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May 1, 2023

Derek Ibarguen, Reviewing Officer
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Submitted via: <https://cara.fs2c.usda.gov/Public//CommentInput?Project=56394> and certified U.S. mail (#7018 3090 0001 5600 9072).

Re: Objection Pursuant to 36 C.F.R. § 218.8 to Tarleton IRP, Pemigewasset Ranger District, White Mountain National Forest

Dear Objection Reviewing Officer:

Standing Trees and The Lake Tarleton Coalition respectfully file¹ this objection to the Tarleton Integrated Resource Project (“IRP”) (the “Project”) under the process identified in 36 C.F.R. § 218.8. Notice of availability of the Draft Decision Notice (“DDN”), Final Environmental Assessment (“Final EA”), and Finding of No Significant Impact (“FONSI”) was published in the newspaper of record, New Hampshire Union Leader, on March 16, 2023. This objection is timely as the deadline to submit objections is May 1, 2023. We submit this objection via certified U.S. mail and electronically. The certified mail copy includes a thumb drive containing electronic copies of all the exhibits cited below.² A list of those exhibits is included at the end of this objection.

¹ Standing Trees and The Lake Tarleton Coalition wish to thank Vermont Law and Graduate School Spring 2023 Environmental Advocacy Clinic students, Isabella Pardales and Sarah Christopherson, for authoring this objection.

² The thumb drive also contains electronic copies of all exhibits cited in our May 11, 2022 comment. Exhibits included in the May 11, 2022 Standing Trees and The Lake Tarleton Coalition comment on the Tarleton IRP Updated Draft EA are referred to below as “(Comment Exhibit __).” New exhibits referenced in this objection are referred to below as “(Exhibit __).”

PROJECT

Pursuant to 36 C.F.R. § 218.8(d)(4), we object to the following project:

Project: Tarleton Integrated Resource Project, Grafton County, New Hampshire

Responsible Official and Forest/Ranger District: Derek Ibarguen, White Mountain National Forest Supervisor and Pemigewasset Ranger District, White Mountain National Forest

ELIGIBILITY TO OBJECT

Standing Trees is a grassroots membership organization that works to protect and restore New England's forests, with a focus on state and federal public lands in Vermont and New Hampshire. Standing Trees works to ensure New England's public lands are managed using just and equitable policies and practices 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 the White Mountain National Forest ("WMNF"), including the area impacted by the Tarleton IRP. The Environmental Advocacy Clinic at Vermont Law and Graduate School submits this objection on behalf of Standing Trees.

The Lake Tarleton Coalition also joins this objection. 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 in the WMNF. Many of the Coalition's members have been involved in efforts to protect Lake Tarleton for decades.

Standing Trees and The Lake Tarleton Coalition jointly filed a timely, specific, and substantive comment during the Draft Environmental Assessment Comment Period for the Project at issue on May 11, 2022. An additional group of individuals filed an identical comment on May 11, 2022. These individuals are Lake Tarleton residents and users, and they join this objection. Throughout this objection, the use of "we" and "our" refers to all Objectors collectively: Standing Trees, The Lake Tarleton Coalition, and the additional individuals mentioned above. Under 36 C.F.R. § 218.8, we have standing to file an objection. All points and issues raised in this objection refer to issues raised in our May 11, 2022 comments on the Updated Draft EA or are related to new information, pursuant to 36 C.F.R. § 218.8(c).

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Pursuant to 36 C.F.R. § 218.8(d)(3), the "Lead Objector" is:

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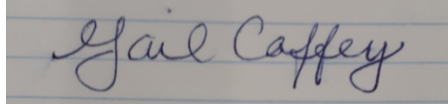


OBJECTOR CONTACT INFORMATION

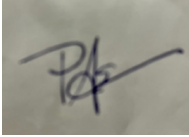
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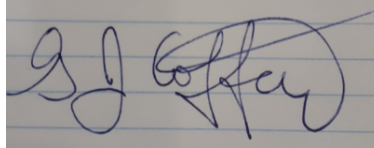
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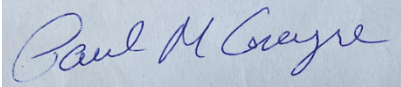
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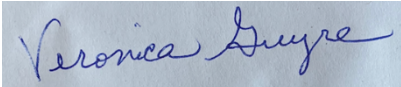
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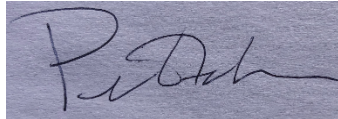
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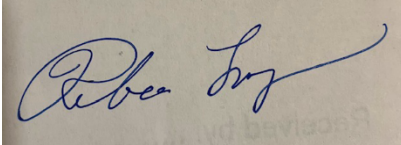
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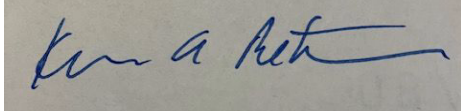


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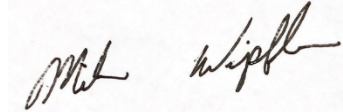
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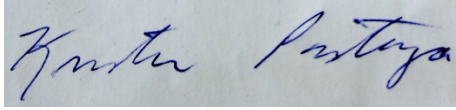
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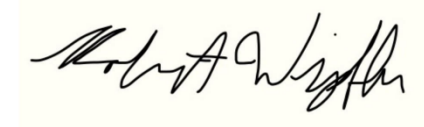
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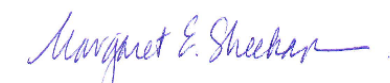
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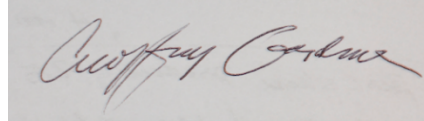
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INTRODUCTION

Lake Tarleton is a clear, cold, and quiet mountain lake in Grafton County, New Hampshire. It is surrounded by undisturbed forests sloping to the shoreline, loons calling through the mist, and the alpine tundra-topped Mt. Moosilauke looming in the distance. It is an iconic corner of the WMNF, with a rocky, undeveloped shoreline surrounded by massive hemlocks and stately white pines. As conceived by the Forest Service, the Tarleton IRP puts a long history of community-led conservation at risk. In 1994, the proposal of a massive resort surrounding Lake Tarleton inspired a multi-year conservation effort, led by the Trust for Public Land (“TPL”) to preserve Lake Tarleton. Organizations, countless individuals, businesses, the State of New Hampshire, and the U.S. Congress worked to raise \$7.5 million to secure public ownership forever as part of the WMNF. Their vision of permanent conservation was unmistakable, and this flawed Project threatens to destroy that vision.

In making its case to the Piermont and Warren Selectboards, TPL made it clear that its vision was for a wild Lake Tarleton. According to the September 5, 2001 edition of the *Bradford Journal Opinion*:

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[.]³

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.”⁴

This Project disregards the importance of these lands and waters to the community and treats one of New Hampshire’s largest, cleanest, and least developed lakes as a woodlot. It is far

³ September 5, 2001 article in the *Bradford Opinion Journal* (Comment Exhibit 1).

⁴ Trust for Public Land, *Residents Celebrate Protection of Lake Tarleton (NH)* (Aug. 23, 2000) <https://www.tpl.org/media-room/residents-celebrate-protection-lake-tarleton-nh#:~:text=Warren%2C%20New%20Hampshire%3A%20Today%20U.S.,Warren%2C%20Piermont%2C%20and%20Benton> (Exhibit 34).

past time to permanently remove the threat of logging and development from Lake Tarleton, as the community was led to believe this was the result of the lake's protection.

The Forest Service's founding motto implores the agency to *manage our public forests for the benefit of the greatest good for the greatest number for the longest time*. The public interest is best served by protecting Lake Tarleton, and its exceptional ecological integrity. The Forest Service has failed to meaningfully engage local stakeholders in project development and ignored the imperative to protect the many intact values of Lake Tarleton. The Project offends the purpose of the WMNF Plan and threatens forest health, climate resilience, water quality, habitat for imperiled species, and the scenic beauty and recreational opportunities for which this treasured landscape is prized. We next provide the specific reasons for this objection and our requested remedies, along with related evidence and rationale on why the Project violates applicable laws and regulations.

CONCISE STATEMENT OF OBJECTIONS

The Tarleton IRP authorizes various actions such as logging, road construction, and the creation of a boat launch in the WMNF. Without meaningful justification and after sidestepping substantive and procedural requirements of federal law, the Forest Service has erroneously decided the Tarleton IRP is needed to implement the management direction in the WMNF Plan and meet the Plan's goals, objectives, and desired conditions for vegetation, wildlife, and other resources. We identify concerns as raised in our comment submitted on May 11, 2022, and issues based on new information that arose after the opportunity to comment closed, pursuant to 36 C.F.R. § 218.8(c).

The Forest Service failed to demonstrate compliance with the National Environmental Policy Act ("NEPA"), National Forest Management Act ("NFMA"), Clean Water Act ("CWA"), Endangered Species Act ("ESA"), and Administrative Procedure Act ("APA"). The Draft Decision Notice ("DDN")⁵, Environmental Assessment ("EA"),⁶ and Finding of No Significant Impact ("FONSI")⁷ violate specific provisions of NEPA, NFMA, ESA, Council on Environmental Quality ("CEQ") guidance, and recent executive orders. Of particular concern is the Forest Service's continued failure to: (1) meaningfully involve the public; (2) take a hard look at impacts on the human environment; (3) consider reasonable alternatives in detail; (4) use

⁵ *Tarleton Integrated Resource Project: Draft Decision Notice*, U.S. FOREST SERVICE 1 (March 15, 2023), <https://usfs-public.app.box.com/v/PinyonPublic/file/1165699833894> (in Tarleton IRP project file at filename Tarleton Draft Decision Notice.pdf) (hereinafter "DDN").

⁶ *Tarleton Integrated Resource Project: Final Environmental Assessment and Finding of No Significant Impact*, U.S. FOREST SERVICE 1 (March 16, 2023) <https://usfs-public.app.box.com/v/PinyonPublic/file/1165697234983> (in Tarleton IRP project file at filename Tarleton Environmental Assessment and Finding of No Significant Impact.pdf) (hereinafter "Final EA").

⁷ *Id.* at 23.

the best available science; (5) and adequately consider the Project's impact on the endangered Northern Long-eared Bat ("NLEB").

The Forest Service should implement our suggested Alternative #3 discussed in Section I(c) below. This alternative would improve recreation resources, habitat restoration, and designate the land as a protected Scenic Area through a Forest Plan amendment—as the public intended when the land was acquired by the WMNF over 20 years ago. Alternatively, to cure the manifest errors in the Final EA and FONSI, and given the significance of this Project, the Forest Service should prepare an Environmental Impact Statement ("EIS") to adequately evaluate the significant impacts posed by the Tarleton IRP. If needed, the Forest Service should also update the WMNF Plan as required under NFMA to clarify and protect the outstanding resource value of the area around Lake Tarleton.

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OBJECTIONS

I. The Final EA Is Inadequate Under NEPA and New Analysis Must be Conducted.

The Tarleton IRP is a major federal action that is likely to significantly affect the quality of the human environment, warranting an Environmental Impact Statement (“EIS”) pursuant to 40 C.F.R. § 1502.3.⁸ NEPA has “twin aims,” imposing on “an agency the obligation to consider every significant aspect of the environmental impact of a proposed action . . . and ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision making process.”⁹ Preparation of an EIS is required when an agency’s action *may* have a significant effect on the environment.¹⁰ Over multiple comment periods, the public raised serious and substantiated concerns about the Forest Service’s failure to fully evaluate the Tarleton IRP in accordance with NEPA. These concerns went unacknowledged by the Forest Service.

Requested Remedy: The Forest Service must complete an EIS for the Tarleton IRP to cure deficiencies in the Final EA as outlined in our comment and expanded upon below.

a. The Public Involvement Process Was Burdened in Violation of NEPA.

Public involvement in the Tarleton IRP has consistently been thwarted by the unavailability of supporting documents, a lack of sufficient detail, and inadequate public engagement in project development. The Project was initially presented to the public at the height of the COVID-19 pandemic, at a time when the public rightly avoided in-person gatherings or visits to town offices where relevant information was posted. A significant percentage of the local population continues to lack access to high-speed internet, preventing many from participating in the NEPA process. Notwithstanding the second comment opportunity, little has changed, with regards to public engagement and availability of supporting information, from the Updated Draft EA to the Final EA. The public is unable 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 conclusory statements. Agency conclusions in an EA “must be supported by some quantified or detailed information, and the underlying environmental data relied upon. . . must be made available to the

⁸ 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* Final EA at 4. 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 this objection are to the 2019 version. *See Bair v. California Dep’t of Transp.*, 982 F.3d 569, 582 (9th Cir. 2020).

⁹ *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983).

¹⁰ *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 444 F. Supp. 3d 832, 854 (S.D. Ohio 2020) (quoting *Mont. Wilderness Ass’n v. Fry*, 310 F. Supp 2d 1127, 1144 (D. Mont. 2004)).

public to allow for informed public comment on the project.”¹¹ The Final EA contains “simple, conclusory statements” without carefully analyzing environmental impacts.¹² It offers little more than a “checklist of assurances and alternatives,” void of reasoned thought and analysis.¹³ Agencies must make genuine efforts to involve the public in their NEPA procedures,¹⁴ and we continue to demand better from the federal agency entrusted as caretaker of Lake Tarleton.

As raised initially in our comment on the Updated Draft EA, supporting documentation has consistently lagged behind the Forest Service’s release of documents triggering time-limited public comment opportunities. We have consistently requested information from the Forest Service that should have accompanied the Project’s public documents, only to be met with delays, refusals, and the cumbersome need to compel disclosures under the Freedom of Information Act (“FOIA”).¹⁵ The Soils Specialist Report and the New Hampshire State Historic Preservation Officer (“SHPO”) concurrence letter were not made available to the public until weeks after the publication of the Updated Draft EA, and only at our request.¹⁶ In November 2021, we requested a stand age class map for the areas proposed for harvest in the Tarleton IRP, but the WMNF refused to provide it.¹⁷ On March 7, 2023, we requested information on the age of the stands proposed for harvest.¹⁸ The Forest Service directed us to the Habitat Management Unit Rationale, which does not provide information about stand age for those proposed for harvest.¹⁹ We submitted a request under FOIA on March 2, 2023, for information related to the Tarleton IRP, only to be told our request would take up to six months to review internally, far past the end of this objection period.²⁰ Only after submission of another FOIA request on March 30, 2023, did we receive some information of interest, information that should have been publicly available from the start—with only about two weeks to review and understand the

¹¹ *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 444 F. Supp. 3d at 858-59.

¹² *Touret v. NASA*, 485 F. Supp. 2d 38, 45 (D.R.I. 2007).

¹³ *Id.*

¹⁴ 40 C.F.R. § 1506.6(a).

¹⁵ In responding to these documents, we do not concede that these disclosures represent final, definitive statements by the agency as they are ambiguous, often with non-cognizable rationale.

¹⁶ E-mail from Scott Hall, USFS NEPA Planner, to Zack Porter (May 2, 2022) (Comment Exhibit 3).

¹⁷ E-mail from Scott Hall, USFS NEPA Planner, to Elaine Faletra (November 19, 2021) (Comment Exhibit 5).

¹⁸ E-mail from Brooke Brown, Pemigewasset District Ranger, to Rob Wipfler (March 30, 2023, 9:07AM) (Exhibit 1).

¹⁹ *Id.*

²⁰ The six-month estimated review time does not include anticipated time for processing the records themselves. E-mail from Isabella Pardales to Region 9 FOIA Coordinator (March 2, 2023, 8:01 AM) (Exhibit 2); E-mail from Marry Stewart, Acting Regional FOIA Coordinator, to Isabella Pardales (March 23, 2023, 10:15 AM) (Exhibit 3).

response.²¹ On April 4, 2023, we requested the Northern Long-eared Bat (“NLEB”) Biological Assessment (“BA”) only to be incorrectly informed it was not considered a public document.²² Upon submission of this objection, the public still has no access to the NLEB BA. The Final EA makes repeated reference to similar, unspecified past harvest projects to justify the no impact conclusion.²³ The DDN similarly claims the decision “tiers to management decisions made over 30 years ago” and claims the land is “now ready for active management.”²⁴ No references or citations are provided to those “management decisions” or past harvest activity so the public can verify these claims. These are just a few examples of the types of information not timely provided to the public, even when requested.²⁵

The Forest Service cumulatively received over 600 unique comment letters regarding the Tarleton IRP, and yet did not summarize or analyze them in a *meaningful* publicly available way.²⁶ After the release of a second draft EA and FONSI, the Forest Service published a two-page, overly simplified summary of the public involvement to date. The document effectively amounts to a single page of comment summary and lacks substantive and meaningful consideration of issues raised by the public. The Forest Service initiated a second 30-day comment period and yet failed to provide more than a cursory summary of public comments on the Project. Instead, we took it upon ourselves to summarize the 500+ comments.²⁷ Over 90% of comments were in opposition to the Project. The Appalachian Trail Conservancy stated: “[i]n the land that comprises the Tarleton IRP, ATC recognizes a substantial wild and intact landscape of a scale uncommon throughout the length of the A.T. . . opportunities to maintain intact forests at this scale are few and far between and should be considered in this broader context.”²⁸ The TPL suggested future management decisions at Lake Tarleton should be folded into the WMNF Plan revision to ensure a complete and thorough public process.

On March 7, 2023, we inquired about comment responses for the second comment period and were told by the WMNF that responses are not available for public review.²⁹ In conflict with this response, we received a draft of the “Tarleton Second 30-Day Comment Period Concern

²¹ Letter from Derek Ibarguen, WMNF Forest Supervisor, to Rob Wipfler (April 12, 2023) (Exhibit 4).

²² E-mail from Suzanne Gifford, USFS Ecologist and Wildlife Biologist, to Zack Porter (April 10, 2023, 1:37 PM) (Exhibit 5).

²³ Final EA at 6, 7, 19, 24, 25.

²⁴ DDN at 2.

²⁵ Members of the public should not be required to submit FOIA requests to view project documents.

²⁶ *Id.* at 4.

²⁷ Standing Trees, *Categorization of Lake Tarleton Comments* (July 2022) (Exhibit 6).

²⁸ Appalachian Trail Conservancy, *Comment on Updated DEA* (May 11, 2022); Trust for Public Land, *Comment on Updated DEA* (May 11, 2022).

²⁹ E-mail from Brooke Brown, Pemigewasset District Ranger, to Rob Wipfler (March 30, 2023, 9:07AM) (Exhibit 1).

Responses” on April 14, 2023, through a FOIA request.³⁰ We also received a detailed document responding to our comments.³¹ However, this document does not constitute a final or official response, and it was only received as the result of a FOIA request. The public *never* received a draft or final comment response document. Standing Trees, members of The Lake Tarleton Coalition, and other members of the public were under the impression the Forest Service would provide a cumulative and intelligible comment response document. By way of example, when assessing the Santa Fe Mountains Landscape Resiliency Project, the Forest Service prepared a “Public Comment Period Content Analysis and Response” document prior to the release of a Final EA after receipt of 123 public comment letters.³² This document was thirty-three pages long and substantively responded to raised issues, summarizing representative comments for consistent issues. Yet upon receipt of over 500 public comment letters for the Tarleton IRP, the Forest Service failed to analyze or respond to the public’s concerns with clarity or transparency.

In regards to the Lake Tarleton region, the WMNF was specifically asked in comments during the Forest Plan revision “to provide a management plan for the Lake Tarleton area.”³³ As the Lake Tarleton area was newly added to the WMNF, and it is a unique and treasured landscape. In response to this public comment, the WMNF said:

The White Mountain Forest Plan revision does not include a level of detail that specifies separate management plans for local areas such as Lake Tarleton. The Forest Plan identifies the general purpose and desired land conditions for each management area, and allows projects and activities to be planned on a case-by-case basis.³⁴

This response ignores the fact that the WMNF should have analyzed alternative Management Area (“MA”) designations for this landscape. In all four alternatives considered during Forest Plan revision, the Lake Tarleton region was designed MA 2.1. In refusing to acknowledge, discuss, and analyze an adequate range of management options for the Lake Tarleton area prior to the publication of the 2005 Forest Plan, the Forest Service told the public that future “project and activities” in the Lake Tarleton area will be planned “on a case-by-case

³⁰ Tarleton Second 30-Day Comment Period Concern Responses, U.S. FOREST SERVICE (Sept. 5, 2022) (Exhibit 7).

³¹ Copy of Tarleton LongForm PDFRTCDRAFT Working, U.S. FOREST SERVICE (Apr. 14, 2023) (Exhibit 8).

³² *Santa Fe Mountains Landscape Resiliency Project: Draft Environmental Assessment Public Comment Period Content Analysis and Response*, U.S. FOREST SERVICE 1 (2021) <https://drive.google.com/file/d/1z6lid22zC8WZvVzKpUtNANVsnuh-0wKm/view> (Exhibit 9).

³³ U.S. FOREST SERV., 2005 WMNF FOREST PLAN – FINAL ENVIRONMENTAL IMPACT STATEMENT- APPENDIX A A-1, A-234 (2005) (hereinafter “WMNF Plan - Final EIS - Appendix A”).

³⁴ *Id.*

basis” and that “public participation will be an important part of the process we use for making site-specific management decisions.”

This refusal to conduct a robust analysis during plan revision placed an added burden on the WMNF during future plan development to conduct robust public engagement and scoping. And yet, local residents and business owners surrounding Lake Tarleton, including Kingswood Camp, heard nothing from the Forest Service with regards to proposals for the Lake Tarleton area for over 15 years following completion of the WMNF Plan. When Kingswood Camp and local residents did hear from the WMNF, it was only *after* the Forest Service had developed plans for the Tarleton IRP.

In sum, if the WMNF claims the 2005 Forest Plan was not the time to assess possible management options for the Lake Tarleton region, and the Forest Service was committed to future “public participation” for “site-specific management decisions” on a “case-by-case basis,” the WMNF has failed to follow-through on its promises.

The overall effect of the described inadequacies is the impediment of public participation, in violation of NEPA’s clear mandate to “encourage and facilitate public involvement in decisions which affect the quality of the human environment.”³⁵ The Forest Service’s decisions to impede public participation are in violation of NEPA’s mandate, as the public should not have to “parse the agency’s statements to determine” project impacts.³⁶

Requested Remedy: The Forest Service must adequately engage with the public and complete an EIS for the Tarleton IRP to cure the described inadequacies.

b. The Purpose and Need Statement Is Legally Deficient Under NEPA, NFMA, and Relevant Executive Orders.

NEPA directs the Forest Service to “specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”³⁷ The statement should accurately reflect the proposed action’s purpose and need because it informs the range of alternatives the agency considers as part of its NEPA analysis.³⁸ The Final EA states the primary purpose of the Tarleton IRP is “to implement the management direction in the Forest Plan by advancing forest plan goals, objectives, and desired conditions for vegetation, wildlife, and other resources.”³⁹ The Forest Service claims the Project is needed:

(1) to improve wildlife and habitat diversity within the Tarleton HMU; (2) help meet the goals and objectives for wildlife and vegetation described in the Forest Plan; (3) increase

³⁵ 40 C.F.R. § 1506.6(a).

³⁶ *League of Wilderness Defs.-Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 761 (9th Cir. 2014).

³⁷ 40 C.F.R. § 1502.13; *See* 40 CFR § 1501.5(c)(2), § 1502.13 (2020).

³⁸ *League of Wilderness Defs.-Blue Mountains Biodiversity Proj. v. U.S. Forest Serv.*, 689 F.3d 1060, 1069 (9th Cir. 2012).

³⁹ Final EA at 5.

forest health, vitality, and resiliency within the project area, including the effects of climate change, and insect and disease outbreaks; (4) address the lack of open forest conditions; (5) provide a sustainable yield of high-quality timber products; (6) promote wildlife habitat objectives; (7) address the lack of adequate forested buffer along the shoreline of Lake Katherine; (8) improve aquatic habitat; (9) expand one existing apple orchard; (10) redesign the Tarleton Fields Wildlife Opening; and (11) to construct a boat launch on Lake Katherine.⁴⁰

The purpose and need statement suffers from two major flaws. First, this detailed purpose and need statement precludes adequate alternative action analysis, a failing of the EA discussed below.⁴¹ It structures the Final EA to presuppose that the Forest Plan goals could *only* be accomplished by *this* proposed action, as action alternatives that fit the above listed needs would be unduly narrow. This unreasonably narrow purpose and need statement and the resulting lack of alternatives analysis—discussed further below—violates NEPA.⁴² The purpose and need statement should be framed in a way that supports consideration of an accurate range of alternatives.

Second, the purpose and need statement is outdated for failing to incorporate recent authorities that must inform it. A properly crafted purpose and need statement would integrate an accurate account of Forest Plan objectives and current Executive Orders.⁴³ The purpose and need statement for the Tarleton IRP fails on both accounts. The Forest Service repeatedly claimed the purpose and need for the Tarleton IRP is driven by WMNF Plan goals and objectives. Yet the WMNF Plan is profoundly outdated at nearly 17 years old, and in utter conflict with NFMA's intent that forest plans be updated on a regular basis to reflect updated science, management objectives, and community needs. The Forest Service claims revision of the WMNF Plan is out of scope for the Project, yet the Project is entirely predicated on the WMNF Plan.⁴⁴ The Tarleton IRP further fails to reconcile the purpose and need statement with current Executive Orders 14072 and 14008, which aim to foster forest conservation, enhance forest resilience, and assess mature forests.⁴⁵ Before proceeding with the Tarleton IRP, the Forest Service should reconcile this more recent direction with the objectives of the WMNF Plan. The FS must connect stand conditions, best science, and desired future conditions to this supposed need for the Project. The

⁴⁰ Final EA at 6-7.

⁴¹ *City of Carmel-By-The-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1995).

⁴² *Nat'l Parks & Conservation Ass'n v. BLM*, 606 F.3d 1058, 1070-72 (9th Cir. 2010).

⁴³ Exec. Order No. 14072, 87 Fed. Reg. 24851 (Apr. 22, 2022) (Comment Exhibit 6); Exec. Order No 14008, 86 Fed. Reg. 19 (Jan. 27, 2021) (Comment Exhibit 45).

⁴⁴ Tarleton Second 30-Day Comment Period Concern Responses, U.S. FOREST SERVICE Seq#27 (Sept. 5, 2022) (Exhibit 7).

⁴⁵ Exec. Order No. 14072, 87 Fed. Reg. 24851 (Apr. 22, 2022) (Comment Exhibit 6); Exec. Order No 14008, 86 Fed. Reg. 19 (Jan. 27, 2021) (Comment Exhibit 45).

purpose and need statement in the Final EA is legally deficient under NEPA, NFMA, EO 14072, and EO14008.

Requested Remedy: The Forest Service should provide a more accurate purpose and need statement that promotes exploration of reasonable alternatives in compliance with the WMNF Plan and Executive Orders 14072 and 14008. The Forest Service should update the WMNF Plan as it is required to do under NFMA.⁴⁶

c. The Final EA Failed to Analyze an Adequate Range of Alternatives.

NEPA mandates that an EA describe the environmental impacts of both the proposed action and alternatives to the proposed action.⁴⁷ In our comment on the Updated Draft EA for the Project, we explained that an EA must include at least a “brief discussion[]” of reasonable alternatives to the proposed action.⁴⁸ “An alternative is reasonable if it is objectively feasible as well as ‘reasonable in light of [the agency’s] objectives.’”⁴⁹ The Final EA fails to meet its obligation for an alternative analysis under an EA for several reasons.

First, a “No Action Alternative” is the bare minimum alternative analysis an agency should undertake for an EA.⁵⁰ One of the most critical purposes of a No Action Alternative is to establish a baseline against which the proposed action can be measured. However, the Final EA only includes a discussion of the Project and a “*Consequences of No Action*” discussion.⁵¹ The Consequences of No Action section of the Final EA is not an analysis, but a list of potential detrimental effects of not moving forward with the Project. NEPA requires agencies to consider both the detriments *and benefits* of proposed projects, which would include considering the benefits of reasonable alternatives as well. Our comment—and those of others—outline numerous benefits of not moving ahead with the Project (i.e. taking No Action).⁵² These benefits include: (1) the benefit of retaining older, mature trees for in-situ carbon storage and avoiding foregone sequestration that would occur with logging; (2) the benefit of retaining mature forests to meet the intent of Executive Order 14072; (3) habitat benefits for the Northern Long-eared Bat and other species that benefit from mature or interior forests or are sensitive to harvest impacts, including species that depend on or prefer early successional habitat created through natural processes; (4) avoiding potential detrimental impacts to water quality due to runoff, sedimentation, and potential herbicide contamination; (5) avoiding loss or damage to historic and

⁴⁶ 16 U.S.C. § 1604(f)(5).

⁴⁷ 40 C.F.R. § 1501.5(c)(2).

⁴⁸ *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)).

⁴⁹ *Id.* (quoting *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 72 (D.C. Cir. 2011)).

⁵⁰ 40 CFR § 1502.14(c).

⁵¹ Final EA at 8.

⁵² Comment Letter from Standing Trees & Lake Tarleton Coalition to Brooke M. Brown, Pemigewasset District Ranger (May 11, 2022) at 12-13. (hereinafter “Comment on Updated Draft EA”) (Exhibit 10).

cultural resources located within the project area; (6) avoiding visual and noise impacts to the recreating public, nearby residents, and local businesses; (7) avoiding a potential violation of Forest Plan standards to maintain very high visual quality standards for MA 8.3 (Appalachian Trail) lands; and (8) avoiding potential, unanalyzed economic impacts to Kingswood Camp and local residents, among many others. These are major benefits that the Forest Service has wholly ignored, in blatant violation of NEPA. Accordingly, the “Consequences” section of the 2023 Final EA is not an analysis of a No Action Alternative.

Second, the Forest Service’s consideration of alternatives is 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.”⁵³ 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.”⁵⁴ Furthermore, an agency may consider only the proposed action when there are no “unresolved conflicts concerning alternative uses of available resources.”⁵⁵ Unresolved conflicts exist when the agency lacks a consensus about the proposed action based on input from interested parties.⁵⁶

Given the many different facets of the Project and the legally deficient purpose articulated in the Final EA—“to implement the management direction in the Forest Plan by advancing forest plan goals, objectives, and desired conditions for vegetation, wildlife, and other resources”—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—we assert it is not—there is a wide variability in how logging, if any is warranted at all, can achieve desired conditions. This variability necessarily implies additional

⁵³ Copy of Tarleton Long Form PDFRTCDRAFT Working, U.S. FOREST SERVICE (Apr. 14, 2023) (Exhibit 8); 40 C.F.R. § 1500.2(e) (emphasis added). The Forest Service claims “no reasonable alternatives [to the proposed Tarleton IRP] have been brought at this time” and “no unresolved conflicts have been brought forward at this time.” *Id.* This is a seriously erroneous misstatement of the record, as the Forest Service has received suggested reasonable alternatives to the Project on multiple occasions. The Project also raises countless unresolved conflicts, as is evident by the number of comments submitted in opposition to the Project.

⁵⁴ *Id.* § 1501.2(c); see also 42 U.S.C. § 4332(2)(E).

⁵⁵ 42 U.S.C. § 4332(E); see also 36 C.F.R. § 220.7(b)(2)(i).

⁵⁶ National Environmental Policy Act Procedures, 73 Fed. Reg. 43,084, 43,092 (July 24, 2008) (codified at 36 C.F.R. Part 220).

reasonable alternatives exist that the Forest Service either did not identify, or, at a minimum, did not consider.

A recent case in federal district court in New Hampshire is instructive on this issue. In *Conservation Law Foundation. v. U.S. Army Corps of Engineers*, 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.⁵⁷

The Court went on to hold that the agency was likely to succeed on the merits because, unlike here, “the EA provided reasonable, common-sense explanations for rejecting alternatives.”⁵⁸ In that case, the agency considered five alternatives, including a true no-action alternative.⁵⁹ 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.⁶⁰

By contrast, here, even after reviewing comments on the Project, 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, we reiterate a suggested reasonable alternative the Forest Service should have considered. As stated elsewhere in this objection, to the extent the Forest Service intends to move forward with the Project, it must complete an EIS. As part of that EIS, it must consider all reasonable alternatives, including a true No Action Alternative.

Additionally, the Final EA fails to address or even acknowledge any reasonable alternatives, including those listed in our comment letter⁶¹ and those submitted by other parties. In a letter to Brooke Brown⁶² and in our comment letter on the Updated Draft EA,⁶³ we suggested the following as one of several possible combinations of project components:

⁵⁷ *Conservation L. Found. v. U.S. Army Corps of Engineers*, 457 F. Supp. 3d at 56 (emphasis in original).

⁵⁸ *Id.*

⁵⁹ *Id.* at 57.

⁶⁰ *Id.* at 57–58.

⁶¹ Comment on Updated Draft EA at 14-15 (Exhibit 10).

⁶² Letter from The Lake Tarleton Coalition to Brooke Brown (July 20, 2022) (Exhibit 11).

⁶³ Comment on Updated Draft EA at 14 (Exhibit 10).

- 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:
 - o Natural woody debris inputs into Lake Katherine to improve fish habitat;
 - o Restoration of natural buffer along the shore of Lake Katherine through removal of non-native species, tree planting, etc.;
 - o Restoration of historic apple orchards;
 - o 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);
 - o 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.

The Forest Service failed to address this reasonable alternative or any others in the Final EA. If the Forest Service analyzed and ultimately rejected this or any other alternative, an explanation for that decision should have been included in the Final EA.⁶⁴

Since early 2022, hundreds of concerned citizens have petitioned the WMNF 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 2000.⁶⁵ 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 and ecological 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

⁶⁴ Furthermore, the Forest Service erroneously indicated in a FOIA response to a Lake Tarleton Coalition member that “[n]o reasonable alternatives” and “[n]o unresolved conflicts have been brought forward at this time.” Tarleton Second 30-Day Comment Period Concern Responses, U.S. FOREST SERVICE (Sept. 5, 2022) (Exhibit 7). This is an egregious misstatement of the record, as project alternatives and significant unresolved conflicts have been provided to the Forest Service by Standing Trees and many other interested parties since the project’s proposal.

⁶⁵ Lake Tarleton and WMNF Petition -With List of Signers (Feb. 8, 2022) (Exhibit 12).

Area and evaluated during the Forest Plan Revision for its potential for wilderness designation by Congress.⁶⁶

The Tarleton IRP highlights the need 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:

[M]eet 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.⁶⁷

Scenic Areas in the WMNF 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 WMNF. Although this is a relatively quiet region of the WMNF, it is within a short distance of the Hanover and White River Junction area. The Lake Tarleton area is the most accessible 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.⁶⁸ 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

⁶⁶ U.S. Forest Service 1992 Directives for the 1982 Planning Rule, FSH 1909.12 – Land and Resource Management Planning Handbook, Chapter 7 – Wilderness Evaluation (Aug. 3, 1992) (Comment Exhibit 23).

⁶⁷ U.S. FOREST SERV., 2005 WMNF FOREST PLAN - CHAPTER 3- MANAGEMENT AREA DIRECTION 3-1, 3-61 (2005) (hereinafter “WMNF Plan - Chapter 3”).

⁶⁸ FSH 1909.12 – Land Management Planning Handbook, Chapter 20, U.S. Forest Service 2015 Planning Direction. (Comment Exhibit 55).

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[.]⁶⁹

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.”⁷⁰ Section 219.13 provides further instruction regarding the amendment process.⁷¹ An amendment to designate Lake Tarleton and the surrounding land as a Forest Management Scenic Area serves as a feasible alternative to the current Project. But ultimately, the Forest Service erroneously failed to consider any alternatives—including a Forest Plan amendment—that would have served important project purposes as well as overall plan purposes.

Requested Remedy: The Forest Service should implement the suggested reasonable Alternative #3. Alternatively, the Forest Service should complete an EIS to further explore Project options.

d. The Final EA Fails to Take a “Hard Look” at Numerous Project-Area Environmental Resources.

Under NEPA, the Forest Service must take a “hard look” at the environmental impacts of the planned action, even after a proposal has received initial approval.⁷² The Forest Service did not fully discuss relevant issues and failed to make meaningful statements regarding the actual impacts of the Project. As proposed, the Tarleton IRP is insufficient. Throughout the Final EA, the Forest Service failed to provide more than mere conclusory statements to support its findings. The discussion below highlights some of the continued inadequacies with the Final EA’s analysis of project-area environmental resources.

i. Sensitive Species

The Final EA references the Tarleton IRP Biological Evaluation, which determined that two federally listed or proposed species and twelve Regional Forester Sensitive Species have potential to occur in the analysis area.⁷³ The Final EA ultimately determined that the Proposed Action may affect, but is not likely to adversely affect, the Northern Long-eared Bat (“NLEB”),

⁶⁹ *Id.* (Comment Exhibit 55).

⁷⁰ 36 C.F.R. § 219.13(a).

⁷¹ *See also* 16 U.S.C. § 1604(f)(4)-(5) (identifying when and how forest plan revisions and amendments may be completed).

⁷² *Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 374 (1989).

⁷³ Final EA at 19.

and that the Project would not jeopardize the continued existence of the tricolored bat. However, the Forest Service failed to provide a Biological Assessments (“BA”) for these species. As further detailed below in this objection, a species-specific BA is required to “evaluate the potential effects of an action on listed and proposed species...[to] determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference [with USFWS] is necessary.”⁷⁴ Without these species-specific BA’s, the public lacks important information related to Federally listed and proposed listed species that might be impacted in the Project area. This information is necessary for the public to make informed comments and objections. Furthermore, according to the 2005 WMNF Plan:

The White Mountain National Forest will provide sufficient habitat and protection to preclude the need for species listing under the Federal Endangered Species Act due to National Forest habitat conditions or effects of activities. For species currently listed under the Federal Endangered Species Act or designated Regional Forester’s sensitive species, the Forest Service will contribute to conservation and recovery of species and their habitats.⁷⁵

As previously raised in our comment on the Updated Draft EA, NLEB 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 NLEB, dated March 22, 2022, the bat depends on mature and old forests for roosting and foraging.⁷⁶ 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,⁷⁷ and females often return to the same maternity area over multiple years.⁷⁸ Additionally, “mature forests are an important habitat type for foraging NLEBs[,]” and “most foraging occurs . . . under the canopy . . . on forested hillsides and ridges.”⁷⁹ Furthermore, NLEBs “seem to prefer intact mixed-type forests . . . for forage and travel rather than fragmented habitat or areas that have been clear cut.”⁸⁰

⁷⁴ 50 C.F.R. § 402.12.

⁷⁵ U.S. FOREST SERV., 2005 WMNF FOREST PLAN - CHAPTER 1- GOALS AND OBJECTIVES 1-1, 1-8 (2005) (hereinafter “WMNF Plan - Chapter 1”).

⁷⁶ *Species Status Assessment for the Northern long-eared bat (Myotis septentrionalis) Version 1.2*, USFWS (Aug. 2022) (hereinafter Species Status Assessment)

<https://www.fws.gov/media/species-status-assessment-report-northern-long-eared-bat> (Exhibit 13).

⁷⁷ *Id.* at 18.

⁷⁸ *Tarleton Integrated Resource Project: Biological Evaluation*, U.S. FOREST SERVICE, 9 (Mar. 2023) <https://www.fs.usda.gov/project/?project=56394> (hereinafter “Biological Evaluation”).

⁷⁹ Species Status Assessment at 18 (Exhibit 13).

⁸⁰ *Id.* at 18-19 (Exhibit 13).

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 NLEB habitat in New England. Some of the silviculture treatment prescriptions involve the removal of mature trees.⁸¹ In combination with recently-approved projects and anticipated logging projects (including Bowen Brook Integrated Resource Project, Deer Ridge Integrated Resource Project, Wanosha Integrated Resource Project, Sandwich Vegetation Management Project, Peabody West Integrated Resource Project, Lost River Integrated Resource Project, and others), WMNF is set to eliminate or degrade several thousand acres of NLEB 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.

Failing to protect the NLEB is a violation of the ESA and NEPA, which provides 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.⁸² Additionally, one of the objectives listed in the 2005 WMNF Plan states:

Within five years of listing, [the Forest Service will] develop conservation approaches for all sensitive species. Biological diversity will be conserved by maintaining viable reproducing populations for all native plant and animal species. For species where the Forest alone cannot support a viable population, species persistence will be maintained, and the Forest Service will contribute to maintaining or improving viability where possible.⁸³

To our knowledge, the Forest Service has not developed conservation approaches for all sensitive species within the WMNF that were listed five or more years ago. If it has, these approaches are not apparent in the Biological Evaluation. The Biological Evaluation provides information (some of which is controversial and conflicts with more accurate and recent scientific studies)⁸⁴ supporting the WMNF’s assertion that federally listed and sensitive species will not be impacted by the Project, but it fails to substantially address any conservation methods and recovery strategies for actually protecting these species.

⁸¹ For example, an estimated 100 acres will be clear-cuts with reserves, which “would result in an immediate change from mature to regeneration age structure.” Final EA at 11. Overstory removal also removes “the majority of the mature overstory within a stand.” *Id.* at 12.

⁸² 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.)

⁸³ WMNF Plan - Chapter 1 at 1-8.

⁸⁴ See, e.g., Species Status Assessment at 18-19 (describing NLEB preferred habitat, including foraging habitat) (Exhibit 13).

Furthermore, the Final EA indicates that a design feature for sensitive plant species was added to the design features table.⁸⁵ The only addition to the Botany Resources section of the Project Design Features table is one sentence addressing a single Butternut Tree on the project grounds, and no additions were made to the Wildlife section.⁸⁶ Protection for the bald eagle is the only other individual species referenced in the table,⁸⁷ while protections for all threatened, endangered, proposed and sensitive (“TEPS”) species listed in the Biological Evaluation⁸⁸ are conspicuously absent. The Forest Service should include these species in the project-specific minimization measures and standard operating procedures table. Through the completion of an EIS, the Forest Service would have an opportunity to do an in-depth analysis of the Project’s impacts on TEPS species and ensure their protection.

Finally, the uplisting of the NLEB is a “significant new circumstance[.]” and provides “information relevant to environmental concerns and bearing on the proposed action or its impacts.”⁸⁹ The Forest Service must therefore complete additional NEPA analysis to adequately address the impacts of these significant new circumstances. This analysis should be done in an EIS, in addition to additional consultation under the ESA.

Requested Remedy: The Forest Service should seek additional project-specific consultation from USFWS and complete an EIS to ensure adequate measures for species survival and protection.

ii. Historic and Cultural Resources

In our comment on the Updated Draft EA, we stated that historical and cultural resources exist within the project area and cited support for this assertion. The FS completely fails to acknowledge these resources in the Final EA, and simply reiterates what was contained in the Updated Draft EA. One of the goals listed in the WMNF Plan states that “[t]he White Mountain National Forest will identify, evaluate, preserve, protect, stabilize, interpret, and when necessary, mitigate for loss of heritage resources at a Forest-wide and project level.”⁹⁰ The Historic and Cultural Resources section of the Tarleton IRP Final EA does not realize this goal.

In fact, the Final EA provides a woefully short discussion of Project impacts on historic and cultural resources. The Final EA 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 resource merely indicates that “archeologists completed a cultural resource review” and “[n]o historic properties will be affected by the proposed project activities.”⁹¹ 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 Forest Service anticipates that potential impacts would be mitigated. This

⁸⁵ Final EA at 5.

⁸⁶ Final EA at 17.

⁸⁷ Final EA at 16.

⁸⁸ Biological Evaluation at 8.

⁸⁹ 40 C.F.R. § 1502.9(d).

⁹⁰ WMNF Plan - Chapter 1 at 1-6.

⁹¹ Final EA at 20.

ambiguity persists in the EA'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."⁹² 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 the Final EA's failure to provide clear NEPA documentation to allow for public review and scrutiny, even after we raised these issues in our comment on the Updated Draft EA.

To be clear, historic and cultural resources *do* exist within the project area, as known by local residents, including members of The Lake Tarleton Coalition, and as documented by the recent Cultural Resource Reconnaissance Report ("CRRR") prepared for the Tarleton IRP.⁹³ This document, which to our knowledge has still not been made available to the general public,⁹⁴ 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.⁹⁵ That same document concluded that the Project had potential to directly impact these cultural resources.⁹⁶ Even if the Forest Service must redact the

⁹² Final EA at 25.

⁹³ White Mountain National Forest, *Cultural Resource Reconnaissance Report* (April 7, 2019) (hereinafter "CRRR") (Comment Exhibit 9); Public Comment on Tarleton IRP from Stephen Alden regarding these resources, (Comment Exhibit 30).

⁹⁴ 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 to view project documents. The Tarleton IRP CRRR was prepared to evaluate the Tarleton IRP, and as such, it should be considered part of the Project Record. The April 2022 Tarleton IRP Draft EA stated that "the project record is incorporated by reference and contains all relevant data, methods, analyses, references, and other technical documentation used in this assessment." *Tarleton Integrated Resource Project: Draft Environmental Assessment and Preliminary Finding of No Significant Impact*, U.S. FOREST SERVICE, at 18 (Apr. 2022) <https://www.fs.usda.gov/project/?project=56394>.; First, 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 CRRR was not reasonably available for inspection during the comment or objection periods 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, we may not have even been made aware of this report and its ability to review this document and fully participate in the public comment and objection processes would have been prejudiced.

⁹⁵ CRRR at 4 (Comment Exhibit 9).

⁹⁶ *Id.*

precise locations of the resources due to concerns about theft or vandalism,⁹⁷ NEPA still requires a robust consideration of what these resources are and how they may be impacted, regardless of the sensitivity of their precise locations. It is also highly possible that the Project area contains significant Indigenous resources that would have been discovered through more rigorous consultation and research.⁹⁸ The failure of the Forest Service to even mention these resources in the Final EA—much less analyze potential impacts and explain how direct impacts may be avoided—is egregious, especially after being given the opportunity to correct this section for the Final EA. The lack of acknowledgement in the Final EA misleads the public regarding cultural resources in the project area. By completing an EIS, the Forest Service would have an opportunity to correct its analysis of the historical and cultural resources within the Project area, ensure the protection of these resources, and properly provide this information to the public.

Requested Remedy: The Forest Service should complete an EIS to further determine cultural and historical resources within the Project area and means for protecting these resources.

iii. Climate Change

While New Hampshire may be a relatively small state, its temperate deciduous forests are among the planet’s most effective carbon sinks. The WMNF contains some of the oldest and most carbon-dense ecosystems in New England. The insubstantial, one-paragraph climate change analysis in the Final EA fails to address the unique values of the WMNF and is inconsistent with Council on Environmental Quality (“CEQ”) guidance, the Forest Service Climate Adaptation Plan, EO 14072, and EO 14008. The Final EA incorrectly implies that prescribed treatments will enhance the forests’ ability to withstand climate change. Final EA fails to cite any authority for its claims. And the section remains unchanged from the Updated Draft EA, despite numerous concerns over its inadequacy. The Forest Service cherry-picked the science it wished to use and failed to respond to comments regarding climate change impacts, in violation of NEPA. NEPA requires agencies to address and explain opposing viewpoints and contrary scientific information along with their rationale for choosing one viewpoint over another.⁹⁹ The Forest Service’s analysis in the Final EA is insufficient because it includes virtually no references to any material in support of or in opposition to its conclusions.¹⁰⁰

New England’s carbon storage levels remain artificially low due to timber harvest frequency and intensity. Timber harvest accounts for 86% of annual forest carbon loss across the Northeast US. The Final EA suggests that in the absence of prescribed treatments, natural

⁹⁷ Copy of TarletonLongFormPDFRTCDRAFT Working, U.S. FOREST SERVICE (APRIL 14, 2023) (Exhibit 8).

⁹⁸ CRRR at 10. (Comment Exhibit 9)

⁹⁹ 40 C.F.R. § 1502.9(b) (requiring agencies to disclose, discuss, and respond to “any responsible opposing view”); *WildEarth Guardians v. Jewell*, No. 1:16-CV-00605-RJ, 2017 WL 3442922 (D.N.M. Feb. 16, 2017); *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013).

¹⁰⁰ *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 444 F. Supp. 3d 832, 858-59 (S.D. Ohio 2020).

thinning and other processes would result in carbon emissions.¹⁰¹ The Project would instead have *only* a “temporary influence on atmospheric greenhouse gas conditions.”¹⁰² This incorrectly implies that the prescribed treatments will enhance the forests’ ability to absorb carbon.¹⁰³ The Forest Service concludes carbon initially emitted from the proposed action would only have a *temporary influence* on emission concentrations because as the forest regrows, carbon is removed from the atmosphere.¹⁰⁴ This is based on a common misconception that young forests are better than old at removing carbon, and ignores strong scientific evidence that carbon storage and sequestration is maximized in un-logged stands in northern New England.¹⁰⁵ Old forests store more carbon than young forests, and they continue to accumulate carbon over time.¹⁰⁶ The rate of carbon sequestration actually increases as trees age.¹⁰⁷ As raised in our comment, recent studies show that among land uses in New England, timber harvest is the leading cause of tree mortality¹⁰⁸ and has the greatest impact on aboveground carbon storage.¹⁰⁹ Forests in New Hampshire are still recovering from extensive clearing in the eighteenth and nineteenth centuries.

¹⁰¹ Final EA at 6.

¹⁰² Final EA at 20.

¹⁰³ Harris et al., *Attribution of Net Carbon Change by Disturbance Type Across Forest Lands of the Conterminous United States*, 11 CARBON BALANCE AND MGMT. 1 (2016) (Comment Exhibit 14).

¹⁰⁴ Final EA at 20.

¹⁰⁵ Keeton et al., *Late-Successional Biomass Development in Northern Hardwood-Conifer Forests of the Northeastern United States* 57 FOREST SCIENCE (Jan. 18, 2011) (Comment Exhibit 22).

¹⁰⁶ Keith et al., *Re-evaluation of Forest Biomass Carbon Stocks and Lessons from the World’s Most Carbon-Dense Forests*, 106 PNAS 11635 (July 14, 2009) (Comment Exhibit 18); Luysaert et al., *Old-growth Forests as Global Carbon Sinks*, 455 NATURE, 213 (2008) (Comment Exhibit 19); Leverett et al., *Older Eastern White Pine Trees and Stands Sequester Carbon for Many Decades and Maximize Cumulative Carbon*, 4 FRONTIERS FOR. GLOB. CHANGE 1 (May 2021) (Comment Exhibit 20); Thom et al., *The Climate Sensitivity of Carbon, Timber, and Species Richness Covaries with Forest Age in Boreal- Temperate North America*, (2019) (Comment Exhibit 29).

¹⁰⁷ Stephenson et al., *Rate of Tree Carbon Accumulation Increases Continuously with Tree Size*, 507 NATURE 90 (Jan. 2014) (Comment Exhibit 21).

¹⁰⁸ Brown et al., *Timber Harvest as the Predominant Disturbance Regime in Northeastern U.S. Forests: Effects of Harvest Intensification* 9 Ecosphere 1 (March 2018) (Comment Exhibit 15).

¹⁰⁹ Duveneck and Thompson, *Social and Biophysical Determinations of Future Forest Conditions in New England: Effects of a Modern Land-use Regime* 55 GLOB. ENV’T CHANGE 115 (March 2019) (hereinafter “Duveneck and Thompson”) (Comment Exhibit 16).

Timber harvesting in New England has been found to have a larger effect on aboveground carbon storage than forest conversion to non-forest uses.¹¹⁰

On January 9, 2023, the CEQ released Interim Guidance for agencies to “make use of immediately” when considering greenhouse gas emissions and climate change under NEPA. This guidance had yet to be released upon the submission of our comment on the Updated Draft EA. Section VII of the CEQ guidance states “agencies should consider applying this guidance to actions in the EIS or EA preparation stage if this would inform the consideration of alternatives or help address comments raised through the public comment process.”¹¹¹ Numerous public comments on this Project, including ours, raised the issue of the Forest Service’s failure to adequately consider climate change impacts. Yet, the CEQ guidance—now in effect and directly applicable to these concerns—is entirely absent from the climate change analysis section of the Final EA.

The CEQ guidance requires agencies to “quantify proposed actions’ [Greenhouse Gas (“GHG”)] emissions, place GHG emissions in appropriate context and disclose relevant GHG emissions and relevant climate impacts, and identify alternatives and mitigation measures to avoid or reduce GHG emissions.”¹¹² Agency decisions should be based on the best available science and account for the urgency of the climate crisis.¹¹³ The guidance clarifies “NEPA requires more than a statement that emissions from a proposed Federal action or its alternatives represent only a small fraction of global or domestic emissions.”¹¹⁴ Yet, the Tarleton IRP Final EA explicitly states: “the proposed action affects a relatively small amount of forest land and carbon on the White Mountain National Forest and, in the near-term, might contribute an extremely small quantity of greenhouse gas emissions relative to national and global emissions” in blatant violation of CEQ guidance.¹¹⁵ As CEQ has concluded, this approach “is not a useful basis for deciding whether or to what extent to consider climate change under NEPA.”¹¹⁶ In addition, no mitigation measures were considered. We cannot foresee all the ways in which the Forest Service fails to comply with the CEQ guidance because there was no attempt to abide by it.

¹¹⁰ *Id.*

¹¹¹ COUNCIL ON ENVIRONMENTAL QUALITY, *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196 (Jan 9, 2023) (Exhibit 14).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 1201.

¹¹⁵ Final EA at 20.

¹¹⁶ *Id.*

Moreover, the Forest Service’s approach to assessing climate impacts of the Tarleton IRP is not in compliance with EO14072 and EO 14008.¹¹⁷ Both expressly direct the Forest Service to take much more extensive action than the insubstantial effort reflected in the Final EA. The Forest Service responded (in part) to EO 14008 with the publication of its Climate Change Adaptation Plan, which explicitly acknowledged that:

[o]ld-growth and mature forests, and other forests with similar characteristics, are an ecologically and culturally important part of the National Forest System. They reside within a continuum of forest age classes and vegetation types that provides for a wide diversity of ecosystem values. Many forests with old-growth characteristics have a combination of higher carbon density and biodiversity that contributes to both carbon storage and climate resilience.¹¹⁸

EO 14072 aims to “enhance carbon storage” and the “climate resilience” of our mature and old-growth forests.¹¹⁹ The Forest Service “Climate Adaptation Plan” recognized the importance of areas protected from logging as it relates to climate-informed stewardship of mature and old-growth forests on Federal lands.¹²⁰ The Forest Service itself identifies carbon uptake and storage as “a major goal for the Forest Service” in helping ecosystems adapt to a changing climate.¹²¹ This vision was further supported by EO 14008 which aimed to “conserve and restore public lands. . . increase reforestation. . . and address the changing climate” through the adoption of climate-smart forestry practices.¹²² The climate change analysis for the Tarleton IRP fails to mention EO 14072, EO 14008, and the Forest Service’s own goals. Despite supposed policy alignment across the Executive branch, the Forest Service failed to ensure the Tarleton IRP is consistent with EO 14072 and EO 14008.

Furthermore, there is no such thing as an “extremely small quantity of greenhouse gas emissions” or effect on a “relatively small amount of forest land”¹²³ when 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.¹²⁴ The one-paragraph climate change analysis

¹¹⁷ Exec. Order No. 14072, 87 Fed. Reg. 24851 (Apr. 22, 2022) (Comment Exhibit 6); Exec. Order No 14008, 86 Fed. Reg. 19 (Jan. 27, 2021) (Comment Exhibit 45).

¹¹⁸ U.S. DEP’T OF AGRIC., USDA FOREST SERVICE CLIMATE ADAPTATION PLAN 1, 13 (July 2022).

¹¹⁹ *Id.*

¹²⁰ U.S. DEP’T OF AGRIC., USDA FOREST SERVICE CLIMATE ADAPTATION PLAN 1, 13 (July 2022).

¹²¹ *Id.* at 42.

¹²² Exec. Order No 14008, 86 Fed. Reg. 19 (Jan. 27, 2021) (Comment Exhibit 45).

¹²³ Final EA at 20.

¹²⁴ Erb et al., *Unexpectedly Large Impact of Forest Management and Grazing on Global Vegetation Biomass*, 553 NATURE 73 (2018) (Comment Exhibit 13).

ignores our remarkable forest ecosystems here in Northeastern North America, and the unique potential of our temperate deciduous forests to contribute on a global scale to climate stabilization and resilience. The WMNF is an insurance policy against a changing climate and increasing extinction rates. It is irresponsible not to consider the high untapped capacity for carbon storage and sequestration of Eastern U.S. forests. The Final EA does not once mention the remarkable and unique capacity of the WMNF to contribute to climate stabilization and resilience at a global scale.¹²⁵

Numerous claims made in the Final EA are easily refuted. The Forest Service failed to acknowledge or consider science that we identified in our comment and in this objection. Federal courts have set aside NEPA analysis when an agency fails to respond to scientific analysis that calls into question the agency's assumptions or conclusions.¹²⁶ The Forest Service cherry picked the science it wished to use and failed to respond in a meaningful way to scoping comments regarding climate change impacts. Ultimately, the Forest Service failed to take a hard look at climate change under relevant authorities.

Requested Remedy: The Forest Service should complete an EIS and additional analysis to address the unique values of the WMNF and ensure compliance with relevant authorities: CEQ guidance, the Forest Service Climate Adaptation Plan, EO 14072, and EO 14008.

iv. Water Quality Impacts/Hydrology

Notwithstanding the Final EA's discussion of the Clean Water Act ("CWA") and hydrology impacts in the Project area, the Final EA still fails to take a hard look at impacts to water quality and the watershed. Additional recent and site-specific analysis is necessary to understand the true impacts that the Project will have not just on Lakes Tarleton and Katherine, but the broader basin and watershed in general. For example, the Forest Service has not addressed the potential threats of cyanobacteria and harmful algal blooms from the proposed activities. Additionally, the Forest Service fails to disclose a plan for preventing logging discharge of organic matter and nutrients from entering riparian areas and waterways upstream from the fen/swampy area that feeds Eastman Brook. Furthermore, the Tarleton IRP lacks any

¹²⁵ Dinerstein et al., *A Global Safety Net to Reverse Biodiversity Loss*, 6 SCI. ADVANCES 1 (Sept. 2020) (Comment Exhibit 44); Jung et al., *Areas of Global Importance for Terrestrial Biodiversity, Carbon, and Water*, 5 NATURE 1499 (2020) (Comment Exhibit 26).

¹²⁶ *High Country Conservation Advocs. v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174 (D. Colo. 2014) (concluding the FS violated NEPA by failing to mention or respond to an expert report on climate impacts); *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1168 (9th Cir. 2003) (concluding that the Forest Service's failure to disclose and respond to evidence and opinions challenging scientific assumptions in an EIS violated NEPA); *Seattle Audubon Soc'y v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993) (stating "[i]t would not further NEPA's aims for environmental protection to allow the Forest Service to ignore reputable scientific criticisms that have surfaced").

discussion of ecological evaluations and monitoring activities that must occur to prevent cyanobacterial increases in the lakes.

Land use and climate change are playing an increasingly important role in the cyanobacterial population increase in non-eutrophic lakes. We suggest the Forest Service perform a thorough stratigraphic and hydrological analysis of the entire proposed treatment area and the adjoining forest area to fully grasp what the impacts might be. We also propose that the Forest Service perform a thorough stratigraphic population analysis of the nitrogen-fixing cyanobacteria *Gloeotrichia* in the lake and its surrounding area to assess not only the risk to Lake Tarleton, but the risk logging activities pose in the current age of rapid climate change.

Water Quality Data. The Forest Service relies on studies conducted in 2007 to support its presumption that Lake Tarleton is impaired due to mercury contamination and acidity, and Lake Katherine is impaired due to mercury contamination.¹²⁷ However, changes in water quality fluctuate frequently due to influences such as precipitation, runoff, use of pesticides and herbicides, recreation, and climate change, among many others. In fact, the CWA and the New Hampshire Department of Environmental Services indicate that water quality assessments must be conducted every two years.¹²⁸ The need for updated water quality status is especially important for lakes used for swimming, fishing, and boating. The Final EA fails to provide the current status of the water quality within Lake Tarleton, Lake Katherine, and their tributaries. The Forest Service cannot rely on data that is nearly 16 years old to support its assumption that the lakes in the Project area are contaminated. In fact, Lake Tarleton, Lake Katherine, and Lake Armington are known to have exceptional water quality.¹²⁹ All three are free of aquatic invasive species.¹³⁰ Lake Armington is located only one tenth of a mile from Lake Tarleton with a stream connecting the two lakes. Due to its proximity and connectivity to Lake Tarleton, Lake Armington should have been discussed, or at least mentioned, in the Final EA's environmental impacts section.

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.¹³¹ Indeed, "establishing appropriate baseline conditions is

¹²⁷ Final EA at 20.

¹²⁸ *Water Quality Assessment and TMDLs*, N.H. DEP'T. ENV'T. SERVS. <https://www.des.nh.gov/water/rivers-and-lakes/water-quality-assessment> (last visited Apr. 23, 2023) (Exhibit 15).

¹²⁹ See *Volunteer Lake Assessment Program Individual Lake Reports*, N.H. DEP'T. ENV'T. SERVS. <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2021-tarleton-piermont.pdf> (Exhibit 16); Virtual Interview with Rob Wipfler, Co-Director of Kingswood Camp for Boys and President of The Lake Tarleton Association (April 27, 2023).

¹³⁰ Virtual Interview with Rob Wipfler, Co-Director of Kingswood Camp for Boys and President of The Lake Tarleton Association (Apr. 27, 2023).

¹³¹ *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1083–87 (9th Cir. 2011); *Cascade Forest Conservancy v. Hepler*, 2021 WL 641614, at 17–20 (D. Or. Feb. 15, 2021).

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.”¹³² It is unclear if baseline data was even gathered for use in the Final EA’s analysis, because no analysis was presented. It is impossible for the public to evaluate or weigh in on the adequacy of the agency’s analysis without a baseline and current data on the actual water quality of the lakes in the Project area.

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.”¹³³ The Final EA 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.¹³⁴ The Final EA fails to indicate what percent of the watershed had been, or will be, treated with even-age (clear-cutting) methods. The public cannot be expected to independently evaluate whether this standard is being followed. In addition, the Final EA makes no mention of Eastman Brook being a 303(d) impaired water under the CWA.¹³⁵ The potential for exacerbation of Eastman Brook’s impaired condition is an obvious and important impact that the Forest Service should have evaluated in the Final EA.

Additionally, the Final EA 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*.”¹³⁶ Emphasis to this statement was clearly added to highlight the water-related resources, but for *all* resources mentioned, these on-site baseline conditions should be identified *prior* to completing the NEPA analysis. The Forest Service should have used that information to describe the impacted environment, provide analysis of *how* these resources may

¹³² *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016).

¹³³ U.S. FOREST SERV., 2005 WMNF FOREST PLAN - CHAPTER 2- FOREST-WIDE MANAGEMENT DIRECTION 2-1, 2-29 (2005) (hereinafter “WMNF Plan - Chapter 2”).

¹³⁴ According to Table 2-01 in the WMNF Plan, only four orders of streams exist: 1st, 2nd, 3rd, and 4th. WMNF Plan - Chapter 2 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. U.S. FOREST SERV., 2005 WMNF FOREST PLAN - LAND AND RESOURCE MANAGEMENT PLAN – APPENDIX H H-1, H-2 (2005) (hereinafter “WMNF Plan – Appendix H”). This presents yet another need for an updated WMNF Plan.

¹³⁵ *New Hampshire’s 2020-2022 303(d) List*. U.S. EPA, <https://www.epa.gov/system/files/documents/2022-03/2020-2022-nh-303d-list.pdf> (last updated Mar. 1, 2023) (Exhibit 17).

¹³⁶ Final EA at 10.

be impacted, and describe how the agency might propose to address those impacts.¹³⁷ Further, it is 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[.]”¹³⁸ 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 “Tarleton Scoping Full Size Project Area Map” with the “Proposed Treatment Harvest Units” map, it appears that unit boundaries for both clearcut and group selection logging come precipitously close to Eastman Brook.¹³⁹ The Final EA does not mention this guideline, nor does it make clear that these 25-foot 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 how the Project’s timber harvesting activities might impact water quality.

Boat Launch. The Final EA also fails to mention or analyze potential impacts of the addition of the boat launch to Lake Katherine in the Hydrology section. The installation of the boat launch will invite additional use¹⁴⁰ and increase the risk of introduction of aquatic invasive species. If the Forest Service plans to construct a boat launch, it should also be responsible for providing a watercraft cleaning station at the upgraded access point. While addressing one risk of boat-launch standards, the Forest Service is inviting another—likely more serious—threat of invasive species introduction. For these reasons, the Forest Service fails to take a “hard look” at the direct and indirect impacts, and ignored the cumulative effects of reasonably foreseeable impacts.

Herbicides. Additionally, the Final EA includes a description of types and methods of herbicide use in the botany resource design features.¹⁴¹ As we pointed out in our comment on the Updated Draft EA, the botany resources description indicates that the Project will involve the use of herbicide treatments, but fails to include any discussion on herbicides and their potential impacts to water resources (or any resources for that matter) in the Final EA. The Forest Service must complete adequate analysis of the impacts to water quality and hydrology, at a minimum, at

¹³⁷ The same issue is present with regard to the planned transportation system changes – “access driveways, 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[.]” *Id.* 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 Forest 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 have newly catalyzed.

¹³⁸ WMNF Plan - Chapter 2 at 2-24.

¹³⁹ Final EA at 28.

¹⁴⁰ Final EA at 21.

¹⁴¹ Final EA at 18.

the watershed scale, since water quality impacts may compound as water from brooks, rivers, and streams meet and intermix.

Timber Harvesting Impacts on Water. Furthermore, the Final EA relies on the Maine Albany South Environmental Assessment to support its assertion that impacts of timber harvesting on water quality and the basal area thresholds within the Project area are expected to be negligible.¹⁴² However, this reference illustrates the inadequacy of the Final EA. First, nearly all the riparian and aquatic resources and water quality information contained in the Albany South IRP EA is site-specific.¹⁴³ Although the document contains some broadly applicable indicators and measures for assessing effects to water resources, the Albany South EA dedicates the vast majority of its analysis to applying these standards to specific features within that project area. The Tarleton Final EA fails to conduct such an analysis, only mentioning general standards for the percent harvest levels at the basal area, and the projected harvest percentages for the Tarleton IRP.¹⁴⁴ Second, much of the sources cited in the Albany South IRP EA are outdated, going back as far as 35 years.¹⁴⁵ Third, the Tarleton IRP Final EA misleads the public to believe that this project was conducted in 2022, when in fact, the Albany South EA was published in 2017.¹⁴⁶ The Final EA also references studies in the White Mountains related to water quality and harvest levels, but does not cite any references to these studies.¹⁴⁷

The Forest Service concludes its Hydrology section by stating “[n]o measurable adverse effects to water quality or quantity are expected due to project implementation.”¹⁴⁸ However, the lack of current site-specific data, and sources to support the Forest Service’s conclusion make it

¹⁴² Final EA at 20 (citing to *Albany South Integrated Resource Project: Final Environmental Assessment*, U.S. FOREST SERVICE, 131-149 (Dec. 2017) <https://www.fs.usda.gov/project/?project=39614>).

¹⁴³ *Albany South Integrated Resource Project: Final Environmental Assessment*, U.S. FOREST SERVICE (Dec. 2017) <https://www.fs.usda.gov/project/?project=39614> (hereinafter “Albany South EA”).

¹⁴⁴ Final EA at 20; The combined acreage of Lakes Tarleton and Katherine is over two and a half times larger than Lake Virginia located in the Albany South project area. Nevertheless, it provides good context for what a proper EA should look like as it relates to the hydrology and water quality impacts of a Forest Service project. The Albany South EA devotes 34 pages to sections on Water Resources and Riparian and Aquatic Habitat, each with subsections covering project-specific: existing conditions, effect indicators and measures, environmental consequences, various alternatives, direct and indirect effects to water quality, timber harvest impacts on water quality, fish habitat quality and productivity, cumulative effects, and climate change among others. Albany South EA at 130-164; Despite the much larger combined lake acreage within the Tarleton IRP, the Final EA Hydrology section consists of a meager half page. Compare Albany South EA at 130-164, with Final EA at 20.

¹⁴⁵ Albany South EA at 131.

¹⁴⁶ *Id.*

¹⁴⁷ Final EA at 20.

¹⁴⁸ *Id.*

impossible for the public to make informed opinions about the Project and its potential implications on water quality. The Final EA fails to meet the NEPA “hard look” standard as it relates to hydrology and water quality in the project area.

Requested Remedy: The Forest Service should complete an EIS and additional NEPA analysis to determine the impacts of the Project on hydrology and water quality.

v. Recreation

The Lake Tarleton area is beloved for the number of recreational opportunities it provides: camping, hiking, swimming, fishing, boating, birdwatching, photography, observing wildlife, ice fishing, and generally relaxing in a pristine natural setting.¹⁴⁹ 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, 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 famous 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. According to the local community, the area has also experienced a dramatic increase in ice fishing and winter recreation on both Lake Tarleton and Lake Katherine since the pandemic. For the past few winters, the parking area at Lake Tarleton is consistently filled to capacity¹⁵⁰ and the lake is teeming with ice houses, tents, snowmobiles, trucks, etc.¹⁵¹ Those seeking winter recreation would be hit by a wall of timber harvesting noise reflecting off the ice and the wafting of diesel fuel for several consecutive winters.

The WMNF makes no attempt to assess potential impacts to the aforementioned long-running recreational activities and related businesses that are 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 Final EA 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. Furthermore, with clearings located only a few hundred feet from the shores, the potential for snowmobiles to access logged lands via Lake Tarleton would be all but certain.

¹⁴⁹ Photo: Canoeing on Lake Tarleton (Exhibit 18).

¹⁵⁰ Photo: Lake Tarleton parking area in wintertime (Exhibit 19).

¹⁵¹ Photo: Recreation activities on Lake Tarleton in wintertime (Exhibit 20).

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.”¹⁵²

While the Final EA makes passing reference to some of these recreational activities,¹⁵³ 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 periods,¹⁵⁴ 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 Final EA, it states “. . . recreational users are likely to disperse to other recreation sites” due to timber harvesting activities.¹⁵⁵ 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[.]”¹⁵⁶ 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 Final EA, is the issue of impacts to the Appalachian Trail. The Appalachian Trail travels through the Project area in two separate places.¹⁵⁷ The 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.¹⁵⁸ 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 Final EA that the Forest Service consulted with NPS. Nor is there any indication that the Forest Service consulted with the Appalachian Mountain Club or the Dartmouth Outing Club, as required by the WMNF Plan MA 8.3 standard S-2, for

¹⁵² September 5, 2001 article in the Bradford Opinion Journal (Comment Exhibit 1).

¹⁵³ Final EA at 21.

¹⁵⁴ See generally Gail Coffey, *Comment on 2021 DEA* (Aug. 5, 2021) (Comment Exhibit 32); Anonymous, *Comment on 2021 DEA*, (Aug. 5, 2021) (Comment Exhibit 33); John Cooley, *Comment on 2021 DEA* (Aug. 5, 2021) (Comment Exhibit 34); Elaine Felatra, *Comment on 2021 DEA* (Aug. 5, 2021) (Comment Exhibit 35); among others.

¹⁵⁵ Final EA at 21.

¹⁵⁶ *Id.* at 21.

¹⁵⁷ Final EA at 27 (Figure 1).

¹⁵⁸ *Id.* at 5.

when management actions affect AT values. All of these groups are conspicuously absent from the list of “Agencies or Persons Consulted” in the Final EA.¹⁵⁹

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.”¹⁶⁰ Even though the purported purpose of the Project is “to implement the management direction in the Forest Plan,”¹⁶¹ there is no mention in the Final EA 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 Forest Service compounded its lack of analysis by failing to consult with NPS or other necessary organizations. The Forest Service must 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, Piermont Mountain, 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.”¹⁶²

Requested Remedy: The Forest Service should conduct an EIS to determine the impacts that the Project will have on recreation in the area.

vi. Scenic Values

The Final EA made an addition of only a short paragraph addressing scenery within the project area. The Final EA claims that the project is consistent with Forest Plan standards and guidelines for scenery management, but only makes passing mention of standards for MA 8.3, and does not even cite to or mention the standards that apply to MA 2.1 located within the project boundary.¹⁶³ The Tarleton IRP Scenery Specialist Report indicates that the analysis area for cumulative effects is the viewshed from just nine public land viewpoints, and the timeframe is from 30 years in the past to 30 years in the future.”¹⁶⁴ The Report further explains, “[t]his timeframe allows for all the harvested openings to fully restock, develop a full canopy of vegetation, and reach a height with enough spread and density to allow the shadow and textural

¹⁵⁹ *Id.* at 23.

¹⁶⁰ WMNF Plan - Chapter 3 at 3-45.

¹⁶¹ Final EA at 5.

¹⁶² WMNF Plan - Chapter 2 at 2-17.

¹⁶³ Final EA at 21.

¹⁶⁴ *Tarleton Scenery Management Specialist Review and Summary*, U.S. FOREST SERVICE, <https://www.fs.usda.gov/project/?project=56394> (last updated Mar. 15, 2023) (hereinafter Scenery Specialist Report).

differences to begin to blend with the adjacent surrounding.”¹⁶⁵ The Report also indicates that depending on the viewpoint, project impacts can be seen for up to a distance of 10 miles by the “casual observer.”¹⁶⁶ Logging projects that can be seen up to 10 miles away and take 30 years to “begin to blend” with their un-logged natural surroundings are clearly significant. These long-lasting eyesores will negatively impact not only the surrounding community, but those recreating in the area.

Although the Tarleton Scenery Specialist Report indicates the Project will follow Forest Standards and Guidelines, it does not specifically reference them. 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.¹⁶⁷

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.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ WMNF Plan - Chapter 3 at 3-52.

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.¹⁶⁸

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.”¹⁶⁹ The Forest Service fails to indicate the amount of acreage within the view that would be impacted by these management activities to confirm that this standard is being met. Although the Forest Service concedes “substantial harvesting happened from the mid 1980’s through the mid 1990’s throughout the Lake Tarleton viewshed[,]” it hastily concludes that this harvesting “primarily occurred outside the 30-year cumulative effects timeframe.”¹⁷⁰ In other words, is unknown how many acres have already been impacted by harvesting within the last 30 years, as significant logging was still occurring in the mid-1990’s. The Forest Service cannot claim to be in compliance with the MA 2.1 Guidelines if it does not know how many acres have been harvested in the area within the last 30 years.

The Final EA also states that the visual impacts will “fade and blend over time as the forest regenerates.”¹⁷¹ This statement may mislead the public to believe that visual impacts will be short-lived, but the Forest 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.¹⁷²

The Tarleton Scenery Specialist Report indicates “[t]he chosen viewpoints are on public lands, provide the best perspectives of the project area and are areas considered to be of reasonable access and highest visitation by the general public as well as recreationalists and tourists.”¹⁷³ Even if the existing scenery impacts analysis were sufficient, which we contest, the Final EA failed to evaluate scenic impacts as viewed from significant locations within the area. For example, Piermont Mountain is located just across the lake from the proposed action and hosts a popular hiking trail and scenic views facing the project area. Although the Forest Service indicates it only selected public lands for viewpoint analysis, Piermont Mountain is the most prominent open summit overlooking the forest surrounding Lake Tarleton,¹⁷⁴ 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. Furthermore, the Forest Service failed to include even a single viewpoint on Lake Tarleton, as seen by boaters, paddlers, and ice

¹⁶⁸ WMNF Plan - Chapter 3 at 3-6 to 3-8.

¹⁶⁹ *Id.* at 3-6.

¹⁷⁰ Scenery Specialist Report at 2-3.

¹⁷¹ Final EA at 21.

¹⁷² Biological Evaluation at 7.

¹⁷³ Scenery Specialist Report at 1.

¹⁷⁴ Photo: Sunset from Piermont Mountain with Lake Tarleton in the foreground, logging activities are proposed for the hillside above the lakeshore (Rob Wipfler) (Exhibit 21).

recreationists. Additionally, the Tarleton Scenery Specialist Report lacks discussion of how the proposed actions will alter views from local residences, which could impact property values. Despite the obvious reasons for assessing visual impacts from these viewpoints, the Forest Service failed to conduct these analyses. Because the Forest Service failed to consider significant impacts to scenic values, it should correct its errors through completion of an EIS.

Requested Remedy: The Forest Service should conduct an EIS to determine the true impacts that the Project will have on scenery in the area.

vii. Socioeconomics

The Final EA 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.”¹⁷⁵ As we previously mentioned in our comment on the Updated Draft EA, 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[,]”¹⁷⁶ 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 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.

Furthermore, the Degree of Effects section of the Final EA indicates that management actions can take up to 10 years to complete. This is a significant amount of time, especially when taken into consideration with the time necessary for reforestation to occur in proposed timber harvest areas.¹⁷⁷ As such, the Project as proposed has a likelihood of impacting local businesses, as those who usually engage in recreational activities in the area (including but not limited to swimming, boating, hiking, fishing, hunting, picnicking, bird watching, ice fishing, and wildlife observation) will seek other locations for outdoor recreation. The Final EA even acknowledges that “recreational users are likely to disperse to other recreation sites.”¹⁷⁸ For Lake Tarleton and Armington residents, and local businesses like Kingswood Camp, whose economic survival is dependent on Lake Tarleton’s recreation and scenery resources, physical relocation is not an option.

The Final EA also failed to disclose how noise levels, traffic and road conditions, and safety hazards of the Project actions might impact local residents. East and west of the Tarleton area, the roads are narrow and steep. Logging trucks and machinery are likely to congest the area with noise and may experience dangerous weather conditions as logging occurs during the winter

¹⁷⁵ Final EA at 22.

¹⁷⁶ *Id.* at 6.

¹⁷⁷ After timber harvesting, it takes approximately 30 years “. . . for all the harvested openings to fully restock, develop a full canopy of vegetation, and reach a height with enough spread and density to allow the shadow and textural differences to begin to blend with the adjacent surrounding.” Scenery Specialist Report at 4.

¹⁷⁸ Final EA at 21.

months. These are major concerns of the people living in the vicinity and along Route 25C, which the Forest Service should have addressed in its analysis of socioeconomic impacts on the community.

Requested Remedy: The Forest Service should conduct an EIS to determine the true socioeconomic impacts that the Project will have on the local community.

viii. Soils

The Final EA fails to provide adequate analysis, discussion, and clarity surrounding impacts to this resource. As previously mentioned in our comment on the Updated Draft EA, this section repeatedly mentions “non-detrimental soil disturbance” in relation to meeting Forest Service Soil Quality Standards,¹⁷⁹ but the referenced guidance does not in fact include that term at all.¹⁸⁰ 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 Final EA 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.¹⁸¹

The only “detrimental” soil impact that the Final EA 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.”¹⁸² 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 do they provide the public with clear NEPA documentation. If the Forest Service had truly been monitoring the amount of construction encompassed within this allocation, it would have been included in the Final EA.

Requested Remedy: The Forest Service should complete an EIS to determine detailed soil impacts that Project will have on the area.

ix. Vegetation & Forest Health

The Tarleton IRP proposes 690 acres of logging and fails to explain how the proposed logging will comply with the WMNF Plan, EO 14072, and EO 14008.¹⁸³ As raised in our comment on the Updated Draft EA, and in this objection, there is clear scientific evidence that

¹⁷⁹ Final EA at 22.

¹⁸⁰ USDA Forest Serv., Forest Service Manual Eastern Regions; Supplement No. R9 RO 2550-2012-1; FSM 2500 – Watershed and Air Management, Chapter 2550 – Soil Management (Jan. 31, 2012) (Comment Exhibit 37).

¹⁸¹ Robert A. Colter, *Soils Specialist Report* 12 (Jan. 2020) (hereinafter Soils Specialist Report).

¹⁸² Final EA at 22.

¹⁸³ Exec. Order No. 14072, 87 Fed. Reg. 24851 (Apr. 22, 2022) (Comment Exhibit 6); Exec. Order No 14008, 86 Fed. Reg. 19 (Jan. 27, 2021) (Comment Exhibit 45).

counsels in favor of protecting mature forests.¹⁸⁴ Aggressive measures are necessary to stave off climate and extinction catastrophe.¹⁸⁵ This vision was endorsed by the Biden Administration through EO 14072 and EO 14008.¹⁸⁶ The Forest Service has not revealed how it intends to implement either in the context of this Project, instead describing the effects on vegetation as “minor and local.”¹⁸⁷ The Forest Service also failed to disclose, discuss, and respond to the scientific evidence we raised in our comment.¹⁸⁸

Vegetation management goals are described in the Final EA to “create small and large openings in the forest” to allow tree regeneration, vegetation regeneration, and increase wildlife habitat diversity.¹⁸⁹ These management practices are increasingly being called into question, including in a new study released in early 2023.¹⁹⁰ The absence of old forests in New England has led to the elimination or decline of elk, caribou, wolverine, wolves, cougars, pine marten, and salmon.¹⁹¹ Large swaths of intact forest minimize harmful vectors for the spread of invasive species and ticks, and allow for a mix of both early and late successional habitats as required by New England’s forest-dependent species. Unlogged forests in New England exhibit the greatest structural complexity and tree species diversity,¹⁹² as well as the greatest resilience to climate change.¹⁹³ The Forest Service suggested the project area is ready for “active management” to cultivate a healthy forest with improved biodiversity yet provided no scientific evidence.¹⁹⁴ The Forest Service states natural means would create “less young forest habitat overall. . . likely

¹⁸⁴ See *supra* Sections (I)(b), (I)(d)(iii).

¹⁸⁵ Ceballos et al., *Vertebrates on the Brink as Indicators of Biological Annihilation and the Sixth Mass Extinction*, 117 PNAS 13596 (June 2020) (Comment Exhibit 41).

¹⁸⁶ Exec. Order No. 14072, 87 Fed. Reg. 24851 (Apr. 22, 2022) (Comment Exhibit 6); Exec. Order No 14008, 86 Fed. Reg. 19 (Jan. 27, 2021) (Comment Exhibit 45).

¹⁸⁷ Final EA at 22.

¹⁸⁸ Comment on Updated Draft EA at 20-23, 31-36.

¹⁸⁹ *Id.* at 9.

¹⁹⁰ Kellett et. al., *Forest-clearing to Create Early-successional Habitats: Questionable Benefits, Significant Costs*, FRONTIERS FOR GLOB. CHANGE 1 (Jan. 9, 2023) (Exhibit 22).

¹⁹¹ Evans and Mortelliti, *Effects of Forest Disturbance, Snow Depth, and Intraguild Dynamics on American Marten and Fisher*, 13 ECOSPHERE 1 (Nov. 24, 2021) (Comment Exhibit 52).

¹⁹² Miller et al., *Eastern National Parks Protect Greater Tree Species Diversity than Unprotected Matrix Forests*, 414 FOREST ECOLOGY AND MGMT. 74 (April 15, 2018) (Comment Exhibit 48); Miller et al., *National Parks in the Eastern United States Harbor Important Older Forest Structure Compared with Matrix Forests*, 7 ECOSPHERE 1 (July 2016) (Comment Exhibit 49).

¹⁹³ Thom et al., *The Climate Sensitivity of Carbon, Timber, and Species Richness Covaries with Forest Age in Boreal- Temperate North America*, (2019) (Comment Exhibit 29).

¹⁹⁴ DDN at 2.

reducing overall wildlife species diversity in the project area over the long-term,”¹⁹⁵ but provides no analysis of: a) how much young forest habitat is already present on public lands (including the high-voltage powerline corridor through the project area) or surrounding private lands; b) how much would be created naturally with a no-action alternative; or c) how its proposed “young forest habitat” differs from what would occur naturally in the forest. Proposed harvests are neither preferable nor as necessary as the Final EA makes it out to be. Climate change has put a spotlight on the damaging effects of outdated forestry practices and beliefs.¹⁹⁶ The Forest Service’s proposal that providing non-shade conditions for some species of trees to thrive is not in agreement with what we know of how large trees can transfer nutrients to smaller trees through fungal communities in the soil.¹⁹⁷ It is also at odds with how healthy forests mature and support the complex food web and balance in a natural undisturbed forest ecosystem. The public is left to wonder whether this “need for management” is entirely based on commercial interests for a more profitable forest—as selective and clearcutting extirpate the largest, most profitable trees for timber. The Forest Service failed to address and explain opposing viewpoints and contrary scientific information along with their rationale for choosing one viewpoint over another.¹⁹⁸

The Final EA fails to take a hard look at stand ages and species composition within the Tarleton Habitat Management Unit (“HMU”). The Forest Service suggests the Tarleton HMU is not meeting its “MA 2.1 Habitat Composition and Age Class Objectives” as outlined in the outdated WMNF Plan. These Age Class Objectives and Potential Natural Vegetation are not informed by the latest scientific understanding of the ecology of New England forests.

As raised in our comments previously, the WMNF’s determination that the natural tendency of the majority of the forest is towards spruce/fir, and that hardwoods, including beech, are unnaturally abundant is erroneous and factually baseless. Hardwoods were the dominant tree species in the WMNF prior to European settlement, and beech was the most dominant of the hardwoods.¹⁹⁹ The WMNF’s age class analysis is similarly erroneous. The project analysis fails to account for regeneration and young-aged trees because it only accounts for these conditions at an artificial stand scale that would rarely if ever occur under natural conditions in the forest. As a result of this foundational error, the Tarleton IRP presupposes that the *only* way to achieve

¹⁹⁵ Final EA at 8.

¹⁹⁶ Gabriel Popkin, *Forest Fight*, 374 SCIENCE 1184 (Dec. 3, 2021) (Exhibit 23).

¹⁹⁷ Simard et. al., *Net Transfer of Carbon Between Ectomycorrhizal Tree Species in the Field*, 388 NATURE 579 (Aug. 7, 1997) (Exhibit 24).

¹⁹⁸ 40 C.F.R. § 1502.9(b) (requiring agencies to disclose, discuss, and respond to “any responsible opposing view”); *WildEarth Guardians v. Jewell*, No. 1:16-CV-00605-RJ, 2017 WL 3442922 (D.N.M. Feb. 16, 2017); *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013).

¹⁹⁹ Lorimer and White, *Scale and Frequency of Natural Disturbances in the Northeastern US: Implications for Early Successional Forest Habitats and Regional Age Distributions* 185 FOREST AND ECOLOGY MANAGEMENT 41(2003) (Comment Exhibit 38).

desired age class goals is to conduct logging activities. This determination biases the agency against other valid management approaches, constraining the development of alternatives.

Standing Trees and members of The Lake Tarleton Coalition have repeatedly requested information about stand age classes in the Project. WMNF continuously failed to produce a stand age class map²⁰⁰ or detailed records of past harvest activity and explicitly stated they are unaware of the stand age classes for cutting units.²⁰¹ Finally, as the result of our FOIA request, we received a Stand Age data document for Lake Tarleton HMU.²⁰² This document reveals the Lake Tarleton HMU is actually quite unevenly aged, with many mature trees.²⁰³ The document is not a map, however, and fails to import an accurate sense of scale. The public still does not have access to this information, making it impossible to determine whether the Project complies with the WMNF Plan. The public is unclear whether the WMNF has complied with Standard S-3 or Guideline G-1 of the WMNF Plan.²⁰⁴ The WMNF Plan also states “[n]o harvest will occur in stands identified to provide old forest habitat.” We raised these issues in our comment, but no analysis has been made available publicly to demonstrate Forest Plan compliance.

Like the Draft EA, the Final EA fails to acknowledge EO 14072 and the obligation imposed on the WMNF to conserve mature and old-growth forests. Just days ago, on April 20, 2023, the Forest Service released a report titled “Mature and Old-Growth Forest: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management” as required under EO 14072.²⁰⁵ Simultaneously, the Forest Service sent a letter to Regional Foresters stating that “[w]e will shortly issue guidance on using this information” in the aforementioned report.²⁰⁶ On April 21st, the Forest Service published an Advance Notice of Proposed Rulemaking that seeks input on how the agency should “adapt current policies to protect, conserve, and manage the national forests and grasslands for climate resilience,”

²⁰⁰ E-mail from Scott Hall, USFS NEPA Planner, to Elaine Faletra (November 19, 2021) (Comment Exhibit 5).

²⁰¹ E-mail from Brooke Brown, Pemigewasset District Ranger, to Rob Wipfler (March 30, 2023, 9:07AM) (Exhibit 1).

²⁰² Letter from Derek Iburguen, WMNF Forest Supervisor, to Rob Wipfler (April 12, 2023) (Exhibit 4).

²⁰³ Lake Tarleton HMU Stand YOO (March 28, 2019) (Exhibit 25).

²⁰⁴ “Timber harvest is prohibited in old growth forest” WMNF Plan - Chapter 2 at 2-13; “Outstanding natural communities should be conserved” WMNF Plan - Chapter 1 at 1-9.

²⁰⁵ MATURE AND OLD-GROWTH FORESTS: DEFINITION, IDENTIFICATION, AND INITIAL INVENTORY ON LANDS MANAGED BY THE FOREST SERVICE AND BUREAU OF LAND MANAGEMENT, U.S. DEP’T OF AGRIC. 1 (Apr. 2023) (Exhibit 35).

²⁰⁶ Letter from Chris French, USFS Deputy Chief, to Regional Foresters (Apr. 18, 2023) (Exhibit 26).

including “concerns about...past and current management practices, including inappropriate vegetation management.”²⁰⁷

The Final EA was released prior to the availability of the initial inventory and report, issuance of guidance to Regional Foresters, and completion of proposed rulemaking, foreclosing the opportunity to protect the very mature forest the Executive branch and national Forest Service are now setting out to protect. This initial inventory was available to the public only a week before the end of the objection period for this Project. The public is left guessing as to this Project's compatibility with EO 14072. Given this guidance and the presence of mature forest in the project area, proceeding with this project without further analysis would irretrievably commit limited resources against the direction of EO 14072. The Final EA fails to acknowledge EO 14072 and the obligation imposed on the WMNF. The Forest Service has recognized current scientific standards and the instruction of EOs 14072 and 14008 require it to re-examine projects. For example, the Forest Service recently withdrew the Flat Country Project in Oregon because the proposed project was inconsistent with EO 14072 and EO 14008.²⁰⁸ Of concern was the project's purpose to regenerate younger age classes and the negative impacts the treatments would have on mature forest characteristics.²⁰⁹ The WMNF failed to recognize and address new policy addressing mature forest conservation under by EO 14072 and 14008.

The WMNF Plan gives the forest a distinct advantage in meeting its NFMA, EO 14072, and EO 14008 obligations by clearly defining mature, old, and old-growth forests. Until detailed analysis is completed to comply with WMNF Plan and EO requirements to conserve mature and old-growth forests, the Tarleton IRP cannot legally proceed under NEPA and NFMA.

Requested Remedy: The Forest Service should complete an EIS, developing an adequate range of alternatives and taking into account the analysis required under the WMNF Plan, EO 14072, and EO 14008.

x. Wildlife

The Forest Service fails to acknowledge the impacts that the Project will have on wildlife and the important role that mature and old-growth forests play in this delicate ecosystem. 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:

²⁰⁷ Letter from Chris French, USFS Deputy Chief, re: Advance Notice of Proposed Rulemaking (Apr. 21, 2023) (Exhibit 36).

²⁰⁸ *Flat Country Regional Review*, U.S. FOREST SERVICE, <https://www.fs.usda.gov/detail/r6/landmanagement/planning/?cid=fseprd1080564> (last visited Apr. 23, 2023).

²⁰⁹ FLAT COUNTRY PROJECT REVIEW REPORT, U.S. FOREST SERVICE 1, 12 (Sept. 27, 2022), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd1080562.pdf.

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.²¹⁰

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. 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 forests and reliant upon complex forest structure for their survival, including standing snags and large living trees.²¹¹ 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.²¹² Mature, unfragmented interior forests make ideal habitat for a variety of native and imperiled species. However, this type of forest is rare in New England overall. This makes the WMNF an important concentration of such habitat within New England. When this habitat is fragmented or degraded, through activities such as logging, these species experience increased threats from interactions with humans, predation, changes in microclimates, the spread of invasive species and ticks, and other fragmentation and edge effects.

One of the Wildlife Objectives listed in the WMNF Plan is to “[m]aintain high quality mature forest and old forest habitats on a majority of the Forest,” as there is good reason for leaving mature forests intact.²¹³ The Final EA incorrectly emphasizes the value of clearings, open spaces, orchards, soft mast, and young forest for bear, deer, turkey, pollinators, and other wildlife.²¹⁴ These are abundant and widespread species with wide-ranging individuals who select

²¹⁰ Zaino et al., *Vermont Conservation Design-Natural Community and Habitat Technical Report*, VT. FISH AND WILDLIFE DEPT. 15 (March 2018) (Comment Exhibit 17).

²¹¹ Robert A. Askins, *The Critical Importance of Large Expanses of Continuous Forest for Bird Conservation*, 25 BIOLOGY FACULTY PUBLICATIONS 1, 25 (2015) (Comment Exhibit 50).

²¹² Thorn et al., *The Living Dead: Acknowledging Life After Tree Death to Stop Forest Degradation*, 18 FRONTIERS IN ECOL. AND THE ENV'T 505 (2020) (Comment Exhibit 51); Evans and Mortelliti, *Effects of Forest Disturbance, Snow Depth, and Intraguild Dynamics on American Marten and Fisher*, 13 ECOSPHERE 1 (Nov. 24, 2021) (Comment Exhibit 52).

²¹³ WMNF Plan - Chapter 1 at 1-20.

²¹⁴ Final EA at 7.

both open areas and forest areas.²¹⁵ These species would not likely have differences in productivity, health, or distribution as a result of the proposed action or no action. In particular, the Final EA proclaims a need for the expansion of one existing apple orchard to create a larger opening to “improve wildlife habitat diversity in the Lake Tarleton HMU.”²¹⁶ The Final EA leads the public to believe there would be benefits to these species from the proposed actions. These species are able to access abundant resources of these types on lands adjacent to the Forest, and are not considered “habitat limited.” It is arbitrary to determine that the Forest should commit resources to benefit these species beyond their current condition. It is also capricious to determine the proposed action would have a different outcome for these species compared to no action. As a result, it would be arbitrary and capricious to carry out the proposed action to create more open space, orchards, or young seral forest in the proposed action area.

Our native ecosystems preserve—and present the opportunity to restore—the greatest levels of wildlife and biodiversity. The Forest Service cannot ignore the vast amount of scientific data showing how mature and old-growth forests support a wide range of wildlife. The Final EA’s discussion of wildlife is inadequate, and the completion of an EIS is necessary to determine the true impacts that the Project would have on wildlife in the area.

Requested Remedy: The Forest Service should analyze an adequate range of alternatives to consider options that would benefit imperiled species, and should complete an EIS to determine the best practices for protecting wildlife and its habitat.

xi. Impacts of Road Construction

Although “Transportation” and the need for a transportation analysis is included as one of the “needs” for the project, there is no analysis of transportation or the impacts of roads in the Environmental Impacts discussion.²¹⁷ 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 would be maintained or reconstructed to provide safe access to vegetation management areas and to meet modern design standards.”²¹⁸ Thus, on its face, the Final EA is internally inconsistent on this point, and again, the Forest Service neither provides nor cites to these referenced standards.

The Final EA did not analyze, or even mention, the potential for roads and skid trails 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 road 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 Final EA of not identifying a baseline against which impacts

²¹⁵ See Kellett et al. (2023) (Exhibit 22).

²¹⁶ Final EA at 7.

²¹⁷ Final EA at 7.

²¹⁸ Final EA at 15.

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.

Requested Remedy: The Forest Service should complete an EIS to determine the impacts of road reconstruction in the Project area.

xii. Cumulative Impacts

The Forest Service not only fails to provide virtually any details in the Final EA's cumulative impacts analysis, but entirely removes previously mentioned past projects that were included in the Updated Draft EA under this section.²¹⁹ When considered together, the combined resource impacts of these actions—past, present, and future—are both significant to the human environment and deeply troublesome.

The Forest Service is required by NEPA to consider the cumulative impacts of the Project.²²⁰ Cumulative impacts are defined as “effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or persons undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.”²²¹ Cumulative effects analysis requires that the agency define and apply a consistent geographic scope in which to analyze cumulative effects.²²² The geographic scope determines which nearby projects will be included in its analysis, and agencies “must provide support for its choice of analysis area[.]”²²³

In the Updated Draft EA, the Forest Service made slight reference to past activities on surrounding lands (including private timber cuts) as well as other ongoing Forest Service projects that involve logging in the WMNF (including Bowen Brook, Pemi Northwest, and Wanosha IRP).²²⁴ In our comment on the Updated Draft EA, we pointed out that other than mentioning these projects, the Draft EA did not discuss what those projects entail, or how the impacts and potential impacts from those projects relate to the Project at issue. Even worse, the Final EA entirely eliminates the list of these non-Federal and Federal projects from its cumulative impacts analysis, and also fails to identify additional proposed and ongoing Forest Service projects in the WMNF. In addition to the projects mentioned in the Updated Draft EA,²²⁵ other Forest Service projects in the WMNF include Sandwich Vegetation Management Project, Peabody West Integrated Resource Project, Lost River Integrated Resource Project, and Hales

²¹⁹ Compare DEA at 21, with Final EA at 18-19.

²²⁰ 40 C.F.R. § 1508.7.

²²¹ 40 C.F.R. § 1508.1.

²²² *LOWD/BMBP v. Connaughton*, 2014 WL 6977611, at 9-11 (D. Or. Dec. 9, 2014).

²²³ *Id.* at 9, citing *Native Ecosystems Council v. Dombeck*, 304 F. 3d 886, 902 (9th Cir. 2002).

²²⁴ DEA at 21.

²²⁵ DEA at 21 (listing Forest Service projects in WMNF including Bowen Brook, Pemi Northwest, and Wanosha Integrated Resource Project).

Location Wildfire Resiliency Project.²²⁶ All of these projects involve substantial logging, carbon emissions, and/or habitat alteration or destruction. An e-mail sent by District Ranger Brooke Brown to Rob Wipfler stated that “[s]uccess (achievement) in transitioning these stands from hardwood to spruce/fir is not attained in a single management action. Future actions will be needed to continue with establishing regeneration and overstory recruitment.”²²⁷ It is unclear whether the Forest Service has assessed the cumulative impacts of these anticipated future logging operations, as that information is absent from the Final EA and project record. It is also unclear whether the Forest Service has accounted for the amount of early successional habitat located on private lands adjacent to the project area and throughout the WMNF region.

The Final EA failed to identify or explain the temporal and geographic scopes of its cumulative impacts analysis for a majority of the resources. Although it acknowledges that such analysis must address activities “overlap[ping] in space and time with effects of the proposed project[,]”²²⁸ it does not actually define that “space” or analysis area. As noted, it vaguely states that “these analysis boundaries vary by resource” and are “documented in the project record.”²²⁹ In addition to its failure to define the geographic scope of the cumulative impacts analysis, the Final EA’s cumulative impacts analysis contains no actual analysis at all and does not even state whether the Project is expected to contribute cumulatively to resource impacts within the analysis area. The Forest Service cannot just make a blanket statement about impacts without supporting it with an actual geographic scope and analysis or some level of detail. As-is, the public has no way of actually evaluating the cumulative impacts of the Forest Service’s Project, because the public is not given any detail to look into the matter themselves.

Further, as we stated in our comment on the Updated Draft EA, the cumulative effects analysis fails to consider effects of the action on climate change or effects of climate change on the action. The analysis also fails to consider the unauthorized access that will inevitably result during and after the proposed action as a result of improvements to Charleston Road. The exclusion of these important components of a cumulative effects analysis contribute to the long list of reasons why this analysis is remarkably inadequate and incomplete.

Finally, as discussed in other sections of this objection, shortly after the Forest Service’s issuing of the Final EA, the uplisting date of the Northern Long-eared Bat (NELB) went into effect pursuant to the Endangered Species Act. The Forest Service was aware of the NLEB uplisting several months in advance, but the Final EA does not address it in its cumulative

²²⁶ *White Mountain National Forest: Projects*, U.S. FOREST SERV., <https://www.fs.usda.gov/projects/whitemountain/landmanagement/projects.>; See WMNF U.S. Forest Service Logging Projects Map (Exhibit 27).

²²⁷ E-mail from Brooke Brown, Pemigewasset District Ranger, to Rob Wipfler (Apr. 24, 2023, 3:50 PM) (Exhibit 28).

²²⁸ Final EA at 19.

²²⁹ Final EA at 19; The only documents that provide a cumulative analysis in the project record are limited to the Biological Evaluation, Soils Specialist Report, and Scenery Specialist Report. See *Tarleton Integrative Resource Project, Supporting*, U.S. FOREST SERV., <https://www.fs.usda.gov/project/?project=56394>.

impacts section. However, the Forest Service did create a Biological Evaluation for the Tarleton IRP which includes a brief discussion of the NLEB. The Biological Evaluation indicates “the analysis area for cumulative effects for TESP species resulting from the activities included under the Proposed Action encompasses National Forest System lands located within the Tarleton HMU” and “activities on private and state-owned land adjacent to the HMU.”²³⁰ In other words, the cumulative impacts analysis for the NLEB and other TESP species only includes a relatively small area (although no map was provided showing the exact spatial scale of the effects analysis). When taken into consideration with all the other Forest Service projects within the WMNF²³¹ discussed above, the cumulative impact is significant. Because these projects 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”²³² To be certain, the cumulative effects of Forest Service projects on the NLEB will be substantial and consequential, not just within the WMNF but also throughout the bat’s national habitat range. This is because USFWS has issued a batched (and botched) Biological Opinion allowing 2,408 planned and ongoing FS actions in the Eastern and Southern Regions to continue.²³³ This action area contains 22,543,398 acres of forested National Forest System lands.²³⁴ Due to the dire state of the NLEB, every individual bat and every logging or habitat destruction activity within its habitat matter. Failure to protect this species is a violation of the ESA.

For all the reasons set forth above, the Forest Service significantly fails NEPA’s hard look requirement of considering all cumulative impacts, and NEPA’s implementing regulations. The absence of detail and any real analysis in the Final EA shows that very little analysis occurred, and to the extent any did, the Forest Service has hidden most of it from the public.

Requested Remedy: The Forest Service should complete an EIS and additional NEPA analysis to ensure that all cumulative impacts of the Project are addressed and made available to the public.

II. The Tarleton IRP is Significant and Requires an EIS.

The Final EA’s finding of no significant impact (“FONSI”) violates NEPA because its finding is unsupported by the facts and the Project is a major federal action that will significantly impact the quality of the human environment. The Forest Service should conduct additional analysis in the form of an EIS.

²³⁰ Biological Evaluation at 7.

²³¹ See WMNF U.S. Forest Service Logging Projects Map (Exhibit 27).

²³² 40 C.F.R. § 1508.7.

²³³ Letter from Karen Herrington, Acting Assistant Regional Director for Ecological Services, Region 3 USFWS, to Gina Owens, Regional Forester Eastern Region U.S. Forest Service (Mar. 31, 2023) (re Northern Long-eared bat Biological Opinion) (in Tarleton IRP project file at filename Biological Opinion NLEB Reinitiation Forest Service R8 and R9 Final.pdf) (hereinafter “BiOp”).

²³⁴ BiOp at 6.

a. The FONSI is Conclusory and Unsupported by the Facts.

A FONSI must “present the reasons why an action . . . will not have a significant effect.”²³⁵ Review of an agency’s FONSI is conducted in three steps: 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; and third, if a finding of no significant impact is made, the agency must be able to make a convincing case for its finding.²³⁶ As described in our comment on the Updated Draft EA and expanded upon here, the Final EA fails to adequately describe the impacted environment and take a hard look at impacts to those resources. Despite this, the Forest Service has advanced a finding of no significant impact without providing convincing reasoning to support this finding.

The FONSI is grounded in the analysis of the EA. This is troublesome because much of the EA relies heavily on the purported lack of impact from past, similar projects to justify this project.²³⁷ Yet no analysis regarding past WMNF projects and their alleged lack of impact is actually provided.²³⁸ The FONSI must “present[] the reasons why an action. . . will not have a significant effect[.]”²³⁹ It is inadequate to state that because other actions did not have a significant impact, thus this Project will also have no significant impact. The Final EA’s failure to support its FONSI is alone sufficient to require additional or supplemental NEPA analysis in the form of an EIS.²⁴⁰

b. The Final EA Fails to Adequately Define the Context or Discuss the Intensity of Project Impacts, Which Weigh in Favor of a Finding of Significance.

An EIS is required for all “major federal actions significantly affecting the quality of the human environment[.]”²⁴¹ Under NEPA, the analysis of significance “requires consideration of both context and intensity[.]”²⁴² As raised in our comment on the Updated Draft EA, the Forest Service’s “analysis” of the context and intensity of impacts is cursory and incomplete. Substantial questions are raised as to whether the Tarleton IRP may cause significant degradation

²³⁵ 40 C.F.R. § 1508.13.

²³⁶ *Nw. Bypass Grp. v. United States Army Corps of Eng'rs*, 470 F. Supp. 2d 30, 61 (D.N.H. 2007).

²³⁷ Final EA at 22, 24-25.

²³⁸ The closest the Final EA comes to discussing past activities is two sentences in the “Vegetation and Wildlife Habitat Management” section that only mentions private timber sales, but not federal actions. Final EA at 6.

²³⁹ 40 C.F.R. § 1508.13.

²⁴⁰ *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 44 F. Supp. 3d at 859.

²⁴¹ 42 U.S.C. § 4332(2)(C).

²⁴² 40 C.F.R. § 1508.27.

to some human environmental factor.²⁴³ The Projects' context and intensity of impacts overwhelmingly require a finding of significance and the preparation of an EIS.

i. Context

The Final 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 affected 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 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.²⁴⁴

Establishing the proper setting and scale (“context”) within which to evaluate the impact of an action is critical, yet the FONSI's discussion of “context” does not establish the context for the analysis of resources impacted by the project at all.

What is presumably the Context section of the FONSI does not indicate whether the project qualifies as a major federal action significantly affecting the quality of the human environment, nor does it provide any discussion or detail about what the context is. But the Final EA suggests that the Project is not a major federal action. 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.”²⁴⁵ Therefore, 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 Forest Service fails to provide any actual analysis explaining the impacts of the project on the local area.

²⁴³ *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149-50 (9th Cir. 1998) (citations omitted) (emphasis original); See also *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 864-65 (9th Cir. 2005) (“To trigger this [EIS] requirement a plaintiff need not show that significant effects will in fact occur, but raising substantial questions whether a project may have a significant effect is sufficient.” (internal quotations, citations, and alterations omitted)).

²⁴⁴ 40 C.F.R. § 1508.27(a).

²⁴⁵ Final EA at 23.

Nor do individual sections of the Final EA 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 EA later identifies as “Heritage,” the Final EA does not even allude to the context of its discussion, and the reader is left guessing.²⁴⁶ 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.* The Forest Service must provide the context for its analysis of each resource.

The context of analysis for other resource sections are similarly amorphous or unclear. For example, the Vegetation section indicates that “[i]mpacts to vegetation are considered in the context of forest health.”²⁴⁷ 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 Socioeconomics and Hydrology 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, Scenery, and Soils. Even then, the context is not discussed in the Final EA, but in separate documents.²⁴⁸ 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 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.” And give citizens a chance to respond to that supplemental EA. The failure to properly address the significance of the local impacts is a fatal and “major analytical lapse.”²⁴⁹

Further, the Forest Service’s choice to begin the “Context” or “Degree of Effects” 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 Forest Service is not allowed to sweep the significant impacts to the Lake

²⁴⁶ Final EA at 20.

²⁴⁷ Final EA at 22.

²⁴⁸ See Biological Evaluation at 7-8; Soils Specialist Report at 2-3.

²⁴⁹ 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 coastline 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.”).

Tarleton area under the rug by pointing to the vastness of the forest surrounding it.²⁵⁰ 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. To be certain, with greater consideration of the context of this Project, the Forest Service would find that the Tarleton IRP is a major federal action significantly affecting the quality of the human environment.

ii. Intensity

Intensity refers to the “severity of impact.”²⁵¹ NEPA provides a list of 10 non-exclusive factors to consider when evaluating intensity.²⁵² 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. As raised in our comment on the Updated Draft EA, 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. Each shortcoming is addressed individually below, as many of these considerations are implicated by the Tarleton IRP. The presence of even just “one of these factors may be sufficient to require an EIS in appropriate circumstances.”²⁵³ The following should be considered in evaluating intensity:

(1) “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.”²⁵⁴

The Final EA does not describe potential adverse effects of the Project. For example, in the discussion of “Clearcuts with Reserves” there is no mention of known detrimental impacts of clear-cut logging, such as the potential to spread ticks and invasive plants, increased erosion, decreases in water quality, and soil compaction from logging activities. *Only* perceived benefits are discussed. The Final EA fails to acknowledge potential adverse impacts, and thus the Forest Service has not met its obligation to “consider... [i]mpacts that may be both beneficial and adverse.”²⁵⁵ This factor also weighs in favor of a finding of significance and the preparation of an EIS.

(2) “The degree to which the proposed action affects public health or safety.”²⁵⁶

The Final EA states the Forest Service “implemented this type of project and similar activities . . . many times on the Forest and in the region, without substantial impacts to public

²⁵⁰ See *Pac. Coast Fed’n of Fisherman’s Ass’ns v. Nat’l Marine Fisheries Serv.*, 265 F.3d 1028, 1035-37 (9th Cir. 2001) (an agency cannot minimize the impact of an activity by adopting a scale of analysis so broad that it trivializes the site-level impact).

²⁵¹ 40 C.F.R. § 1508.27(b).

²⁵² 40 C.F.R. § 1508.27(b)(1)-(10).

²⁵³ *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 865 (9th Cir. 2005).

²⁵⁴ 40 C.F.R. § 1508.27(b)(1).

²⁵⁵ 40 C.F.R. § 1508.27(b)(1).

²⁵⁶ 40 C.F.R. § 1508.27(b)(2).

health or safety.”²⁵⁷ Repeated reliance on the fact that similar projects have occurred in the past ignores the fact that each project location is unique and therefore requires its own analysis of potential impacts. It would undermine the entire purpose of NEPA to allow for general *types* of past actions to justify future actions. NEPA analysis is done on a project-specific basis. The Forest Service fails to describe the “potential impacts to public health and safety” or to ensure that these are minimized or avoided.²⁵⁸ Valid public safety concerns were raised during scoping comment periods, and never addressed. This factor also weighs in favor of a finding of significance and the preparation of an EIS.

(3) “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.”²⁵⁹

In the Final EA, the Forest Service makes a conclusive statement that the Project area is “not unique” and there are “no unique geographic areas.” Contrary to this suggestion, the Project area is absolutely unique, as it includes the largest lake entirely within the White Mountain National Forest—indeed, Lake Tarleton is one of the cleanest and least developed lakes of its size in the entire White Mountain region. We do not agree with the Forest Service’s refusal to recognize potential Inventoried Roadless Areas, park lands, and ecologically critical areas within the Project area. Lake Tarleton has been proposed for special management since before the revision of the WMNF Plan in 2005, and is now proposed for reclassification as a Scenic Area. The WMNF failed to honor the reasons for which the lake was protected more than two decades ago. The WMNF has also failed its obligation to identify the area encompassing Lake Tarleton and surrounding Lands as an Inventoried Roadless Area under the 1992 Directives for the 1982 Planning Rule. The Forest Service should correct the omission and recognize the Project area for its roadless qualities and wilderness potential. For many of the reasons raised earlier in this objection, the Project area is ecologically critical. Especially in light of the NLEB’s listing as an Endangered Species. NLEB’s are known to occur in the Project area and yet the Forest Service fails to recognize the importance of mature forest for the species. The intensity of potential impacts to this area is high when considering the above outlined unique characteristics, as well as those raised in our comment on the Updated Draft EA. The unique characteristics of the Tarleton HMU weighs in favor of a finding of significance and the preparation of an EIS.

(4) “The degree to which the effects on the quality of the human environment are likely to be highly controversial.”²⁶⁰

For the purposes of this factor, “[a] substantial dispute exists when evidence, raised prior to the preparation of an EIS or FONSI . . . casts serious doubt upon the reasonableness of an

²⁵⁷ Final EA at 24.

²⁵⁸ Final EA at 24.

²⁵⁹ 40 C.F.R. § 1508.27(b)(2).

²⁶⁰ 40 C.F.R. § 1508.27(b)(4).

agency's conclusions."²⁶¹ The word "controversial" refers to situations where "substantial dispute exists as to the size, nature, or effect of the major federal action."²⁶² The Forest Service ignores the high degree of scientific controversy over the Project's implementation and reasoning. Substantial scientific dispute clearly exists related to: management for early successional habitat, management to improve carbon storage and sequestration, management for climate adaptation and resilience, and protection of water quality. In Section (I)(d)(iii), we elaborate on the importance of mature forests in climate change adaptation and mitigation. The Forest Service fails to respond to or consider recent studies that support the protection of mature forests. In Section (I)(d)(ix), we expand on the failure of the Forest Service to recognize and address the growing importance of mature forest conservation, in line with policy alignment across the Executive Branch as a result of EO 14072 and 14008. The Forest Service's determinations and reasoning in the EA are inconsistent with greater efforts to protect and conserve mature forests, rooted in scientific understanding ignored by the Forest Service. Further, there is significant controversy over the Forest Service's failure to assess impacts to local residents and businesses. Substantial dispute exists as to the effect of the Tarleton IRP on the human environment, weighing in favor of a finding of significance and the preparation of an EIS.

(5) "The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks."²⁶³

The Forest Service attempts to justify its decision based on the existence of past projects implemented in the Forest and the region.²⁶⁴ Absent is any supporting information or authorities for the public to validate this claim. The possible effects on the human environment are highly uncertain *and* involve unique or unknown risks because the Project is predicated on "similar actions" implemented in the WMNF.²⁶⁵ This reasoning escapes the heart of NEPA: *project-specific* analysis. The Forest Service denied the public due consideration of this specific Project's impacts. Foreclosing the opportunity to assess unique or unknown risks. This flawed analysis weighs in favor of a finding of significance and the preparation of an EIS.

(6) "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."²⁶⁶

The Tarleton IRP will irretrievably harm the forests surrounding Lake Tarleton, flying in the face of a community-led conservation history as detailed in our Introduction. The proposed

²⁶¹ *Nat'l Parks Conservation Ass'n.*, 3d 722, 736 (9th Cir. 2001).

²⁶² *Town of Cave Creek v. FAA*, 325 F.3d 320, 331 (D.C. Cir. 2003) (quoting *North American Wild Sheep v. U.S. Department of Agriculture*, 681 F.2d 1172, 1182 (9th Cir. 1982)) (emphasis in original); See also *Middle Rio Grande Conservancy Dist. v. Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002) (same); *Town of Superior v. U.S. Fish and Wildlife Serv.*, 913 F. Supp. 2d 1087, 1120 (D. Colo. 2012) (same).

²⁶³ 40 C.F.R. § 1508.27(b)(5).

²⁶⁴ Final EA at 25.

²⁶⁵ Final EA at 25.

²⁶⁶ 40 C.F.R. § 1508.27(b)(6).

action could harm or disqualify the contiguous landscape from Ch. 70 Wilderness Inventory and evaluation in subsequent Forest Plan revisions. The Forest Service places too much weight on prior implementation of a *type* of activity, which says nothing about the impact of that activity on a specific location. Project-specific evaluation is critical because where and how activities occur in the landscape determines the nature of the impact. This is a dangerous precedent to establish for future actions and weighs in favor of a finding of significance and the preparation of an EIS.

(7) “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.”²⁶⁷

We expand in Section I(d)(xii) on the Final EA’s lack of analysis regarding cumulative impacts. As previously explained, there are a number of potential cumulative impacts resulting from this Project that will rise above the claimed level of “minor or less.”²⁶⁸ This factor also weighs in favor of a finding of significance and the preparation of an EIS.

(8) “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.”²⁶⁹

The Forest Service ignores the numerous historic and cultural resources that exist within the project area, as expanded upon in Section I(d)(ii). The Final EA makes no mention of the fact that the inventory fails to catalogue or acknowledge known gravesites within the project area. It is highly likely these unacknowledged resources would be lost or damaged if the Project was implemented. The potential loss of these resources counsels in favor of significance and the preparation of an EIS.

(9) “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.”²⁷⁰

We expand in Section III on the Final EA’s complete lack of consideration for the endangered NLEB. The recent uplisting of the species and absence of transparency from both the Forest Service and USFWS weighs heavily in favor of a finding of significance, necessitating a full analysis of the impacts to the NLEB and other endangered and threatened species in an EIS.

(10) “Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.”²⁷¹

²⁶⁷ 40 C.F.R. § 1508.27(b)(7).

²⁶⁸ Final EA at 25.

²⁶⁹ 40 C.F.R. § 1508.27(b)(8).

²⁷⁰ 40 C.F.R. § 1508.27(b)(9).

²⁷¹ 40 C.F.R. § 1508.27(b)(10).

As expanded upon at length in this objection, the Forest Service failed to demonstrate compliance with a number of laws imposed for the protection of the environment: NEPA, NFMA, CWA, and the ESA. In Section III, we expand on the concern the Project will lead to violations of the ESA and the requirements imposed for the protection of the NLEB. In Section IV, we elaborate on how the Project violates NFMA and the WMNF Plan. The Project threatens the violation of numerous Federal requirements, weighing in favor of a finding of significance and the preparation of an EIS.

Requested Remedy: For all of the reasons outlined above the Forest Service should withdraw its FONSI and prepare an EIS to evaluate the significant impacts posed by this Project.

III. The Analyses and Protections for the Endangered Northern Long-eared Bat Are Deficient.

While we acknowledge that the Forest Service has reinitiated consultation with U.S. Fish and Wildlife Service (“USFWS”) regarding the Northern Long-eared Bat (“NLEB”), the Forest Service still fails to meet its legal obligations under the ESA and other federal statutes for the following reasons.

a. The Tarleton IRP Fails to Comply with the ESA.

Congress passed the Endangered Species Act (“ESA”) in 1973 for the purpose of conserving endangered and threatened species and the ecosystems upon which they rely.²⁷² 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.”²⁷³ On November 30, 2022, USFWS published a final rule reclassifying the NLEB, uplisting the bat from threatened to endangered under the ESA.²⁷⁴ Though initially set to become effective on January 30th, 2023, in an unusual and unprecedented move, USFWS delayed the effective date of the uplisting until March 31, 2023.²⁷⁵ The NLEB status is currently in place, with part of its known habitat range within the Tarleton IRP area. Federal agencies, including the Forest Service, are required to be in compliance with the ESA as it relates to the endangered status of the NLEB.

Section 9 of the ESA broadly prohibits the “take” of any listed species.²⁷⁶ “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.”²⁷⁷ 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

²⁷² 16 U.S.C. § 1531(b).

²⁷³ *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978).

²⁷⁴ Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, 87 Fed. Reg. 73,488-504 (Nov. 30, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-11-30/pdf/2022-25998.pdf> (Exhibit 29).

²⁷⁵ Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat; Delay of Effective Date, 88 Fed. Reg. 4,908-10 (Jan. 26, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-26/pdf/2023-01656.pdf> (Exhibit 30).

²⁷⁶ 16 U.S.C. § 1538(a).

²⁷⁷ *Id.* at § 1532(19).

. . . 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.”²⁷⁸ To assist in the completion of this statutory requirement, the agency undertaking the action (“action agency”) must complete a Biological Assessment (“BA”).²⁷⁹ 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.”²⁸⁰ 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.²⁸¹ USFWS then produces a Biological Opinion (“BiOp”) to determine whether the agency action is likely to jeopardize the continued existence of a listed species.²⁸² If the action is likely to jeopardize listed species, the BiOp must include reasonable and prudent alternatives to the action as proposed.²⁸³

First, as indicated above, the Forest Service is required to complete a BA evaluating the potential effects of the action (the Project) on listed species.²⁸⁴ Accordingly, a species-specific BA should have been conducted for the NLEB and the Tricolored bat. On April 4, 2023, we sent an e-mail to the Forest Service requesting a BA for the NLEB.²⁸⁵ The Forest Service incorrectly indicated that the BA was not a public document, interpreted this as a Freedom of Information Act (“FOIA”) request, and forwarded the request to the Forest Service Eastern Region (R9) Acting Regional FOIA Coordinator.²⁸⁶ We have yet to receive the requested NLEB BA. Assuming the BA has been completed by the Forest Service, it should not need to be requested. BA’s conducted by the Forest Service are considered public records and should be easily accessible by the public upon completion. This is especially important for the public to have all the necessary information to make informed comments and objections to projects, such as the Tarleton IRP. Furthermore, the NLEB BA for the proposed action should have been provided to USFWS for that agency to accurately review whether the proposed action would affect the NLEB. The BA is also necessary for USFWS to prepare an accurate BiOp. It is unclear whether the Forest Service has provided a NLEB BA to USFWS for review. What is clear is that the BA is not currently available to the public.

Furthermore, as indicated in Section 7 of the ESA, agencies may not engage in activity that results in the destruction or adverse modification of endangered and threatened species’

²⁷⁸ 16 U.S.C. § 1536(a)(2).

²⁷⁹ *Id.* at § 1536(c)(1).

²⁸⁰ 50 C.F.R. § 402.12.

²⁸¹ 50 C.F.R. § 402.14.

²⁸² *Id.* at § 402.14(h).

²⁸³ *Id.* at § 402.12(h)(2).

²⁸⁴ *Id.* at § 1536(c)(1).

²⁸⁵ E-mail from Suzanne Gifford, USFS Ecologist and Wildlife Biologist, to Zack Porter (April 10, 2023, 1:37 PM) (Exhibit 5).

²⁸⁶ E-mail from Marry Stewart, Acting Regional FOIA Coordinator, to Zack Porter (April 10, 2023, 11:52am) (Exhibit 31).

habitat.²⁸⁷ In blatant disregard of this obligation, the Forest Service concedes that in the Tarleton IRP area “roosts may be removed during timber harvests” and “foraging habitat may be impacted by project activities”²⁸⁸ Therefore, the Project as-is would violate the ESA through destruction and adverse modification of endangered bat habitat.

b. The Biological Evaluation for the Tarleton IRP Is Insufficient.

A Biological Evaluation is prepared in accordance with legal requirements set forth under Section 7 of the ESA,²⁸⁹ and must be compliant with the Forest Service Manual,²⁹⁰ the WMNF Plan,²⁹¹ and USDA Forest Service Standards and Guidelines.²⁹² The 2023 Biological Evaluation for the Tarleton IRP indicates that the NLEB was documented throughout the WMNF, roosting and foraging habitat exists within the action area, and individuals were captured in the area prior to the onset of white-nose syndrome.²⁹³ The Methodology section of the Biological Evaluation for the Project indicates acoustic bat surveys were conducted at two sites in the action area by New Hampshire Fish and Game biologists in July 2019.²⁹⁴ However, the Biological Evaluation fails to mention any results from these surveys. It does not appear that the Forest Service has attempted to conduct any additional surveys or capture efforts in the area for over three and a half years. For these reasons, information on the activity of NLEB in the Project area is not only scarce and inadequate, but also outdated. Additionally, the Tarleton IRP Biological Evaluation indicates that, “[t]here are no known hibernacula or roost trees within the action area, so there are no habitat features that would require a buffer from project activities.”²⁹⁵ Without any supporting data, studies, or evidence, this appears to be a conclusory statement, leaving the public wondering how the Forest Service came to this determination. Due to the recent and severe impacts on the species from threats such as white-nose syndrome, climate change, and habitat loss,²⁹⁶ the Forest Service should conduct additional studies to determine the current status of the NLEB in the project area before taking any action.

The Biological Evaluation indicates that the Forest Service used the USFWS Information for Planning and Conservation (“IPaC”) website to determine which federally-listed species may occur within the action area.²⁹⁷ However, the Forest Service Tarleton IRP website fails to mention whether the Forest Service completed the Determination Key review process (“DKey”)

²⁸⁷ 16 U.S.C. § 1536(a)(2).

²⁸⁸ Biological Evaluation at 10.

²⁸⁹ 16 U.S.C. 1536(c).

²⁹⁰ FSM 2672.42.

²⁹¹ WMNF Plan - Chapter 1.

²⁹² USDA Forest Service 2005a.

²⁹³ Biological Evaluation at 9.

²⁹⁴ Biological Evaluation at 6. The Biological Evaluation also mentions that the New Hampshire Fish and Game Department conducted an unsuccessful two-night capture effort in July 2019. *Id.* at 9. It is unclear whether this was the same effort as the acoustic survey.

²⁹⁵ Biological Evaluation at 9.

²⁹⁶ BiOp at 19.

²⁹⁷ Biological Evaluation at 7.

under IPaC to evaluate the effects of the project on the NLEB. According to the Standing Analysis and Implementation Plan, “[t]ree removal could affect NLEBs by the loss and/or fragmentation of foraging and commuting habitat and the removal and loss of roost trees. Actions that implement the conservation measures for NLEBs will not result in a gap in forested habitat of greater than 1,000 feet or isolate habitat.”²⁹⁸ Additionally, “[t]ree removal projects proposed within the 3.0 miles of NLEB captures or detections, within 1.5 miles of known roosts, and within 5.0 miles of hibernacula will not be eligible for a predetermination of NLAA [Not Likely to Adversely Affect].”²⁹⁹

As previously mentioned, although the Forest Service indicates that there are no known hibernacula or roost trees within the action area, the Forest Service fails to provide any substantive data or studies to support this assertion. It is unclear what field studies or actions—if any—the Forest Service actually undertook to make this determination. The Forest Service must also consider roosts, hibernacula, or bat presence directly outside of the activity area that might fall within the USFWS DKey range requirements.

Furthermore, USFWS also indicates that only tree clearing projects up to *10 acres* are eligible for a predetermined outcome of Not Likely to Adversely Affect the NLEB.³⁰⁰ Currently, the Biological Evaluation indicates the action may affect but is not likely to adversely affect the NLEB,³⁰¹ however, the Final EA asserts that clearcuts in the project area where all trees are removed in a stand will “create large openings (*greater than 10 acres but no more than 30 acres*).”³⁰² The Final EA estimates that a total of approximately 100 acres will undergo clearcut treatment in the Tarleton IRP area.³⁰³ This proposed action clearly does not support a finding of Not Likely to Adversely Affect the NLEB as the Forest Service indicated in the Final EA and Biological Evaluation. The determination of Not Likely to Adversely Affect is inconsistent with the USFWS DKey requirements, and the Forest Service is required “to coordinate with the local USFWS Ecological Services Field Office and/or follow a supplemental consultation process.”³⁰⁴

USFWS also provides an NLEB State-Specific Information Sources document³⁰⁵ and advises government agencies to consult with the appropriate office to determine whether rare or listed species are located within a project area and may be affected by a proposed action. The Forest Service should consult with the New Hampshire Division of Forests & Lands (“NHB Data

²⁹⁸ *Standing Analysis and Implementation Plan – Northern Long-Eared Bat Assisted Determination Key*, Version 1.1, USFWS (April 2023) at 19 (hereinafter “DKey”) (Exhibit 37).

²⁹⁹ DKey at 22 (Exhibit 37).

³⁰⁰ DKey at 12, 22 (Exhibit 37).

³⁰¹ Biological Evaluation at 11.

³⁰² Final EA at 10.

³⁰³ Final EA at 9.

³⁰⁴ DKey at 5. (Exhibit 37).

³⁰⁵ *Northern Long-Eared Bat: State-Specific Information Sources*, USFWS, https://www.fws.gov/sites/default/files/documents/Roost%20Tree%20and%20Hibernacula%20-%20State-Specific%20Data%20Links_2.pdf (last visited April 23, 2023) (Exhibit 32).

Check Tool”)³⁰⁶ to ensure that the proposed activities do not overlap with the required distances from NLEB hibernaculum, staging or swarming areas, recorded captures or acoustic detection locations, and roosts. In fact, the Forest Service should consult with the New Hampshire Division of Forests and Lands for *all* federally listed, proposed listed, and regional forester sensitive species within the project area. A consultation would provide additional species support assistance to the Forest Service and help ensure compliance with various statutes.

c. The Forest Service Fails to Meet NFMA Requirements.

The Forest Service fails to meet its obligations under NFMA as they relate to the NLEB and other TESP species. The Forest Service’s NFMA implementing regulations outline forest plan ecosystem diversity and species protection requirements.³⁰⁷ The statute states:

The plan must include plan components, including standards or guidelines, to maintain or restore the diversity of ecosystems and habitat types throughout the plan area. In doing so, the plan must include plan components to maintain or restore . . . [r]are aquatic and terrestrial plant and animal communities[.]³⁰⁸

Additional, species-specific NFMA plan components indicate that:

The responsible official shall determine whether or not the plan components . . . provide the ecological conditions necessary to: contribute to the recovery³⁰⁹ of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area. If the responsible official determines that the plan components . . . are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area.³¹⁰

The Forest Service’s Biological Evaluation and the Project fail to meet these requirements for several reasons. First, the Biological Evaluation provides an incomplete project effects analysis on the species,³¹¹ because it includes no discussion of how the Forest Service

³⁰⁶ *NHB DataCheck Tool*, NH DIVISION OF FORESTS AND LANDS, <https://www4.des.state.nh.us/NHB-DataCheck> (last modified Feb. 28, 2022) (Exhibit 33).

³⁰⁷ 36 C.F.R. § 219.9.

³⁰⁸ 36 C.F.R. § 219.9(a)(2).

³⁰⁹ NFMA definition of “Recovery”: “For the purposes of this subpart, and with respect to threatened or endangered species: *The improvement in the status of a listed species to the point at which listing as federally endangered or threatened is no longer appropriate.*” *Id.* at § 219.19 (emphasis added).

³¹⁰ 36 C.F.R. § 219.9 (b)(1).

³¹¹ Biological Evaluation at 9-10.

plans to maintain or restore the NLEB or other TESP species in the project area. The Forest Service admits to some negative short-term project effects on the NLEB, but then references conflicting scientific evidence to assert long-term benefits. For example, the Biological Evaluation suggests that some of the project activity outcomes (such as open habitat for foraging) may yield long-term benefits to the NLEB.³¹² This suggestion is in direct conflict with other studies that describe preferred habitats for the NLEB.³¹³ Second, the Biological Evaluation fails to explain how the Project will contribute to the recovery of the NLEB to the point at which its listing as endangered is no longer necessary. Finally, the Biological Evaluation indicates the Project activities may indirectly impact the NLEB, but it does not include discussion of species-specific plan components to provide the required ecological conditions necessary for the bat's recovery. For these reasons, the Forest Service fails to meet its obligations under NFMA as they relate to the NLEB and other TESP species.

Requested Remedy: The Forest Service should complete additional NEPA analysis to adequately address the impacts of the Project on the NLEB. This analysis should be done in an EIS, with additional consultation with USFWS under the ESA.

IV. The Project Is in Violation of NFMA.

NFMA requires the Forest Service to develop and implement a Forest Plan for each unit of the National Forest System.³¹⁴ Projects in each forest must be consistent with their relevant Forest Plan³¹⁵ and reviewing courts must be able to reasonably ascertain the Forest Service's compliance with that Forest Plan.³¹⁶ The WMNF Plan is nearly 17 years old and beyond this glaring deficiency, the Project fails to meet numerous goals and objectives of the WMNF Plan.

The WMNF Plan requires the use of "the latest scientific knowledge to restore the land and forest where needed" and emphasizes a focus on "ecosystem viability within the context of New England."³¹⁷ NFMA constrains the Forest Service timber harvest in the National Forest System to situations where "cuts are consistent with the protection of soil and the regeneration of the timber resources."³¹⁸ As discussed in our comment on the Updated Draft EA, and in this objection at great length, the project fails to use the latest scientific knowledge to restore the

³¹² Biological Evaluation at 10.

³¹³ See, e.g., Species Status Assessment at 18-19 (explaining "most foraging occurs . . . under the canopy . . . on forested hillsides and ridges" which "coincides with data indicating that mature forests are an important habitat type for foraging NLEBs."). Furthermore, NLEBs "seem to prefer intact mixed-type forests . . . for forage and travel rather than fragmented habitat or areas that have been clear cut." (Exhibit 13).

³¹⁴ 16 U.S.C. §§ 1600–1614; 16 U.S.C. § 1604.

³¹⁵ *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1061-62 (9th Cir. 2002); *Great Old Broads for Wilderness v. Kimbell*, 709 F.3d 836, 850 (9th Cir. 2013).

³¹⁶ *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 963 (9th Cir. 2005).

³¹⁷ WMNF Plan - Chapter 1 at 1-3.

³¹⁸ 16 U.S.C. § 1604(g)(3)(E)(i), (F)(v).

land. The Project ignores relevant scientific knowledge of healthy forests and their importance to building climate resilience. The proposed treatments are not appropriate methods to meet the objectives and requirements of the WMNF Plan considering the best available science. NFMA empowers responsible officials to “document how the best available scientific information was used” and “explain the basis for that determination,”³¹⁹ as high quality scientific analysis and public scrutiny are essential to NEPA implementation.³²⁰ The Tarleton IRP does not use the best available science based on its failure to analyze and incorporate the conclusions of numerous recent studies on forest ecology, biodiversity, forest carbon, water quality, and more.

The Forest Service also fails to consider the project within the greater context of New England, and the importance of the project area’s endangered habitat which provides for species protection and interconnectivity. The Project fails to contribute to the “conservation and recovery” of the NLEB and its habitat, as required by the WMNF Plan.³²¹ The Project will also contribute to air pollution, in opposition to the WMNF Plan goal to “protect or maintain air quality.”³²²

The Project’s top-down planning and failure to fully address deep public concerns offends the premise of the WMNF Plan that project-specific decisions would reflect particularized public feedback. During the 2005 WMNF Forest Plan revision, the public requested a management plan for the Lake Tarleton area. In response, the Forest Service stated:

The White Mountain Forest Plan revision does not include a level of detail that specifies separate management plans for local areas such as Lake Tarleton. The Forest Plan identifies the general purpose and desired land conditions for each management area and allows projects and activities to be planned on a case-by-case basis.³²³

No management plan for the Lake Tarleton Area was ever created. The Forest Service instead implored that “[p]ublic participation will be an important part of the process we use for making site-specific management decisions.”³²⁴ The Forest Service has continued to discourage public efforts to sustain the natural and cultural resources of the Lake Tarleton area by severely limiting public participation in this Project.

Requested Remedy: The Forest Service must ensure the Tarleton IRP complies with the WMNF Plan. The Forest Service should update the WMNF Plan, as required under NFMA.

³¹⁹ 36 C.F.R. § 219.3 (2017).

³²⁰ 40 C.F.R. § 1500.1(b).

³²¹ WMNF Plan - Chapter 1 at 1-8.

³²² *Id.* at 1-3.

³²³ WMNF Plan - Final EIS - Appendix A at A-234.

³²⁴ WMNF Plan - Final EIS - Appendix A at A-234.

CONCLUSION

For the foregoing reasons, we object to the Tarleton IRP. The Forest Service should implement our suggested Alternative #3. This alternative would improve recreation resources, habitat restoration, and designate the land as a protected Scenic Area through a Forest Plan amendment—as the public intended when the land was acquired by the WMNF over 20 years ago. Alternatively, to cure the manifest errors in the Final EA and FONSI, and given the significance of this Project, the Forest Service should prepare an EIS to adequately evaluate the significant impacts posed by the Tarleton IRP. The Forest Service should also update the WMNF Plan as required under NFMA to clarify and protect the outstanding resource value of the Lake Tarleton area. We look forward to hearing from you to discuss the issues raised in this objection.

Respectfully submitted,

STANDING TREES

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THE LAKE TARLETON COALITION

AND

OTHER INDIVIDUAL OBJECTORS NAMED
ABOVE

Table of Exhibits

Number	Exhibit Title
1	E-mail from Brooke Brown, Pemigewasset District Ranger, to Rob Wipfler (March 30, 2023, 9:07 AM)
2	E-mail from Isabella Pardales to Region 9 FOIA Coordinator (March 2, 2023, 8:01 AM)
3	E-mail from Marry Stewart, Acting Regional FOIA Coordinator, to Isabella Pardales (March 23, 2023, 10:15 AM)
4	Letter from Derek Ibarguen, WMNF Forest Supervisor, to Rob Wipfler (April 12, 2023)
5	E-mail from Suzanne Gifford, USFS Ecologist and Wildlife Biologist, to Zack Porter (April 10, 2023, 1:37 PM)
6	Standing Trees, <i>Categorization of Lake Tarleton Comments</i> (July 2022)
7	Tarleton Second 30-Day Comment Period Concern Responses, U.S. FOREST SERVICE (Sept. 5, 2022)
8	Copy of Tarleton Long Form PDF RTRC DRAFT Working, U.S. FOREST SERVICE (Apr. 14, 2023)
9	<i>Santa Fe Mountains Landscape Resiliency Project: Draft Environmental Assessment Public Comment Period Content Analysis and Response</i> , U.S. FOREST SERVICE 1 (2021) https://drive.google.com/file/d/1z6lid22zC8WZvVzkpUtNANVsnuh-0wKm/view
10	Comment Letter from Standing Trees & Lake Tarleton Coalition to Brooke M. Brown, Pemigewasset District Ranger (May 11, 2022)
11	Letter from The Lake Tarleton Coalition to Brooke M. Brown, Pemigewasset District Ranger (July 20, 2022)
12	Lake Tarleton and WMNF Petition -With List of Signers (Feb. 8, 2022)
13	<i>Species Status Assessment for the Northern long-eared bat (Myotis septentrionalis) Version 1.2</i> , USFWS (Aug. 2022) https://www.fws.gov/media/species-status-assessment-report-northern-long-eared-bat .
14	COUNCIL ON ENVIRONMENTAL QUALITY, <i>National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change</i> , 88 Fed. Reg. 1196 (Jan 9, 2023)
15	<i>Water Quality Assessment and TMDLs</i> , N.H. DEP'T. ENV'T. SERVS. https://www.des.nh.gov/water/rivers-and-lakes/water-quality-assessment (last visited Apr. 23, 2023)
16	<i>Volunteer Lake Assessment Program Individual Lake Reports</i> , N.H. DEP'T. ENV'T. SERVS. https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2021-tarleton-piermont.pdf
17	<i>New Hampshire's 2020-2022 303(d) List</i> . U.S. EPA, https://www.epa.gov/system/files/documents/2022-03/2020-2022-nh-303d-list.pdf (last updated Mar. 1, 2023).

18	Photo: Canoeing on Lake Tarleton (Zack Porter)
19	Photo: Lake Tarleton parking area in wintertime (Elaine Felatra)
20	Photo: Recreation activities on Lake Tarleton in wintertime (Elaine Felatra)
21	Photo: Sunset from Piermont Mountain with Lake Tarleton in foreground (Rob/Mike Wipfler)
22	Kellett et. al., <i>Forest-clearing to Create Early-successional Habitats: Questionable Benefits, Significant Costs</i> , FRONTIERS FOR GLOB. CHANGE 1 (Jan. 9, 2023)
23	Gabriel Popkin, <i>Forest Fight</i> , 374 SCIENCE 1184 (Dec. 3, 2021)
24	Simard et. al., <i>Net Transfer of Carbon Between Ectomycorrhizal Tree Species in the Field</i> , 388 NATURE 579 (Aug. 7, 1997)
25	Lake Tarleton HMU Stand YOO (March 28, 2019)
26	Letter from Chris French, USFS Deputy Chief, to Regional Foresters (Apr. 18, 2023).
27	WMNF U.S. Forest Service Logging Projects Map
28	E-mail from Brooke Brown, Pemigewasset District Ranger, to Rob Wipfler (Apr. 24, 2023, 3:50 PM)
29	Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, 87 Fed. Reg. 73,488-504 (Nov. 30, 2022), https://www.govinfo.gov/content/pkg/FR-2022-11-30/pdf/2022-25998.pdf .
30	Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat; Delay of Effective Date, 88 Fed. Reg. 4,908-10 (Jan. 26, 2023), https://www.govinfo.gov/content/pkg/FR-2023-01-26/pdf/2023-01656.pdf .
31	E-mail from Marry Stewart, Acting Regional FOIA Coordinator, to Zack Porter (April 10, 2023, 11:52am)
32	<i>Northern Long-Eared Bat: State-Specific Information Sources</i> , USFWS, https://www.fws.gov/sites/default/files/documents/Roost%20Tree%20and%20Hibernacula%20-%20State-Specific%20Data%20Links_2.pdf
33	<i>NHB DataCheck Tool</i> , NH DIVISION OF FORESTS AND LANDS, https://www4.des.state.nh.us/NHB-DataCheck (last modified Feb. 28, 2022)
34	Trust for Public Land, <i>Residents Celebrate Protection of Lake Tarleton (NH)</i> (Aug. 23, 2000) https://www.tpl.org/media-room/residents-celebrate-protection-lake-tarleton-nh#:~:text=Warren%2C%20New%20Hampshire%3A%20Today%20U.S.,Warr en%2C%20Piermont%2C%20and%20Benton.
35	MATURE AND OLD-GROWTH FORESTS: DEFINITION, IDENTIFICATION, AND INITIAL INVENTORY ON LANDS MANAGED BY THE FOREST SERVICE AND BUREAU OF LAND MANAGEMENT, U.S. DEP'T OF AGRIC. 1 (Apr. 2023)
36	Letter from Chris French, USFS Deputy Chief, re: Advance Notice of Proposed Rulemaking (Apr. 21, 2023)
37	<i>Standing Analysis and Implementation Plan – Northern Long-Eared Bat Assisted Determination Key</i> , Version 1.1, USFWS (April 2023)