and wildlife.

In New England, frequent flooding and nutrient-driven water quality degradation are two of our most costly environmental crises, and both are compounded by climate change. Mature and old forests naturally mitigate against flooding and drought by slowing, sinking, and storing water that would otherwise rapidly flow into our streams, rivers, and lakes.²³ Scientists have also shown that old forests are exceptional at removing nutrients that drive harmful algae blooms.²⁴

After Tropical Storm Irene ravaged New England in 2011, Vermont’s Department of Forests, Parks, and Recreation commissioned a report entitled “Enhancing Flood Resiliency of Vermont State Lands.” According to the report:

“There may be a tendency to assume that lands in forest cover are resilient to the effects of flooding simply by virtue of their forested status. However, forest cover does not necessarily equate to forest health and forest flood resilience. Headwater forests of Vermont include a legacy of human modifications that have left certain land areas with a

¹⁸ See Keeton et al. (2011)

¹⁹ U.S. Department of Agriculture, Forest Service, Northern Research Station, Forest Inventory and Analysis National Program, [Forest Inventory EVALIDator web-application](#) Version 1.8.0.00. (2019)

²⁰ See Moomaw et al., INTACT FORESTS IN THE UNITED STATES: PROFORESTATION MITIGATES CLIMATE CHANGE AND SERVES THE GREATEST GOOD (2019) [Exhibit 24] (hereinafter “Moomaw et al. (2019)”)

²¹ Dinerstein et al., A GLOBAL SAFETY NET TO REVERSE BIODIVERSITY LOSS (2020) [Exhibit 25] (hereinafter “Dinerstein et al. (2020)”)

²² Jung et al., AREAS OF GLOBAL IMPORTANCE FOR TERRESTRIAL BIODIVERSITY, CARBON, AND WATER (2020) [Exhibit 26]

²³ Underwood and Brynn, ENHANCING FLOOD RESILIENCY OF VERMONT STATE LANDS (2015) [Exhibit 27] (hereinafter “Underwood and Brynn (2015)”)

²⁴ Warren et al., FOREST STREAM INTERACTIONS IN EASTERN OLD-GROWTH FORESTS (2018) [EXHIBIT 28]

heightened propensity to generate runoff, accelerate soil erosion, and sediment streams. These legacy impacts affect forest lands across the state... The quality of [today's] forests is not the same as the pre-Settlement old growth forests. The legacy of early landscape development and a history of channel and floodplain modifications continue to impact water and sediment routing from the land.”²⁵

A 2019 study led by the University of Vermont looked into the climate resilience of older compared to younger forests. The research found that:

“[older forests] simultaneously support high levels of carbon storage, timber growth, and species richness. Older forests also exhibit low climate sensitivity...compared to younger forests... Strategies aimed at enhancing the representation of older forest conditions at landscape scales will help sustain [ecosystem services and biodiversity] in a changing world... Although our analysis suggests that old forests exhibit the highest combined [ecosystem services and biodiversity (ESB)] performance, less than 0.2% of the investigated sites are currently occupied by forests older than 200 years. This suggests a large potential to improve joint ESB outcomes in temperate and boreal forests of eastern North America by enhancing the representation of late-successional and older forest stand structures...”²⁶

The Tarleton IRP DEA climate analysis rests on suggestions that the project “might contribute an extremely small quantity of greenhouse gas emissions relative to national and global emissions,” that the project “would not convert forest land to other non-forest uses,” and that the “prescribed treatments” are the best way to increase climate resilience and age diversity within the forest. The EA claims that we should be most afraid of “mortality-inducing natural disturbances and other processes resulting in dead trees.” DEA at 19. All of these claims are easily refuted in the recent papers cited and quoted above, and yet this information is ignored in the DEA and supporting materials. Either the Forest Service is cherry picking the science it wishes to use, or it has failed to take a hard look at climate change and climate resilience as they related to the White Mountain National Forest and the Tarleton IRP.

iv. Water Quality Impacts/Hydrology

The DEA fails to take a hard look at impacts to water quality, both within the context of the project area and at a broader basin or watershed scale. The Forest Service has assured Standing Trees that with the exception of soils, wildlife, and botany, all other specialists “wrote directly into the EA.” See Exhibit 3. Based on the scant 3-sentence “analysis” of environmental impacts to Hydrology, it is unclear whether a specialist was engaged to review impacts to this resource at all. In its entirety, the section states the following:

The proposed action is consistent with the laws and policies related to the Clean Water Act. Project Design, including design features, and best management practices would reduce or avoid impacts to water quality or quantity to de

²⁵ Underwood and Brynn (2015)

²⁶ Thom et al., THE CLIMATE SENSITIVITY OF CARBON, TIMBER, AND SPECIES RICHNESS COVARIES WITH FOREST AGE IN BOREAL-TEMPERATE NORTH AMERICA (2019) [Exhibit 29]

minimis levels. No measurable adverse effects to water quality or quantity are expected due to project implementation.

DEA at 19. This section contains zero analysis, instead consisting of three conclusory statements regarding impacts to water quality. Potential impacts to water quality are not even identified, yet are summarily dismissed as being preemptively mitigated. It is impossible for the public to evaluate or weigh in on the adequacy of the agency's analysis here, because there is nothing to evaluate. This section should, at a minimum, address erosion, run-off, sedimentation, loss of stream shading, and the potential impacts of, and specific mitigation for, harvest activities. The same can be said for anticipated management needed to place the proposed woody debris into Lake Katherine, the changes to hydrology resulting from the proposed forested buffer between the wildlife opening and Lake Katherine, and the expansion of the Lake Katherine parking lot. Additionally, although the DEA makes passing references to vernal pools, riparian zones, and wetlands, these resources are not actually identified to the reader. Without knowing the location of these resources, it is impossible for the public to meaningfully comment on the impacts to these resources because it is unclear which project activities will be taking place within or adjacent to them.

In contrast, the DEA had no trouble mentioning the potential issue of sedimentation and impacts to water quality when describing the alleged perils of not undertaking the project.²⁷ 2022 DEA at 8. In that section, the DEA alludes to the fact that current conditions, for Lake Katherine at least, involve "poor water quality overall." *Id.* Why is this baseline condition not mentioned within the "Hydrology" discussion? Was it taken into account when the DEA proclaimed that project activities would not impact water quality? What is the current status of the water quality within Lake Tarleton and its tributaries? In fact, although the DEA makes no mention of it, Lake Tarleton, Lake Katherine, and Lake Armington are known to have exceptional water quality. All three are free of aquatic invasive species. Lake Armington served as one of only two reference lakes, statewide, for a 2020 New Hampshire study on PFAS contamination in fish, surface water, and sediment. This should have all been discussed, or at least mentioned, in the discussion of the project's environmental impacts.

Pursuant to NEPA's "hard look" mandate, an agency must rely on adequate baseline data that enables the agency to carefully consider information about direct environmental impacts and may not rely on outdated data to do so. *See N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1083–87 (9th Cir. 2011); *Cascade Forest Conservancy v. Heppler*, 2021 WL 641614, at *17–20 (D. Or. Feb. 15, 2021). Indeed, "establishing appropriate baseline conditions is critical to any NEPA analysis," because without establishing a baseline, "there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA." *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016). It is unclear if baseline data was even gathered for use in the DEA's analysis, because no analysis was presented.

²⁷ For reasons discussed elsewhere in these comments, Standing Trees is hesitant to characterize that discussion as a "no-action alternative" because it is not presented as an alternative, nor is it properly detailed or evaluated in the manner a no-action alternative should be or typically is by the Forest Service and other federal agencies.

Further, the WMNF Plan forest-wide guideline for vegetation management G-1 requires that “[n]o more than 15 percent of the area of watersheds of first and second order perennial streams should be treated with even-age regeneration methods in a five year period.” WMNF Plan at 2-29. The DEA makes no mention of this standard, either in the Hydrology discussion or within its cumulative impacts discussion. Eastman Brook, both a tributary and outflow of Lake Tarleton, is one such stream.²⁸ Did the Forest Service determine what percent of the watershed had been, or will be, treated with even-age (clear-cutting) methods? The DEA does not indicate this, and the public cannot be expected to complete this analysis for them in order to understand whether or not this standard is being followed. In addition, the DEA makes no mention of Eastman Brook being a 303(d) impaired water under the CWA. Surely this warrants a mention and attendant impact analysis. *See* Exhibit 31 (New Hampshire’s 2020-2022 303(d) list).

Additionally, the DEA states that there will be field visits prior to project implementation “to refine treatment unit boundaries and acres including modifications to address on-site conditions[,]” including potentially “reduc[ing acres] to meet visual and *water quality objectives*, to incorporate reserve patches of uncut trees in final harvest stands, and to *incorporate protective buffers around features such as vernal pools*, cultural resources, nest trees, and *riparian zones*.” DEA at 9. Emphasis to this statement was clearly added to highlight the water-related resources, but for *all* resources mentioned, these on-site baseline conditions should have been identified *prior* to conducting the NEPA analysis. That information could and should have been used to describe the impacted environment, actually provide analysis of *how* these resources may be impacted, and describe how the agency might propose to address those impacts.²⁹ Further, it seems especially important that the treatment unit boundaries be defined prior to any implementation because of the potential for boundaries to stray into protected riparian areas. Specifically, the WMNF Plan forest-wide guideline G-1 for Riparian and Aquatic Habitats states that “[t]ree cutting and harvest should not occur within 25 feet of the bank of mapped perennial streams[.]” WMNF at 2-24. To our knowledge, no map of the project area was provided that shows both the location of Eastman Brook along with the harvest unit boundaries. However, by comparing the “Conceptual Planning Area Map” provided as part of the pre-scoping package with the Proposed Treatment Harvest Units map contained in the 2022 DEA at 27, it appears that unit boundaries for both clearcut and group selection logging come precipitously close to Eastman Brook. The 2022 DEA does not mention this guideline, nor does it make clear that these 25’ buffers are integrated into the project design. Without this information, it is impossible to tell if this WMNF Plan guideline is being met, and further demonstrates the failure of the Forest Service to take a hard look at this matter.

²⁸ According to Table 2-01 in the WMNF Plan, only four orders of streams exist: 1st, 2nd, 3rd, and 4th. WMNF Plan at 2-25. Appendix H of the WMNF Plan contains a list of third- and fourth- order streams; on which Eastman Brook is not listed.

²⁹ The same issue is present with regard to the planned transportation system changes – “access roads, each less than 500 feet in length, would be constructed or reconstructed to access log landings. Final locations of log landings and associated access roads may be modified during implementation planning[.]” Because the location of roads and landings will affect the type and intensity of impacts to surrounding resources, this information should be known *prior* to making a finding of no significant impact. Otherwise the Service could claim no impacts will result from the currently proposed positioning but then change the proposed road and landing locations while evading public scrutiny of the impacts they’ve newly catalyzed.

The DEA also fails to mention or analyze potential impacts of the addition of the boat launch to Lake Katherine. The installation of the boat launch will invite additional use, and the risk of introduction of aquatic invasive species will commensurately be raised. In addition to failing to take a “hard look” at these direct and indirect impacts, as discussed below, the Forest Service also ignored the cumulative effects of these reasonably foreseeable impacts.

One of the 2022 DEA’s few additions was a description of types and methods of herbicide use to the “botany resource design features.” *Id.* at 4, 17. The addition of this information indicates that the project will involve the use of herbicide treatments, but other than listing these “design features,” herbicides and their potential impacts to water resources (or any resources for that matter) are not mentioned anywhere in the DEA. The Forest Service must complete adequate analysis of the impacts to water quality and hydrology, at a minimum, at the watershed scale, since water quality impacts may compound as water from brooks, rivers, and streams meet and intermix.

v. Recreation

The Lake Tarleton area is beloved for a number of recreational opportunities it provides, including camping, hiking, swimming, fishing, boating, birdwatching, photography, observing wildlife, and generally relaxing in a pristine natural setting. Lake Tarleton State Park, which was established concurrently with the addition of the lands surrounding the lake to the WMNF, is a popular area for water-based recreation. Kingswood Camp is a long-running summer overnight camp, first established as Camp Serrana in 1909, that is located on the west shore of the lake. The Dartmouth Outing Club operates a cabin on the lakeshore. The ridgeline that forms the southern and eastern boundary of the Lake Tarleton watershed is traversed by the Appalachian National Scenic Trail. Piermont Mountain, rising to the west of Lake Tarleton and Lake Katherine and accessed via two popular user-created trails, provides a stunning vista over the lake basin, Webster Slide, and Mount Moosilauke. Several user-created campsites exist around the shore of Lake Tarleton, accessible by either boat (typically canoe or kayak) or by foot using a user-created trail around the southern shore of the lake. Both the lakeside trail and campsites fall within the proposed harvest areas.

The WMNF makes no attempt to assess potential impacts to the aforementioned long-running businesses dependent upon the unique scenery and recreational opportunities afforded by Lake Tarleton. Nor does the WMNF assess potential impacts on the public’s ability to enjoy long-established recreational resources in the project area, with the exception of a brief review of possible impacts to the Appalachian Trail. The Tarleton DEA also only briefly considers the likelihood and impacts of illegal motorized use, including both wheeled and oversnow vehicles, in harvested areas and on improved roads and skid trails.

When the Trust for Public Land (“TPL”) unveiled its proposal to protect Lake Tarleton to the Piermont and Warren, NH Selectboards, to the general public, and to donors, TPL was clear in its vision and expectations for White Mountain National Forest management. As noted in the introduction, A September 5, 2001 article in the Bradford *Opinion Journal* reported TPL’s goal to “protect and conserve the ‘wilderness’ quality of the Lake Tarleton area, stressing low impact recreational activities.” *See* Exhibit 1.

While the 2022 DEA makes passing reference to some of these recreational activities, *id.* at 19, some are ignored entirely, and those that do make the cut are quickly dismissed as not being negatively impacted, or at least for not long. For example, despite concerns raised by birdwatchers and enthusiasts during previous comment periods³⁰, no analysis or discussion is provided addressing impacts to bird population, diversity, or distribution resulting from the proposed logging activities.

There is also no discussion of the project's potential to displace recreational use of the area. In the Socioeconomics section of the DEA, it states: "As described in the Recreation section, timber harvest and other construction activities during project implementation may affect levels of recreational use by displacing users due to noise or physical disturbance." 2022 DEA at 20. However, the Recreation section does not discuss or even mention potential displacement; instead, it merely states that "[p]otential noise impacts to hikers . . . would be minimized[.]" *Id.* at 19. If the Forest Service believes that recreationists will be displaced as a result of the project, it should actually address those potential impacts.

Another primary concern, only given scant attention in the DEA, is the issue of impacts to the Appalachian Trail. The Appalachian Trail travels through the Project area in two separate places. 2022 DEA at 26 (Figure 1). The proposed Project activities occur within two Forest Management Areas—MA 8.3, which is Appalachian National Scenic Trail (Appalachian Trail), and MA 2.1, which is General Forest Management. *Id.* at 5. Despite the close proximity of the iconic Appalachian Trail, there is little analysis of impacts to that resource and the multitude of hikers that use and enjoy it. Further, even though the Appalachian Trail is managed in conjunction with the National Park Service (NPS), there is no indication in the 2022 DEA that the Forest Service consulted with NPS. Nor is there any indication that the Forest Service consulted with the Appalachian Trail Conservancy, the Appalachian Mountain Club, or the Dartmouth Outing Club, as required by the WMNF Plan MA 8.3 standard S-2, for when management actions affect AT values. All of these groups are conspicuously absent from the list of "Agencies or Persons Consulted" in the 2022 DEA. *Id.* at 22.

For MA 8.3, the Forest Plan sets forth Desired Conditions including emphasizing "a remote backcountry recreation experience in a predominantly natural or natural-appearing landscape." Forest Plan at 3-45. Even though the purported purpose of the Project is "to implement the management direction in the Forest Plan," there is no mention in the 2022 DEA as to how the Project will support this desired condition. To the contrary, the project activities—specifically, the clear-cuts and overstory removal—will alter the landscape to make it less natural or natural-appearing. And while the logging is occurring, it will detract from any sense of "a remote backcountry recreation experience" along those portions of the Appalachian Trail. The visual impacts to the trail are discussed below in the section addressing Scenic Values.

The 2022 DEA also ignores several other standards and guidelines set forth in the Forest Plan for MA 8.3. For example, the Vegetation Management Guideline G-1 states:

³⁰ See generally Exhibit 32 (G. Coffey comment on 2021 DEA), Exhibit 33 (Anonymous comment on 2021 DEA), Exhibit 34 (J. Cooley comment on 2021 DEA), Exhibit 35 (E. Faletra Comment on 2021 DEA), among others.

Where the AT management area adjoins MA 2.1, commercial timber management and salvage operations are allowed in that portion of the Appalachian Trail MA between the trail footpath and the 2.1 Management Area, *but only outside the foreground area as defined in the Scenery Management System (SMS)*. The foreground zone is determined by site-specific analysis of the area as seen from the AT. *Everywhere else in the AT management area, commercial timber management and salvage sales are prohibited.*

Forest Plan at 3-53 (emphasis added). This is precisely the situation present for this Project—MA 8.3 (the Appalachian Trail management area) “adjoins” MA 2.1. 2022 DEA at 5 (stating that the project activities will occur within management areas MA 2.1 and 8.3).³¹ Thus, commercial timber management is prohibited in MA 8.3 unless it occurs between the trail footpath and MA 2.1, but “only outside the foreground area as defined in the Scenery Management System” *Id.* The 2022 DEA does not define or establish the foreground zone—which is supposed to be determined by a site-specific analysis—and therefore there is no way to understand whether or not the project activities are complying with this condition of the Forest Plan.

The 2022 DEA also ignores the MA 8.3 Wildlife Standard S-1, which states that the “[c]reation of regeneration forest habitat must occur only through natural disturbance events, except for areas adjacent to MA 2.1, in that portion of the AT MA between the trail footpath and the 2.1 Management Area outside the foreground zone.” Forest Plan 3-53. Like the Vegetation Management guideline, this standard requires a determination by the Forest Service of the foreground zone between the AT footpath and MA 2.1, in order to ensure that project activities are not occurring in that zone. As mentioned, the 2022 DEA does not define or establish the foreground zone, and therefore it is unclear how or if the Forest Service was able to determine the Project’s compliance with this standard.

In sum, the 2022 DEA’s conclusory statement that “[t]he project design is consistent with management direction for the Appalachian Trail” (2022 DEA at 23) is not supported by any analysis or accompanying documentation and appears inconsistent with several Forest Plan standards and guidelines. The Forest Service compounded this lack of analysis by failing to consult with NPS or other necessary organizations. The Forest Service needs to provide adequate analysis of project impacts and cumulative impacts to recreation. This should be evaluated within the context of the local project planning area and at the forest level, because impacts to Lake Tarleton, Lake Katherine, Lake Armington, Mt. Piermont, Webster Slide, the Appalachian Trail, and surrounding recreation areas will be felt most acutely at the local level. In addition, the WMNF Plan itself requires that such “projects must be evaluated in terms of their effects on both the individual sites and on Forest-wide development levels.” WMNF Plan at 2-17, *Developed Recreation Standard S-1*.

³¹ The 2022 DEA does not contain a map that delineates the borders of the two management areas. *See, e.g.,* 2022 DEA, at 26–30 (Appendix A – containing several maps, none of which show the locations of the management areas). The pre-scoping materials contain a Conceptual Planning Area map that appears to delineate the two management areas, but does not identify them by their management area numbers. A clear map is needed to fully understand where the logging will take place in relation to the two management areas.

vi. Scenic Values

The DEA claims that the project is consistent with Forest Plan standards and guidelines for scenery management, but does not even cite to or mention the separate standards that apply to the two management areas located within the project boundary. 2022 DEA at 20. It is difficult for the public to meaningfully comment on visual impacts and the Service's analysis thereof, when they are not even told what standards the project allegedly meets, nor given any analysis explaining why the standards are met. For example, the Scenery Management Standards for MA 8.3 (Appalachian Trail) are as follows:

S-1: The AT is a Concern Level 1 Travelway, and middleground and background areas on National Forest lands seen from the AT must be managed for scenery in accordance with Scenic Integrity Objectives identified through the Scenery Management System.

S-2: All management activities will meet a Scenic Integrity Objective of High or Very High.

2005 Forest Plan at 3-52. Relevant MA 2.1 (General Forest Management) guidelines include:

G-1: In evaluating cumulative effects for viewed landscapes from established concern level 1, open, higher elevation viewpoints affording expansive or large scale views, no more than 9 percent of the acreage within the view should be treated with regeneration vegetation management activities within a 30 year period. Total area affected during any one entry period with new regeneration treatment should not exceed 4 percent of the acreage. Assessment may need to be made from multiple viewpoints (that view a common land base). The assessment will apply to each view separately.

G-3: For areas with a "High" Scenic Integrity Objective, created openings should be minimally evident from trail, road, or use area vantage points. Maximum observed size should not exceed 4-5 acres. If openings occur, they should appear as natural occurrences and be well distributed in the viewed landscape.

G-7: For projects where group cutting is the preferred prescription, and views from a superior viewpoint are a concern, groups should be laid out in an informal distribution pattern and varied in size.

WMNF Plan 3-6 to 3-8. Based on the above standards and guidelines, because the AT is a Concern Level 1 travelway, on MA 2.1 lands visible from the trail "no more than 9 percent of the acreage within the view should be treated with regeneration vegetation management activities within a 30 year period. . . [and t]otal area affected during any one entry period with new regeneration treatment should not exceed 4 percent of the acreage." Did the Forest Service analyze the amount of acreage within the view that would be impacted by these management activities to confirm that this standard was being met? How many acres, if any, had already been impacted within the last 30 years? If this analysis was done, why did the Service not show its work by simply including this information in the DEA?

Further, it is not clear how the proposed project, which includes approximately 120 acres of large clear-cuts³², 2022 DEA at 9, some of which will be done relatively close to the AT itself, *id.* at 27, will meet the “high” to “very high” Scenic Integrity Objectives assigned to views from MA 8.3 lands. *Very High* scenic integrity is characterized as “unaltered” and “refers to landscapes where the valued landscape character ‘is’ intact with only minute if any deviations. The existing landscape character and sense of place is expressed at the highest possible level.” USDA FOREST SERV., LANDSCAPE AESTHETICS: A HANDBOOK FOR SCENERY MANAGEMENT at 2-4 (1995) (Exhibit 36). *High* scenic integrity is characterized by *appearing* unaltered and “refers to landscapes where the valued landscape ‘appears’ intact. Deviations may be present but must repeat the form, line, color, texture, and pattern common to the landscape character so completely and at such scale that they are not evident.” *Id.*

The 2022 DEA claims that a “scenery analysis” was done, but aside from identifying the nine viewpoints used, it does not describe the methodology for the analysis. *Id.* It also does not explain how or why the nine particular viewpoints were chosen versus other potential viewpoints. Even with the vague description of the scenery analysis, the Forest Service acknowledges that “[s]ome visual impacts from the proposal can be expected,” *id.*, however, the agency never measures those expected impacts against the Forest Plan standard that requires all management activities meet a High or Very High Scenery Integrity Objective. The 2022 DEA also states that the visual impacts will “fade and blend over time as the forest regenerates.” 2022 DEA at 20. This statement may mislead the public to believe that visual impacts will be short-lived, but the Service itself admits that the impacts of its suggested logging “is on the order of decades to centuries because that is how long it can take for forested stands” to return to pre-harvest condition. BE at 8.

Even if the existing scenery impacts analysis was sufficient, which Standing Trees contests, the DEA failed to evaluate scenic impacts as viewed from, Piermont Mountain, just across the lake from the proposed action, and which hosts a popular hiking trail and scenic views facing the project area. Piermont Mountain is the most prominent open summit overlooking the forest surrounding Lake Tarleton, with a popular trail that is highly prized and utilized by members of the local community, including Kingswood Camp and Camp Walt Whitman, also located in the area. Despite the obvious reasons for assessing visual impacts from this viewpoint, the WMNF failed to conduct this analysis.

vii. Socioeconomics

The DEA focuses its discussion of socioeconomic impacts on the displacement of recreational opportunities, and concludes that “socioeconomic changes to the local communities are expected to be negligible.” 2022 DEA at 20. The analysis of this impact is insufficient in one of two ways. Either (1) the Forest Service entirely neglected to analyze socioeconomic impacts flowing from the supposed “sustainable yield of high-quality timber products to support local economies and communities[.]” *id.* at 6, in which case it failed to take a hard look at socioeconomic impacts; or (2) it did analyze these impacts, but concluded that these supposed

³² This total includes only the proposed “clearcut with reserves” (115 acres) and “patch clearcut” (5 acres). This total is much higher (approximately 100 additional acres) when accounting for the mini clear-cuts authorized as part of the “group selection” harvest prescription. 2022 DEA at 9.

benefits, in fact, were expected to be negligible, in which case the economic benefit of the proposed logging cannot be used to justify the project's implementation.

viii. Soils

While the DEA gives more attention to its discussion of impacts to Soils than to most of the other identified resources, it still fails to provide adequate discussion and clarity surrounding impacts to this resource. The section repeatedly mentions "non-detrimental soil disturbance" in relation to meeting Forest Service Soil Quality Standards, 2022 DEA at 20, but the referenced guidance does not in fact include that term at all. Exhibit 37 (USDA FSM Supplement R9 RO 225-2012-1). Instead, it merely identifies types of soil disturbance, without categorizing them as detrimental or non-detrimental. It is unclear where this term came from, and its repeated use in the DEA belies the actual potential impacts to the project area, which the Soils Specialist Report concluded may include soil disturbance on up to 20% of the project area. Soils Specialist Report at 12.

The only "detrimental" soil impact that the DEA admits to, the impact of expanding the Lake Katherine parking lot, is ostensibly justified by pointing to the fact that the WMNF Plan FEIS (not even the plan itself) "allowed up to a certain amount of new construction to be built within the life of the plan and based on current monitoring the forest has yet to meet that threshold." 2022 DEA at 20. This "certain amount" is not identified, nor is the unspecified "threshold." These ambiguous references and unsupported conclusions do not meet the Service's obligation to take a hard look at impacts, nor to provide the public with clear NEPA documentation. If the Service has truly been monitoring the amount of construction encompassed within this allocation, why is it not simply listed in the DEA?

ix. Vegetation & Forest Health

The Tarleton IRP uses outdated science and misinterprets the concept of habitat diversity to justify extensive logging totaling 880 acres, nearly half of which is slated to be even-aged management. Furthermore, the Tarleton IRP fails to explain how proposed logging will comply with Forest Plan standards and prohibitions, as well as President Biden's Executive Order 14072, Strengthening the Nation's Forests, Communities, and Local Economies. Exhibit 6.

New Hampshire's intact forests are the state's greatest natural asset in the fight against climate change. And yet, a century and a half since New Hampshire was largely deforested by European settlers, its forests are still in the early stages of recovery. Today, less than 1/10 of 1% of New England's landscape resembles the complex, interconnected, biodiverse forests that evolved over millennia alongside the region's sophisticated indigenous cultures.³³ Elk, caribou, wolverine, wolves, cougars, pine marten, and salmon, once common in New Hampshire, have either been entirely eliminated or have long since failed to naturally reproduce. By any objective measure of ecosystem health, New Hampshire's ecosystems remain in the ICU.

Despite the clear scientific evidence for increased amounts of old, wild forest, only 3% of New Hampshire (and a similar amount across New England) is managed to permanently protect

³³ Zaino et al. (2018)

or restore old forest conditions, with a primary emphasis on supporting native biodiversity, natural processes, and climate stabilization.³⁴

New Hampshire was historically dominated by old forests, and it remained that way for millennia prior to European arrival.³⁵ Although the Abenaki people and other indigenous communities developed a sophisticated culture and cleared and managed some of the New England landscape with fire, recent science demonstrates that their impacts were highly concentrated, with the majority of historic New England forests primarily impacted by forces such as wind, ice, and beavers.³⁶ Much of New Hampshire's landscape evolved with relatively minor human influence over thousands of years since the last glaciation.

According to the definitive paper on disturbance frequency and intensity in New England, “the proportion of the presettlement landscape in seedling–sapling forest habitat (1–15 years old) ranged from 1 to 3% in northern hardwood forests (*Fagus–Betula–Acer–Tsuga*) of the interior uplands.” “The current estimates of 9–25% [seedling–sapling habitat] for the northern New England states are probably several times higher than presettlement levels.” Gap size in Hemlock–Northern Hardwood forests averaged less than .75 acres. Beech was the dominant species among Northern Hardwoods, comprising perhaps 30% of the forest. Stand replacing events occurred, on average, only every 1,000 to 7,500 years.³⁷

A 2008 paper builds on these themes: “Although humans have a long history (about 12,000 years) on the North American continent, the magnitude of change wrought by European settlement has no parallel since the last glaciation... In New England, rates of landscape change have been far greater in the past 300 years than in the previous 1000 years as a result of forest cutting, agricultural conversion, urban development, altered fire regimes and herbivore populations, nonnative species introductions, and atmospheric pollution... There has been no return to presettlement conditions because of continuing low-level disturbance and perhaps insufficient recovery time.”³⁸

We can measure New Hampshire's progress towards forest ecosystem restoration against several large landscape conservation visions that have gained traction in the past fifteen years. In 2006, Wildlands and Woodlands, a program of Harvard Forest and Highstead Foundation, produced a widely supported vision for New England that included a goal for 10% of all regional forestlands to be conserved as wildlands. Fifteen years later, only 3% of New England is in wildlands, and relatively little progress has been made toward the 10% goal, despite excellent progress towards conserving forests for extraction of wood products.

³⁴ Moomaw et al. (2019)

³⁵ Lorimer and White, SCALE AND FREQUENCY OF NATURAL DISTURBANCES IN THE NORTHEASTERN US: IMPLICATIONS FOR EARLY SUCCESSIONAL FOREST HABITATS AND REGIONAL AGE DISTRIBUTIONS (2003) [Exhibit 38] (hereinafter “Lorimer and White (2003)”)

³⁶ Oswald et al., CONSERVATION IMPLICATIONS OF LIMITED NATIVE AMERICAN IMPACTS IN PRE-CONTACT NEW ENGLAND (2020) [EXHIBIT 39]

³⁷ Lorimer and White (2003)

³⁸ Nowacki and Abrams, THE DEMISE OF FIRE AND “MESOPHICATION” OF FORESTS IN THE EASTERN UNITED STATES (2008) [Exhibit 40]

More recently, based on the rapid decline of wildlife populations³⁹ and the rapid degradation of the climate,⁴⁰ scientists have suggested that much more aggressive measures must be taken to stave off climate and extinction catastrophe. The 2019 Global Deal for Nature (the inspiration for “30x30”) calls for 30% of lands and waters to be permanently protected in GAP 1 and 2⁴¹ protected areas⁴² by 2030 to maintain and restore biodiversity, with an additional 20% percent conserved to stabilize the climate.⁴³ This vision was partially endorsed by the Biden Administration in Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.” Exhibit 45. To date, the Forest Service, including the White Mountain National Forest, has not revealed how it intends to implement EO 14008.

Large blocks of intact forest minimize harmful vectors for the spread of invasive species, and allow natural disturbances to play out across a sufficiently large landscape to ensure that there is a mix of early and late successional habitats required by the full spectrum of New England’s forest-dependent species.

Although passive management is most often all that’s required to restore old forest conditions,⁴⁴ it takes centuries to develop forest complexity, requiring permanent protection from timber harvest if restoration is to be successful.^{45,46,47,48,49}

The 2022 DEA states that its vegetation management goals include creation of “small and large openings in the forest” to “improve wildlife habitat diversity,” as well as “discouraging beech regeneration.” *Id.* at 9. The DEA suggests that “an analysis of the current habitat conditions indicates that the Tarleton [Habitat Management Unit (“HMU”)] is not meeting the MA 2.1 Habitat Composition and Age Class Objectives” outlined in the 2005 WMNF Plan. 2022 DEA at 6. However, the DEA fails to include any description of this supposed analysis, and it is unclear that the WMNF has sound information about stand ages classes in the Tarleton HMU. Despite repeated requests, the WMNF has failed to produce a stand age class map or detailed records of past harvest activity. Exhibit 5. Nor does the DEA contain an analysis of whether the age class objectives for regeneration and young age classes have already been met, forest-wide,

³⁹ Ceballos et al., VERTEBRATES ON THE BRINK AS INDICATES OF BIOLOGICAL ANNIHILATION AND THE SIXTH MASS EXTINCTION (2020) [Exhibit 41]

⁴⁰ “[Climate Change 2021: The Physical Science Basis](#)” (Working Group I contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change) [Exhibit 42]

⁴¹ The US Geological Survey maintains the nation’s protected area database and has created a “[GAP Status Code Assignment](#)” to categorize types of conservation across all land ownerships, public and private.

⁴² Dreiss and Malcom, GETTING TO 30X30: GUIDELINES FOR DECISION-MAKERS (2020) [Exhibit 43]

⁴³ Dinerstein et al., A GLOBAL DEAL FOR NATURE: GUIDING PRINCIPLES, MILESTONES, AND TARGETS (2019) [Exhibit 44]

⁴⁴ See Zaino et al. (2018)

⁴⁵ Watson et al., THE EXCEPTIONAL VALUE OF INTACT FOREST ECOSYSTEMS (2019) [Exhibit 46]

⁴⁶ DiMarco et al., WILDERNESS AREAS HALVE THE EXTINCTION RISK OF TERRESTRIAL BIODIVERSITY (2019) [Exhibit 47]

⁴⁷ Dinerstein et al. (2020)

⁴⁸ Miller et al., EASTERN NATIONAL PARKS PROTECT GREATER TREE SPECIES DIVERSITY THAN UNPROTECTED MATRIX FORESTS (2018) [Exhibit 48]

⁴⁹ Miller et al., NATIONAL PARKS IN THE EASTERN UNITED STATES HARBOR IMPORTANT OLDER FOREST STRUCTURE COMPARED WITH MATRIX FORESTS (2016) [Exhibit 49]

in the 17 years since the signing of the WMNF Plan. Indeed, the Forest Plan expects that regeneration age-class objectives will be met by year 10 of the Forest Plan. WMNF Plan at 1-21.

Taking the aforementioned science into account, the public is also left to wonder what science the White Mountain National Forest is basing its management decisions off of. Which species does the Tarleton IRP stand to benefit most? Why does the Tarleton IRP seem to favor game species, which already exist in abundance elsewhere in New Hampshire? Why are interior and mature forest species devalued in the project area? Why does the WMNF plan to dramatically reduce the beech population, despite the fact that it is a critical wildlife food source and that it was historically the dominant species on this site? By removing all beech, how can we identify strains that are resistant to beech bark disease? How should the public reconcile extensive areas of even-age management with the fact that such openings bear little resemblance to the natural disturbance regime of a Northern Hardwood forest?

The presence of a high-voltage powerline corridor through the project area raises another flaw in the analysis of existing forest age-classes, desired future conditions, and alternatives considered by the WMNF. The DEA mentions that “the powerline corridor is privately owned and managed for low-growing vegetation for safety purposes related to the powerline.” However, the WMNF makes no attempt to describe the “low-growing vegetation” or its age, nor does it consider whether a Memorandum-of-Understanding could be reached with the electric utility company to manage the right-of-way to improve regeneration and young-age class forest habitat, thereby meeting Forest Plan objectives without the need for hundreds of acres of additional timber harvest. It is possible that certain age class objectives in the Forest Plan are already met in the Tarleton HMU if the powerline corridor is considered. In fact, upon completion of the Tarleton IRP, the WMNF may exceed the age class objectives in the Forest Plan for the Tarleton HMU by failing to consider the powerline corridor.

As mentioned previously, the Tarleton IRP DEA fails to take a hard look at stand ages within the Tarleton Habitat Management Unit, and it similarly fails to identify whether there are any outstanding natural communities present within the project area. Without such analysis, it is impossible for the public to determine whether the WMNF can comply with at least two Forest Plan standards and prohibitions.

Standard S-3 in WMNF Plan Ch 2-Forest-Wide Management Direction states that “Timber harvest is prohibited in old growth forest.” Further, Guideline G-1 states that “Outstanding natural communities should be conserved.” WMNF Plan 2-13. Old-growth is defined in the WMNF Plan as “Uneven-aged (three or more age classes) forest with an abundance of trees at least 200 years old, multiple canopy layers, large diameter snags and down logs, and a forest floor exhibiting pit-and-mound topography. There should be little or no evidence of past timber harvest or agriculture. Northern hardwood old growth consists primarily of sugar maple and American beech; softwood old growth is largely made up of spruce and hemlock. Stands need to be at least 10 acres in size to be identified as old growth. Anything smaller is a patch of old trees within a younger stand, not a habitat type in its own right.” WMNF Plan Abbreviations, Acronyms, and Glossary at 21.

The WMNF Plan goes beyond protections for *existing* old-growth forest, however, clearly looking to how the WMNF can facilitate recovery of old-growth forest across a larger percentage of the forest in the future. The WMNF Plan defines old forest as beginning at 70 years of age in Aspen-birch habitat types, 90 years of age in Spruce-Fir, 120 years of age in Northern hardwoods, Mixed wood, Oak-Pine, and Hemlock. WMNF Plan D-2. The WMNF Plan defines Old Forest Habitat as: “Desired habitat conditions start with those for mature forest and can include greater size, decadence, structural complexity, etc. *No harvest will occur in stands identified to provide old forest habitat*” [emphasis added]. WMNF Plan Abbreviations, Acronyms, and Glossary at 21.

Given the descriptions above, it is also instructive to consider the WMNF Plan definition of Mature Forest Habitat. The mature age class ranges from 40-89 years for Spruce-Fir habitat types, 60-119 years for Mixed wood and Northern hardwood, 40-69 years for Aspen-birch, and 70-119 years for Oak-Pine and Hemlock. WMNF Plan D-2. The WMNF Plan further defines Mature Forest as “Stands in which the overstory is in the mature age class. Mature forest habitat is typically made up of trees that are eight inches or more in diameter. Mortality is just beginning in these stands, resulting in a few scattered canopy gaps and a small number of snags and cavities in the overstory. Most snags and down logs are small in diameter and within the intermediate or understory layers. *Depending on site conditions, thinning and uneven-aged harvest methods can be used in this habitat without negatively impacting habitat quality.* Some uneven-aged harvest may enhance vegetative and structural diversity” [emphasis added]. WMNF Plan Abbreviations, Acronyms, and Glossary at 18. This definition clearly implies that even-aged management in mature forest may “negatively [impact] habitat quality.” Despite this instruction to avoid even-aged management in mature forest habitat, the WMNF offers no explanation for how such negative impacts will be avoided or mitigated in the Tarleton IRP.

On April 22, 2022, President Joseph R. Biden issued Executive Order (EO) 14072, “Strengthening the Nation's Forests, Communities, and Local Economies.” Exhibit 6. The EO reads:

“Sec. 2 . Restoring and Conserving the Nation's Forests, Including Mature and Old-Growth Forests . My Administration will manage forests on Federal lands, which include many mature and old-growth forests, to promote their continued health and resilience; retain and enhance carbon storage; conserve biodiversity; mitigate the risk of wildfires; enhance climate resilience; enable subsistence and cultural uses; provide outdoor recreational opportunities; and promote sustainable local economic development.”

The EO continues:

“(b) The Secretary of the Interior, with respect to public lands managed by the Bureau of Land Management, and the Secretary of Agriculture, with respect to National Forest System lands, shall, within 1 year of the date of this order, define, identify, and complete an inventory of old-growth and mature forests on Federal lands, accounting for regional and ecological variations, as appropriate, and shall make such inventory publicly available.

(c) Following completion of the inventory, the Secretaries shall:

(i) coordinate conservation and wildfire risk reduction activities, including consideration of climate-smart stewardship of mature and old-growth forests, with other executive departments and agencies (agencies), States, Tribal Nations, and any private landowners who volunteer to participate;

(ii) analyze the threats to mature and old-growth forests on Federal lands, including from wildfires and climate change; and

(iii) develop policies, with robust opportunity for public comment, to institutionalize climate-smart management and conservation strategies that address threats to mature and old-growth forests on Federal lands.”

The WMNF Plan gives the forest a distinct advantage in meeting its NFMA and EO obligations by already clearly defining mature, old, and old-growth forests. However, to date, the WMNF has failed to clearly identify, inventory, and conserve mature, old, and old-growth forests in the case of the Tarleton HMU. Although we do not address the broader implications for WMNF management here, this failure to identify, inventory, and conserve mature, old, and old-growth forest may also extend across the entirety of the National Forest. Until detailed analysis is completed to comply with Forest Plan and EO requirements, the Tarleton IRP cannot legally proceed.

x. Wildlife

The 2018 Vermont Conservation Design Natural Community and Habitat Technical Report is instructive for the state of New Hampshire and the White Mountain National Forest:

“The state’s native flora and fauna that have been here prior to European settlement are adapted to this landscape of old, structurally complex forest punctuated by natural disturbance gaps and occasional natural openings such as wetlands or rock outcrops. The complex physical structure of old forests creates diverse habitats, many of which are absent or much less abundant in younger forests.”⁵⁰

What the White Mountain National Forest calls “old forests” are northern New England’s *natural forests*. As such, much of New Hampshire’s community of life evolved over millennia within these remarkable original forests. In just the blink of an eye, a combination of overhunting and habitat loss following European settlement led to the disappearance of wide-ranging carnivores such as cougars, wolves and wolverines. Elk and caribou met a similar fate. Some species we might take for granted today, such as bear, moose, beaver, and loons, were on the brink of extirpation only a short while ago. Lynx, Northern Long-eared Bat, and pine marten currently teeter on the edge. Salmon, once prolific in the Connecticut River system, struggle to naturally reproduce. Many of New Hampshire’s imperiled bird species are adapted to interior

⁵⁰ See Zaino et al. (2018)

forests and reliant upon complex forest structure for their survival, including standing snags and large living trees.⁵¹ Indeed, the availability of dead and dying trees and downed wood is critical for the health of many species, from bats to pine marten to invertebrates.^{52,53}

Our native ecosystems preserve – and present the opportunity to restore – the greatest levels of biodiversity.

xi. Impacts of Road Construction

Although “Transportation” and the need for a transportation analysis is included as one of the “needs” for the project, 2022 DEA at 7, there is no analysis of transportation or the impacts of roads in the Environmental Impacts discussion. Instead, the only discussion surrounding transportation is in the description of the proposed action, which states that “no new road construction or decommissioning is included under the Proposed Action,” but then immediately notes that “system roads and log landings would be constructed, maintained, or reconstructed to provide safe access to vegetation management areas and to meet modern design standards.” *Id.* at 15. Thus, on its face, the DEA is internally inconsistent on this point, and again, the Service neither provides nor cites to these referenced standards.

At a minimum, the DEA should have analyzed, or at least mentioned, the potential for roads to contribute to water quality issues through increased erosion and sedimentation, soil compaction resulting from the use of heavy machinery used to achieve the proposed roading activities, and renewed fragmentation of wildlife habitat, among other things. For example, although no “new” roads are proposed, the reconstruction of some of these roads may be equivalent to opening a new road, where those roads may have already been reclaimed by the forest. This is another example of a persistent theme of the DEA of not identifying a baseline against which impacts can be measured. Because the existing condition of roads in the project area have not been described, it is impossible for the public to tell whether or not road reconstruction may result in significant impacts.

xii. Cumulative Impacts

The Forest Service was required by NEPA to consider the cumulative impacts of the Project. 40 C.F.R. § 1508.7. A lawful cumulative impacts analysis includes consideration of “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions” *Id.* Moreover, “cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* Cumulative effects analysis requires that the agency define and apply a consistent geographic scope in which to analyze cumulative effects. *LOWD/BMBP v. Connaughton*, 2014 WL 6977611, at *9–11 (D. Or. Dec. 9, 2014). The geographic scope determines which nearby projects will be included in its

⁵¹ Askins, Robert A., THE CRITICAL IMPORTANCE OF LARGE EXPANSES OF CONTINUOUS FOREST FOR BIRD CONSERVATION (2015) [EXHIBIT 50]

⁵² Thorn et al., THE LIVING DEAD: ACKNOWLEDGING LIFE AFTER TREE DEATH TO STOP FOREST DEGRADATION (2020) [EXHIBIT 51]

⁵³ Evans and Mortelliti, EFFECTS OF FOREST DISTURBANCE SNOW DEPTH AND INTRAGUILD DYNAMICS ON AMERICAN MARTEN AND FISHER (2022) [Exhibit 52]

analysis, and agencies “must provide support for its choice of analysis area[.]” *Id.* at *9, citing *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 902 (9th Cir. 2002).

The 2022 DEA failed to identify or explain the geographic scope of its cumulative impacts analysis. Although it acknowledges that such analysis must address activities “overlap[ping] in space and time with effects of the proposed project[.]” 2022 DEA at 21, and makes a vague reference to the “analysis area[.]” *id.*, it does not actually define that “space” or “analysis area.” References are made to private lands outside of the WMNF, as well as projects occurring within it, *id.*, but it neither defines nor “provide[s] support for its choice of the analysis area[.]” *Dombeck*, 304 F.3d at 902.

In addition to the failure to define the geographic scope of the cumulative impacts analysis, the DEA’s “cumulative impacts analysis” contains no actual analysis at all. As noted, it merely alludes to past private activities and future federal activities, and in a conclusory manner says that guidelines will be followed, thus there will be no impacts. The Forest Service cannot just make a blanket statement about impacts without supporting it with actual analysis or some level of detail. As-is, the public has no way of actually evaluating the Forest Service’s claims regarding impacts, because the public is not even given enough detail to look into the matter themselves.

The Forest Service identifies only one category of past activities—private timber cuts and other residential activities “on surrounding, non-National Forest System lands”—that may have present effects that should be assessed in conjunction with the Project to determine cumulative impacts. 2022 DEA at 21. There are several problems with the agency’s vague description of past activities:

- (1) The Forest Service did not include an assessment of past activities on National Forest System lands. As discussed below, the agency only touched on current (or ongoing) and future projects on WMNF land. There is no definitive statement that no past project, including logging projects, have occurred in the WMNF or have occurred in the vicinity of the Project; rather that category of past projects on WMNF land is simply absent from the analysis.
- (2) The Forest Service states the “[k]nown, recent private timber cuts have been relatively small in scale (e.g., less than 75 acres) and scattered throughout the landscape.” 2022 DEA at 21. This ambiguous statement raises several questions. What method did the agency employ to identify relevant timber cuts? How many timber cuts did the Forest Service identify? It does little good to know that the timber cuts are less than 75 acres if it is not known how many there are. There is no indication of the quantity of private timber cuts so there is no way to assess the total acreage cut, which in turn makes it impossible to assess cumulative impacts. How far back in time is “recent”?
- (3) The past actions include an undefined category of “other residential activities.” 2022 DEA at 21. The Cumulative Actions section does not define what these other residential activities are, nor does it quantify them. It only says they, along with the

private timber cuts, are “scattered throughout the landscape.” *Id.* In sum, the Forest Service does not identify the type of activity, the locations of the activity, or the number and scope of the activities, which makes it impossible to evaluate whether the Project, when added to these unidentified activities will have a significant effect cumulatively.

With respect to present and reasonably foreseeable future activities, the Forest Service fares no better. On WMNF land, the agency identifies three other projects that it says were considered—“the ongoing Bowen Brook and future Pemi Northwest and Wanosha Integrated Resource Projects.” 2022 DEA at 21. But other than mentioning the other three projects, it does not discuss what those projects entail, or how the impacts and potential impacts from those projects relate to the Project at issue. More troubling is the Forest Service’s contention that “[d]ue to the implementation of forest plan standards and guidelines and other design features for each of these projects, no measurable cumulative impacts are expected with the proposed action.” 2022 DEA at 21. This is nonsensical. Individual projects’ compliance with Forest Plan standards and guidelines is irrelevant to whether those projects, *cumulatively*, will have a significant effect on the human environment. That is the point of asking the cumulative effects question—to understand whether or not separate actions, even if they are presumed to be in compliance individually, nevertheless have a cumulative effect.

Further, the cumulative effects analysis failed to consider effects of the action on climate change or effects of climate change on the action. The analysis also failed to consider the unauthorized access that will inevitably result during and after the proposed action as a result of improvements to Charleston Road. By excluding these important components of a cumulative effects analysis, the 2022 DEA only considered the subset of trends and planned actions that support a finding of no significance.

Finally, as discussed above, prior to the Forest Service issuing the 2022 DEA the U.S. Fish & Wildlife Service proposed to change the status of the Northern Long-eared Bat from threatened to endangered. The 2022 DEA does not discuss this development at all, and specifically does not address it in its cumulative impacts section. Because the Project may result in logging of mature trees that the bats use for roosting and foraging, the Forest Service must analyze the cumulative effects this Project will have on bat habitat, “when added to other past, present, and reasonably foreseeable future actions” 40 C.F.R. § 1508.7.

For all of the reasons set forth above, the Forest Service’s cumulative impacts analysis falls far short of the standard required by NEPA and its implementing regulations. The lack of detail and any real analysis in the 2022 DEA is evidence that no analysis occurred, and to the extent any did, the Forest Service has hidden it from the public.

e. The Project is Significant and Requires an EIS

The 2022 DEA’s preliminary finding of no significant impact (“FONSI”) violates NEPA because its finding is conclusory and unsupported by the facts, and because the proposed project is a major federal action significantly impacting the quality of the human environment, and thus requires an environmental impact statement (“EIS”).

i. The FONSI is Conclusory and Unsupported by the Facts

A FONSI must “present[] the reasons why an action. . . will not have a significant effect[.]” 40 C.F.R. § 1508.13. Review of an agency's FONSI is conducted under a four part analysis:

First, the agency must have accurately identified the relevant environmental concern. Second, once the agency has identified the problem it must have taken a hard look at the problem in preparing the EA. Third, if a finding of no significant impact is made, the agency must be able to make a convincing case for its finding. Last, if the agency does find an impact of true significance, preparation of an EIS can be avoided only if the agency finds that changes or safeguards in the project sufficiently reduce the impact to a minimum.

Nw. Bypass Grp. v. United States Army Corps of Eng'rs, 470 F. Supp. 2d 30, 61 (D.N.H. 2007) (quoting *Coal. On Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 66-67 (1987)). As discussed above, the DEA fails to properly describe the impacted environment and resources, and subsequently fails to take a hard look at impacts to those resources. Despite this, the Forest Service has still advanced a finding of no significant impact without providing convincing reasoning to support this finding.

The discussion surrounding the FONSI starts by noting that its finding is “[b]ased upon the analysis in this EA[.]” 2022 DEA at 22. Even a cursory review of the discussion that follows that statement reveals that this is not accurate. Much of the limited discussion of context and the intensity factors leans heavily on the claim that *similar* projects have been done in the past, therefore no impacts are expected for *this* project. *See* 2022 DEA at 22 (“The WMNF has implemented this type of project and similar proposed activities. . . many times on the Forest and in the region, without substantial impacts to public health or safety.”); 23 (concluding there are no substantial or unusual risks based on “experience with similar projects”; no unique or unknown risks exist “[b]ased on consideration of past projects”; the project does not set precedent for future actions “because actions [allegedly] similar to the ones proposed have been considered. . . in the past”). Despite the claim that the FONSI is “[b]ased upon the analysis in this EA,” no analysis regarding past WMNF projects or their alleged lack of impact is actually included in the EA, nor does the DEA point to these examples so the public can review them.⁵⁴ The closest the DEA even comes to discussing past activities is two sentences in the “cumulative actions” section that only mentions private timber sales and residential activities⁵⁵, but not federal actions. 2022 DEA at 21.

The Forest Service cannot simply claim that because past projects have allegedly not resulted in impacts, that this project will also not have impacts. Doing so is tantamount to treating prior, undisclosed, NEPA analyses as categorical exclusions that excuse this project from actual substantive analysis. What’s more, even if prior similar projects did not, in fact, have

⁵⁴ The heavy reliance in the FONSI on purported lack of impacts from past, similar projects to justify this Project stands in stark contrast to omission of any discussion of these past projects in the cumulative impacts analysis. *See* 2022 DEA at 21.

⁵⁵ Even then does not actually analyze those past actions.

negative impacts, that analysis is not provided nor even identified in the EA, leaving its contention entirely unsupported. The FONSI must “present[] the reasons why an action. . . will not have a significant effect[.]” 40 C.F.R. § 1508.13. It is not sufficient to simply state that *other actions* did not have a significant impact, thus this one, by extension, will also have no such effect.

The DEA’s failure to support its FONSI is alone sufficient to require additional or supplement NEPA analysis. That additional analysis, however, should be done in an EIS because a proposed project of this scale and impact requires the heightened level of analysis required by that more rigorous document.

ii. The DEA Failed to adequately define the context or discuss the intensity of project impacts, but these factors weigh heavily in favor of a finding of significance.

An EIS is required for all “major federal actions significantly affecting the quality of the human environment[.]” 42 U.S.C. § 4332(2)(C). Under NEPA, the analysis of significance “requires consideration of both context and intensity[.]” 40 C.F.R. § 1508.27.

The DEA claims that its FONSI is “based on consideration of the [CEQ] criteria for significance (40 CFR 1508.27), both with regard to the context and intensity of impacts described in the EA.” 2022 DEA at 22. However, as discussed below, the Forest Service’s “analysis” of these factors is cursory and incomplete, and when properly evaluated, these considerations weigh heavily toward a finding of significance and the preparation of an EIS.

1. Context

The CEQ’s NEPA-implementing regulations provide that:

[T]he significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend on the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant.

40 C.F.R. § 1508.27(a). Establishing the proper setting and scale (“context”) within which to evaluate the impact of an action is critical, yet the EA/FONSI’s discussion of “context” does not appear to actually establish the context for the analysis of resources impacted by the project at all.

The DEA’s “Context” section starts with the conclusory statement that “[t]he project is not a major federal action significantly affecting the quality of the human environment.” 2022 DEA at 22. It then states that “effects of the proposed action are limited in context[.]” but does not provide any discussion or detail of what that context actually is. *Id.* The only sentence conceivably addressing the matter of context is the statement that “[p]roject activities would

occur over an area totaling less than about one percent of the total acreage within the WMNF.” *Id.* Based on the preceding sentence, we must assume this statement is intended to identify the project area – that “less than one percent” of the WMNF – as the context. However, the Service failed to provide any actual analysis explaining the impacts of the project on the local area.

Nor do individual sections of the DEA properly establish the context for its “analysis” of those resources. For example, under the “Environmental Impacts” discussion of the National Historic Preservation Act (“NHPA”) which the DEA later identifies as “Heritage”, the DEA does not even allude to the context of its discussion, and the reader is left guessing. 2022 DEA at 19. The Climate Change section similarly lacks clarity, first appearing to limit the context of the discussion to “a relatively small amount of forest land” in the project area, but then attempting to minimize the appearance of any potential impacts by stating that any emissions would be “extremely small. . . relative to national and global emissions.” *Id.* Is the context the project area? The nation? The world? All of them? If so, where is the analysis for each scale?

There is also no hint of the context or scope at which impacts to hydrology or water quality was analyzed. Instead, that section – only three sentences long – states in a conclusory manner that the proposed action is consistent with relevant laws, and that any impacts (whatever they might be – we are not told) would be successfully mitigated, and therefore no adverse effects are expected. 2022 DEA at 19. The context of analysis for other resource sections are similarly amorphous or unclear – the Vegetation section indicates that “[i]mpacts to vegetation are considered in the context of forest health.” *Id.* at 21. Presumably this analysis is at the forest scale, but then it appears to switch the relevant context by declaring that “[o]verall, effects on vegetation would be minor and local.” *Id.* The discussions of Scenery, Socioeconomics, and Soils fare no better. In fact, the only sections that remotely appropriately define the context of their analyses are the discussions of Federally Listed and Regional Forester Sensitive Species, and Soils. Even then, the context is not discussed in the EA, but in separate documents. 2021 Biological Evaluation; Soils Specialist Report. This goes to show that the Forest Service is capable of properly defining the context of its analysis for the purpose of determining significance, but did not do so for the vast majority of its resource analyses.

The EA’s failure to appropriately identify, or in some instances failure to identify at all, the context within which to evaluate impacts of the proposed project is a critical failure. Without first establishing the proper context within which to conduct its analysis, it is impossible for the Forest Service to properly evaluate the intensity of project impacts. While a single housefire may be inconsequential on the scale of the city, the impacts on the effected home are devastating. Context is the key to determining the significance of an impact, and that is why context must be properly defined and supported for each resource being evaluated.

The Forest Service needs to correct these omissions and prepare an EIS to address the significant impacts of the proposed federal action, or at the very least conduct additional analysis and prepare a supplemental EA that clearly defines the context of its proffered “analysis.”

The failure to properly address the significance of the local impacts is a fatal and “major analytical lapse.” *See Anderson v. Evans*, 371 F.3d 475, 490–92 (9th Cir. 2004) (“In short, the record establishes that there are ‘substantial questions’ as to the significance of the effect on the

local area . . . And because the EA simply does not adequately address the local impact of the Tribe’s hunt [for whales], an EIS is required.”; *Sierra Club v. Marsh*, 769 F.2d 868, 881 (1st Cir. 1985) (finding it improper for the Corps to look at impacts to the entire Maine coast line when evaluating the impacts of a development on a particular island. “Here, the nature of the action, and the geographical character of Sears Island, suggest that the appropriate ‘locale’ is Sears Island and its immediate surroundings.”)

The FONSI’s ultimate conclusion regarding significance is based, in part, on the Project’s impacts being “limited in context.” 2022 DEA at 22. It is unclear how that conclusion was reached when the DEA itself fails, in nearly all of its resource discussions, to define the context of its significance analysis.

Further, the Forest Service’s choice to begin the “Context” discussion by noting that the project area accounts for “less than about one percent” of the forest is a clear attempt to improperly minimize and obfuscate the localized impacts to the Lake Tarleton Area. The Service is not allowed to sweep the significant impacts to the Lake Tarleton area under the rug by pointing to the vastness of the forest surrounding it. *See Pac. Coast Fed’n of Fisherman’s Ass’n v. Nat’l Marine Fisheries Serv.*, 265 F.3d 1028, 1035-37 (9th Cir. 2001) (agency cannot minimize the impact of an activity by adopting a scale of analysis so broad that it trivializes the site-level impact). This is equivalent to the Forest Service proposing to burn the house down and telling the family that impacts are minimal because the rest of the city is still there.

2. Intensity

Intensity refers to the “severity of impact.” 40 C.F.R. § 1508.27(b). NEPA provides a list of 10 non-exclusive factors to consider when evaluating intensity. 40 C.F.R. § 1508.27(b)(1)-(10). Because the Forest Service failed to define the context of its analysis for most project-area resources, its analysis of intensity, which is intrinsically linked to the context within which it is evaluated, is also necessarily inadequate. Beyond this broad failure, the discussion provided for the majority of the 10 consideration factors is cursory, often pointing to the supposed success of prior unnamed projects, and referring to unspecified “analysis” in order to make findings that each factor weighs against a finding of significance. These shortcomings are addressed individually below. Review of these factors reveals that many of these considerations are implicated by the Tarleton Project. The presence of even just “one of these factors may be sufficient to require an EIS in appropriate circumstances.” *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 865 (9th Cir. 2005).

“The following should be considered in evaluating intensity ...”

“Impacts that may be both beneficial and adverse. A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial.” 40 C.F.R. § 1508.27(b)(1)

Despite the EA’s claim to the contrary, it does not describe potential adverse effects of the proposed project, focusing instead on the purported benefits of the action. For example, in the discussion of “Clearcuts with Reserves” the DEA describes purported benefits of clear-cutting,

such as increasing species diversity, stimulating germination of herbaceous vegetation, and promoting asexual reproduction of certain tree species. However, there is no mention of known detrimental impacts of clear-cut logging, such as the potential to spread invasive plants post-logging, the removal of mature forest impacting habitat for sensitive species reliant upon that forest structure, erosion, increased stream temperatures, other water quality impacts, compaction from logging activities, and windthrow, among others. The failure to acknowledge and/or adequately address potential adverse impacts is consistent throughout the discussion of all planning area resources.

If the Forest Service disagrees with the above characterization and believes that it did not adequately address potential adverse impacts of the proposed project for all relevant resources, Standing Trees requests that it identify where in the DEA or supporting documentation these impacts to each resource are discussed and analyzed.

Without actually analyzing, or at least disclosing, potential adverse impacts of the proposed activities, the Forest Service has not met its obligation to “consider... [i]mpacts that may be both beneficial and adverse[,]” 40 C.F.R. § 1508.27(b)(1), as part of its significance determination.

“The degree to which the proposed action affects public health or safety.” 40 C.F.R. § 1508.27(b)(2)

In its discussion of this consideration factor, the DEA points repeatedly to the fact that *similar* projects have been done in the past without resulting in substantial impacts to public health or safety. This entirely ignores the fact that even if similar categories of actions have been completed before (“e.g. recreation site construction and maintenance, transportation, and vegetation management”), each project location is unique and therefore analysis of potential impacts, here to public health and safety, must be done on a project-specific basis. It would completely defeat the purpose of requiring NEPA analysis if it were sufficient to simply point to past *types* of actions occurring successfully to justify future actions.

The DEA also claims that necessary standards and practices will be applied to “further ensure that potential impacts to public health and safety are minimized and avoided[,]” *id.* at 23, but fails to discuss anywhere in the EA what those potential impacts could be. Again, it is unclear how this consideration weighs against a finding of significance when it doesn’t appear to have been considered at all.

Further, the 2022 DEA failed to address public safety concerns raised in comments to the 2021 DEA related to the expansion of the Lake Katherine parking lot and boat launch. One comment by the administrators of the Lake Tarleton Association Lake Host program noted that there are already typically 25-30 non-motorized boats launched each weekend day, and the expansion will encourage additional use. The concern surrounds the associated increase in vehicles and trailers that will invariably park along Route 25C, causing traffic concerns, and safety concerns for those traversing the road to access the small parking lot. This factor also weighs in favor of requiring an EIS.

“Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.” 40 C.F.R. § 1508.27(b)(3)

The DEA claims that the project area “is not unique in its geographic setting[.]” 2022 DEA at 23. In support of this statement, it cites to the lack of “parklands, prime farmlands, or ecologically critical areas[.]” and noting that “[e]ligible Wild and Scenic Rivers or Forest Plan Inventoried Roadless Areas do not occur in the project area.” *Id.* Standing Trees does not take issue with the statement regarding prime farmland or Wild and Scenic Rivers, but does not agree regarding Inventoried Roadless Areas, park lands or ecologically critical areas.

Parklands

Although no longer under the direct management of the National Park Service after an administrative transfer to the U.S. Forest Service in 1994, the portion of the project area designated as MA 8.3 (Appalachian Trail) still retains a higher park-like protection than other Forest Service lands. In fact, the Appalachian Scenic Trail is described by the 2008 Appalachian National Scenic Trail Resource Management Plan (the “2008 AT Plan”) as “a 2,175-mile long unit of the National Park System.” *See* Exhibit 53. The WMNF Plan notes that these NPS acquired and transferred lands are “commonly referred to as either ‘corridor lands’ or ‘transfer lands’[.]” WMNF Plan at 3-45. It also indicates that “commercial timber management and salvage operations are prohibited” on “all National Park Service (NPS) acquired corridor lands.” Vegetation Management Standard S-1, WMNF Plan at 3-52 (parenthetical in original). Despite claiming that the project area contains no park lands, the Forest Service seems to anticipate that it would be called out on this issue, by stating that “project design is consistent with management direction for the Appalachian Trail.” DEA at 23. Standing Trees disagrees, and discusses this further in Section I(d)(v) below.

Ecologically Critical Areas

Even if the project area was not previously considered to be ecologically critical, which Standing Trees contests, it certainly should be now considering the recent proposed up-listing of the Northern Long-eared Bat (“NLEB”) from Threatened to Endangered under the Endangered Species Act. *See* Section I(d)(i) for detailed discussion on this matter. For purposes of the significance factor, it is sufficient to note that the DEA’s supporting February 2021 Biological Evaluation admits that NLEB are known to occur the project area, *id.* at 8, that they may forage and roost in mature stands in the project area, *id.*, that the project proposes to log at least 120 acres of mature forest, 2022 DEA at 10, 31, and that habitat loss is one of the primary drivers of mortality for this species. *Species Status Assessment Report for the Northern long-eared bat*, March 22, 2022, at iii.

Wetlands

The DEA admits that wetlands (an enumerated “unique” characteristic) are found in the project area, but immediately concludes that “these areas would not be measurably impacted by the project” and cites to its Environmental Impacts section in apparent support. 2022 DEA at 23.

First, whether or not the Service thinks the wetlands will be impacted does not make their existence any less of a “unique” factor within the geographic area. Second, the reference to the “Environmental Impacts” section, presumably to the sub-section titled “Hydrology”, does not say anything about wetlands in its sparse three sentences. 2022 DEA at 19. In fact, wetlands, and potential impacts to them, are not directly addressed anywhere in the DEA at all. *See* Section I(d)(iv) for further discussion on failure to take a hard look at impacts to water quality in general.

Inventoried Roadless Areas

According to Ch. 70 of the 1992 Directives for the 1982 Planning Rule, the forest block encompassing Lake Tarleton, Webster Slide, and Wachipauka Pond should have been identified during the 2005 Forest Plan revision process as an Inventoried Roadless Area and evaluated for its potential for wilderness designation by Congress. Exhibit 23. The 1992 Directives state:

7.11 - Inventory Criteria. Roadless areas qualify for placement on the inventory of potential wilderness if, in addition to meeting the statutory definition of wilderness, they meet one or more of the following criteria:

- 1. They contain 5,000 acres or more.*
- 2. They contain less than 5,000 acres but:*
 - a. Due to physiography or vegetation, they are manageable in their natural condition.*
 - b. They are self-contained ecosystems such as an island.*
 - c. They are contiguous to existing wilderness, primitive areas, Administration-endorsed wilderness, or roadless areas in other Federal ownership, regardless of their size.*
- 3. They do not contain improved roads maintained for travel by standard passenger-type vehicles, except as permitted in areas east of the 100th meridian (sec. 7.11b).*

7.11a - Criteria for Including Improvements. Roadless areas may qualify for inventory as potential wilderness even though they include the following types of areas or features.

- 1. Airstrips and heliports.*
- 2. Cultural treatments involving plantations or plantings where the use of mechanical equipment is not evident.*
- 3. Electronic installations, such as television, radio, and telephone repeaters, and the like, provided their impact is minimal.*

Given the criteria listed above, the WMNF seems to have failed its obligation to identify an Inventoried Roadless Area encompassing Lake Tarleton and surrounding lands. This omission can be corrected in future Forest Plan revisions, but the inventory and evaluation of the area’s roadless qualities and wilderness potential will be harmed by the actions proposed in the Tarleton IRP. The DEA should analyze these foreseeable impacts and constraints on future management decisions as it assesses the scale and scope of the Tarleton IRP and considers a range of alternatives.

Historic and Cultural Resources

As detailed in Section I(d)(ii) of these comments, there are also numerous historic and cultural resources located within the project area that contribute to the uniqueness of the geographical area and that weigh in favor of a finding of significance and the preparation of an EIS.

Other Unique Characteristics

Even if the none of the above listed characteristics qualify the project area as “unique,” this would not preclude the area from being considered “unique” for purposes of significance. 40 C.F.R. § 1508.27(b)(3)’s list of examples are just that – examples – as indicated by the use of “such as” in the language of the consideration factor.

Tarleton Lake and the surrounding area are unique in their own right because it is a popular and beloved recreation area held in high esteem not only by locals, but by others who travel great distances to recreate and enjoy the scenic values offered by the area in its current undisturbed state. This is evidenced by the massive effort undertaken to purchase the land surrounding the lake to protect it from development in the first place. In 2000, the New Hampshire Congressional Delegation, the Governor, numerous non-governmental organizations, and 600 individual donors came together to purchase the 5,300+ acres surrounding Lake Tarleton. This collective effort was well-documented in local news publications at the time, as evidenced in Exhibit 54. The land was given to the Forest Service preserve the land for the public in its natural state. Despite clear intent and purpose behind this transfer of land, the Service failed to integrate the necessary protections for this beloved area when it later revised and issued the 2005 WMNF Plan. This area and its unique character galvanized a regional movement to protect and preserve this land. To deny the unique character of this geographic area would be an affront to the hundreds, if not thousands, of people who worked so hard to preserve this unique and beloved area.

Considering all of the above outlined unique characteristics of the geographic area and the proposed project activities, the intensity of potential impacts to this area are high, and thus this consideration weighs heavily toward a finding of significance, and the preparation of an EIS.

“The degree to which the effects on the quality of the human environment are likely to be highly controversial.” 40 C.F.R. § 1508.27(b)(4)

Controversy exists where “a substantial dispute exists as to the size, nature, or effect of the major federal action rather than to the existence of opposition to a use.” *Found. For N. Am. Wild Sheep v. U.S. Dep’t of Agric.*, 681 F.2d 1172, 1182 (9th Cir. 1982); *see also Northwest Bypass Group v. U.S. Army Corps of Eng’rs*, 552 F. Supp. 2d 97, 136 (D.N.H. 2008). “A substantial dispute exists when evidence, raised prior to the preparation of an EIS or FONSI ... casts serious doubt upon the reasonableness of an agency’s conclusions.” *Nat’l Parks Conservation Ass’n.*, 241 F.3d 722, 736 (9th Cir. 2001).

Here, the DEA claims that “this project considered current scientific research, including that submitted by the public, to determine its applicability to the project and found no controversy related to the predicted effects.” 2022 DEA at 23. This is not correct. As noted previously in this document, there is a high degree of scientific controversy and significant disagreement with Forest Service scientific assertions related to:

- Management for early successional habitat;
- Management to improve carbon storage and sequestration, as well as climate adaptation and resilience;
- Management of beech trees, among other issues.

The existence of this controversy weighs in favor of a finding of significance and the preparation of an EIS.

“The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. 40 C.F.R. § 1508.27(b)(6)

The Tarleton IRP Proposed Action could irretrievably harm the forests surrounding Lake Tarleton while there is an active effort to reclassify the Management Area to 8.5 (Scenic Area), the MA that most accurately fits the project area. Further, the Proposed Action could harm or even disqualify the contiguous landscape stretching from Lake Tarleton to Webster Slide from Ch. 70 wilderness inventory and evaluation in subsequent Forest Plan revisions.

Similar to its consideration of public health and safety, here again the Service points to the prior use of the same types of activities having occurred in the forest before. 2022 DEA at 23 (“The proposed activities are well established on the Forest, and elsewhere in the region and nation.”). Again, prior implementation of a *type* of activity says nothing about the impact of that activity on a specific project location.

“Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” 40 C.F.R. § 1508.27(b)(7)

See Section I(d)(xii) of these comments for a detailed discussion regarding the 2022 DEA’s lack of analysis regarding cumulative impacts. As explained above in these comments, it is reasonable to anticipate a number of potential cumulative impacts flowing from this project, and thus this consideration factor also weighs in favor of a finding of significance and the preparation of an EIS.

“The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.” 40 C.F.R. § 1508.27(b)(8)

As already discussed in these comments, a number of historic and cultural resources exist within the project area. Despite failing to actually analyze impacts to these resources, we know that a rough inventory of some of these sites was taken. *See* Exhibit 9. However, even that document fails to catalogue or acknowledge known gravesites within the project area, including some specifically raised by commenters during initial scoping and during the 2021 DEA comment period. Without some sort of official acknowledgement of these historic resources, it is possible, if not likely, that they will be lost or damaged during project implementation because no protections or buffers will be observed to avoid these un-acknowledged resources. The potential loss or destruction of these historic sites weighs in favor of significance and the preparation of an EIS.

“The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. 40 C.F.R. § 1508.27(b)(9)

See Section I(d)(i) of these comments for a detailed discussion regarding potential project impacts on the Northern Long-Eared Bat, an ESA Threatened species that has recently been proposed for up-listing to Endangered. 87 Fed. Reg. 16442 (March 23, 2022), Exhibit 7. These potential impacts to the NLEB in light of its recent proposed up-listing weighs heavily in favor of a finding of significance, and needs to be fully analyzed in an EIS.

“Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment. 40 C.F.R. § 1508.27(b)(10)

If the Forest Service fails or refuses to reinitiate consultation with the USFWS in light of a completed up-listing of the NLEB and moves forward with proposed logging activities, it will be in violation of Section 7 of the ESA, which requires every federal agency to consult with USFWS to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.” 16 U.S.C. § 1536(a)(2). *See* Section I(d)(i) and Section 3 (ESA).

Additionally, as outlined below, the proposed logging in the MA 8.3 designation (Appalachian Trail), would likely be in violation of the Forest Plan, and thus a violation of the National Forest Management Act. 16 U.S.C. § 1604.

For all of the reasons outlined above the Forest Service should rescind its FONSI and prepare an EIS to evaluate the significant impacts posed by this proposed project.

iii. The DEA unlawfully relies on mitigation measures to avoid a finding of significance

The DEA makes numerous references to project design features and protective measures that will or could be put into place to allegedly mitigate the undisclosed project impacts. However, the Service may not reply upon mitigation measures to avoid preparing an EIS, if those impacts may have been significant prior to implementation of those measures.

Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies . . . should not rely on the possibility of mitigation to avoid the EIS requirement.

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such *possible* mitigation does not obviate the need for an EIS . . . [Preparation of an EIS] is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.”

Sierra Club v. Marsh, 769 F.2d 868, 877 (1st Cir. 1985) (quoting *Forty Most Asked Questions*, *supra*, 46 Fed. Reg. 18028, 18038 (1981)) (citations omitted) (emphasis in original).

For example, the Cultural Resource Reconnaissance Report indicates that there would be direct impacts to the resources. There is no analysis provided regarding the potential significance of the impact, because they immediately say impacts will be avoided based on mitigation measures. While binding mitigation measures may be used to ultimately avoid impacts, the agency must still acknowledge the significant impact of the unmitigated action and fully analyze and disclose it before making this decision.

f. The proposed up-listing of the Northern Long-Eared Bat requires additional NEPA analysis

For the same reasons discussed above in Section I(d)(i), the proposed up-listing of the Northern Long-eared Bat is a “significant new circumstance[.]” and provides “information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(d). The Forest Service must therefore complete additional NEPA analysis to adequately address the impacts of these significant new circumstances. As outlined above, this analysis should be done in an EIS, in addition to reinitiating consultation under the ESA.

II. NFMA Violations

The NFMA, 16 U.S.C. §§ 1600–1614, requires the Forest Service to develop and implement a Forest Plan for each unit of the National Forest System. 16 U.S.C. § 1604. Projects in each forest must be consistent with its relevant Forest Plan, *see Great Old Broads for Wilderness v. Kimbell*, 709 F.3d 836, 850 (9th Cir. 2013), and reviewing courts must be able to reasonably ascertain that the Forest Service complied with that Forest Plan. *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 963 (9th Cir. 2005).

The above comments have outlined a number of WMNF Plan standards and guidelines that this project threatens to violate, including those for scenery, vegetation management, wildlife, and general management. The relative dearth of analysis or underlying supporting data

or documentation for the Service's claims means that the public is unable to reasonably ascertain whether the Service has complied with these standards. Standing Trees and the Lake Tarleton Coalition are confident that any court would agree.

To avoid potentially violating NFMA by approving a project that not only permits, but calls for, violations of the Forest Plan, the Forest Service must reopen or restart its NEPA analysis to address the deficiencies identified in these comments.

CONCLUSION

For the reasons discussed above, in order to comply with the NEPA, NFMA, and the ESA, the Forest Service must prepare additional NEPA analysis to adequately evaluate the potential significant environmental impacts of the proposed Tarleton IRP. The Forest Service should also reinitiate consultation with the USFWS to address Project impacts to the Northern Long-Eared Bat, which has been recently proposed for up-listing from Threatened to Endangered. To meet its statutory and regulatory obligations, the Forest Service must complete an EIS for the Project, or at the very least complete supplemental NEPA analysis in the form a new EA or supplemental EA, to correct the deficiencies identified in these comments.

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Exhibits

1. September 5, 2001 article in the Bradford *Opinion Journal*
2. USDA FOREST SERV., CITIZEN’S GUIDE TO NATIONAL FOREST PLANNING (2016)
3. Hall and Porter email chain regarding Soils Report and SHPO letter dated May 2, 2022
4. New Hampshire State Historic Preservation Office concurrence letter dated 2/18/2021
5. Faletta and Hall email chain regarding availability of age-class map, dated November 19, 2021
6. Executive Order 14072 on Strengthening the Nation’s Forests, Communities, and Local Economies (April 22, 2022)
7. US FISH & WILDLIFE SERV., ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED SPECIES STATUS FOR NORTHERN LONG-EARED BAT, 87 Fed. Reg. 16442 (March 23, 2022)
8. US FISH & WILDLIFE SERV., SPECIES STATUS ASSESSMENT REPORT FOR THE NORTHERN LONG-EARED BAT (MYOTIS SEPTENTRIONALIS) VERSION 1.1 (MARCH 22, 2022)
9. White Mountain National Forest Cultural Reconnaissance Report for Tarleton IRP dated 1/29/2021, Reviewed 2/4/2021 (CRRR# 2019-04-07)
10. New Hampshire Climate Action Plan (2009)
11. Intergovernmental Panel On Climate Change, Summary for Policymakers
12. Glasgow Leaders’ Declaration
13. Erb et al., UNEXPECTEDLY LARGE IMPACT OF FOREST MANAGEMENT AND GRAZING ON GLOBAL VEGETATION BIOMASS (2018)
14. Harris et al., ATTRIBUTION OF NET CARBON CHANGE BY DISTURBANCE TYPE ACROSS FOREST LANDS OF THE COTERMINOUS UNITED STATES (2016)
15. Brown et al., TIMBER HARVEST AS THE PREDOMINANT DISTURBANCE REGIME IN NORTHEASTERN U.S. FORESTS: EFFECTS OF HARVEST INTENSIFICATION (2018)
16. Duveneck and Thompson, SOCIAL AND BIOPHYSICAL DETERMINATIONS OF FUTURE FOREST CONDITIONS IN NEW ENGLAND: EFFECTS OF A MODERN LAND-USE REGIME (2019)
17. Zaino et al., VERMONT CONSERVATION DESIGN – NATURAL COMMUNITY AND HABITAT TECHNICAL REPORT (2018)

18. Keith et al., RE-EVALUATION OF FOREST BIOMASS CARBON STOCKS AND LESSONS FROM THE WORLD'S MOST CARBON-DENSE FORESTS (2009)
19. Luysaert et al., OLD-GROWTH FORESTS AS GLOBAL CARBON SINKS (2008)
20. Masino et al., OLDER EASTERN WHITE PINE TREES AND STANDS SEQUESTER CARBON FOR MANY DECADES AND MAXIMIZE CUMULATIVE CARBON (2021)
21. Stephenson et al., RATE OF TREE CARBON ACCUMULATION INCREASES CONTINUOUSLY WITH TREE SIZE (2014)
22. Keeton et al., LATE-SUCCESSIONAL BIOMASS DEVELOPMENT IN NORTHERN HARDWOOD-CONIFER FORESTS OF THE NORTHEASTERN UNITED STATES (2011)
23. Forest Service 1992 Directives for the 1982 Planning Rule
24. Moomaw et al., INTACT FORESTS IN THE UNITED STATES: PROFORESTATION MITIGATES CLIMATE CHANGE AND SERVES THE GREATEST GOOD (2019)
25. Dinerstein et al., A GLOBAL SAFETY NET TO REVERSE BIODIVERSITY LOSS (2020)
26. Jung et al., AREAS OF GLOBAL IMPORTANCE FOR TERRESTRIAL BIODIVERSITY, CARBON, AND WATER (2020)
27. Underwood and Brynn, ENHANCING FLOOD RESILIENCY OF VERMONT STATE LANDS (2015)
28. Warren et al., FOREST STREAM INTERACTIONS IN EASTERN OLD-GROWTH FORESTS (2018)
29. Thom et al., THE CLIMATE SENSITIVITY OF CARBON, TIMBER, AND SPECIES RICHNESS COVARIES WITH FOREST AGE IN BOREAL-TEMPERATE NORTH AMERICA (2019)
30. Comments of Stephen Alden on Tarleton IRP
31. US ENVIRONMENTAL PROTECTION AGENCY, 2020–2022 NEW HAMPSHIRE 303(D) LIST OF IMPAIRED WATERS (downloaded on May 6, 2022, from: <https://www.epa.gov/tmdl/new-hampshires-2020-2022-303d-list-report-and-related-documents> , <https://www.epa.gov/system/files/documents/2022-03/2020-2022-nh-303d-list.pdf>)
32. G. Coffey comment on 2021 DEA dated 8/5/2021
33. Anonymous comment on 2021 DEA dated 8/5/2021
34. J. Cooley comment on 2021 DEA dated 8/5/2021
35. E. Faletra Comment on 2021 DEA dated 8/5/2021
36. USDA FOREST SERV., LANDSCAPE AESTHETICS: A HANDBOOK FOR SCENERY MANAGEMENT (1995)

37. USDA FOREST SERV., FOREST SERVICE MANUAL EASTERN REGION; SUPPLEMENT NO. R9 RO 2550-2012-1; FSM 2500 – WATERSHED AND AIR MANAGEMENT, CHAPTER 2550 – SOIL MANAGEMENT (JAN. 31, 2012)
38. Lorimer and White, SCALE AND FREQUENCY OF NATURAL DISTURBANCES IN THE NORTHEASTERN US: IMPLICATIONS FOR EARLY SUCCESSIONAL FOREST HABITATS AND REGIONAL AGE DISTRIBUTIONS (2003)
39. Oswald et al., CONSERVATION IMPLICATIONS OF LIMITED NATIVE AMERICAN IMPACTS IN PRE-CONTACT NEW ENGLAND (2020)
40. Nowacki and Abrams, THE DEMISE OF FIRE AND “MESOPHICATION” OF FORESTS IN THE EASTERN UNITED STATES (2008)
41. Ceballos et al., VERTEBRATES ON THE BRINK AS INDICATES OF BIOLOGICAL ANNIHILATION AND THE SIXTH MASS EXTINCTION (2020)
42. [“Climate Change 2021: The Physical Science Basis”](#) (Working Group I contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change)
43. Dreiss and Malcom, GETTING TO 30X30: GUIDELINES FOR DECISION-MAKERS (2020)
44. Dinerstein et al., A GLOBAL DEAL FOR NATURE: GUIDING PRINCIPLES, MILESTONES, AND TARGETS (2019)
45. Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad (January 27, 2021)
46. Watson et al., THE EXCEPTIONAL VALUE OF INTACT FOREST ECOSYSTEMS (2019)
47. DiMarco et al., WILDERNESS AREAS HALVE THE EXTINCTION RISK OF TERRESTRIAL BIODIVERSITY (2019)
48. Miller et al., EASTERN NATIONAL PARKS PROTECT GREATER TREE SPECIES DIVERSITY THAN UNPROTECTED MATRIX FORESTS (2018)
49. Miller et al., NATIONAL PARKS IN THE EASTERN UNITED STATES HARBOR IMPORTANT OLDER FOREST STRUCTURE COMPARED WITH MATRIX FORESTS (2016)
50. Askins, Robert A., THE CRITICAL IMPORTANCE OF LARGE EXPANSES OF CONTINUOUS FOREST FOR BIRD CONSERVATION (2015)
51. Thorn et al., THE LIVING DEAD: ACKNOWLEDGING LIFE AFTER TREE DEATH TO STOP FOREST DEGRADATION (2020)
52. Evans and Mortelliti, EFFECTS OF FOREST DISTURBANCE SNOW DEPTH AND INTRAGUILD DYNAMICS ON AMERICAN MARTEN AND FISHER (2022)

53. US NATIONAL PARK SERV., APPALACHIAN NATIONAL SCENIC TRAIL RESOURCE MANAGEMENT PLAN (2008)
54. Various newspaper clippings and letters detailing history of Lake Tarleton purchase (various dates)
55. Forest Service 2015 Planning Direction