August 4, 2025

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Submitted via public participation portal to: https://www.regulations.gov, USDA-2025-0008

RE: Comments on *Interim Final Rule, National Environmental Policy Act* (90 Fed. Reg. 29632, July 3, 2025)

Dear Chief Schultz, Deputy Chief French, and Secretary Rollins:

On behalf of the undersigned organizations and individuals, we write to provide the Department of Agriculture ("USDA" or "Department") and the United States Forest Service ("Forest Service") with the below comments on the Department's interim final rule ("IFR" or "Rule") regarding National Environmental Policy Act procedures, 90 Fed. Reg. 29,632 (July 3, 2025), RIN 0503-AA86. Our organizations collectively represent decades of experience with the Forest Service's implementation of NEPA across the spectrum of land management actions, including forest planning, vegetation, wildlife, mineral, range, aquatic, travel, and recreation management decisions, and our comments focus narrowly on how the Department's IFR will affect the Forest Service and its land management decisions. Our organizations and members would be adversely affected by this proposal, which would immediately eliminate important procedural rights that we and other members of the public rely on to ensure the lawful

stewardship of National Forestlands. The proposal would have far-reaching effects on the places we advocate for and help to steward, as well as the communities dependent on these lands.

We have extensive expertise regarding the Council on Environmental Quality's ("CEQ") prior NEPA regulations, the Forest Service's NEPA regulations and procedures, and the body of federal case law interpreting the agency's legal obligations under NEPA. Our experience in agency decision-making processes, in collaborative efforts, and as plaintiffs in NEPA litigation lends us unique insight into the promises and pitfalls of the Forest Service's NEPA policies and practices.

While we generally agree that the environmental analysis process can be more efficient—by focusing on providing essential funding and training for Forest Service NEPA personnel—the Department has released a final rule that brazenly removes the public from public land management decisions and seeks to expand the scope and scale of land management without sufficient environmental analysis. This is not the type of decision-making required by NEPA. NEPA requires transparency, accurate scientific data and analysis, and inclusion of the public—including local communities, Tribes, local governments, scientists, and many others who use, enjoy, and rely upon the National Forests for a variety of values—in federal agency decision-making.

The IFR serves the present Administration's agenda to elevate the interests of extractive industries above those of the public in public land management. This agenda is particularly inappropriate on the national forests, which are owned in common by all Americans, not just a privileged few. The IFR will drastically reduce and, in some cases, eliminate public involvement in the management of their national forests, curtail the role of science in land management planning, and will ultimately undermine the credibility of the Forest Service as "expert scientists" in the eyes of the public it was created to serve. We predict that the IFR will erode the public's trust in the Forest Service, increase controversy and litigation, and compromise the agency's mission.

The Department has ignored the successful efforts of its most talented agency staff to accomplish more and higher-quality work by accepting stakeholder contributions. Instead, it promulgated a rule meant to avoid accountability, with a rationale that is not supported by the information before the agency.

Because the Department has failed to prepare a sufficient administrative record to support its IFR, we anticipate that the Rule will not survive judicial review, or, if it does, it will irreparably compromise the agency's relationship with the public it serves. We therefore recommend that the Department abandon this rulemaking effort and focus on immediate needs such as forest plan revision, science-based forest restoration, monitoring, and internal cultural changes.

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I. The Interim Final Rulemaking is a Substantive Final Rule under the Administrative Procedure Act Requiring Formal Notice and Comment Rulemaking Procedures

The Administrative Procedure Act ("APA") "serve[s] as the fundamental charter of the administrative state," and establishes the landscape in which an administrative agency may promulgate a rule. *Kisor v. Wilkie*, 588 U.S. 558, 580 (2019). Under the APA, a "rule" encompasses "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551. The agency's action here is indisputably a "rule." Section 553 of the APA governs informal rulemakings, requiring that federal agencies grant the public an opportunity to comment on and engage with prospective rules. Specifically, among other things, the APA requires that agencies post proposed rules to the Federal Register and allow the interested public an opportunity to comment. The agency must in turn consider the public's input before finalizing the IFR. To be valid under the APA, agency rulemakings under Section 553 "must examine the relevant data and articulate a satisfactory explanation for [the] action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983). "[I]nterpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" are exempted from notice and comment. 5 U.S.C. § 553(b)(A). Agencies may also be exempt from notice and comment procedures when they find with "good cause" that adhering to them would be "impracticable, unnecessary, or contrary to the public interest." *Id.* § 553(b)(B).

A. The IFR is a substantive rulemaking not entitled to an APA exemption.

The Department claims that because the Rule is "procedural" in nature, it falls under Section 553(b). 90 Fed. Reg. at 29,644. Or, in the alternative, according to the Department, the Rule is merely an interpretive or policy rule which also does not require notice and comment. *Id.* The Department is mistaken with respect to both arguments. The Interim Final Rule is an APA Section 553 substantive rulemaking which requires that the Department both involve the interested public in the rulemaking process *and* that they act reasonably based on the input and information they receive from the public in promulgating the Rule.

To begin, it is well settled that "the APA's notice and comment exemptions must be narrowly construed." *U.S. v. Picciotto*, 875 F.2d 345, 347 (D.C. Cir. 1989). "The distinctive purpose of § 553's third exemption, for rules of agency organization, procedure or practice, is to ensure that agencies retain latitude in organizing their internal operations." *Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1047 (D.C. Cir. 1987). In other words, the APA's "procedural" exception merely "covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which parties present themselves or their viewpoints to the agency." *Id.*

The Rule does far more than this. Not only does it *completely remove* affected parties' rights to express their viewpoints in the first place, it also removes the requirement to disclose information that is required by law and necessary for the public to adequately form those viewpoints. As explained below, the Rule purports to strip entire programs of agency management from mandatory NEPA compliance. Though NEPA is itself a procedural statute, its regulations have several substantive benefits. Take, for example, the most basic mandate of NEPA: When an agency action will foreseeably have significant environmental effect, the agency must prepare an environmental impact statement ("EIS") subject to input from the public. As the Supreme Court has recognized, these procedures are "almost certain to affect the agency's substantive decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Regulations that enable the agency to shirk this duty and thereby exclude the public from their right to participate in the EIS process are a far cry from the kind of internal "house-keeping measures" covered by the Section 553 procedural exemption. *Batterton v. Marshall*, 648 F.2d 694, 702 (D.C. Cir. 1980). "Where a rule," as here, "imposes substantive burdens . . . encodes a substantive value judgment . . . trenches on substantial private rights [or] interests . . . or otherwise alters the rights or interests of parties, it is not procedural for purposes of the section 553 exemption." *Am. Fed'n of Lab. & Cong. of Indus. Organizations v. Nat'l Lab. Rels. Bd.*, 57 F.4th 1023, 1034–35 (D.C. Cir. 2023) (internal references omitted).

Turning now to the Department's alternative argument that the Rule is merely a policy or interpretive statement covered by the Section 553 exception, we emphasize that the agency's own characterization that something is a "policy statement" is not a magic wand that converts a substantive rule into an interpretive one. Simply put, an "agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy." *See Pac. Gas & Elec. Co. v. Fed. Power Comm'n*, 506 F.2d 33, 37 (D.C. Cir. 1974).

"The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings." *Id.* At its core, a legislative rule is something "issued by an agency pursuant to statutory authority which implement[s] the statute." *Am. Min. Cong. v. Mine Safety & Health Admin.,* 995 F.2d 1106, 1109 (D.C. Cir. 1993) (discussing the legislative history of the APA). The touchstone of the inquiry is "whether the disputed rule has the force of law." *Id.* Compared to a legislative rule—where subsequent agency decisions turn on whether the facts before the agency conform to the rule—a policy statement, "on the other hand, does not establish a 'binding norm.'" *Pac. Gas & Elec. Co.*, 506 F.3d at 38. Rather, a policy statement merely "announces the agency's tentative intentions for the *future*." *Id.* (emphasis added). The same is true where the agency *removes* a binding norm from its books. In other words, policy statements exempted from notice and comment under the APA cannot properly dismantle the framework and analysis required for countless federal decisions, nor can they create a binding framework in which those decisions are made in the future.

Interpretive statements are a distinct, third kind of agency action, but are similarly inapposite to the Interim Final Rule here. Agency action "fall[s] within the category of interpretive," and outside of Section 553 notice and comment procedural requirements, only if the action "derive[s] a proposition from an existing document whose meaning compels or logically justifies the proposition." *Cath. Health Initiatives v. Sebelius*, 617 F.3d 490, 494 (D.C. Cir. 2010). This is clearly not the case here. In promulgating the Rule, the Department reversed long standing and established NEPA regulations for several agencies. It dramatically changed course for several agency actions, with significant effect on the public. This is a far cry from a statement which merely clarifies existing rules. Much the opposite, the IFR is a textbook example of a legislative rule subject to Section 553's notice and comment requirements.

B. Notice and comment is practical, necessary, and serves the public interest.

The Department further claims that the Interim Final Rule is exempt from notice and comment procedures because it has found that "the need to expeditiously replace its existing rules satisfies the 'good cause' exceptions in 5 U.S.C. [§] 553(b)(B) and (d)." The Department goes on to explain that because CEQ rescinded its NEPA regulations, there is an "urgent need" to replace the Department's prior NEPA regulations which, in part, implemented the CEQ rules. Neither of these justifications are sufficient to satisfy the APA.

A rulemaking agency bears the burden of demonstrating good cause. *See, e.g.*, *N. Arapahoe Tribe v. Hodel*, 808 F.2d at 751. Courts unanimously agree that the good cause exception should be read narrowly and used sparingly. *See, e.g.*, *U.S. v. Garner*, 767 F.2d 104 (5th Cir. 1985) (the good cause exception "is to be read narrowly in order to avoid providing agencies with an 'escape clause' from the requirements Congress prescribed"); *N.J. Dep't of Env't Prot. v. EPA*, 626 F.2d 1038, 1045–46 (D.C. Cir. 1980) (the exception is to be "narrowly construed and only reluctantly countenanced" by the judiciary); *Jifry v. Fed. Aviation Admin.*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) ("The exception excuses notice and comment in emergency situations, or where delay could result in serious harm." (internal citations omitted)); *U.S. Steel Corp. v. EPA*, 595 F.2d 207, 214 (5th Cir. 1979) ("This exception should be read narrowly. . .. It is an important safety valve where delay would do real harm. It should not be used, however, to circumvent the notice and comment requirements whenever an agency finds it inconvenient to follow them."). Further, it is well settled that a need for immediate guidance is not good cause, *see, e.g.*, *Mobil Oil Corp. v. Dep't of Energy*, 610 F.2d 796 (Em. App. 1979), *cert. denied* 446 U.S. 937 (1980), *appeal after remand* 647 F.2d 142 (Em. App. 1981), and must be supported by more than the bare need to have regulations—especially when the new regulations are set to be permanent. *See, e.g.*, *Nat'l Ass'n of Farmworkers Orgs. v. Marshall*, 628 F.2d 604 (D.C. Cir. 1980). The same is true for the need to eliminate possible uncertainty. *See, e.g.*, *U.S. v. Reynolds*, 710 F.3d at 510.

Similarly, although fact- or context-dependent, courts usually find emergency justification only where a situation is so compelling as to pose an immediate threat to public

health, safety, or welfare. *See, e.g.*, *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012). (quoting *Mid-Tex Elec. Coop. v. FERC*, 822 F.2d 1123, 1132 (D.C. Cir. 1987)); *see also Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d at 114 ("Impracticality is fact and context specific, but is generally confined to emergency situations in which a rule would respond to an immediate threat to safety, such as to air travel, or when immediate implementation of a rule might directly impact public safety."); *N.C. Growers' Ass'n v. United Farm Workers*, 702 F.3d 755, 766 (4th Cir. 2012) ("Examples of such [impracticable] circumstances under which good cause existed include an agency determination that new rules were needed 'to address threats posing a possible imminent hazard to aircraft, persons, and property within the United States,' or were 'of life-saving importance to mine workers in the event of a mine explosion,' or were necessary to 'stave off any imminent threat to the environment or safety or national security.'" (quoting *Mack Trucks*, 682 F.3d at 93). Similarly, harms to the "public interest" are usually imminent threats to life or property. *See e.g.*, *Sorenson Commc'ns, Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) (collecting cases). And the D.C. Circuit has held that when an agency argues that its actions are in the "public interest," a court will accept that justification only "in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest." *Mack Trucks*, 682 F.3d at 95.

The IFR, which purports to upend decades of established agency practice and revoke several invaluable opportunities for public engagement in agency decision-making, requires notice and comment procedures like any other rule of its magnitude. The proposition that routine notice and comment procedures would be harmful to the public interest, and that any delay in promulgating the IFR is likely to cause "serious harm," is outlandish. *See Jifry*, 370 F.3d at 1179. As explained throughout these comments, the IFR is hasty, unlawful, and risks significant harms to the public. Much to the contrary of the Department's claims, notice and comment for this rulemaking is practical, necessary, and deeply beneficial to the public interest. The agency has thus not shown that it is entitled to the good cause exception.

Because the Rule cannot qualify for any exceptions under the APA, the Department must consider and respond to these comments—as well as any other comments it receives from the interested public—before finalizing the Rule.

II. The Interim Final Rulemaking Requires NEPA Compliance.

Major federal actions, including policy changes with significant impacts to the human environment, require preparation of an environmental impact statement ("EIS"). 42 U.S.C. § 4332(2)(C). This rulemaking is a major federal action, and it cannot proceed without environmental analysis and consideration of alternatives in an EIS.

The 2023 Fiscal Responsibility Act amended NEPA, including the definition of "major federal action." 42 U.S.C. § 4336e(10). In turn, the IFR refers to and adopts the statutory definition. 90 Fed. Reg. at 29673. The definition of "major federal action" no longer specifically

refers to "new or revised agency rules, regulations, . . . or . . . procedures" as did the prior CEQ regulations, 40 C.F.R. § 1508.18(a) (1978). Instead, the new definition defines "major federal action" as a list of actions that are *not* major federal actions. Notably absent from the new definition are "new or revised agency rules, regulations, . . . or . . . procedures." Because the statute (and proposed regulation) is an exhaustive list of actions that are not major federal actions and does not exclude "new or revised agency rules, regulations, . . . or . . . procedures," the promulgation of USDA's NEPA procedures requires compliance with NEPA. *See* Daniel R. Mandelker, NEPA LAW AND LITIGATION, § 8:27 (2005 Suppl.) ("Federal agency rules and regulations are federal actions that may require the preparation of an impact statement"); *Citizens for Better Forestry v. U.S. Dep't of Agric*., 481 F. Supp. 2d 1059, 1080 (N.D. Cal. 2007) (*Citizens II*). An agency considering "major federal actions significantly affecting the quality of the human environment" has an obligation under NEPA to prepare an EIS that in "form, content and preparation foster[s] both informed decision-making and informed public participation." *Native Ecosystems Council v. United States*, 418 F.3d 953, 958 n.4, 960 (9th Cir. 2005) (internal quotation marks omitted); *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 491 (9th Cir. 2011).

Courts in the Ninth Circuit routinely require the preparation of NEPA documentation for proposed federal agency rules, including "procedural" rules. For example, the Ninth Circuit in *Citizens for Better Forestry v. U.S. Dep't of Agriculture* held that the Forest Service violated NEPA (and the Endangered Species Act) for failing to conduct any environmental analysis on nationwide procedural regulations governing the development of land management plans. 341 F.3d 961, 971 (9th Cir. 2003) (*Citizens I*). Lower courts subsequently twice struck down the Forest Service's later pro forma attempts to cure this defect when it prepared inadequate NEPA documentation for the forest planning regulations. *Citizens II*, 481 F. Supp. 2d at 1080–90; *Citizens for Better Forestry v. U.S. Dep't of Agric*., 632 F. Supp. 2d 968, 980–81 (N.D. Cal. 2009) (*Citizens III*).

Similarly, the Ninth Circuit required the preparation of an environmental impact statement for a nationwide rulemaking involving state-based procedural protections for roadless areas on federal lands. *California ex rel. Lockyer v. U.S. Dep't of Agric*., 459 F. Supp. 2d 874, 893–909 (N.D. Cal. 2006), *opinion clarified sub nom. People of State of California ex rel. Lockyer v. U.S. Dep't of Agric*., 2006 WL 2827903 (N.D. Cal. 2006), *aff'd*, 575 F.3d 999 (9th Cir. 2009). Likewise, the Ninth Circuit held that NEPA required the preparation of an EIS for nationwide regulations issued by the Bureau of Land Management ("BLM") regarding procedures for assessing rangeland health. *Kraayenbrink*, 632 F.3d at 491. And the courts have held that the Fish and Wildlife Service failed to comply with NEPA when it promulgated nationwide regulations setting forth procedures regulating the "take" of raptors under the Bald and Golden Eagle Protection Act, *Shearwater v. Ashe*, 2015 WL 4747881, at *14–24 (N.D. Cal. 2015), as well as when BLM failed to prepare an environmental impact statement for a nationwide final rule setting forth procedures for regulating methane waste from oil and gas

development on federal lands. *California v. Bernhardt*, 472 F. Supp. 3d 573, 618–30 (N.D. Cal. 2020).

Anticipating this argument, the Department posits in the preamble to the IFR that simply because "[p]rocedures for implementing a purely procedural statutes must be, by their nature, procedural rules," as if that somehow overrides the nature of the IFR as a major federal rule and exempts it from NEPA compliance. 90 Fed. Reg. at 29644, 29645 ("NEPA does not require environmental analysis or documentation when establishing procedural guidance."). But procedures can have substantive direct and indirect effects on the quality of the human environment, thus triggering the need to comply with the statute. For example, the IFR removes explicit reference to cumulative effects of agency actions, which may result in environmental degradation, consequences that NEPA requires the Department to consider when promulgating the IFR. *See infra* Section XI. The Department should have prepared at least an environmental assessment ("EA") to accompany the IFR.

A. The IFR cannot be categorically excluded from analysis under NEPA.

The Department cannot simply ignore NEPA's obligations. *Citizens for Better Forestry v. USDA*, 481 F. Supp. 2d 1059, 1085 (N.D. Cal. 2007) ("NEPA requires *some* type of procedural due diligence—even in cases involving broad, programmatic changes—a fact defendants ignore . . .."). Consequently, if the Department does not intend to prepare an EA or EIS for the Interim Final Rule, it must at least attempt to justify the use of a categorical exclusion ("CE").

Although the preamble fails to cite it, only a single CE could arguably apply to this total overhaul of the Department's environmental analysis and decision-making process. 7 C.F.R. § 1b.4(20) ("Rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions"). This category, however, cannot be used to authorize rules with substantive impact. *California v. USDA*, 575 F.3d 999 (9th Cir. 2009). Where, as here, a putatively procedural rule is intended to facilitate on-the-ground effects, those effects must be analyzed. *Citizens for Clean Energy v. DOI*, 2019 WL 1756296, at *8 (D. Mont. 2019) (Secretarial order replacing a moratorium on leasing with an order to expeditiously process leases could not be categorically excluded); *Shearwater v. Ashe*, 2015 WL 4747881 (N.D. Cal. 2015).

The substantive effects of the Department's so-called procedural changes are concrete and readily ascertainable. While we recognize that the IFR applies to all agencies within the Department, at least the Forest Service has the data and documentation to predict the aggregate effect of the procedural changes wrought by the IFR. For example, during NEPA rulemaking in 2019, the Forest Service predicted that expanding CEs to new actions would result in up to 75% of its EAs being completed with CEs, leaving a very small percentage of actions documented with an EIS. 84 Fed. Reg. at 27550. The agency's sample of past actions provided a further basis

for measuring the substantive effect of scoping and comments on CEs and EAs. *See generally* Attach. 1.

The IFR, of course, eliminates scoping and comments on CEs and EAs. *See* 36 C.F.R. § 220.4(c)–(e) (2024). The Forest Service (and/or the Department) can, and therefore *must*, quantify the substantive effects of eliminating public scoping, analysis, and comment for such a large number of its decisions. How have past projects changed from proposal to decision as a result of the comment process and public participation? What activities were dropped or relocated? What kinds of mitigation were added? What does monitoring show were the actual, not theoretical, impacts of these actions? Those effects must be considered, along with the effects of alternative approaches to the IFR that would have fewer negative impacts on the quality of the human environment.

The elimination of scoping for CEs is another proposed change with substantive effects that necessitates analysis under NEPA. Under the IFR, actions proposed under CEs will no longer be "scoped" for public comment nor will comment on the action be sought from the public. This will eliminate any public participation for an astonishing number of Forest Service decisions. Of the roughly 30,000 decisions made by the agency between 2006 and 2016, the vast majority (80.1%) were approved using CEs; 17.6% were approved using EAs; and the remaining 2.3% of decisions were made with EISs.[1] Presumably, expanding the availability of CEs developed by other subcomponents will increase that percentage even further, although it is the agency's burden to estimate the effect. The Forest Service and the Department can and must analyze the impacts of removing public notice and opportunity to comment for these decisions. In using these CEs in the past, how have proposed projects changed in response to public comments at scoping? How many were dropped outright?

The Department must attempt to quantify the on-the-ground effects of these proposals, not only individually but cumulatively. The IFR's intent and effect is to circumvent public participation and environmental analysis at the site-specific level for the vast majority of actions undertaken by the Forest Service. In order to proceed with such fundamental changes, the Forest Service must first describe the baseline—how public participation and analysis have improved (or not) its projects and programs over time—and disclose how its new process is likely to affect similar improvements (or not) in the future. Again, these effects can readily be determined, and far exceed the applicable threshold: a mere "*possibility* of significant effects" that may flow from the policy change. *Citizens for Better Forestry*, 481 F. Supp. 2d at 1088, *citing California v. Norton,* 311 F.3d 1162, 1168 (9th Cir. 2002).

As a result, the IFR cannot proceed without a traditional NEPA analysis. The effects of these proposals, like the other changes, are substantive and readily ascertainable. How many projects have been analyzed using an EA or EIS in the past because of possible harm to sensitive

[1] Forest Service data provided to Southern Environmental Law Center in response to FOIA request 2018-FS-WO-01712-F, Attach. 2.

species? How have those projects been improved or mitigated thanks to environmental analysis and public participation? Here, too, the effects can be quantified from documents and data already in the Department's possession.

B. The IFR would strip analysis and public participation from some Forests' entire programs of work.

As noted above, the Forest Service expects that the vast majority of its actions will be undertaken with CEs. Indeed, the IFR states that EAs can be prepared only if CEs "cannot" be used instead. 7 C.F.R. § 1b.2(f)(2)(iv). For some Forests, however, a single CE decision could be used to cover several years' worth of timber sales. In the Southern Appalachians, the acreage of most forest management projects would fall within the range of current CEs, meaning that virtually the entire timber program of this ecologically and socially complex ecoregion could be categorically excluded from analysis and public involvement under the Interim Final Rule. These impacts take on a particular significance in the context of the smaller Eastern forests, which are on average about half the size of Western forests yet boast a tremendous ecological and social complexity.

The Forest Service (and Department) must also consider the cumulative impacts of these changes on individual forests and regions, many of which have complexities precluding the use of such broad authorities. Where the new authorities would subsume entire programs of work for those particular forests (such as eastern national forests), the Department must explain why those programs of work have no potential for significant impacts.

C. The IFR requires an EIS because it will effectively revise forest plans across the entire national forest system.

Since at least the 1980s, forest plans have uniformly been conceived of as programmatic documents, and analyses of those plans have accordingly committed to further analysis and public participation for site-specific decisions. The IFR, however, would eschew those commitments for most site-specific decisions given the intent to move to CEs and EAs without scoping, detailed environmental analysis, and public comment. Therefore, the IFR would effectively rewrite most, if not all, forest plans to remove the procedural safeguards of additional review and input.

The Forest Service Chief explained that forest plans are programmatic documents in 1988, in "landmark" appeal decisions for the Idaho Panhandle and Flathead National Forest Plans. *See* 58 Fed. Reg. 19369, 19370 (1993). As programmatic documents, forest plans are not self-implementing. Implementation—defined as "the activity to accomplish the management direction of a forest plan"—occurs at the site-specific level. 53 Fed. Reg. 28807, 26836 (1988).

Under the 1982 planning rule, which provides the context for interpreting the vast majority of current forest plans, implementation for most aspects of a forest plan begins with

identification of a proposed action—a specific action in a specific location that could help to achieve the plan's goals and objectives. *Id.* The proposed action is then subject to "analysis and evaluation . . . to make site-specific decisions" based on "site-specific data." *Id.* The analysis is conducted by an interdisciplinary team, and it is used to determine whether the proposed action would be consistent with the plan, among other things. *Id.* While this analysis dovetails with analysis and public participation required by NEPA, it is separately required under the National Forest Management Act ("NFMA") to support the agency's substantive responsibilities, including consideration of other multiple use goals, potential harms, stand-level effects to residual trees, effects to site productivity and soil and water resources, and the site-dependent costs of transportation and sale administration. *Id.*; 36 C.F.R. § 219.27(b) (1982).

Courts have uniformly agreed with the Forest Service's longstanding interpretation of forest management as consisting of two distinct stages—programmatic planning and site-specific implementation. As the Supreme Court has summarized,

> Although the Plan sets logging goals, selects the areas of the forest that are suited to timber production, and determines which "probable methods of timber harvest" are appropriate, it does not itself authorize the cutting of any trees. Before the Forest Service can permit the logging, it must: (a) propose a specific area in which logging will take place and the harvesting methods to be used; (b) ensure that the project is consistent with the plan; (c) provide those affected by proposed logging notice and an opportunity to be heard; (d) conduct an environmental analysis pursuant to [NEPA] to evaluate the effects of the specific project and to contemplate alternatives; and (e) subsequently make a final decision to permit logging.

Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726, 729–30 (1998) (internal citations omitted);[2] *see also, Idaho Cons. League v. Mumma*, 962 F.2d 1508, 1511–12 (9th Cir. 1992) (describing the "two-stage approach" and further affirming that site-specific assessment is needed for both NFMA and NEPA compliance at the project level).

Consistent with these legal requirements, which have prevailed throughout the time period when current plans were adopted, forest plans across the country have been built around this two-stage decision-making process, expressly deferring site-specific analysis to the project level. In 2006, the Forest Service analyzed a random sample of 20 forest plans to determine whether they followed the two-stage approach.[3] *See* Attach. 1, Appendix 4. Every single one of

[2] For item (c) in this summary, *Ohio Forestry* cited the Appeals Reform Act, P.L. 102-381, 106 Stat. 1419, at § 322 (1993), which was repealed by the 2014 Farm Bill, P.L.113-79, 128 Stat. 649, at § 8006 (2014), and replaced with a "pre-decisional objection process" codified at 36 C.F.R. Part 218. The pre-decisional objection process continues to provide for an opportunity to comment on site-specific projects requiring analysis and contemplation of alternatives under NEPA. It appears that USDA is contemplating further rulemaking to remove or alter this requirement, a reasonably foreseeable future action the effects of which require analysis. 90 Fed. Reg. at 29644.

[3] "The Evolution of National Forest System Land Management Planning and Results of the Review of Revised Land and Resource Management Plan Environmental Impact Statements" (May 2006). All of the sampled plans are still in effect with the exception of the Francis Marion National Forest's plan, which was again revised in 2017.

the 20 plans adopted the programmatic framework and committed to future site-specific analysis for the purposes of complying with NEPA and/or NFMA. Typical language from these plans follows:

- "This FEIS is a programmatic document. . .. This is in contrast to analyses for site-specific projects. . .. The environmental effects of individual projects will depend on the implementation of each project, the environmental conditions at each project location, and the application of the standards and guidelines in each case."[4]

- "Forest Plans are permissive in that they allow, but do not mandate, the occurrence of certain activities. Site-specific analysis of proposed activities will determine what can be accomplished."[5]

- "Land management activities on national forest lands are conducted only after appropriate site-specific NEPA analysis has been conducted. This provides opportunities to identify and minimize direct, indirect, and cumulative environmental effects that cannot be specifically determined or analyzed at the large scale of this FEIS."[6]

- "To achieve desired conditions of the alternatives, certain probable activities may occur. Location, design, and extent of such activities generally are not known or described in a Forest Plan. That is a site-specific (project-by-project) decision. Before implementing any of these activities, a site-specific environmental analysis will be conducted."[7]

- "The Forest Supervisor will accomplish many management activities to implement the Revised Plan. Unlike the programmatic decisions listed above, these activities are site-specific and require analysis and disclosure of effects under NEPA. These site-specific analyses will be done during implementation of the Revised Plan."[8]

- "[Responsible officials] will consider many new proposed activities during the life of this plan. Site specific analyses will be done before approving these activities to insure they are compliant with the goals, objectives, and standards and guides of the revised plan."[9]

[4] Routt National Forest Plan FEIS, Ch. 3, at 2 (1998).
[5] Arapaho-Roosevelt National Forest Plan ROD at 56 (1998).
[6] Chattahoochee-Oconee National Forest Plan ROD FEIS, Ch. 3, at 78 (2004).
[7] National Forests in Florida FEIS, Ch. 3, at 1 (1999).
[8] Routt National Forest Plan ROD at 29 (1998).
[9] Dakota Prairie Grasslands Plan ROD at 40 (2002).

Programmatic analyses should be explicit about what decision is being made at the broad scale, and what decision space is deferred to a future project: "If subsequent actions remain to be analyzed and decided upon, that would be explained in the programmatic document and left to a subsequent tiered NEPA review."[10] Because site-specific impacts cannot be assessed at the programmatic level, as these forest plans explain, those impacts must be evaluated "when the agency proposes to make an irreversible and irretrievable commitment of the availability of resources which usually occurs following a tiered site- or project-specific NEPA review."[11]

Consistent with this guidance, forest plans and their associated NEPA documents also contain very specific descriptions of issues that are deferred to the site-specific level, with commitments to conduct further analysis of those issues, consider alternatives, and provide additional opportunities for public input. For example, deferred issues include:

- Location/site of harvest[12]
- Harvest method[13]
- Site-level determination of suitability for timber production[14]
- Whether to permit or conduct activities that would affect the wilderness character of a particular potential wilderness area (PWA) or other unroaded area[15]
- Site-specific transportation decisions (e.g., closure or obliteration of roads,[16] construction of new roads or related facilities,[17] or opening roads to the public[18])
- Site-specific recreation infrastructure decisions (e.g., location of trails or mitigation of project impacts)[19]
- Analysis and mitigation of proposed special uses[20]
- Site-specific water quality protection measures[21]

[10] *See* Memorandum from Michael Boots, CEQ, to Heads of Federal Departments and Agencies, "Effective Use of Programmatic NEPA Reviews" at 15 (Dec. 18, 2014).
[11] *Id.* at 27.
[12] E.g., National Forests in Florida Plan FEIS, Ch. 3, at 1 (1999); Chattahoochee National Forest Plan FEIS, App'x G at 7-40 (2004).
[13] E.g., Chattahoochee National Forest Plan FEIS, Ch. 3, at 545 (2004); Pisgah-Nantahala Plan EIS at II-23, App'x N at 50 (1994); Jefferson National Forest Plan FEIS at 401 (2004).
[14] E.g., George Washington National Forest, Forest Supervisor's Letter Clarifying the 2014 Revised LRMP (July 29, 2015); Jefferson National Forest Plan FEIS at 336 (2004).
[15] E.g., George Washington National Forest Plan FEIS at 351-52 (2014), Forest Supervisor's Letter Clarifying the 2014 Revised LRMP (July 29, 2015).
[16] E.g., Boise National Forest Plan FEIS, Ch. 1, at 9 (2003); Payette National Forest Plan FEIS, Ch. 1, at 8-9 (2003).
[17] E.g., Chattahoochee National Forest FEIS, App'x G at 108 (2004); Pisgah-Nantahala Plan EIS, App'x N at 68.
[18] E.g., Jefferson National Forest Plan ROD at 9 (2004).
[19] E.g., Pisgah-Nantahala Plan EIS, App'x N at 2 (1994).
[20] E.g., George Washington National Forest Plan EIS at 384 (2014); Jefferson National Forest Plan FEIS, App'x J at cmt. 939 (2004).
[21] E.g., Northwest Forest Plan FSEIS at 2-71, 3&4-105 to -107 (1994); Pisgah-Nantahala Plan EIS, App'x N at 67 (1994); George Washington National Forest Plan EIS, App'x N at 59 (2014); Jefferson National Forest Plan FEIS, App'x J at 458 (2004).

- Site-specific soil protection measures[22]
- Mitigation of impacts to cultural and historical resources[23]
- Survey and identification of late successional and old growth reserves[24]
- Protection of rare species through survey and proactive management[25] and mitigation of project impacts[26]

Plans developed under the 2012 planning rule are shaping up to be the same, with perhaps an even greater emphasis on plan-level flexibility and a correspondingly greater need to conduct further analysis at the site-specific level. Consider the following excerpts from selected early-adopter plans under the 2012 planning rule:

Table: 2012-Rule Plan Excerpts

Forest	Excerpt	Reference
Francis Marion (2017)	Future ground disturbing activities and projects will be consistent with the revised land management plan and subject to additional site-specific public involvement, environmental analysis, and pre-decisional review processes	ROD at 34
Inyo (2018)	Forest plan direction, as defined in the 2012 Planning Rule, does not authorize projects or activities or commit the Forest Service to take actions (36 CFR 219.2 (2)). Forest plans outline the vision (desired conditions), objectives (how the Inyo will move toward attaining desired conditions) and the framework to apply when attaining the objectives (standards and guidelines). The plans do not get at the "how" an activity would be completed; that's determined at the project level.	FEIS Vol. 3 at cmt. 2058
	The forest planning process is a high-level process designed to make decisions to serve as side boards to management and not designed to make site specific	FEIS Vol. 3 at cmt. 5071

[22] E.g., Jefferson National Forest Plan FEIS, App'x J at 456 (2004); Chattahoochee National Forest Plan FEIS at 3-27.
[23] E.g., Northwest Forest Plan FSEIS at 3&4-319.
[24] E.g., Northwest Forest Plan FSEIS at 3&4-320; Pisgah-Nantahala Plan EIS, App'x N at 30, 33 (1994); George Washington National Forest, Forest Supervisor's Letter Clarifying the 2014 Revised LRMP (July 29, 2015); Chattahoochee National Forest Plan FEIS, App'x G at 7-81 (2004); Cherokee National Forest Plan FEIS at 187.
[25] E.g., Northwest Forest Plan ROD at 11, 46.
[26] E.g., Pisgah-Nantahala Plan EIS, App'x J at 1 (1994); Jefferson National Forest Plan FEIS, App'x J at 490 (2004).

	decisions requiring a different level of analysis that are needed to make decisions on [adding] specific [unauthorized] routes. Forest plans are intended to guide management of the national forests so they are ecologically sustainable and contribute to social and economic sustainability while providing people and communities with a range of benefits. Effects of forest vegetation treatments would be disclosed in project-specific environmental analysis. All specific proposed actions for vegetation management and mechanical treatments and their potential effects on humans and the environment would be analyzed and approved at the project level. Use of logging techniques would be determined at the project level.	FEIS Vol. 3 at cmt. 7104
Flathead (2018)	It is important to note that this plan is a programmatic plan and site-specific decisions are needed to make progress towards many of the desired conditions and objectives found throughout the plan. For the forest plan, the Forest has analyzed the effects of the vegetation standards and their exceptions in a programmatic way, but additional analysis appropriately occurs at the project level, as required by NEPA, the National Forest Management Act, and the Endangered Species Act. Specific treatment prescriptions depend on many factors, such as stand conditions and location, and are appropriately determined at the site-specific level. The forest plan does not make site-specific travel management decisions. This analysis occurs at the project level, with decisions following site-specific NEPA. At the project level, the Forest is able to map and assess the existing cover condition that has resulted from past	FEIS at 8-41 FEIS at 8-125 to -126 FEIS at 8-129 FEIS at 8-221 to -222 FEIS at 8-357

	wildfire, timber harvest, and thinning in conjunction with the size and arrangement of specific proposed treatments. The Forest has the ability to discuss effects on wildlife in much more detail at the project level than is possible for a programmatic plan that uses a probabilistic model. Often, the "sideboards" that are needed vary because of site-specific situations and are therefore best identified at the project level. It is through this series of "staged decisionmaking" that the management requirements necessary to meet the ecological integrity and species-specific requirements of Forest Service Handbook 219.9 are addressed. It is most appropriate to assess and manage some aspects of connectivity at the project level because what is needed to achieve desired conditions varies over time and across the Forest, depending upon site-specific existing conditions, the species being considered, and the nature of the proposed action.	FEIS at 8-362

In sum, each and every forest plan in the national forest system is programmatic in nature, meaning that they do not resolve conflicts about site-specific actions and impacts. With varying levels of detail and clarity, forest plans therefore contain explicit commitments to conduct future analysis with public involvement. As described in planning documents, these commitments are important safeguards for forest resources. Future site-specific analysis and public participation isn't offered gratuitously, nor is it simply a matter of NEPA compliance; it is understood to be critical to meeting the requirements of NFMA and other environmental laws. These commitments to process are just as integral to tiering project-level decisions as any other standards or guidelines.

The IFR would disregard those commitments and undermine forest plans' procedural safeguards, which are needed for the Forest Service and the Department to meet their substantive legal obligations. As a result, it would effectively rewrite forest plans across the nation by forgoing site-specific environmental analysis for projects implementing plans. The IFR would ensure that most site-specific decisions (and, on some forests, practically all such decisions) are made without environmental review and without public input. These are significant potential consequences that should have been analyzed in at least an EA accompanying the IFR.

D. The IFR must be analyzed in at least an EA to address unresolved conflicts by providing alternatives.

Even where a proposal will not have significant impacts, NEPA nonetheless requires consideration of alternatives when there are "unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(H). Categorical exclusions do not involve the consideration of alternatives; consequently, where unresolved conflicts exist, a CE is the wrong tool.

An unresolved conflict exists when the agency's objective "can be achieved in one of two or more ways that will have differing impacts on the environment." *Trinity Episcopal School v. Romney*, 523 F.2d 88 (2d Cir. 1975). The agency must consider alternatives at the site-specific and, as here, the programmatic level. *See Bob Marshall Alliance v. Hodel*, 852 F.2d 1223 (9th Cir. 1988) (requiring alternatives analysis, even though the decision was not itself an irretrievable commitment of resources, because it "may allow or lead to other activities" with environmental consequences).

The IFR involves unresolved conflicts. Thus, the Department must consider alternatives to the IFR, which is not the only, nor even the most effective, way to meet the Department's stated goal of addressing changes in underlying NEPA case law and the repeal of CEQ's NEPA regulations. For example, the Department makes no attempt to analyze whether the Forest Service's existing NEPA procedures—even though they incorporate some aspects of the now-repealed 1978 CEQ regulations—are consistent with NEPA as amended by the Fiscal Responsibility Act or the Supreme Court's holding in *Seven County*, the stated impetus for the IFR. CEQ's longstanding interpretation of the statute, embodied in its repealed regulations regardless of CEQ's authority to promulgate regulations (as opposed to interpret the statute), still provides the Department with the best interpretation of the meaning of the statute. Thus, the Department's rationale for eschewing the Forest Service's agency-specific NEPA procedures is suspect at best and illusory at worst. 90 Fed. Reg. at 29632. Thus, there are reasonable alternatives to the IFR that the Department could have considered but failed to do so.

III. The Interim Final Rule Requires Programmatic Consultation with the Fish and Wildlife Service.

The Forest Service must complete a programmatic consultation with both the U.S. Fish and Wildlife Service ("FWS") and the National Marine Fisheries Service ("NMFS") (hereafter jointly "Services") to identify the potential harms caused by changes in the Interim Final Rule. Under Section 7 of the Endangered Species Act ("ESA") and its implementing regulations, each federal agency, in consultation with the Services, must insure that any action authorized, funded, or carried out by the agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species or (2) result in the destruction or adverse modification of the critical habitat of such species. 16 U.S.C. § 1536(a).

Agency "action" is broadly defined to include actions that may directly or indirectly cause modifications to the land, water, or air, and actions that are intended to conserve listed species or their habitat, specifically including, as here, "the promulgation of regulations." 50 C.F.R. § 402.02(b). Under the Services' joint regulations implementing the ESA, an action agency such as the Forest Service must initiate consultation under Section 7 whenever its discretionary action "may affect" a listed species or critical habitat. 50 C.F.R. § 402.14(a); *see also Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007).

The Fish and Wildlife Service Consultation Handbook defines the "may affect" standard as "[t]he appropriate conclusion when a proposed action may pose **any** effects on listed species or designated critical habitat."[27] Courts have made clear that the "may affect" threshold is low. *See*, *e.g.*, *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011) ("the minimum threshold for an agency action to trigger consultation with the Wildlife Service is low"); *Colorado Env't Coalition v. Office of Legacy Management*, 819 F. Supp. 2d 1193, 1221–22 (D. Colo. 2011) (holding that the action agency's conclusion that impact on a listed species was "highly unlikely" was enough to meet the "may affect" threshold, thus requiring consultation). A "may affect" determination is required by the Services' Joint Consultation Handbook when any "*possible* effect, whether beneficial, benign, adverse, or of an undetermined character" occurs. *Center for Biological Diversity v. BLM*, 698 F.3d 1101, 1122 (9th Cir. 2012) (emphasis added). Simply put, "may affect" includes any actual effect on an endangered species, and "no effect" means absolutely no effect on an endangered species whatsoever. As the Ninth Circuit explained in *Karuk Tribe of California v. U.S. Forest Service*, "actions that have any chance of affecting listed species or critical habitat—even if it is later determined that the actions are 'not likely' to do so—require at least some consultation under the ESA." 681 F.3d 1006, 1027 (9th Cir. 2012).

Here, the IFR easily crosses the "may affect" threshold for a number of reasons. A key purpose and intended effect of the rule is to increase the pace and scale of logging projects, meaning that more logging will occur and that it will occur sooner. This obviously has the potential for impacts to the scores of candidate, threatened, and endangered species who rely on national forests for habitat. Further, this proposal will immediately remove procedural and substantive protections for listed species and their critical habitats. The loss of those protections will likely result in direct and cumulative impacts that will cause "take" and undermine recovery efforts. [28] *See infra* Section IX.C.

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[27] U.S. Fish & Wildlife Serv. and Nat'l Marine Fisheries Serv., Endangered Species Consultation Handbook at xvi (Mar. 1998).

[28] We note, however, that while the IFR makes ESA compliance substantially more difficult, it does not in any way relieve the Forest Service of its substantive and procedural obligations to comply with ESA § 7(a)(2) on any individual or programmatic decisions that may affect listed species. Further, independent of § 7(a)(2), the ESA establishes that it is the policy of Congress that all federal agencies, including the Forest Service, shall seek to conserve listed species, 16 U.S.C. §§ 1531(c)(1), 1532(3) (definition of "conserve"), and that the Forest Service is

Simply put, by allowing the Forest Service to unilaterally decide when the presence of listed species is sufficiently adverse—a completely arbitrary and undefined process and standard—to trigger NEPA review and public involvement, the Rule clearly meets the "may affect" standard. Consequently, the Department is ignoring its unambiguous obligation to consult with the Services. Although effects to individuals of listed species or their habitat would occur in the future, at the project level, consultation for this important change must occur at the programmatic level as well. *See*, *e.g.*, *California ex rel. Lockyer v. U.S. Dept. of Agr*., 575 F.3d 999 (9th Cir. 2009) (finding Forest Service violated the ESA by failing to consult on a rulemaking to replace the Roadless Area Conservation Rule with a state petition process); *Citizens for Better Forestry v. U.S. Dept. of Agric.*, 481 F. Supp. 2d 1059, 1096 (N.D. Cal. 2007) (declining to dismiss plaintiffs' claim that the Forest Service failed to consult under the ESA on a decision to amend the agency's planning rules).

First, the proposal removes public participation, which has been important in protecting species from project-level impacts. The general public, state agencies, and often Tribal governments through Government-to-Government consultation, rely on the scoping process to identify project locations that may affect Proposed, Endangered, Threatened and Sensitive ("PETS") species. And the Forest Service sometimes overlooks project-level impacts to listed species.

- In one particularly egregious example, the Forest Service missed the same issue twice in two successive entries to a watershed well known for its rare aquatic species. A 1980s-era project in the Citico Creek drainage of the Cherokee National Forest failed to consider impacts to the endangered Smoky Madtom and the threatened Yellowfin Madtom, even though the species are highly affected by sedimentation and the project would have drained immediately to their critical habitat. After three consecutive administrative appeals (which were all won by the appellants), the Forest Service finally disclosed the impacts in the project's fourth iteration. When the watershed was scheduled for its next entry,[29] the Forest Service cursorily mentioned that those same species were present in the analysis area, but failed to realize that project activities were located immediately adjacent to their designated critical habitats. Environmental groups notified the Forest Service of the issue during the NEPA process (in comments on the Nov. 2010 Draft EA), which ultimately resulted in relocating project activities, mitigation, robust monitoring commitments, and, during implementation, the decision to drop some risky stands.

independently obligated to utilize its authorities to further the ESA's purposes by carrying out programs for the conservation of listed species, *id*. 1536(a)(1).

[29] Draft Environmental Assessment, Middle Citico Project, Tellico Ranger District, Cherokee National Forest (November 2010); Decision Letter, Finding of No Significant Impact (September 2013).

- Another recent example is *Bombus affinis*, the rusty patched bumble bee, which was listed in 2017 due to precipitous declines. As FWS has stated, "[t]he rusty patched bumble bee is so imperiled that every remaining population is important for the continued existence of the species." When the George Washington National Forest proposed the Duncan Knob vegetation management project, the species was not known to exist in the project area. That project was proposed under a CE, and it is highly unlikely that surveys for the bee would have been conducted in advance of its implementation. Fortunately, a separate NEPA process was ongoing for the Atlantic Coast Pipeline ("ACP"), which overlapped the project area. A contractor for ACP found the species near the project area. The end result: Duncan Knob stands were dropped from within the subsequently-developed "high potential zone" for occurrence of *Bombus affinis*. Those stands would have been implemented, and "take" would likely have resulted to this highly imperiled species, but for the lucky timing of a separate NEPA process that made up for the shortcomings in the Forest Service's proposed use of a CE.

Other recent projects show just how important the public's role can be in identifying rare species generally:

- On the Welch project (Nantahala National Forest), citizen scientists found *Aconitum reclinatum* that was missed by the agency.

- On the Buck project (Nantahala National Forest), the Forest Service missed *Polygala senega* and *Geum donium*, which were found by citizen scientists.

- In the Stony Creek project (Cherokee National Forest), it was *Pyrola americana*. In that project, the stand was also identified as old growth based on citizen science, and the stand is now being managed with fire to maintain the rare species.

- The North Carolina Wildlife Resources Commission found new occurrences of green salamander (*Aneides aeneus*) in the Southside project (Nantahala National Forest), resulting in new buffers on those locations.

- In the Turkeypen project (Nantahala National Forest), agency staff missed red-legged salamanders (*Plethodon shermani*) which were later located by a citizen scientist.

- In the North Clack Integrated Resource Project (Mt. Hood National Forest) the agency surveyed for red tree voles (*Arborimus longicaudus*) protected by the Northwest Forest Plan and found three active vole nests. A community science team surveyed the same area and found over 60 red tree vole nests, each of which received a 10-acre buffer.

Each of these species is considered "sensitive" or "forest concern" or, under the 2023 Nantahala-Pisgah Forest Plan, a "species of conservation concern." Their declines will lead to listing (particularly for green salamander) if not addressed quickly. The Forest Service has an important role in preventing listing of these species under the ESA. These examples also highlight the difficulty in ensuring that rare species are actually found during surveys. These sometimes-elusive species can be overlooked simply because the survey does not occur at the right time of year. For example, the green salamanders in the Southside project were initially missed because they were in an arboreal phase of their life cycle during the survey, and Forest Service staff were looking for them in the rock crevices where they nest at other times of the year. Examples of overlooked rare plants are even more common, and for similar reasons: seasonal morphological changes can make locating and identifying rare plants excruciatingly difficult for all but the most experienced.

Losing site-specific public involvement for projects in ecologically complex areas will result in serious but uncounted harm to rare species. Already many impacts likely fall through the cracks. But the Forest Service's efforts to scale up timber harvest pursuant to this administration's policy priorities (along with staff terminations and inadequate agency funding) mean less time spent by biologists and botanists on each acre. Eliminating scoping and moving projects into categorical exclusions will ensure that the public is less involved at the site-specific level and will therefore be unable to catch mistakes. This is a disastrous combination for rare species.

Second, state and tribal wildlife biologists also depend on the NEPA process to assist the Forest Service in locating and protecting rare species. Scoping and environmental analysis are crucial for letting those state and tribal experts know where to prioritize their own surveys. The IFR would frustrate the work of state and governmental partners, which fails to fulfill the Department's commitment to shared stewardship.

Even when listed species are found in project areas, the IFR would remove substantive protections from them. The Forest Service's extraordinary circumstances regulation currently (at least partially) ensures that the impacts are properly understood, uncertainties eliminated, and appropriate mitigation put in place before project activities go forward. Under the IFR, however, projects would remain eligible for categorical exclusions unless the responsible official, in their "sole discretion" without the benefit of analysis and public involvement, determines the effect would be potentially significant after weighing the prospects of mitigation against the adverse impacts. 7 C.F.R. § 1b.3(f). As a practical matter, this change would result in fewer project improvements, and it would undermine recovery efforts by allowing minor but repeated impacts to species for which every population and every acre of available habitat matters.

IV. Executive Order 14,154 Does not Justify the Approach Taken by the IFR.

The Department has explained that its revisions have been animated by President Trump's Executive Order 14,154. 90 Fed. Reg. 29634, 29635. That executive order provides that "[c]onsistent with applicable law," the Department should "prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the policy goals set forth in section 2 of [that] order or that could otherwise add delays and ambiguity to the permitting process." Executive Order 14,154, § 5(c) (Jan. 20, 2025).

Section 2, in turn, emphasizes policy goals like "encourag[ing] energy exploration and production," Executive Order 14,154, § 2(a), "establish[ing] our position as the leading producer and processor of non-fuel minerals," § 2(b), "protect[ing] the United States's economic and national security and military preparedness," § 2(c), and "promot[ing] true consumer choice," § 2(e); *see also* § 2(f). There are two problems with the Department's reliance on this executive order to justify its new NEPA processes: (1) The executive order is inconsistent with NEPA's requirements; and (2) the procedures implemented by the Department fail to satisfy the executive order on its own terms.

A. Executive Order 14,154 is inconsistent with NEPA.

A NEPA process that seeks to achieve "efficiency and certainty over any other objective" and aims to implement only the policy goals enumerated in section 2 of the executive order are fundamentally inconsistent with NEPA. While efficiency and more assurances as to outcomes are worthy objectives, the statute does not allow them to be prioritized over the protection of human and environmental health, as the executive order demands.

NEPA, not the executive order, declares the relevant policy of the federal government. It serves to "declare a national policy which will encourage productive and enjoyable harmony between man and his environment," 42 U.S.C. § 4321, and it establishes that the "continuing policy of the Federal Government" is to "use all practicable means and measures . . . to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans," 42 U.S.C. § 4331(a). The whole of the "Federal Government" thus must "use all practicable means . . . to improve and coordinate Federal plans, functions, programs, and resources" to various "end[s]," including, among others, "assur[ing] for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings," and "preserv[ing] important historic, cultural, and natural aspects of our national heritage." 42 U.S.C. § 4331(b). Accordingly, if the Department took the executive order to allow it to disregard these policies and goals, its NEPA revisions cannot stand.

Indeed, to the extent NEPA gestures at any of the goals embraced by section 2 of the executive order, it reflects a need to balance those ends with other goals. *See* 42 U.S.C. § 4331(b)(3) ("attain the widest range of beneficial uses of the environment without degradation,

risk to health or safety, or other undesirable and unintended consequences"); § 4332(b)(4) (balancing "maintain[ing]" "variety of individual choice" with the need to "preserve important historic, cultural, and natural aspects of our national heritage"); § 4332(b)(5) ("achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities"). There is no statutory support for considering "efficiency and certainty," or the policy goals enumerated in section 2, to the exclusion of all other aims—especially the ones called out in the statute itself, including NEPA's express purpose of environmental protection. *See* 42 U.S.C. § 4321.

The statute also confirms the marching orders the "agencies of the Federal Government" must follow. *See* 42 U.S.C. § 4332(B). Agencies are not directed to prioritize "efficiency and certainty" or to pursue the specific aims discussed in section 2 of the executive order above all else. Rather, "[a]ll agencies of the Federal Government" have long been required to be in "full compliance with the purposes and provisions of this chapter," including those just discussed. 42 U.S.C. § 4333. They must "identify and develop methods and procedures . . . which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. § 4332(B).

The Department's adherence to this executive order, rather than NEPA's statutory text, also places it on the wrong side of Supreme Court precedent. While agencies are "not constrained by NEPA from deciding that other values outweigh the environmental costs," they must ensure that they have followed "the necessary process," which in turn includes ensuring that "adverse environmental effects of the proposed action are adequately identified and evaluated." *Robertson*, 490 U.S. at 350. It is through NEPA's public-facing procedures—not a process that seeks efficiency and certainty over all else—that the "sweeping policy goals" found in Section 4331 are implemented. *Id.* To that end, the "twin aims" of NEPA are an "obligation to consider every significant aspect of the environmental impact of a proposed action" and "ensur[ing] that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983) (citation modified). The goal of "[a]dministrative efficiency and consistency of decision" should give way if NEPA's requirements are not otherwise met. *See id.* at 101.

In short, NEPA identifies the policy goals it intends agencies to pursue in promulgating regulations implementing it, and they are not those goals that agencies have elected to pursue by relying on Executive Order 14,154. The Department should reconsider its NEPA implementation decisions for that reason alone.

B. The NEPA process the Agency adopted does not achieve the efficiency and certainty goals of the executive order, in any event.

Even so, as evidenced further in these comments, the Department has failed to implement the President's command.

To start, among the policies enumerated in the executive order is a "guarantee that all executive departments and agencies (agencies) provide opportunity for public comment and rigorous, peer-reviewed scientific analysis." Executive Order 14,154, § 2(h). But these NEPA rules provide no guarantee of such public comment. Indeed, the Department has *declined* to require public comment when it establishes or revises any categorical exclusion, when it uses such an exclusion, when it uses an EA, and when it issues a draft EIS. The Department has further declined to guarantee public involvement in any scoping proceedings preceding environmental review. Accordingly, the Department's approach to NEPA review fails to align with the Executive Order by its own terms.

Moreover, these choices, and others, have undermined "efficiency and certainty" and will produce "delay and ambiguity" in the permitting process. Executive Order 14,154, § 5(c). There is ambiguity and uncertainty about when, exactly, these new rules will begin to be applied. Notwithstanding the Department's insistence that it proceed by IFR, the Department also has indicated that the "revised agency procedures will have no effect on ongoing NEPA reviews" where the old rules still will apply. 90 Fed. Reg. at 29634. The Department stacks confusion on confusion, including in one part of the preamble a suggestion that the "revised agency procedures will have no effect on ongoing NEPA reviews" because "it will continue to apply" the old rules, 90 Fed. Reg. at 29634, while suggesting elsewhere that "USDA subcomponents have discretion to continue using the versions of USDA and agency-specific NEPA regulations" that existed before the IFR, 90 Fed. Reg. at 29634. Still more, the preamble provides that the Department would be free to apply the "2020 version of the CEQ NEPA regulations," 90 Fed. Reg. at 29644, which are not the most recent version of the CEQ NEPA regulations. So, which rule is going to apply to any given NEPA review remains a mystery.

This approach amplifies the risk of inconsistent environmental review that NEPA was meant to address. In the past, public comment—and the Forest Service's response to those comments—could be relied on to shape project analysis. But there is uncertainty about the level of public involvement the Forest Service will choose. Even where it takes comment, the Department has explained that "[t]here is no requirement in NEPA to address comments in writing," and thus has retained "discretion for addressing substantive comments in writing." 90 Fed. Reg. at 29638. And so, while it says elsewhere that it "should consider and should address in writing that raise substantive issues and/or recommendations," 90 Fed. Reg. at 29663, it is unclear whether the Department is committed to doing so.

In short, no one will know what NEPA review will look like for any given project, and given the possibility that the Forest Service will not fully respond to comments, there will be

uncertainty about what the Forest Service actually considered. And there will be no way to rely on what an agency has done in the past to inform what material might be useful to the agency going forward.

Finally, there is yet another efficiency cost of the Forest Service proceeding without public involvement. As discussed throughout these comments, public involvement *helps* the Forest Service identify the relevant universe of environmental effects and alternatives, potential mitigation options, and other information the Forest Service would be expected to evaluate. Public involvement surfaces "reliable data source[s]" necessary for evaluating environmental impacts, 42 U.S.C. § 4336(b)(3), so that the Forest Service does not have to locate that material all by itself. And experience shows that engaging the public and listening to their concerns reduces controversy and boosts the likelihood that projects will be timely permitted and completed. In other words, public involvement saves agencies' time while simultaneously producing better environmental reviews. Thus, whatever time savings might be gained by cutting corners in the environmental review process will be overcome by the time lost to inefficiencies, uncertainties, and controversies resulting from the new rules. To be sure, the Forest Service has in places retained its discretion to do more than the bare minimum. But this just reinforces the point that the goals of certainty and efficiency are better served by having a consistent and predictable set of rules that project proponents and the public, and the Forest Service itself, know up front will apply.

Moreover, the data reflects that the need for time savings is overstated. Recent data show that, in the wake of the 2023 amendments to NEPA and the regulatory reforms of the previous administration, the trend towards longer and longer EIS and EA timelines had been reversed. For example, in a 2025 report, CEQ found that federal agencies "benefitted from recent statutory, regulatory, and executive reforms to the NEPA process and significant cross-government investments to expedite permitting processes." CEQ, Environmental Impact Statement Timelines (2010-2024), at 1 (Jan. 13, 2025). Progress is also documented in a 2024 fact sheet that explained how thoughtful reforms and investments accelerated the timeline for project permitting.[30] Rather than rush to gut NEPA altogether, the Department and current administration should have given these reforms time to work. At a minimum, the Department should explain its reasoning for its action in light of this documented success.

In the end, these skipped steps in the environmental review will contribute to yet another kind of delay and uncertainty. There will be serious questions about whether the Department's NEPA decisions will withstand judicial scrutiny. If an agency has failed to "address[] environmental consequences and feasible alternatives as to the relevant project," it casts doubt on whether the agency's decision is "reasonably explained." *Seven County*, 145 S. Ct. at 1511.

[30] Fact Sheet: Biden-Harris Administration Takes Action to Deliver More Projects More Quickly, Accelerates Federal Permitting (White House, Aug. 29, 2024), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/08/29/fact-sheet-biden-harris-administration-takes-action-to-deliver-more-projects-more-quickly-accelerates-federal-permitting.

Granted, an agency enjoys some discretion about what to do with "new potential information" it receives, in terms of "determin[ing] whether and to what extent" to address that information. *Id.* at 1512 (quoting *Pub. Citizen*, 541 U.S. at 767). But there is no refuge for an agency that creates processes that allow it to "entirely fail[] to consider an important aspect of the problem" or "articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Indeed, now, just as before, NEPA cannot be implemented to allow an agency to "act on incomplete information, only to regret its decision after it is too late to correct." *Marsh*, 490 U.S. at 371. Because the Department gives NEPA's processes short shrift, project proponents will have less certainty, not more, that their projects can go forward, and there will be an increased likelihood of delay resulting from an agency needing to redo an inadequate environmental review. That benefits no one.

For all these reasons, the Department should reevaluate its decision to eliminate many of the features of the existing regulations that ensured efficiency and certainty in their NEPA reviews.

V. The Interim Final Rule is Arbitrary and Capricious and Contrary to Law.

Court challenges to the IFR will be reviewed under the Administrative Procedure Act, 5 U.S.C. § 706, under which agency actions are unlawful "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (summarizing judicial review under the Administrative Procedure Act).

The Department's rationale for its new policy must be clearly stated in the administrative record. *SEC v. Chenery*, 318 U.S. 80 (1943). That rationale must also be genuine: the agency cannot rely on a pretextual or contrived explanation in order to avoid legal or political accountability for its actions. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2575–76 (2019) ("The reasoned explanation requirement of administrative law, after all, is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public").

Notably, agencies are entitled to deference only when they are interpreting a statute that they are uniquely responsible for administering. *Ardestani v. INS*, 502 U.S. 129, 148 (1991) ("[C]ourts do not owe deference to an agency's interpretation of statutes outside its particular expertise and special charge to administer"). Because NEPA applies broadly to federal agencies, the Department will receive no deference in the interpretation of its requirements. *United Keetoowah Band of Cherokee Indians in Oklahoma v. FCC*, No. 18-1129 (D.C. Cir. Aug. 9, 2019); *Grand Canyon Trust v. Federal Aviation Admin*., 290 F.3d 339, 341-42 (D.C. Cir. 2002) ("because NEPA is addressed to all federal agencies and Congress did not entrust administration

of NEPA to [any one agency]," "the court owes no deference to [an agency's] interpretation of NEPA or the CEQ regulations"); *Park County Resource Council, Inc. v. United States Dep't of Agric.*, 817 F.2d 609, 620 (10th Cir. 1987) ("deference to agency expertise is inapplicable in the NEPA context"). This lack of deference is reinforced by *Loper Bright v. Raimondo*, under which reviewing courts no longer defer to "reasonable" interpretations, but instead decide on the "best" interpretation. 603 U.S. 369, 400 (2024).

A. The IFR is not based on accurate and complete problem identification.

The Department's justification for the IFR is that given CEQ's repeal of its NEPA procedures, congressional amendment of the NEPA statute, and the Supreme Court's decision in *Seven County*, the Department is "without necessary interpretation of, and implementing procedures for, NEPA." 90 Fed. Reg. at 29632. Additionally, the Department claims—without any evidentiary support whatsoever generally, much less applicable to the Forest Service—that existing NEPA procedures have "increased the cost of projects dramatically, 'both for the agency preparing the EIS and for the builder of the project,' resulting in systemic harms to America's infrastructure and economy." *Id*. at 29,634 (*citing Seven County*, 145 S. Ct. at 1513–14).

We initially point out that this quote from *Seven County* was not based on any information in the record before the Court in that case (it is dicta at best and unsupported judicial supposition at worst), and even if there was evidence that NEPA resulted in increased costs to the federal agency at issue *in that case*, there is no corresponding evidence before the Department *in this rulemaking.* The Department has proved no rationale beyond mere assertion that CEQ's repeal of its NEPA procedures, congressional amendment of the NEPA statute, and the Supreme Court's decision in *Seven County* warrants the repeal of the Forest Service's NEPA procedures or replacement with universal Departmental regulations.

Indeed, the available information before the Department (and the Forest Service) indicates that NEPA analysis and public engagement themselves are in fact *not* problematic or costly. When the Forest Service undertook rulemaking to alter its NEPA regulations in 2019 during the first Trump administration, it created a substantial administrative record demonstrating that inadequate agency funding and staffing lead to delays in project implementation, not the NEPA process itself. Available data demonstrate that the number of days of analysis *per acre included in the decision* do not vary greatly by decision type and, in fact, are almost identical with respect to EAs and CEs. *See* Attach, 1, Appendix 5.

Other data show that the Forest Service is already better at timely decision-making under NEPA than other agencies. From 2010 to 2017, EIS completion time for all agencies averaged

4.5 years, with a median of 3.6 years.[31] The Forest Service was notably quicker during that timeframe, completing EISs in an average of 3.35 years and a median of 2.92 years.[32]

The Forest Service outperforms other agencies at each stage of the EIS process. The average time from a notice of intent ("NOI") to a draft environmental impact statement ("DEIS") for all agencies is 2.6 years; for the Forest Service, 1.8 years. The average time from the DEIS to the final environmental impact statement ("FEIS") for all agencies is 1.4 years; for the Forest Service, 1.3 years. And the average time from the FEIS to the record of decision ("ROD") is 0.4 years for all agencies; for the Forest Service, 0.3 years.

Similar comparative data are not publicly available for EAs and CEs, but EISs are most instructive in understanding the advantages or disadvantages of a particular agency's decision-making processes because EISs have the most rigorous procedural requirements. These data strongly suggest that the Forest Service's processes allow it to more quickly and efficiently complete NEPA review than most agencies *under its existing NEPA procedures*. The Department should have at least made an attempt to understand what makes its current processes more efficient than other agencies'. Notably, the Forest Service's former NEPA procedures at 36 C.F.R. Part 220 (2024) were stronger than those of other agencies, so that would have been a good place to start looking.

Without such an analysis, the Department cannot disregard one possible reasonable explanation: that the Forest Service gets more timely, useful information from public engagement than other agencies. Because of the large number of decisions the Forest Service makes, and because of its strong history of public engagement, it has more sophisticated stakeholders who understand the agency's limitations and institutional needs and who can help improve projects in ways that still meet those projects' essential needs. We suspect that the best performing agencies have earlier public involvement and modify their proposals earlier in the process—features of current Forest Service procedures that the IFR would destroy.

To put it simply, Forest Service stakeholders are providing high-quality information about specific places and their values, and they are offering alternatives that can be used to refine projects rather than simply opposing them. The Forest Service's stakeholders are providing this information within the agency's already short commenting deadlines, comment opportunities that would be eliminated for the vast majority of agency decisions. Such data and information may sometimes be inconvenient to a responsible official who wants to push ahead with a project that would affect resources that are important to the public, but such data should be useful to a multiple-use agency charged with minimizing harmful impacts to competing multiple-use values and the human environment.

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[31] CEQ, *Environmental Impact Statement Timelines (2010-2017)*, at 1 (Dec. 14, 2018) (hereinafter "EIS Timelines"). These figures, moreover, include travel management planning and forest planning EISs, which can take much longer in some cases than project-level decisions.

[32] *Id.* and accompanying Excel Workbook (available at https://ceq.doe.gov/nepa-practice/eis-timelines html).

Numerous sources demonstrate that most delays in project implementation result from inadequate congressional appropriations, insufficient training of agency personnel tasked with NEPA compliance, inadequate staff qualified to undertake NEPA compliance, and the failure to leverage existing internal learning around NEPA. Other challenges include the Forest Service's institutionalized promotional policies that encourage staff to take short-term "detail" positions, resulting in high vacancy rates and turn-over or transitions.

The Forest Service also has long lamented the fact that increasingly expensive fire suppression precludes mission critical work. For example, the Forest Service's report, *The Rising Cost of Wildfire Operations: Effects on the Forest Service's Non-Fire Work* [33] details how the cost of wildfire suppression has adversely affected the agency's ability to implement mission critical work related to capital investments, road maintenance, recreational opportunities, habitat restoration, timber production, and monitoring. There is not a single mention of NEPA or other analysis procedures as a barrier to project implementation in this report; instead, the document focuses on the rising cost of fire suppression as the agency's number one challenge.

Complaints and critiques of the Forest Service's decision-making process are nothing new. Data and analyses have long been available to show that the real problems, however, "center on inadequate monitoring, data, and public involvement."[34] Strong monitoring commitments, with accountability for follow-through, are needed to shift resources away from time-consuming and inefficient predictive analyses.[35] Data collection is needed, among other reasons, to plan the correct levels of activities and to locate those activities in the right places.[36] And public participation is needed to set priorities.[37]

To the extent that priority-setting through public engagement is difficult, it is often because the Forest Service is not receptive to changing its practices in response to the public's values. Despite the equal priority established by the Forest Service's multiple-use mandate, timber production is often considered to be the most important priority, even when it conflicts with other needs. This is due to the importance of timber receipts in funding agency operations and the significant role of timber in performance evaluations and career advancement.[38] In the Great Basin and Southwest, livestock grazing is often considered to be the most important priority, even when it conflicts with other species and uses and leads to landscape-scale vegetation treatments.

The solutions to the Forest Service's decision-making problems have long been known: "these changes require nothing more than involving the appropriate parties at the appropriate

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[33] United States Forest Service, *The Rising Cost of Wildfire Operations: Effects on the Forest Service's Non-Fire Work*, available at https://www.fs.fed.us/sites/default/files/2015-Fire-Budget-Report.pdf (Aug. 4, 2015).
[34] GAO, Forest Service Decision-Making (1997) at 40.
[35] Id. at 41-43.
[36] Id. at 43-45.
[37] Id. at 45-47.
[38] Id. at 64-65.

times and basing decisions on sound information."[39] These solutions have been hampered, however, by "leaving their implementation to the discretion of regional offices and forests."[40] The IFR, of course, would dig further into this hole, removing minimum procedural requirements rather than strengthening them.

The Forest Service provided a candid assessment of the actual underlying causes of agency inefficiency in planning and implementation in an agency presentation at a workshop in Phoenix, Arizona in 2017.[41] That presentation summarizes the internal investigation the Forest Service conducted regarding its environmental analysis and decision-making process, and it reveals the agency's "hard truths:" that funding, staffing, training, and internal policies and procedures are the root causes of inefficient project development, analysis, and implementation.

For example, the *Phoenix EADM Presentation* reveals that since the Forest Service abandoned regular NEPA training for staff in the 1990s, it is not surprising that many staff "learn NEPA" from colleagues who themselves are not trained in how to comply with and effectively implement the law. And, although the Forest Service has been through several internal and external initiatives to "improve NEPA," the agency continues to struggle to learn from and leverage the lessons of these endeavors, no doubt in part a consequence of known capacity challenges.

Similarly, the Forest Service's own Environmental Analysis and Decision Making (EADM) roundtables that it hosted in 2018 to accompany prior NEPA rulemaking[42] (and which are conspicuously absent in this rulemaking) revealed what nearly every member of the public who comes in contact with the agency already knows:

- The major message from partner input is that transformational change for both the land and communities must begin with cultural change away from risk aversion and fear of litigation, and toward truly embracing partnerships and collaboration consistently across all levels of the agency. The "culture of mobility" in which the Forest Service incentivizes frequent employee movement for career advancement interferes with EADM processes, relationships with community members, and understanding of local ecological and socioeconomic conditions. Partners expressed that these cultural changes must happen to ensure successful implementation of regulatory shifts aimed at increasing efficiency or effectiveness.[43]

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[39] *Id.*
[40] *Id.*
[41] USDA Forest Service, *Environmental Analysis and Decision Making: The Current Picture* (Phoenix, AZ. Sept. 2017) (hereinafter *Phoenix EADM Presentation*).
[42] National Forest Foundation, *Regional EADM Partner Roundtables - National Findings and Leverage Points* (May 2018).
[43] To this point, we highlight the fact that the Department has recently announced a significant reorganizational process that will, among other things, eliminate the nine Forest Service regions, combine research functions into a single location based in Colorado, and require existing staff to move to new duty stations to retain their jobs. This transition will further compromise the ability of the Forest Service to meet any of its multiple use mandates because

- Both Forest Service leadership and partners spoke to an inconsistency in how policies are interpreted, applied, and implemented at units across the country due to the cultural norms that guide how the Agency operates and how it relates to its public. The history of remote ranger stations has led to persistent autonomy at the district and forest levels, despite changes in technology and current national directives.

- Partners raised concerns that cross-boundary issues like climate change, invasive species, and wildlife habitat are not well managed or planned for. With the heavy demand of staff time and funding toward fire response, other resource areas experience funding and staffing shortages.

- Partners commented on the agency's practice of incentivizing employees to change positions and move frequently to gain breadth and depth of experience, and to gain responsibility. From the agency's perspective, this "culture of mobility" helps to: adequately prepare agency employees to advance professionally; ensure employees are able to make unbiased and professional decisions in managing public lands; and builds consistency and shared culture across the agency. While moving employees to different units can support a transfer of good practices and new ideas, partner criticisms include that it also means that staff are on a frequent and steep learning curve to understand the relevant forest conditions, ecological systems, community interests and dynamics, as well as the Forest Service staff environment they are joining. Turnover, detail assignments, and fire response often reduce productivity due to interruptions in project momentum and changes in project direction.

- Turnover in Forest Service staff has significant impacts on partners. Local relationships become fractured and have to be rebuilt.

- Partners expressed frustration that they are brought into discussions about projects after EADM has been initiated. Collaborative groups and other types of partners want to be involved before scoping begins, particularly during the project design phase. Even when collaborative groups have prioritized and developed agreement around potential projects at the district level, they often feel disenfranchised when those projects are not incorporated into planned programs of work and associated EADM.

- Participants commented they experience inconsistencies across units in Forest Service transparency, willingness to accept external assistance, and communications with partners. They stated that external scientific and traditional ecological knowledge is

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the majority of agency personnel will be mobilizing—or terminated—over the next year. USDA did not attempt to address this basic operational issue in this rulemaking.

not typically accepted in EADM or broadly used by the Forest Service.

- Partners commented that training in project and personnel management, resource specializations, and EADM itself remains an unaddressed need throughout the Forest Service. Budget shortfalls and statutory mandates on funding for fire response, combined with a shortage of trained employees in areas other than fire and/or a frequent diversion of staff to emergency response or shifting priorities, hamper the ability of the agency to make progress on other important forest and grassland resource management efforts. Moreover, the complexity of landscape-scale factors (e.g., climate, fuels, insects, and disease) demands a high level of expertise and a deep knowledge of forest conditions at multiple levels of the Forest Service.

- Partners recognize that staffing levels are not adequate to meet the current demand for EADM. One example of this is the large backlog of special-use permits and long timeframe for processing. EADM timelines are often lengthened due to the need for hiring or on-boarding additional staff, including "holes" in interdisciplinary team specialist representation. The Forest Service also dedicates minimal human and funding resources to monitoring.

- Small EADM projects seem to be managed similarly to larger ones, and partners commented that staff capacity does not appear to be deployed for efficiency.

- Partners expressed a desire for more and better analysis so that they can trust proposed actions. While this reaction seems contradictory to the frustration with lengthy documents, it stems from the perception that the Forest Service is not focused on the right analysis. It also is a reaction to the bias of existing EADM processes toward the Forest Service operating in a closed and insular manner, rather than being open and transparent. Units rarely share "current thinking," and instead prefer to release fully developed documents.

- Monitoring is considered expendable, and there is a lack of data upon which to base adaptive management decisions or to influence future project design.

- The Forest Service lacks common measurements or metrics across forests and projects to assess change.

These operational and organizational culture issues—funding, staffing, and training—are wholly unrelated to the agency's NEPA regulations and have been exacerbated by the second Trump administration's impulsive cuts to agency staffing and funding. Instead, these factors are chronic issues faced by all federal agencies; although in the Forest Service they are aggravated by systemic management practices that, for example, encourage frequent relocation. This

practice results in numerous "acting" employees that may not be an appropriate fit, and in turn often stalls NEPA analysis on critical project-level work, sometimes for months or years. Inadequate agency budgets and hiring freezes also mean that many positions remain vacant for extended periods.

In short, these are not "NEPA problems" that can be remedied by repealing the Forest Service's NEPA regulations and replacing them with weaker Department-wide regulations. Until the Forest Service grapples with and addresses these issues, the Department's attempts to alter its NEPA regulations will be arbitrary and capricious because its rulemaking will be based on "factors Congress did not intend it to consider." *Lands Council v. McNair*, 629 F.3d 1070, 1074 (9th Cir. 2010); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co*., 463 U.S. 29, 43 (1983) (decisions that "entirely fail to consider an important aspect of the problem" are arbitrary and capricious); *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (record must demonstrate that the agency considered the relevant factors). Moreover, because the Department is acting contrary to the existing record before it, it bears an elevated obligation to demonstrate the legality of its proposed action. *Organized Vill. of Kake v. U.S. Dep't of Agric*., 795 F.3d 956, 966–70 (9th Cir. 2015) *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 981 (2005); *FCC v. Fox Television Stations, Inc*., 556 U.S. 502 (2009).

As summarized simply in one of the agency's so-called "hard truths," "*[i]t's us, not NEPA.*"[44] Before proceeding with the IFR, the Department must conduct an accurate and complete problem analysis that clearly articulates the operational and organizational culture hurdles to effective and efficient environmental analysis and decision-making that are reflected in its own data. Such an analysis would not point the Department to change the Forest Service's NEPA procedures, but would instead show the need for a strategy, along with an action plan, to address those identified issues, and reflect the strategy in its budget requests and program direction.

B. The IFR goes far beyond its stated purpose and need.

The preamble to the IFR states that the "purpose and need" of the IFR is to: 1) address the repeal of CEQ's NEPA procedures; 2) comport with statutory changes to NEPA by the 2023 Regulatory Flexibility Act; and 3) address the Supreme Court's holding in *Seven County*. 90 Fed. Reg. at 29,632. While these may be laudable goals, the IFR does not reflect this relatively limited scope of change and instead goes far beyond it, rendering the IFR arbitrary and capricious because it considers factors Congress did not intend for the Department to consider when promulgating the IFR. The IFR goes beyond the Department's stated intent in a number of ways, including but not limited to: 1) eliminating the Schedule of Proposed Actions ("SOPA") and scoping requirements; 2) eliminating nearly all public comment opportunities, particularly that for environmental assessments; 3) expanding the use of categorical exclusions without a

[44] *Phoenix EADM Presentation*.

reasoned basis in fact or law; 4) avoiding environmental analysis and substituting the use of "design criteria;" 5) giving agencies sole discretion, without public input or review, to rely on previous environmental analysis and documents, including that produced by other federal agencies in different ecological settings; 6) changing the definition of "effects;" and 7) allowing the use of bonds in the NEPA process.

The 2023 amendments to the statute instituted page and time limits, clarified definitions, provided more detail regarding unified federal review for projects within the jurisdiction of multiple federal agencies, provided new direction regarding third party NEPA preparation, created new reporting requirements, outlined how agencies may utilize the CEs of other federal agencies, and created new digital permitting provisions. *See*, 42 U.S.C. § 4332 et seq (as amended). The 2025 repeal of the CEQ regulations simply (although with profound regulatory and environmental effect) repealed the regulations in place and binding on all federal agencies since 1978. And *Seven County* – while sometimes using charged rhetoric – merely reiterated that NEPA is a procedural law and NEPA analyses should only consider the environmental consequences of the project at issue: concepts that have been foundational NEPA law and practice for decades.

The IFR does not represent a rational connection between the facts found regarding the preceding changes in NEPA and the decision the Department has made in the IFR to eliminate important procedural safeguards and creating new barriers to public involvement and science-informed environmental decisionmaking. Indeed, the Department does not even attempt to explain how its new regulations address the "need" for change beyond a bald assertion that change is needed. The Department should have explained why each new provision is required or at least authorized by law. Failing that, the IFR is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(A).

Instead of providing a rational connection between the facts found and the decision made, it appears that the IFR is based on predominantly political factors Congress did not intend for the Department to consider when promulgating the rule. The present administration has emphasized domestic timber production on federal lands at the expense of environmental review, public engagement, and Tribal consultation.[45] The administration has also effectuated an unprecedented

[45] *See*, Executive Order 14225, Immediate Expansion of American Timber Production. The EO directs USDA to "take all necessary and appropriate steps consistent with applicable law to suspend, revise, or rescind all existing regulations, orders, guidance documents, policies, settlements, consent orders, and other agency actions that impose an undue burden on timber production," "establish a new categorical exclusion for timber thinning and re-establish a categorical exclusion for timber salvage activities; and "adopt categorical exclusions administratively established by other agencies to comply with the National Environmental Policy Act and reduce unnecessarily lengthy processes and associated costs related to administrative approvals for timber production, forest management, and wildfire risk reduction treatments." *Id.* The IFR certainly takes steps to implement these objectives, *but they are <u>not</u> the justification provided in the IFR. See also* Secretarial Memorandum 1078-006, Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands; Implementation of Secretarial Memo 1078-

curtailment of Forest Service capacity through deferred resignations, termination of probationary employees, an ongoing hiring freeze, and impoundment of congressionally appropriated funds for critical agency functions. These policy decisions are the driving force behind the IFR such that the Department acknowledges that "the wholesale revision and simplification of this [permitting] regime, effectuated by these [NEPA] procedures, is necessary to ensure efficient and predictable reviews, with significant upsides for the economy and for projects of all sorts. This set of policy considerations drastically outweighs any claimed reliance interests in the preexisting procedures." 90 Fed. Reg. at 29,635.

But the Department never discusses the "significant upsides" of the IFR, or why the dramatic changes to Forest Service NEPA procedures are required in response to the proffered change triggers (i.e., CEQ regulation repeal, statutory amendments to NEPA, and Supreme Court case law). Indeed, the need for change in the Department's NEPA regulations are about unrelated policy choices designed to increase domestic timber production, not to reflect changes to the statutory, regulatory, or common law regime that themselves are untethered to the IFR. *See Dep't of Com. v. New York,* 588 U.S. 752, 783-85 (2019). The IFR is therefore arbitrary, capricious, and not in accordance with law. *See Lands Council v. McNair*, 629 F.3d 1070, 1074 (9th Cir. 2010); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co*., 463 U.S. 29, 43 (1983); *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985); *Organized Vill. of Kake v. U.S. Dep't of Agric*., 795 F.3d 956, 966–70 (9th Cir. 2015) *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 981 (2005); *FCC v. Fox Television Stations, Inc*., 556 U.S. 502 (2009).

C. The elimination of public comment on EAs and CEs is arbitrary and capricious.

As noted, the Department states that the purpose and need for the rulemaking is to provide the Department with "necessary interpretation of, and implementing procedures for, NEPA" in light of CEQ's repeal of its NEPA procedures, congressional amendment of the NEPA statute, and the Supreme Court's decision in *Seven County*. 90 Fed. Reg. at 29632. While we disagree with the factual and legal basis for this determination, we note that the scope of the IFR is inconsistent with this statement of need with respect to the IFR's elimination of public comment on EAs and CEs, the latter of which was common Forest Service NEPA practice. In other words, the Forest Service has *always* interpreted NEPA to require robust public participation, and nothing in *Seven County* or the rescission of CEQ's regulations prevents the

006. The implementation memo directs the Forest Service to increase National Forest timber harvest by 25% over the next 4-5 years, increase NEPA-approved "shelf stock" in each National Forest region, "use innovative and efficient approaches to meeting the minimum requirements of the National Environmental Policy Act (NEPA), Endangered Species Act, National Historic Preservation Act, and other environmental laws, including categorical exclusions, emergency authorities (including the Secretary's recent expanded Emergency Situation Determination), condition-based management, determinations of National Environmental Policy Act (NEPA) adequacy, and staged or tiered decision-making," and embrace "mandatory minimum approaches to scoping, extraordinary circumstances analysis and decision documentation requirements." Again, while the IFR takes steps to comply with these directives by limiting public comment, environmental analysis, and Tribal consultation, these objectives do not reflect USDA's justification for the IFR.

agency from continuing to do so. Elimination of public comment on EAs and CEs will compromise the agency's ability to meet its multiple use mandate, and important to this administration, its timber production goals.

Without public accountability, the Forest Service will not retain the same level and quality of analysis currently undertaken. Resources and time spent on project development are not largely consumed by public engagement, but rather by the scientific analysis needed to actually prepare projects with thoughtfulness and care, consistent with the best available science and other substantive laws such as the National Forest Management Act and Endangered Species Act.

In its 2019 rulemaking, the Forest Service stated that between 2014 and 2018, an average decision with an EA and Decision Notice ("DN")/Finding of No Significant Impact ("FONSI") took 687 days.[46] If project timelines are slowing down, the agency can and must correlate the slowdown with the portion of its budget available for project development (including salaries and expenses). Still, even taking this figure as a given, the agency fails to show that the timeframe has anything to do with public participation. Of the time that it takes to complete an average decision with an EA and DN/FONSI, only 30 days are currently required for public comment, assuming that the agency combines the scoping and draft EA comment periods. In addition, in order to provide a minimally iterative process that may avoid objections, many districts routinely offer two separate 30-day comment periods. If specific substantive comments are received, there is another 45-day window for administrative objections. That's a maximum of 105 days of public participation, during which other analytical and field work on the project can continue. The longer average timeline for EAs is therefore not attributable to public engagement: it is instead caused by EAs' greater size and complexity (as compared to projects developed under CEs of narrower scope and with acreage limitations) as well as internal (funding, staffing, annual leave, fire season deployments, etc.) and external (emergency management, congressional spending limitations, etc.) factors.

As noted above, the time spent "in NEPA" has very little influence on the time spent per acre. Removing public participation alone, therefore, cannot be expected to reduce the length of the NEPA process by up to 16 months on average, because only 105 days—at most—are spent in consultation with the public. 84 Fed. Reg. at 27551. Taking away the opportunity to comment costs the public a lot, but it gains the agency nothing; and indeed, we posit that the lack of public involvement on the vast majority of Forest Service projects will backfire on the agency and lead to decreased public trust of the agency, its mission, and its land management.

If the Forest Service hopes to save any substantial time and staff resources in this effort, it will only be because it expects to spend less time and effort *per acre treated*. Cutting out public

[46] 84 Fed. Reg. at 27550. This number appears to have been cherry picked, because EAs and DN/FONSIs took an average of 580 days for all projects between 2006 and 2016 (data provided to the Southern Environmental Law Center in response to a FOIA request).

participation is apparently a necessary step in that direction according to the Forest Service, because public engagement typically focuses on site-specific concerns, requiring agency investigations and responses at the same scale. Indeed, without increasing budgetary and staff resources, there is no possible way that the Forest Service can meet the expected 25% increase in timber volume by 2030 without its specialists spending appreciably less time on each project and each stand or acre treated.[47] As Region 4 explained to the Washington Office, "[i]n order to increase our pace and scale of restoration, we need to ensure we have the workforce to plan, prepare, sell, and carry out the work that is identified."[48] This admission candidly highlights one of the real bottlenecks to project implementation—which has been exacerbated by actions taken by this administration to eliminate agency personnel and starve it of funds as demonstrated in the President's FY26 Budget—and yet the IFR does not even attempt to address it.

In addition, the Department fails to disclose the IFR's costs. The sum effect of the Rule will be to dramatically curtail the process that distinguishes between good and bad actions in specific locations, catches mistakes, and ensures compliance with applicable laws. Without that process, unintended effects will proliferate, and mistakes will be much more costly. As the Government Accountability Office has explained, "[a]lthough compliance with planning and environmental laws is costly and time-consuming, noncompliance is also."[49] These costs include both harm to environmental resources and, if the mistakes are caught in time, financial liability for canceled timber contracts.[50] For example, researchers recently quantified the substantive influence of public comment on environmental decisions under NEPA, finding "that public comment influences agency decisions and is a valuable tool for agencies to gather information and refine plans, which could lead to more sustainable outcomes for affected communities and the natural world."[51]

To put it simply, if the Department was truly concerned about the Forest Service's capacity to do effective, legally compliant, environmentally protective, and transparent work, it wouldn't eliminate free capacity provided by the public and stakeholders. The Forest Service's stakeholders provide valuable information and analysis that often result in beneficial project changes. In addition, failing to incorporate information from the public will cause increased friction over time, as unintended harms alienate stakeholders and reinforce zero-sum tradeoffs between resource values. This sort of friction is not necessarily connected to any particular decision, but it imposes a tax on every decision.

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[47] *See* Periodic Timber Sale Accomplishment Report for FY 2017; Summary of Five-Year Availability of Regional Projects (May 17, 2018) (provided to Southern Environmental Law Center pursuant to a Freedom of Information Act Request).
[48] Intermountain Region Implementation Strategy for Improving Forest Conditions (June 8, 2018) (hereinafter *Intermountain Region Implementation Strategy*) (provided to Southern Environmental Law Center pursuant to a Freedom of Information Act Request).
[49] GAO, Forest Service Decision-Making (1997).
[50] *Id.*
[51] *See* Attach. 3, Ashley Stava et al., *Quantifying the Substantive Influence of Public Comment on United States Federal Environmental Decisions under NEPA,* 20 ENV'T RSCH. 1, 6 (2025).

We know that the Forest Service is not unaware of these realities. But by overstating the benefits of the Rule and failing to disclose the costs, the IFR runs counter to the evidence before the Department during its prior rulemaking process and suggests that other factors are motivating the proposed changes. In internal documents we received in response to a Freedom of Information Act ("FOIA") request on the agency's 2019 NEPA rulemaking, the Forest Service provides a candid assessment of the internal dilemmas behind these radical changes: at the root of the problem is the pressure to increase timber volume outputs, pressure that has substantially ratcheted up in this administration.[52]

Because of inadequate budgets and intense pressure to perform, the Department has confused outputs with outcomes, and it is now focused on increasing the former at the expense of the latter. The emphasis on timber outputs has also already resulted in the loosening of environmental protections. Shortcuts cause mistakes. Despite good intentions, the Forest Service makes mistakes in many of its projects. During the existing NEPA process, these mistakes can often be caught by an engaged public. Indeed, the Forest Service's own data show that projects change substantively in response to public input more than 63% of the time. *See* Attach. 1, Appendix 1. This is how NEPA is supposed to work. But Forest Service mistakes or inadequate analysis almost always cause projects to be cut down in size, because the agency lacks the capacity to find ways to avoid or otherwise resolve questions about site-specific impacts. To keep pace with its growing targets, therefore, the Forest Service needs to increase the percentage of proposed actions that make it through to a final decision. Instead of a rulemaking focused on decreasing the number of mistakes by working with the public to propose better actions, this Rule eliminates the public's role in catching mistakes and ensures that stands that should have been dropped along the way will instead make it into final decisions. This will lead to both unnecessary harmful impacts and inefficient litigation.

Imagine if the Forest Service told the truth about this rulemaking, to wit: "We have been ordered to increase timber volume, but we've also been prevented from seeking the budgets we need to do so responsibly, and we don't have time for front-loaded processes that would allow the public to help us develop better and bigger project proposals. As a result, we're proposing to cut the public out of the process. We're hoping not just to avoid the minimal costs and delays of public engagement, but also to cut corners in analysis, overlook site-specific impacts, and ignore less harmful alternatives that could meet our goals."

The public simply would not stand for it. And yet that is ***exactly*** what the Department has adopted in the IFR. We posit that the public's response to this rulemaking will be an unmitigated public relations disaster for the Department and its agencies, particularly the Forest Service, which is a public-facing public service organization that manages 193 million acres of the *public's* lands.

[52] *Supra* note 1.

Unfortunately for the Forest Service, even if the proposal is finalized, it will not lead to the hoped-for increase in outputs for timber and fuels reduction. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1215 (9th Cir. 1998) ("Although we now impose the "snag" that the Forest Service feared but the law requires, the Forest Service has largely succeeded in its strategy"). Although the IFR may initially result in more planned acres, these projects are very likely to be challenged in federal court, because that will be the only outlet for stakeholders who disagree with the agency's proposed action since administrative avenues to clarify issues and resolve disputes will no longer exist. Furthermore, an increase in planned acres is unlikely to result in an increase in acres treated, absent an increase in implementation staff, such as contracting officers, grants and agreements specialists, etc., not to mention sufficient wood products infrastructure, related workforce, or viable markets.

Finally, given the pressure to meet timber output targets without adequate staffing, the nature of the work accomplished is likely to favor commercial removal alone, without seeing reductions in fire risk, let alone achievement of broader restoration goals. What gets measured gets done, especially if there isn't the funding to do anything else. Decades of scientific research have demonstrated that a singular focus on resource extraction depletes natural resources and eviscerates the public's trust in the Forest Service.

We are not unsympathetic to the agency's dilemma, but it cannot have it both ways. The Department's efforts to increase outputs without commensurate increases in Forest Service capacity will result in unlawful outcomes. Rather than explain its dilemma, the Department punishes the public for its desire to engage in the management of the public lands it owns. But the agency may not offer a disingenuous rationale for its policies in order to avoid legal or political accountability. *Dep't of Com.,* 588 U.S. at 783-85.

D. Eliminating opportunities for public comment impedes the public's ability to challenge a project in court.

The Interim Final Rule is arbitrary and capricious because the Department failed to consider an important aspect of the problem—that eliminating the requirement for at least one designated public comment period for EA projects hinders the public's ability to adequately challenge an EA or EIS project in court. In doing so, the Forest Service has acted arbitrarily and capriciously and thus, unlawfully. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

While the Forest Service recognized that the rescission of the 36 CFR § 220 regulations "has implications" on the 36 CFR § 218 regulations for the project-level pre-decisional administrative process, it completely failed to address an implication of critical importance: by failing to guarantee at least one designated period in which the public can submit "specific written comments regarding a project or activity," the rule potentially prevents the public from being eligible to file an administrative objection. And without filing an administrative objection,

which "exhaust[s] the administrative review process," judicial review of an EA or EIS project "is premature and inappropriate."[53]

Part 218, which governs the administrative objection process, states clearly that only those who "have submitted timely, specific written comments regarding a proposed project or activity . . . during any designated opportunity for public comment" may file an objection. 36 C.F.R. § 218.5(a).[54] Prior to the Interim Final Rule, this was not an issue since the Forest Service (1) required scoping for all projects, and (2) acknowledged that Part 218 required the agency to offer at least one designated comment period. Indeed, section 218.22, which is titled "Proposed Projects and Activities *Subject to Legal Notice and Opportunity to Comment,"* applies to EA and EIS projects.[55] At a minimum, the agency could simply offer a comment period at scoping to satisfy both requirements. In practice, the agency frequently offered a comment period at scoping *and* on the draft EA. As discussed elsewhere, doing so provided many benefits to the public and the Forest Service.

Now, however, the Interim Final Rule has eliminated the scoping requirement without requiring a separate comment period that would allow the public to satisfy Part 218 requirements. Even more, the IFR prohibits the Forest Service from offering a discretionary comment period if it would cause the review period to exceed one year.[56]

The Interim Final Rule's sudden removal of all notice and comment requirements for EAs and EISs disregards decades of clear Congressional intent. As detailed below, Congress has spoken to the importance of notice and comment, as well as the need for an administrative appeals process (whether pre- or post-decisional) at least three times now. The Interim Final Rule also ignores that the Forest Service itself has recognized and valued these requirements for decades, understanding that notice, comment, and administrative appeal processes are required. The agency has met these requirements with Parts 215, 218, and 220. Together, these regulations have been a system of gears that fit together well, cranking each project neatly through the NEPA and administrative appeals/objection process. Now, the Interim Final Rule removes the notice and comment requirements without acknowledging that this disrupts the administrative objection process.

In 1992, Congress enacted the Appeals Reform Act ("ARA"), which: (1) required the Forest Service to establish a notice and comment process; and (2) modified and formalized the voluntarily-provided, post-decisional administrative appeals process that the agency had been

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[53] 36 C.F.R. § 218.14.
[54] *See also* 36 C.F.R. § 218.8(c) (The only issues that can be raised in an objection are those "based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment."), 218.8(d) (objection must include a statement demonstrating "the connection between prior specific written comments . . . and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment[.]
[55] 36 C.F.R. § 218.22 (emphasis added). *Compare to* 36 C.F.R. § 218.23 titled "Proposed Projects and Activities *Not Subject to Legal Notice and Opportunity to Comment"* (emphasis added).
[56] *See* 7 CFR §§ 1b.5(e) (governing EAs), 1b.7(d)(4) (governing EISs).

using.[57] Implementing regulations were promulgated at 36 CFR Part 215 in 1993 and then revised in 2003.[58] Part 215 exempted CE projects from the ARA, which prompted multiple lawsuits challenging whether the exemption was lawful.[59] In 2012, a district court enjoined the Forest Service from exempting CE projects from the notice, comment, and appeal processes of the ARA.[60]

Just a few months before the injunction, Congress directed the Forest Service in the Consolidated Appropriations Act of 2012 ("2012 Act") to replace its *post*-decisional administrative appeal process with a *pre*-decisional administrative objection process for EA and EIS projects.[61] Importantly, while the 2012 Act superseded the appeal process of the ARA, the Forest Service retained the notice and comment requirements of the ARA because it "understood Congress' intent to be that the notice and comment provisions of the ARA would continue to operate for the set of projects and activities subject to predecisional objection[.]"[62] Implementing regulations were promulgated at 36 CFR Part 218, and appropriately identified EA and EIS projects as "[p]roposed projects and activities subject to legal notice and opportunity to comment."[63]

In 2014, Congress responded to the lawsuits by clarifying in the Consolidated Appropriations Act of 2014 ("2014 Act") that the ARA did not apply to CE projects.[64] The notice, comment, and objection process remained in place, however, for EA and EIS projects, with the Forest Service explaining in its resulting rulemaking process, "[t]he legislative history [of the 2014 Act] confirmed Congress' intention to return public involvement processes to the preexisting regulatory norm prior to the date of the District Court's injunction."[65]

The following month, Congress enacted the 2014 Farm Bill, which again clarified that the ARA processes did not apply to CE projects. As the Forest Service explained, in order to "address the management challenge that became apparent following the nationwide injunction" and "ensure nonsignificant [CE] actions may promptly proceed," Congress repealed the

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[57] Forest Service Decisionmaking and Appeals Reform Act, Pub.L. 102–381, Tit. III, § 322, 106 Stat. 1419, note following 16 U.S.C. § 1612 (1992). *See also* 36 CFR 215.1 (1993). *See also* 79 Fed. Reg. 44291, 44291 (July 31, 2014) (summarizing timeline of changes to Forest Service notice, comment, and administrative appeal requirements).
[58] *See* 58 Fed. Reg. 58904 (Nov. 4, 1993), 68 Fed. Reg. 33582 (June 4, 2003).
[59] *See* 36 CFR §§ 215.3(a), 215.8 (1993); 36 CFR §§ 215.4(a), 215.12(f) (2003).
[60] *Sequoia ForestKeeper v. Tidwell*, 847 F. Supp. 2d 1244 (E.D. Cal. 2012), *judgment vacated, appeal dismissed not on the merits* (Mar. 7, 2014).
[61] Consolidated Appropriations Act of 2012, Pub.L. 112-74, § 428, 125 Stat. 1046, note following 16 USC 6515 (Dec. 23, 2011); *see also* 77 Fed. Reg. 47377, 47338 (Aug. 8, 2012) (summarizing timeline of changes). The predecisional objection process was based on section 105 of the Healthy Forests Restoration Act of 2003.
[62] 77 Fed. Reg. at 47342; *see also* 78 Fed. Reg. 18481, 18482 (Mar. 27, 2013) (stating that one purpose of the Final Rule is to establish a process for providing the notice and comment provisions of the ARA"). The Forest Service chose to leave the ARA's supplanted provisions in place because of ongoing lawsuits and legislative processes related to the whether ARA must also apply to CE projects. 79 Fed. Reg. 44,291 (July 31, 2014).
[63] *See* 78 FR 18481, 18502 (2013); 36 CFR § 218.22.
[64] Consolidated Appropriations Act, 2014, Public Law 113–76, 128 Stat. 5, Section 431 (Jan. 2014).
[65] 79 Fed. Reg. 44,291 (July 31, 2014).

underlying statute at issue, the ARA.[66] In other words, to resolve the legal question being litigated of whether the ARA applied to CE projects, Congress simply repealed the ARA.[67] This was likely the simplest way to resolve the issue and would have little impact since the notice, comment, and appeal provisions originally required by the ARA for EA projects were now embodied in Part 218. Having moved the processes for EA and EIS projects into Part 218 (Healthy Forests Restoration Act ("HFRA") and non-HFRA projects), Part 215 was now similarly unnecessary, prompting the agency to remove Part 215. With this, the notice, comment, and administrative objection provisions were now situated in Parts 218 and 220, where they remained until July 2025.[68]

In promulgating the Interim Final Rule, the Department has ignored this legislative history and what is clear from it—that notice, comment, and an administrative objection process are still integral to EA and EIS projects. The Department has also ignored the fact that by eliminating the guarantee of at least one comment period, it has impermissibly interfered with the pre-decisional administrative objection process. As a result, would-be plaintiffs may not be able to exhaust their administrative remedies and seek judicial relief. In ignoring these important aspects of the problem, the Forest Service has acted arbitrarily and capriciously and thus, unlawfully. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

E. The Public has reliance interests in longstanding NEPA procedures eliminated by the IFR.

In promulgating the IFR, the Department "acknowledges that third parties may claim to have reliance interests in the Department's existing NEPA procedures." 90 Fed. Reg. at 29634. It claims, however, that because procedures will "have no effect on ongoing NEPA reviews," and because reliance interests "are inherently backward looking," these interests are unavailing. *Id.* Not so.

Agencies are required to consider reliance interests that have formed due to longstanding regulatory policies, determine whether they are significant, and weigh them against policy interests.[69] *Dep't of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 33

[66] Agricultural Act of 2014, Public Law 113–79, 128 Stat. 649, Section 8006 (Feb. 2014).
[67] Agricultural Act of 2014, Public Law 113–79, 128 Stat. 649, Section 8006 (Feb. 2014).
[68] In 2008, the Forest Service promulgated Part 220, which moved the agency's NEPA procedures from the Forest Service Manual and Forest Service Handbook. *See* 73 Fed. Reg. 43, 084 (July 24, 2008).
[69] Curiously, the Department quotes *Department of Homeland Security v. Regents of the University of California* for the proposition that substantive environmental concerns should be given no weight in this analysis. 90 Fed. Reg. at 29634. But in that case, the Supreme Court expressly rejected DHS's same argument (there, that DACA could have no "legally cognizable reliance interests" because the DACA program conferred no substantive rights) and found no authority to support this proposition. 591 U.S. 1, 31 (2020).

(2020). Here, the public has, for decades, relied on the Schedule of Proposed Actions ("SOPA"), scoping process, and opportunities for public comment to engage in Forest Service decision-making. Indeed, entire organizations have been founded specifically to engage in these public processes. These organizations have hired staff, developed expertise, and invested significant resources into programs devoted to monitoring the SOPA, conducting field surveys based on scoping notices, and leveraging community knowledge during comment periods. In taking away the very tools that these groups were founded, and are presently organized and funded, to utilize, the IFR frustrates a significant reliance interest held by these organizations and their members.

It makes no difference whether ongoing projects proceed under the IFR; SOPA, scoping, and public comment have been central aspects of the Forest Service's management program for decades, and the Department must "take[] into account" that "longstanding policies may have 'engendered serious reliance interests.'" *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). Here, the existence of the Forest Service's longstanding public processes has provided an invaluable backstop to the public to ensure that the agency has in fact considered their input in the scope of "environmental concerns in the decisionmaking process." *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc*., 462 U.S. 87, 97 (1983).

To be clear, that NEPA is a "procedural statute" does not invalidate the significance of the public's reliance on its safeguards. Arguing the opposite, the Department relies heavily on the Supreme Court's recent decision in *Seven County*, repeatedly citing the opinion's recognition that NEPA is itself a procedural statute. 145 S. Ct. 1497 (2025). But *Seven County* broke no new ground: NEPA's approach to environmental review of agency action has been acknowledged by the courts since the statute's inception. *See, e.g.*, *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc*., 435 U.S. 519, 558 (1978) (noting that NEPA's "mandate to the agencies is essentially procedural"). Nevertheless, the Department claims a newly articulated categorical rule that, because NEPA imposes "no substantive environmental obligations or restrictions," any "asserted reliance interests grounded in substantive environmental concerns" are inapposite. 90 Fed. Reg. at 29634. There is simply no authority to support this broad contention and regardless, as explained in detail below, *infra* Section X, NEPA's "sweeping policy goals announced in § [4331] are [] realized through a set of 'action-forcing' procedures that require that agencies take a '"hard look" at environmental consequences.'" *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21 (1976)). In this instance, the procedure *is* the substance. *See, e.g.*, *Seven County*, 145 S. Ct. at 1510 ("Properly applied, NEPA helps agencies to make better decisions[.]"). And here, removal of critical procedures harms the public's established and longstanding reliance in their existence.

VI. Incomplete NEPA Documents Do Not Comply with NEPA.

The IFR allows for the publication of NEPA documents even when the analysis is incomplete. *See* 90 Fed. Reg at 29660. Though NEPA requires agencies to meet certain

deadlines, 42 U.S.C. § 4336a(g), the IFR's allowance of unfinished environmental analysis when those deadlines are not met is inconsistent with the purpose and mandate of NEPA, which nowhere allows federal agencies to make decisions affecting the quality of the human environment based on incomplete analysis. NEPA cannot and will not foster informed decisions without *complete* analysis of the consequences of agency action.

The certification requirement, 90 Fed. Reg. at 29661, does ameliorate these concerns somewhat. But an internal determination that an undisputedly incomplete EA is "adequate" still circumvents NEPA's twin aims: first, that the agency consider *every* significant aspect of the environmental impact of a proposed action, and second, that the agency informs the public that it has done so. *See id.*; *Baltimore Gas,* 462 U.S. 87. To be clear, "every" does not mean almost. And a "good faith" effort to follow the law is not the same as following it. 90 Fed. Reg. at 29661. The proposed regulation is therefore *ultra vires*.

Moreover, the publication of an incomplete environmental assessment blatantly conflicts with the implicit requirements of the Forest Service's objection process. In the Forest Service's own words, the objection process is designed to be "a final opportunity to ensure full understanding of public concerns shortly preceding a decision." 77 Fed. Reg. 153, 47341 (2012). It is only logical that a document must be *complete* before it is final; Congress itself has "stated that National Environmental Policy Act (NEPA) documents are to be in complete or final form when made available for objection." *Id.* If any analysis is left on the table when an incomplete EA or EIS is published, and if the agency is to faithfully implement NEPA's mandate that a decision only be made in light of "every" impact revealed by that analysis, then any objection based on the non-final information is futile.

To meet NEPA's section 4336a(g) deadlines, we encourage the Forest Service to instead consider the scope and scale of its planned actions in light of its limited staffing and budget constraints. If the agency lacks resources to adequately analyze a project within the statutory timeframe, then it likely lacks the resources to adequately implement the project, regardless of NEPA violations.

VII. Determinations of NEPA Adequacy are Unlawful.

Although the proposed regulations do not use the phrase, it appears that the Department is proposing to adopt "determinations of NEPA adequacy" ("DNAs") as a regulatory tool. *See* 7 C.F.R. §§ 1b.9(e)(6), 1b.9(e)(8), 1b.9(e)(8)(vi). NEPA does not contemplate such a tool, and the proposed regulations are therefore *ultra vires*.

The preamble to the proposed regulations do not speak to the rationale that led the Department to propose the use of DNAs, but when the Forest Service proposed to adopt DNAs in its 2019 NEPA rulemaking, the agency stated that it was "modelled after" a similar concept in

the Bureau of Land Management's ("BLM's") procedures.[70] BLM's use of DNAs began as a "best practice" as early as 1999 for the incorporation of previous "existing environmental analyses" by reference into a new decision document. *Pennaco Energy, Inc. v. U.S. Dep't of Interior*, 377 F.3d 1147, 1152 (10th Cir. 2004).[71] If it had been confined to that context, we would likely not be discussing it here. Its use quickly spread, however, to other types of decisions, because prior environmental analyses can be relevant to current decision-making in several distinct ways.

Using examples, BLM's NEPA Handbook (H-1790-1 at Ch. 5)[72] describes three potential uses for a DNA, and identifies when public participation is required in preparing the DNA itself (as distinct from public participation required for a separate NEPA process):

- First, a DNA can be used to determine whether a prior decision can be used in support of a later, similar project. The example given is a permit for a second OHV race on the same route as a previously analyzed race. In these circumstances, the prior analysis can be incorporated by reference into a new decision. If there are differences between the projects—for example, if the type of vehicle was different in the second race—then BLM seeks public input on its use of the DNA to determine whether those differences are relevant to the type or degree of environmental impacts.

- Second, BLM allows the use of DNAs to determine whether a proposal is part of a broader ongoing action that was previously analyzed. As an example, BLM describes a particular timber sale that may have been previously analyzed in a landscape-level timber harvest project. The relevant question is whether a broader NEPA document has already identified and analyzed the impacts of the instant portion of the ongoing action—or, to paraphrase, did the previous decision "get all the way to the ground"? If the prior analysis did not address the specific locations for the timber sale, then BLM would seek public input on the use of the DNA to determine whether the newly identified location has unique or different considerations from what was disclosed more generally in the prior analysis.

- Third, BLM allows use of DNAs to determine whether there is new information requiring supplementation for an ongoing action. As an example, BLM offers a proposed road that has been analyzed in an older NEPA document, but for which a decision was delayed by "several years." The DNA would be used to determine whether new information or circumstances are relevant to the decision's potential impacts. BLM has broad discretion to seek public input in the use of the DNA if it

[70] 84 Fed. Reg. at 27546.

[71] 68 Fed. Reg. 52595, 52599 (2003); 72 Fed. Reg. 45504, 45538 (2007); 73 Fed. Reg. 126 (2008).

[72] We acknowledge that BLM's NEPA handbook has been rescinded and that the Department of the Interior is likewise promulgating NEPA procedures binding on all Interior agencies.

believes the public may have relevant contributions with respect to new information or circumstances.

Of these uses for a DNA, the first relates to a *new* decision that relies on the analysis from a *separate* decision: the decisionmaker determines that the previous analysis is adequate to *support the subsequent decision*. In the second scenario, the decisionmaker evaluates whether the previous analysis is adequate *standing alone* because the later action was included (and adequately analyzed) in the prior decision. In the third scenario, the decisionmaker determines whether the previous analysis is adequate, again standing alone, because it is being used to support the *same decision* it was associated with in the first place.

These important differences have caused BLM to misuse DNAs and left it subject to litigation. Decisionmakers occasionally have the misperception that a finding that the previous analysis is *adequate* means that no additional NEPA process is required. That is true only with respect to the second and third scenarios. Specifically, in the second scenario, if the prior analysis *did* get all the way to the ground, then no additional NEPA documentation would be required. But if the prior analysis *did not* get all the way to the ground, then a subsequent "tiered" decision would be needed to address the previously unanalyzed facts or issues. Similarly, in the third scenario, if there was no new information, then the decision could be made on the basis of the previous but unconsummated analysis. If, on the other hand, there *is* new information, then the decision would require new analysis with a fresh NEPA process to seek public input on the new or supplemental analysis.

For the first scenario, however, additional NEPA documentation is required regardless of the outcome of the DNA process because there is a *new and distinct decision*. If the prior analysis is adequate to support the new decision in part or in full, then it can be incorporated by reference into the new decision. If the prior analysis is not fully adequate, then new analysis—potentially tiering to or supplementing the earlier analysis—is required to support the new decision. Either way, however, the new NEPA decision must be subject to applicable public notice and comment requirements.

BLM gets into trouble when it attempts to use a DNA to substitute for a new NEPA decision—i.e., when it finds that a previous analysis related to a previous decision is "adequate" and then fails to go through the NEPA process for a temporally or spatially distinct decision. *E.g.*, *Triumvirate LLC v. Bernhardt*, 367 F. Supp. 3d 1011 (D. Alaska 2019) (in forgoing an EA, BLM improperly relied on DNA to issue another outfitter's permit even though the permits would have had similar effects); *compare Friends of Animals v. BLM*, 232 F. Supp. 3d 53 (D.D.C. 2017) (approving use of DNA where the new gather was part of an ongoing action in the same herd management area), *with Friends of Animals v. BLM*, 2015 WL 555980 (D. Nev. 2015) (reliance on DNA violated NEPA where the new gather was an action of different scope and intensity); *W. Watersheds Project v. Zinke*, 336 F. Supp. 3d 1204, 1212 (D. Idaho 2018)

(enjoining oil and gas leasing in sage grouse habitat via DNAs without additional public notice and comment).

The proposed regulations are even more problematic than BLM's procedures because they allow the Department to "rely on previous analysis completed by the subcomponent *or analysis completed by any other Federal agency where it makes sense to do so* given the nature of the proposal, the potentially affected environment, and the anticipated effects." 7 C.F.R. § 1b.9(e)(8) (emphasis added). There is nothing in NEPA that allows an agency to "borrow" the analysis completed by another agency for a particular action and apply it to an entirely different action undertaken by a different agency, and the Department provides no authority for it. In addition, the clause "where it makes sense to do so" is so vague as to provide no standards against which a reviewing court could assess the legality of such an action, because the phrase invests the decisionmaker with complete discretion to determine what "makes sense."

Finally, DNAs are simply bad policy and NEPA practice. Like other elements of the IFR addressed throughout these comments, adoption of DNAs as a misguided invitation to line officers to avoid the NEPA process for new proposed actions would damage public trust and increase the agency's litigation exposure. The Department should abandon the proposal to adopt DNAs.

VIII. The Department Does Not Have the Authority to Impose Bonding Requirements on NEPA Procedures.

Proposed 7 C.F.R. § 1b.2(b)(vi) allows the Department to "[e]stablish[] subcomponent procedures for appropriate bonding or other security" in "managing NEPA compliance." The construction of this provision is unclear: It is ambiguous whether the bonding provision applies to parties engaged in drafting NEPA documents, the public that participates in the NEPA comment process, or other entity.

We are gravely concerned that this provision could be interpreted as allowing the Department to set bonding requirements on the public to participate in the NEPA process. The Department does not identify the statutory authority for this provision, and indeed, no such authority exists. Nothing in NEPA authorizes an agency or Department to establish bonding requirements. Nor does the Administrative Procedure Act or Article III, which precludes federal agencies from placing constraints on judicial authority to determine the appropriate relief for agency failures to conform with the law.[73] Congress may limit or enhance the availability of judicial remedies, but where Congress has chosen to make judicial review available, it declined to create hurdles like bonding requirements, and vested in the federal courts the discretion to

[73] Mandelker, Daniel R., Glicksman, Robert L., Aughey, Arianne Michalek, McGillivray, Donald, Doelle, Meinhard, MacLean, Jason, *NEPA Law and Litigation*, § 8.20, Thomas Reuters (2019), *cited* at 85 Fed. Reg. 1,709.

determine the circumstances in which injunctive relief is appropriate. Departments and agencies do not have the authority to revisit these choices.

We are also concerned about the potential for punitive bonds set at levels that make public or governmental engagement with the NEPA process cost prohibitive. The Ninth Circuit has stated that significant monetary bonds "would seriously undermine the mechanisms in NEPA for private enforcement" and, as a result, "plaintiffs in many NEPA cases would be precluded from effective and meaningful appellate review."[74] Indeed, high bond amounts could systematically keep out low-income, minority, and Tribal plaintiffs, exacerbating existing under-representation of those groups. If courts were to impose a bond requirement plaintiffs cannot afford, then the Department would be able to go forward with major federal actions that were not compliant with NEPA. These arguments all apply equally to a federal agency requiring a bond to stay an agency decision in anticipation of litigation.

The Department has failed to provide any statutory authority for its ability to impose a bond requirement. The proposed regulation therefore violates the APA and is *ultra vires*.

IX. The Interim Final Rule Violates NEPA in Several Ways with Regard to Categorical Exclusions.

The Interim Final Rule massively expands the Forest Service's ability to create and use categorical exclusions while simultaneously erasing procedural steps that would alert the public to upcoming CE actions. These changes have the potential to remove the vast majority of Forest Service activities from environmental review under NEPA. The contours of such activities, including details about their potential significance and the presence of extraordinary circumstances, will be eclipsed from public view. This approach is both unwise and unlawful.

A. Adopting subcomponent CEs across the Department without further analysis violates NEPA.

The first way the agency purports to do this is by making all Department subcomponent CEs available across the Department. This broad extension ignores critical context in the CE promulgation process.

Under NEPA, categorical exclusions may only be promulgated or adopted for categories of actions that "normally do[] not significantly affect the quality of the human environment."[75] Normally, according to the Forest Service, means "in the absence of extraordinary circumstances."[76] In other words, to promulgate a CE, an agency must substantiate that the

[74] *Friends of the Earth, Inc. v. Brinegar*, 518 F.2d 322, 323 (9th Cir. 1975).
[75] 42 U.S.C. § 4336e(1); *see also* 42 U.S.C. § 4336c (agencies adopting categorical exclusions from other agencies must "ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate").
[76] *See* Attach. 4, *The Clinch Coalition v. United States Forest Service*, 2:21-cv-3, Dkt. 144 at 46 (W.D. Va. Jan. 16, 2025).

covered actions categorically lack such impacts, unless disqualified by the agency's defined extraordinary circumstances.

This determination requires careful substantive consideration of both past and possible applications of the CE, but agencies consider whether the covered action would normally lack significant impacts within the purview of *their* work, not the work of other agencies or subcomponents. Indeed, each agency or subcomponent lacks the expertise to know how use of a CE would differ between those contexts.

USDA's various subcomponents' work varies widely in scope and significance, meaning that CEs developed and analyzed in one subcomponent's purview are not likely to be relevant to other contexts.[77] For example, the Forest Service recently attempted to utilize two Natural Resources Conservation Service ("NRCS") CEs, CE1 and CE 11, to authorize extensive activities on the Pisgah National Forest. Unlike the Forest Service though, NRCS does not manage millions of acres of public lands. Instead, it primarily helps private landowners practice conservation management on their own land. Accordingly, when NRCS developed the CEs at issue, it was not thinking about public land management on a broad scale. Instead, it was considering much more targeted "ecosystem" restoration projects on private lands like "stream channel work," "fence" construction, "plugging field drains," and "de-leveling fields to create relief more likened to natural topography."[78] Nat'l Res. Conservation Serv., Categorical Exclusion Supporting Statement at 22–23 (June 8, 2009).

To make all subcomponent CEs available across the Department, the records supporting all affected (i.e., both existing and future) CEs would require information sufficient to substantiate a determination that application of the CE would "normally" not cause significant impacts in *all* USDA subcomponent contexts.

[77] Congress confirmed that such context matters when establishing the requirements for adopting another agency's CEs. Specifically, the adopting agency must "consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate." 42 U.S.C. § 4336c. In other words, when adopting external CEs, agencies must ensure that the external context is analogous to their own.

[78] The limited scope of the NRCS CEs is underscored by the comparisons NRCS made to other agencies' CEs at the time it developed CE1 and CE 11. According to NRCS, CE 1 is "similar" to CEs from other agencies allowing "installation of fences" or "planting, seeding, and mulching" that does "not include the use of herbicides" and "shall not exceed 4,200 acres" and must be "completed within one year following" a disaster or disturbance. NRCS Supporting Statement at 9–10. Likewise, NRCS found CE 11 is "similar" to CEs that allowed "repair of fish passageways," the addition of "fish ladders," or fencing to protect stream corridors or dunes. *Id.* at 22–25. These sorts of activities are not comparable to the extensive debris removal, roadbuilding, and release treatments contemplated by the Forest Service across huge swaths of Pisgah.

B. The IFR undermines the efficacy and importance of extraordinary circumstances review.

The IFR also weakens extraordinary circumstances review, introducing impermissible vagueness into the process and unnecessarily concentrating the analysis to the "sole discretion" of individual decisionmakers. Again, this is both illogical and statutorily impermissible.

First, the IFR is impermissibly vague. Where listed resource conditions exist on a project, the Rule dictates that extraordinary circumstances exist "only when there is reasonable uncertainty" about whether the effect of the project on that resource is significant or else "certainty" that such is true. 7 C.F.R. § 1b.3(f)(2). Likewise, where extraordinary circumstances do exist on a project, the decisionmaker can alter the proposed action such that "certainty is created" regarding impact to the resources of concern, and a categorical exclusion may still proceed where there is not a "reasonably foreseeable significant impact" on the projected resource. *Id.* at (f)(3).

Nowhere in the regulations does the Department define "reasonable" or "certainty." Is "reasonable" uncertainty a decisionmaker's strength of belief that impacts to project resources are 50.01% uncertain? Perhaps it is some other undisclosed statistical measurement, or worse, a vague intuition on the part of the decisionmaker. Likewise, "certainty" of occurrence or impact is left to each individual reviewer to evaluate without any guiding criteria, and critically, without the benefit of the environmental analysis afforded in the EA process.

We fail to see how this language aligns with Executive Order 14,154's mandate to "prioritize efficiency and certainty over any other objectives." Metrics based off guesswork by agency officials cannot and will not lead to "certainty" or standardization in project objectives and outcomes. Without a definition, metric, or sideboards, there will be no limit to the responsible official's discretion, allowing the accumulation of negative impacts. Such vagueness and lack of direction is arbitrary and capricious.

Additionally, the new regulations place an undue amount of authority in the "sole discretion" of the relevant decisionmaker. *See* 7 C.F.R. § 1b.3(f) (stating that extraordinary circumstances review will entail review of resources as "determined at the responsible official's sole discretion"); *Id.* at (f)(2) (reiterating the same). Under this new text, it is entirely up to this individual to determine (1) whether the resources enumerated by regulation at 7 C.F.R. § 1b.3(f)(1)(i)–(vii) are considered and (2) whether any additional resources are considered and to what extent before issuing a Finding of Applicability and No Extraordinary Circumstances ("FANEC").

This new concentration of authority will sow confusion and inconsistency across projects and will lead to worse environmental outcomes. Individual decisionmakers should not be expected to have the economic, scientific, engineering, and practical experience that is held within the rest of the agency and the interested public. Instead, decisionmakers will move

forward on projects without that expertise, leading to worse outcomes. This change is not just impractical and ill-advised—it is also a violation of law. NFMA requires that forest planning at all levels have a greater level of review. Indeed, prior iterations of this regulation provided for interdisciplinary team input for such determinations regarding a proposed project and the effects of the action on resource conditions. The IFR rests solely on the responsible official's discretion in their determination of environmental effect. This violates NFMA. *See* 16 U.S.C. § 1604(g)(3)(F)(ii).

Finally, as discussed at length in section IX.D, the newly rewritten extraordinary circumstances review cuts the public out of this analysis. Responsible officials using a categorical exclusion must "document" their findings, but each subcomponent of USDA may do so in "any format." 7 C.F.R. § 1b.3(g). There is no obligation under these regulations to publish this document to the public, nor to open it for public comment. NEPA does not permit the agency to conduct environmental analysis behind closed doors. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA "ensures that the agency . . . will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience").

C. CE stacking violates NEPA.

The IFR suggests that agencies may use multiple CEs to cover a single action, otherwise known as CE "stacking." "Stacking" CEs to authorize multiple layers of management on the same acres violates the core purpose and language of NEPA. *Friends of the Inyo v. United States Forest Service*, 103 F.4th 543, 556 (2024) (holding CE stacking invalid under NEPA itself and noting that the practice would "swallow the protections of NEPA") ("[W]hen an agency applies CEs in a way that circumvents NEPA's procedural requirements and renders the environmental impact of a proposed action unknown, the purpose of the exclusions is undermined.").

An agency cannot concurrently use multiple CEs to authorize discrete actions that may, when used together, have a significant impact. [79] When an agency promulgates a CE, it studies only whether that particular category of actions may have a significant impact. It does not study whether that category, in combination with other categories, may collectively have a significant effect. In other words, "[t]he fact that [an agency] has found CEs 'normally do not have a significant effect on the human environment,' does not mean they have no effect, and combining carefully defined exclusions renders these calculated risks unknown." *Friends of the Inyo*, 103 F.4th at 547. For example, the National Forests in North Carolina recently proposed a project

[79] One of the agency's fundamental responsibilities when conducting environmental analysis under NEPA is to examine the cumulative effects of its actions. This analysis must include the effects "from individually minor but collectively significant actions taking place over a period of time." *Appalachian Voices v. U.S. Dep't of Interior*, 25 F.4th 259, 271 (4th Cir. 2022). By skipping analysis for multiple projects—all of which pose some effects—an agency is effectively skipping its mandate under NEPA.

under two NRCS CE's: CE 1 and CE 11, which involved debris removal, road building, non-commercial thinning, tree release, crop-tree release, midstory removal, and sanitation cutting across tens to hundreds of thousands of acres. Several of the activities, such as release treatments purportedly authorized by CE 11, are planned in areas "identified for planting, staking, and seeding treatments" purportedly authorized by CE 1. In other words, the project proposes multiple layers of disturbance on the same acres. But, by stacking two CEs on top of one another to cover those multiple layers of management, the Forest Service has failed to consider the *interactive* effects of those iterative and compounding activities. In this case, significant effects are nearly certain to occur within that interaction: the best available science indicates that when an area is subjected to repeated disturbances, including even relatively minor individual management activities stacked on top of one another, species may struggle to cope with the interactive, cumulative effects of those disturbances.[80]

The Interim Final Rule has failed to account for these interactive and cumulative effects. Stacking CEs evades NEPA's core mandate that agencies *must* consider the reasonably foreseeable environmental effects for "*every* . . . major Federal action[] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(c). There is nothing in the record to support the contention that layering "one or more" activities on top of each other, often in the same location, will not have significant effects.

D. The IFR unlawfully restricts public comment on the development and implementation of new CEs.

The Rule removes the public's right to comment on the creation of new CEs. The Department has not explained how the elimination of this critical engagement will affect the public's rights nor the Department's ability to comply with NEPA, or why the creation of new CEs is not subject to APA public notice and comment. Without that explanation the public is precluded from providing fully informed comments on the elimination of public comment on the creation of new CEs.

Despite this gap in information, we caution that eliminating public comment for CE promulgation practically guarantees poorer CEs and flawed records used to support them. This, in turn, invites significant litigation risk and wasted Forest Service and public resources. In the past, public comment has helped the Forest Service identify blind spots in its own analysis, which has led to the beneficial refinement of proposed CEs. Even for controversial CEs that have subsequently landed the agency in court, public comment has been instrumental in shaping the scope and contours of the final proposal. For example, in 2019 the Forest Service proposed CE 26, which would have enabled up to 7,300 acres of ecosystem restoration activities, including

[80] *See* Attach. 3, David Lindenmayer and R.F. Noss, *Salvage Logging, Ecosystem Processes, and Biodiversity Conservation*, 20 Conservation Biology 949, 953 (2006) (observing that "species may be susceptible to novel forms and combinations of disturbances.").

commercial timber harvest on up to 4,200 acres, and up to 2.5 miles of temporary road construction. *See* 36 C.F.R. § 220.5(e)(26) (2019). During the public comment period in 2019, the Forest Service received input from several of the undersigned groups that its analysis was faulty. Specifically, the public explained that the agency had used a faulty project sample and heavily skewed their analysis of it by using the project acreage mean (compared to the acreage median) to determine the acre limit to appear in the CE. In response to this input, the agency refined their analysis and eliminated some outliers in their project set. These changes caused the agency to lower the CE's scope to 2,800 acres of active forest management. This is good for the public, for project outcomes, and for the agency. Indeed, public conformity review has long been part of the agency's process for promulgating CEs. Until the 2025 change to CEQ's NEPA regulations, agencies were required to "provide an opportunity for public review and review by the Council for conformity with the [National Environmental Policy] Act." 40 C.F.R. § 1507.3(b)(2)(2020) (previously 40 C.F.R. § 1507.3(a) (2005). Even without this regulation, such a review makes practical sense.

Additionally, these changes cut the public out the opportunity to comment on, or be notified of, the *application* of CEs. This eliminates important public review and input from the implementation stage, reintroducing the technical and practical issues discussed above which arise when CEs are promulgated in isolation. Project outcomes will be worse without the expertise given through public comment, which is often scientific in nature and informed by decades of familiarity with USDA managed lands, and which lead to real changes on proposed projects. *See*, *e.g.*, Attach. 1, Appendix 1. These changes are not legal. NEPA "guarantees" that "relevant information will be available" to the public. *Robertson*, 490 U.S. at 349; *see also Baltimore Gas & Elec. Co.*, 462 U.S. at 97 (discussing the "twin aims" of NEPA, one of which is to "inform the public" about the "environmental concerns" relevant to agency decision-making).

In sum, public input is critical for both stakeholders—who, under the IFR, are denied any subsequent opportunity to engage on CE projects—and the Forest Service. Without it, the Forest Service will be flying blind to vulnerabilities in both its analysis and application of new CEs. Such a haphazard approach to NEPA compliance is sure to place a heavy burden on agency resources through inevitable litigation, as well as cause extensive damage to our national forests.

E. Forest Service CE 38 conflicts with both NEPA and NFMA.

CE 38 purports to exclude all "[l]and management plans, plan amendments, and plan revisions developed in accordance with 36 CFR part 219 et seq." from environmental review. This CE plainly conflicts with both the National Forest Management Act ("NFMA") and 36 C.F.R. Part 219, the Forest Service's implementing NFMA regulations, as well as NEPA.

First, because the Rule simultaneously does away with *all* requirements for public participation in the CE process, the Rule is in tension with NFMA itself. NFMA plainly requires robust public participation for all land management plan revisions. Specifically, it mandates that:

> The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions. 16 U.S.C. § 1604(2)(a).

Legitimate public involvement in planning, as NFMA plainly requires, necessitates consideration and publication of the foreseeable environmental effects of a given plan. Under the Rule, the Forest Service could theoretically keep their *entire* environmental review secret from the public. While the agency could still conduct public meetings to *view* plan revisions or listen to the agency opine on why *it* feels their revision course is appropriate, there are no existing mechanisms that would facilitate the public's involvement in the "development, review, or revision" of forest plans outside of the NEPA process.

Even under the Forest Service's *own* interpretation of NFMA, its mandate for public participation includes "disclosure of [a forest plan's] environmental impacts in accompanying National Environmental Policy Act (NEPA) documents[] and reviewing the results of monitoring information" with the public. 36 C.F.R. § 219.4(a). These regulations *require* an EIS for plan development and revision, 36 C.F.R. § 219.7(c)(1), and all forest plans created under NFMA, so far, have involved the creation of an EIS.

That forest plans have so far proceeded under EISs, in other words, that forest plans have so far been found to have significant environmental effect, is inevitable. Land management plans have significant effects that are not and cannot be considered at the project level. For example, they set criteria for how much and where logging will occur on a given National Forest, and they also enact a variety of immediate, direct management mandates (such as closing or opening certain areas to recreation, dictating the types of permits which may be issued, and otherwise regulating various uses of the forest). These activities have both short-term and long-term impacts which are uniquely attributed to decisions made in the forest planning process and must be considered under NEPA.

Courts around the country have repeatedly held that forest plans are capable of creating the kinds of significant effects which mandate the preparation of an EIS under NEPA. For example, in *Western Watersheds Project v. Vilsack*, the Tenth Circuit found that an EIS for an amendment to the Thunder Basin National Grassland Plan was invalid because it "failed to take a hard look at the combined impacts" of multiple management strategies acting in concert. No. 23-8081, 2024 WL 4589758, at *11 (10th Cir. Oct. 28, 2024). Likewise, in *Sierra Club v. Kimbell*, the Eighth Circuit held that the Forest Service was required "to consider the impacts of [the Superior National Forest Plan's] alternative management scenarios" on adjacent wilderness areas in an EIS because of NEPA's policy of "'promot[ing] efforts which will prevent or eliminate

damage to the environment.'" 623 F.3d 549, 560 (8th Cir. 2010) (quoting 42 U.S.C. § 4321). In *Meister v. United States Department of Agriculture*, the Sixth Circuit held that the Forest Service violated NEPA because its alternatives analysis for the Huron National Forest Plan "was based on a series of factual and legal errors" that disregarded alternatives which could have mitigated significant environmental effects. 623 F.3d 363, 377 (6th Cir. 2010). The Ninth and Eleventh Circuits have both similarly discussed foreseeable significant environmental effects related to forest plans. *See Sierra Forest Legacy v. Sherman,* 646 F.3d 1161, 1181 (9th Cir. 2011); *Ouachita Watch League v. Jacobs*, 463 F.3d 1163, 1175 (11th Cir. 2006) (noting that the Forest Service was required to prepare an EIS, and specifically an EIS which legitimately considered effects to relevant species populations, "*before* enacting [a forest plan] amendment").

CE 38 therefore covers myriad foreseeable and significant environmental impacts, violating NEPA. To be sure, these impacts are not unique to only certain forest plans. Rather, they are necessary hallmarks of the forest planning process which inherently involves numerous agency decisions regarding tradeoffs between various alternatives and approaches, all of which contain myriad environmental pros and cons. *See Sierra Club v. Kimbell*, 623 F.3d 549 (8th Cir. 2010).

Putting a finer point on the issue, the Ninth Circuit has already found that a past version of this *particular* CE was invalid. The Forest Service's 2005 NFMA planning regulations included a CE for forest plan development, revision, or amendment, 70 Fed. Reg. 1062, *National Environmental Policy Act Documentation Needed for Developing, Revising, or Amending Land Management Plans; Categorical Exclusion, Notice of proposed National Environmental Policy Act implementing procedures; request for comment* (Jan. 5, 2005), but that planning rule was invalidated by the courts and subsequently abandoned. *Citizens for Better Forestry v. U.S. Dep't of Agric*., 481 F. Supp. 2d 1059, 1085–90 (N.D. Cal. 2007). CE 38 thus attempts to resurrect an unlawful CE, and in doing so upends decades of established practice, blatantly contradicts the agency's own NFMA regulations, and defies clear holdings from courts around the country that such a maneuver is blatantly unlawful.[81]

F. The IFR allows for agency action without analysis of unresolved conflicts as required by NEPA.

The Department's regulations unlawfully allow the use of CEs by any subcomponent without any backstop to ensure that actions with unresolved conflicts receive the statutorily required alternatives analysis. *See* 42 U.S.C. § 4332(H) (requiring that agencies "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). The exercise

[81] To the extent the agency intends to revise its NFMA planning regulations to address this glaring contradiction, we caution that it must clearly explain its reasoning for the about face. *See supra*, Section V; *see also*, *Organized Vill. of Kake v. U.S. Dep't of Agric*., 795 F.3d 956, 966–70 (9th Cir. 2015) *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 981 (2005); *FCC v. Fox Television Stations, Inc*., 556 U.S. 502 (2009).

of discretion to locate forest management activities at the site-specific level will often, and for some CE activities may always, involve an unresolved conflict of available resources. Yet the Department's regulations allow use of those CEs even when the proposal involves unresolved conflicts.

Different areas of the national forests are different, and the same actions in different areas will have different effects. 16 U.S.C. § 529; *New Mexico v. BLM*, 565 F.3d 683, 706 (10th Cir. 2009) (the "location of development greatly influences the likelihood and extent of habitat preservation. Disturbances on the same total surface area may produce wildly different impacts on plants and wildlife depending on the amount of contiguous habitat between them"). For example, fuels treatments aren't effective at reducing wildfire risk unless they're located in the right places.[82] A clear-cut in old-growth forest is not equivalent to a clear-cut in a third-growth plantation forest.

The Forest Service enjoys considerable discretion in the location of management activities. Forest plans do not commit to actions in specific locations; that discretion is deferred to the project level. Plans simply do not, generally, commit to site-specific impacts. Those decisions, significant or not, are left to the project level.

Where alternative locations or methods for harvest would have different environmental impacts, NEPA requires the agency to weigh those alternatives. *See EPIC v. Forest Service*, 234 F. App'x 440 (9th Cir. 2007). Some forest management activities will not involve "unresolved conflicts," because the agency will lack the legal discretion or the practical ability to choose. For example, issuance of a temporary road closure order to meet water quality requirements would not require consideration of alternatives. Similarly, if a forest's plan requires it to conduct a sanitation harvest to prevent the spread of bark beetles, there would not be any unresolved conflicts in conducting such a harvest. In either case, the decision space has already been narrowed by external legal requirements. This is not true, however, for most vegetation management projects. On most forests, timber harvest occurs for a variety of purposes—both ecological and economic. The Forest Service enjoys broad discretion to balance the benefits of timber harvest against its site-specific impacts. Within any given analysis area, the Forest Service can choose any number of stands for harvest. The same is true of road locations, and indeed the Forest Service often relocates road alignments during project development based on public feedback.

Because of that broad discretion, and because of the wide variety of environmental differences between potential locations for timber harvest, the Forest Service is obligated to consider alternatives. Categorical exclusions do not require consideration of alternatives, *Mahler v. Forest Service*, 927 F. Supp. 1559, 1573 (S.D. Ind. 1996), and they are therefore the wrong

[82] *See* Attach. 3, *generally* Vaillant and Reinhardt, "An Evaluation of the Forest Service Hazardous Fuels Treatment Program—Are We Treating Enough to Promote Resiliency or Reduce Hazard?" 115 Journal of Forestry 300 (July 2017) (noting that because "[i]t is neither realistic nor necessary to do fuel treatments on every acre …, it is important to prioritize when, where and how to treat wildland fuels").

tool for the vast majority of vegetation management projects. Some agencies, including the Rural Housing Service, a subcomponent affected by the changes discussed herein, have dealt with this problem by considering unresolved conflicts to be "exceptional circumstances" which may preclude the use of a CE. 7 C.F.R. § 1970.52(a) (rescinded by the IFR). This is further proof that some CEs adopted broadly by the Department do carry the potential for unresolved conflicts and demonstrates one manner in which an agency may deal with this statutory problem. The Department cannot lawfully erase this backstop to prevent unresolved conflicts from going unanalyzed.

Even if an agency were prepared to consider alternatives internally for a CE, it would not be enough because the public must be involved in the process of suggesting alternatives and providing feedback on their respective impacts. *Ayers v. Espy*, 873 F. Supp. 455 (D. Colo. 1994).

All of this goes double for CEs that were developed by another subcomponent. As explained above, those CEs were largely not considered in the public lands context, let alone in each niche ecosystem that exists within the national forest system. These external CEs, thus, drastically increase the likelihood of unresolved conflicts for all projects which purport to proceed under them.

X. The Interim Final Rule Eliminates Several Critical Opportunities for Public Involvement without Accounting for the Benefit of those Opportunities.

As explained throughout this letter, public involvement is critical for both NEPA compliance and decision-making efficiency. Public participation in Forest Service projects improves outcomes and minimizes environmental impacts. It provides the Forest Service a practical and streamlined mechanism to consider community-held expertise and on-the-ground realities of which the agency would not otherwise be aware. Despite these clear benefits, the IFR does away with several important opportunities for public involvement. Because the Department failed to account for the benefits of these lost opportunities, the IFR is arbitrary and capricious.

A. The IFR eliminates the SOPA.

The Interim Final Rule eliminates the Forest Service's Schedule of Proposed Actions ("SOPA"). For decades, conservation groups, interested individuals, and other members of the public have used SOPA to stay apprised of Forest Service projects that affect areas they care about. SOPA not only provided helpful links to project pages and agency NEPA documents, but also included essential information on agency project timelines, including project comment deadlines, estimated decision dates, and expected implementation dates. Because SOPA reports were archived, they also provided a helpful way to examine the development of projects over time, as well as an easy way to view the full suite of restoration work occurring across Forest Service units.

In recent years, as the Forest Service has slashed budgets, trimmed public-facing positions, and slowed its responses to FOIA requests, SOPA's importance has only increased. Indeed, during recent litigation, the Forest Service argued that, in part because of SOPA, the public had little to fear from regulatory changes that would reduce opportunities for public comment on Forest Service projects.[83] Now, because of the Interim Final Rule, one of the public's best tools for understanding public forest management has been taken away. Without access to SOPA, interested members of the public will be forced to file lengthy and administratively costly FOIA requests, or contact Forest Service staff directly just to learn basic details about projects occurring in areas they care about. This will not only increase the agency's administrative burdens on the back end, but will also divert agency staff from their critical duties at a time when budget and staffing reductions have cut the Forest Service to the bone.

B. The IFR largely eliminates the scoping process.

The Interim Final Rule eliminates the scoping process (although it requires a similar opportunity to comment on the "notice of intent" for EISs only). The IFR explains the Department's view that "[s]coping is not a statutorily required step in the NEPA review procedures and there is no prescribed process or procedure required for scoping." 90 Fed. Reg. at 29662. This is false.

The Forest Service does not have the discretion to eliminate scoping for some of its CEs because Congress required scoping for these categories when it created them. Per 16 U.S.C. §§ 6591b and 6591d, the Secretary is obligated to "conduct public notice and scoping for any project or action" proposed under those sections. By eliminating scoping across the board, the agency fails to recognize the important distinction between—and importance of both—means of public engagement, and runs afoul of congressional statutory direction.

The importance of scoping is not merely theoretical: It is also a matter of good NEPA practice to advise the public of the environmental consequences of actions its government undertakes. For CEs, the loss of scoping would mean the loss of the public's only chance to raise potential inconsistencies with the forest plan or alert the agency to the existence of extraordinary circumstances or cumulative impacts. Mistakes happen, and they happen more often when the public is not involved. As a recent example from the Nantahala National Forest, the Camp Branch Salvage CE (2017) was proposed to recoup economic value from timber that had been damaged by the previous fall's wildfires. During scoping, members of the public realized that the project would have included the harvest of live trees within a designated future old growth patch (inconsistent with the forest plan) and additional existing old growth that was outside the patch. Because of those scoping comments, the Forest moved some of the harvest activities and revised the designated patch boundary to include the existing old growth—an outcome that was

[83] *See* Attach. 4, Memo. in Supp. of Summ. J., *Clinch Coalition v. U.S. Forest Serv.*, No. 2:21-cv-0003 (Jan. 16, 2025) (Dkt. 144) (repeatedly arguing that the public could stay apprised of Forest Service actions via SOPA).

consistent with the forest plan, better for ecological protection, and still able to meet the project's goals; and it satisfied the public's interests.

Scoping's importance is statistically verifiable based on information already in front of the Forest Service. In 2019, the Forest Service collected a sample of 68 projects it believed were relevant to one of its newly proposed CEs—the "restoration" CE now codified at 7 C.F.R. § 1b.4(d). As explained by members of the public in 2019, these past projects were substantively improved because of public comment, particularly scoping comments. Sixty of the 68 projects were modified in some fashion during the NEPA process. *See* Attach. 1, Appendix 1. Thirty-seven projects were substantively modified between scoping and EA, with 29 of those being modified due at least in part to public comment. *Id.* Thirty-three projects were substantively modified after the release of an EA, with 26 being modified due at least in part to public comment. *Id.* Only eight of the 68 projects did not appear to change at all throughout the NEPA process. *Id.*

Combining the benefits of scoping and other designated comment periods, concerns expressed by the public resulted in 70 substantive modifications to 43 projects. *Id.* Public input on 6 additional projects caused the Forest Service to conduct additional analysis but did not result in substantive changes. *Id.* In contrast, the agency made just 15 modifications to 11 projects based on its own internal review process. *Id.* These data show that the Forest Service was four times more likely to modify a project based on concerns expressed by the public than due to internal review.

Unless the Forest Service first analyzes its prior decision processes to understand how, and how often, projects change in response to scoping comments, a decision to eliminate scoping would be arbitrary and capricious, because it would fail to consider an important factor (i.e., the cost to good decision making). The record before the agency shows that the cost would be high.

Even if the Forest Service had the discretion and the record to support elimination of scoping,[84] it would be an unwise revision to its NEPA procedures and bad NEPA practice. The loss of scoping for EAs would be inefficient and harmful to the public's ability to participate effectively. Scoping is an important opportunity to raise concerns early, before sunk costs in a project make changes difficult. Without early public engagement in the use of CEs, or administrative review, the public's only recourse will be to resort to the courts for redress, increasing government costs and inefficiency. This result is inconsistent with and will compromise the achievement of this administration's priorities.

[84] In the past, the agency has argued that the SOPA provided an adequate substitute for scoping but the Department has now eliminated that public transparency tool as well.

C. The IFR dramatically reduces or eliminates opportunities for public comment on EAs and Draft EISs.

The Rule also removes the public's right to comment on EAs and draft EISs. As explained above, *supra* Section V.C, public engagement in the NEPA process does far more good than harm or delay. Public comment on EAs and draft EISs is critical in helping the Forest Service refine the details and contours of its proposals before it has fully finalized a project—at which point the agency has sunk significant resources into the planned outcome. Moreover, stakeholders themselves depend on the public comment process to achieve better project outcomes. Below are several examples of recent projects where the Forest Service meaningfully altered its course to avoid harm directly because of public comment:

- The Cherokee National Forest dropped the entirety of the Big Creek project over steep slope concerns, decided not to log old growth in the Clarke Mountain Project, and made changes in a proposed expansion of horse trails to protect endangered aquatic species in the Middle Citico Project. In both Clarke Mountain and Middle Citico, modification of the projects allowed the majority of actions to move forward, while the actions with the most potential for harm were forgone. The Offset Project was modified such that unroaded areas were not negatively impacted and the project has successfully moved forward.

- The Nantahala and Pisgah National Forest has modified several projects. In the Haystack Project, one stand was dropped to protect old growth forest and rare species habitat. The result was a project that went forward without harming old growth forest resources. In the Upper Santeetlah Project, some stands were dropped from consideration for logging to protect old growth forest and Carolina northern flying squirrel habitat. In the Fontana Project, approximately 80 acres of logging was removed based on comments from the public to protect cerulean warbler habitat. That project also moved forward and created habitat for golden-winged warbler without harming old growth or rare species. During the Courthouse Project, 60 acres of timber harvest and over seven miles of attendant road construction were removed from the project because of the high potential for damage to soil and water resources. In the Brushy Ridge Project on Pisgah National Forest, information provided during NEPA resulted in approximately 70 acres of white pine plantation being added to the project so that harvest could restore native species composition.

- The Chattahoochee National Forest authorized eight projects under EAs since 2019 which have all changed significantly based on public comments the agency received. For six of these eight projects, the acreage of commercial timber harvest decreased. On average, commercial logging for EA level projects on the Chattahoochee shrank by around 8% during the NEPA process, largely the result of the Forest Service

dropping stands that were initially proposed for treatment but subsequently identified through analysis and public comment as likely to experience various undesirable environmental impacts. Some projects shrank even more than 8%. For example, in the Cooper Creek Project, there was a 40% reduction in commercial harvests from the initial project proposal to the final decision. This change was needed to eliminate logging on certain steep slopes and areas in close proximity to Bryant Creek and its tributaries—environmental risks that were pointed out by the public during the NEPA process.

- On the George Washington National Forest, public input has significantly shaped the Dunlap Creek Vegetation Management Project. The public informed the Forest Service that the project would overlap with old growth forest areas in the Southern Allegheny Cluster of Virginia's Mountain Treasures and expressed concern about the extent of temporary roads proposed for the project. The Draft EA contained internal discrepancies regarding stream crossings that could damage water quality and lacked information regarding the potential impacts on steep slopes and necessary NEPA documents assessing impacts to threatened and endangered species. As a result of these comments, the Forest Service conducted additional old growth surveys in the project area. Public comment has also shaped the Archer Knob Project. Among other things, the public explained concern about water quality impacts as well as impacts to the Archer Knob Potential Wilderness Area, Archer Knob Virginia Mountain Treasure, and Elliot Knob Virginia Mountain Treasure. As a result of comments, the Forest Service expanded their analysis of water quality impacts from road repair and construction in the Final EA, including recommendations for improving stream crossings on certain roads.

- The Gifford Pinchot National Forest removed pockets of special habitats from sale plans that were identified by the public in the scoping phase of the Yellowjacket Project which were originally missed by Forest Service staff.[85] The agency also removed plans to reconstruct a decommissioned road as a result of public comment on the EA. Reconstruction of this roadway would have likely increased sedimentation and temperature issues. Also in the Gifford Pinchot, during the Upper Wind Vegetation Management Project, the Forest removed plans to use regeneration harvest in stands over 120 years old and instead limited regeneration to young and mid-aged stands due to public engagement throughout the process.[86] Along with pointing out the importance of maintaining mature forests, commenters noted there was no longer

[85] Revised Draft Environmental Assessment: Yellowjacket Project, Cowlitz Valley Ranger District, Gifford Pinchot National Forest (October 2023); Yellowjacket Project: Environmental Assessment, Finding of No Significant Impact, Draft Decision Notice (February 2024).
[86] Environmental Assessment: Upper Wind Vegetation Management Project, Gifford Pinchot National Forest, Mt. Adams Ranger District (March 2021); Decision Notice and Finding of No Significant (December 2022).

a need to do much early seral creation due to the Big Hollow Fire naturally creating thousands of acres of early seral habitat in close proximity to the project area during project planning.

In sum, public comment improves project outcomes and supports the Forest Service's ability to comply with NEPA and substantive laws like NFMA.

This elimination is especially troubling because, lately, the Forest Service is publishing fewer EISs than it has historically, and is instead, shirking multi-hundred-thousand-acre forest projects covering ranger districts or entire forests into EAs. For example, the following 100,000+ acre management projects all proceeded under EAs, despite their long-range implementation timelines and capability of producing significant effects:

- The Pine Valley Wildfire Risk Reduction project on the Dixie National Forest in Utah involved over 127,000 acres of treatments, including 91,000 acres of thinning, and over 1,000 acres of logging treatments within old growth stands.[87] The estimated implementation timeline for the project is 10 years, and a DN/FONSI were issued in May 2025.
- The Ashley Aspen Restoration Project on the Ashley National Forest in Utah would have allowed for mechanical logging treatments in any aspen community across the Ashley National Forest outside of designated wilderness, including more than 147,000 acres of inventoried roadless areas, over 10-20 years.[88] The project DN/FONSI was issued October 2023. The project was withdrawn in July 2024 after litigation challenged NEPA and Roadless Rule compliance.[89]
- Boulder Mountain Vegetation and Watershed Improvement Project on the Fishlake National Forest in Utah was issued for scoping in December 2024.[90] The project proposes treatment, including pre-commercial and commercial thinning, on up to 174,000 acres, the vast majority within inventoried roadless areas. Project implementation would involve treatments on up to 20,000 acres per year over 20-25 years.
- The Lower North South Vegetation Management Project on the Pike-San Isabel National Forests in Colorado is set to include mechanical thinning on up to 111,000 acres, including 17,000 acres of roadless forests, and including on slopes of up to

[87] Draft Environmental Assessment: Pine Valley Wildfire Risk Reduction Project, Pine Valley Ranger District, Dixie National Forest (December 2024); Decision Notice and Finding of No Significant Impact (June 2025).
[88] Updated Environmental Assessment: Ashley National Forest Aspen Restoration Project, Ashley National Forest (June 2022).
[89] Decision Notice: Ashley National Forest Aspen Restoration Project, Ashley National Forest (October 2023); Decision Withdrawal Letter (July 2024).
[90] Scoping Notice: Boulder Mountain Vegetation and Watershed Improvement Project, Fremont Ranger District, Fishlake National Forest (December 2024).

60%.[91]. The Decision Notice was approved June 2025. Project implementation would last approximately 20 years.

Under the IFR, these massive projects will now be insulated from public review.

The Forest Service must explain how eliminating public comment on EAs and draft EISs affects both the public's right to engage in project development and the agency's own ability to faithfully carry out NEPA.

XI. The Interim Final Rule Adopts a Definition of "Significance" that is Inconsistent with NEPA.

NEPA requires, "to the fullest extent possible, . . . all agencies of the Federal Government shall . . . include in every recommendation or report on proposals for . . . major Federal actions significantly affecting the quality of the human environment, a detailed statement" of the effects of the proposal and any reasonable alternatives. 42 U.S.C. § 4332. The statute therefore obligates agencies to utilize a clear, objective, and inclusive test for "significance." The Department's definition falls well short of that statutory obligation.

Agencies decide whether to prepare an EIS by applying their definition of what constitutes "significance." Between 1978 and 2020, all agencies used CEQ's "context and intensity" factors listed at 40 C.F.R. § 1508.27 (1978). Although these factors and the surrounding caselaw created a predictable test, they were replaced in 2020 by vague direction to consider the "potentially affected environment and degree of the effects." 40 C.F.R. § 1501.3(b) (2020). CEQ described the new language as a "simpler, more flexible approach." 85 Fed. Reg. at 43322. Relatedly, the 2020 regulations limited which effects would be considered in the significance determination, excising "cumulative" effects from the analysis. *Id.* at 43343. The 2020 regulations also invited agencies to weigh beneficial effects against adverse effects in the significance determination. 40 C.F.R. § 1501.3(b) (2020).

Soon thereafter, however, CEQ restored the earlier "context and intensity" test for significance. 40 C.F.R. § 1501.3(d) (2024); 89 Fed. Reg. at 35557. Though it had a few modifications from the 1978 version, the definition again provided detailed and predictable guidance to implement the statutory requirement. CEQ also restored consideration of cumulative effects when determining whether effects are significant. 40 C.F.R. § 1501.8(g) (2022); 87 Fed. Reg. at 23469. And it clarified once again that beneficial effects should not be used to offset adverse effects when making this threshold determination. 40 C.F.R. § 1501.3(d) (2024).

None of these regulatory interpretations of the threshold for an EIS, however, were ever vetted under the Supreme Court's holding in *Loper Bright v. Raimondo*, which since 2024 has

[91] Final Environmental Assessment: Lower North-South Vegetation Management Project, South Platte Ranger District, Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands (June 2025); Decision Notice (June 2025).

provided the test for whether regulations interpreting statutory requirements are permissible. 603 U.S. 369 (2024). Under *Loper Bright*, agencies no longer enjoy the flexibility to adopt "reasonable" interpretations that ping pong back and forth between administrations: "In the business of statutory interpretation, if it is not the best, it is not permissible." *Id.* at 400. Because the courts have not yet had the occasion to provide the "best" interpretation of NEPA's significance threshold, the Department is skating on thin ice by taking an approach that is inconsistent with the statute and its longstanding interpretation.

The Interim Final Rule adopts the 2020 approach to significance. 7 C.F.R. § 1b.2(f)(3). The regulatory language directs agencies to "consider" the "potentially affected environment and degree of the effects," but it does not offer guidance on when those effects cross a threshold of significance. *Id.* It again removes consideration of "cumulative" effects, *id.* at § 1b.11(12), and invites agencies to offset environmental harms with the action's purported benefits. These changes create confusion as well as both practical and legal vulnerabilities for the Department.

First, consideration of cumulative effects is necessary to ensure that agencies comply with NEPA by acting on complete information. In short, cumulative effects have always been part of NEPA's purview. In passing NEPA, Congress meant to situate effects analysis in the context in which they arise, which reflects a set of complex "interrelations of all components of the natural environment." 42 U.S.C. § 4331(a). NEPA seeks to capture all "undesirable and unintended consequences," 42 U.S.C. § 4331(b)(3), that flow from a project, and embraces consideration of problems that are more global and "long-range" in scope, *see* 42 U.S.C. § 4332(I). To that end, agencies act as "trustee of the environment for succeeding generations," 42 U.S.C. § 4331(b)(1), and so should explore the "relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity."[92] 42 U.S.C. § 4332(C)(iv). And NEPA's legislative history confirms the point, surfacing the complexity of environmental impacts and the consequences of "letting them accumulate in slow attrition of the environment" and the "ultimate consequences of quiet, creeping environmental decline." 115 Cong. Rec. 29070 (Oct. 8, 1969); *see also* Report Accompanying S. 1075, National Environmental Policy Act of 1969, Senate Committee on Interior and Insular Affairs (July 9, 1969).

Just after NEPA's passage federal courts quickly and repeatedly recognized that environmental effects should not be considered in a vacuum. In 1972, the Second Circuit

[92] CEQ's original and decades-long interpretation of the statute also confirms this point. Shortly after NEPA's passage, CEQ's interim guidelines explained that the statute should be "construed by agencies with a view to the overall, cumulative impacts of the action proposed." Interim Guidelines, § 5(b) (Apr. 30, 1970); *see also* 36 Fed. Reg. at 7724. CEQ rooted its interpretation in the statute. *See* Interim Guidelines, § 7(a)(iv) (The agency must "[a]ssess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations."). In its 1973 guidelines, CEQ repeated the earlier guidance but further explained that "agencies should bear in mind that the effect of many Federal decision about a project . . . can be individually limited but cumulatively considerable." 38 Fed. Reg. at 20551. NEPA review solves that problem by requiring agencies to consider how that limited effect fits into a broader context where decisions made over "a period of years" can result in significant impacts on the environment. *Id.*

acknowledged the common-sense idea that "even a slight increase in adverse conditions that form an existing environmental milieu may sometimes threaten harm that is significant." *Hanly v. Kleindienst*, 471 F.2d 828, 831 (2d Cir. 1972). At a minimum, then, it is important to consider effects against the backdrop of "the existing environment of the area which is the site of a major federal action" because "[o]ne more factory polluting air and water in an area zoned for industrial use may represent the straw that breaks the back of the environmental camel." *Id*. In 1975, the Second Circuit once again explained that Congress had recognized that a "good deal of our present air and water pollution has resulted from the accumulation of small amounts of pollutants added to the air and water by a great number of individual, unrelated sources." *Nat. Res. Def. Council v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975). The court thus interpreted the statute to account for this problem, explaining that NEPA was "in large measure, an attempt by Congress to instill in the environmental decisionmaking process a more comprehensive approach so that long term and cumulative effects of small and unrelated decisions could be recognized, evaluated and either avoided, mitigated or accepted as the price to be paid for the major federal action under consideration." *Id.* Other courts likewise embraced the idea that "cumulative effects can and must be considered on an ongoing basis." *Swain v. Brinegar*, 517 F.2d 766, 775 (7th Cir. 1975); *see also Baltimore Gas & Elec. Co.*, 462 U.S. at 106–07 (1983) ("[W]e agree with the Court of Appeals that NEPA requires an EIS to disclose the significant health, socioeconomic and cumulative consequences of the environmental impact of a proposed action."); *Sierra Club v. Morton*, 510 F.2d 813, 824 (5th Cir. 1975) ("CEQ guidelines, Interior regulations, Bureau of Land Management regulations, and prior court decisions all require that federal agencies consider the cumulative effect of similar actions."); *cf. Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) ("Thus, when several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending before an agency, their environmental consequences must be considered together.").

The recent statutory amendments[93] and the Supreme Court's decision in *Seven County* do not displace consideration of cumulative effects. When agencies are called on to consider the "effects on the environment that result from the incremental effects of the action," 40 C.F.R. § 1508.1(i)(3), that complies with "the textually mandated focus of NEPA" being "the project at hand," *Seven County*, 145 S. Ct. at 1515. What the concept of cumulative effects adds is that the effects of the project at hand must be considered in the relevant context—that is, when the effects of the project at hand are "added to effects of other . . . actions" the agency reasonably knows have taken place or reasonably foresees will take place in the future. 40 C.F.R. § 1508.1(i)(3). The agency is not being called on to account for the environmental effects of a separate project that is "initiated (or expanded) as a result of . . . the current project." *Seven County*, 145 S. Ct. at 1512-13. But rather, a consideration of cumulative effects reflects that the acknowledged effects

[93] CEQ retained its definition of cumulative effects in the regulations it promulgated after those statutory amendments, and CEQ already had determined that the key statutory addition—the inclusion of a "reasonably foreseeable" qualifier, 42 U.S.C. § 4332(C)—is consistent with CEQ's "cumulative effects" analysis. *See, e.g.*, 87 Fed. Reg. at 23467 ("[T]he final rule will retain language on reasonable foreseeability.").

of the project at hand must be assessed against the environmental backdrop in which the project at hand arises. In this way, consideration of cumulative effects informs the consideration of the effects of the project itself. Or, to put it in terms of the effects "NEPA dictated that" the agency in *Seven County* must consider—the ways the new railroad line "could disrupt the habitat of protected species, or the new rail embankments could cause soil erosion into local bodies of water, or trains on the new line could pollute the air," 145 S. Ct. at 1516—a consideration of cumulative effects would at least require looking at the ways those effects might combine with other actions to disrupt the species, cause soil erosion, or pollute the air.[94]

Second, the Department's interpretation of the statutory threshold reflected in the IFR is not even reasonable, much less the "best" interpretation of NEPA as required by *Loper Bright*. *See* 603 U.S. at 400. For one, the Department's formulation is much too vague and subjective to meet the statutory requirement that "every" action with significant effects receive an EIS. Significance cannot depend on the subjective views and preferences of the responsible official; it is a statutory term that, according to Congress, must *objectively* enable agency decision makers to differentiate "every" action with significant effects from the actions that do not have such effects. The Department's IFR does not do so.

Third, the Department's approach is impermissible because it directs agencies to weigh adverse effects against benefits as part of the threshold question whether to prepare an EIS. But the EIS process itself is where an agency decides if adverse effects are justified by an action's benefits. *Calvert Cliffs v. Atomic Energy Comm'n*, 449 F.2d 1109, 1113 n.9 (D.C. Cir. 1971). Such a balancing of benefits and harms is required to be based on the information in the EIS, not used as an excuse to skip preparation of the EIS.

Finally, the Department has omitted the consideration of "global" contexts and instead defines significance only in terms of effects to "the American people." 90 Fed. Reg. at 29674. NEPA itself calls for agencies, to the "fullest extent possible," to:

> recognize the *worldwide* and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize *international* cooperation in anticipating and preventing a decline in the quality of mankind's *world environment*.

42 U.S.C. § 4332(2)(I) (emphasis added); *id.* § 4346b (authorizing "expenditures in support of international activities"). While the focus of NEPA is "fulfill[ing] the social, economic, and other requirements of present and future generations of Americans," 42 U.S.C. § 4331(a), NEPA recognizes the extraterritorial impacts of federal government actions—on climate, water, air

[94] Indeed, the Court expressly recognized that one form of well-recognized cumulative analysis is called for, explaining that it often will be necessary to consider "other projects" where they are "so interrelated" as to inform the analysis of the project as issue. *Seven County*, 145 S. Ct. at 1517. So, there is every indication that the Court would expect that other forms of cumulative analysis would continue, too.

pollution, and biodiversity among other things—ultimately impact Americans as well as everyone else. NEPA's application to federal actions that result in environmental impacts outside U.S. borders has long been settled. *See, e.g., Env't Def. Fund v. Massey*, 986 F.2d 528, 533 (D.C. Cir. 1993). In conclusion, the Department cannot lawfully finalize the Interim Final Rule without further developing its threshold test for significance, including additional public notice and comment under the APA. The IFR's failure to reflect key provisions of the statute, caselaw interpreting it, or CEQ's extensive explanations for including cumulative and global effects analysis in its NEPA review renders it definition of "significance" unsupported. *See Fox*, 556 U.S. at 515.

XII. The IFR's Approach to Design Criteria and Mitigation is Inconsistent with NEPA.

The Department's new regulations provide that "[w]hen design criteria are added in response to an issue, that issue should no longer be analyzed in detail in the analysis process." 7 C.F.R. § 1b.11(11). This provision is nonsensical and inconsistent with the NEPA statute and other portions of the IFR.

Under NEPA, an agency must provide a "detailed statement" on the reasonably foreseeable environmental effects of the proposed action. NEPA does not provide a carve-out for effects that will be mitigated, in part, with design criteria. After all, design criteria, by definition, do not necessarily *eliminate* effects. *See* 7 C.F.R. § 1b.11(11) (defining design criteria as actions that "[m]inimiz[e]" or "limit[] the degree or magnitude of the action," or "[r]educ[e]" adverse impacts). Because the Department's regulations allow its subcomponents to avoid a detailed analysis of effects that have only been mitigated, but not eliminated, its Interim Final Rule is inconsistent with NEPA.

The Department's Rule is also inconsistent with other portions of its IFR. Under 7 C.F.R. § 1b.7(h)(5), an EIS "*shall include*" a discussion of "[a]ny means identified to reduce adverse environmental effects, *such as design criteria* included in the proposed action or action alternatives" *Id.* (emphasis added). Agencies cannot both comply with this command—to include a discussion of "design criteria" in their "detailed statement"—and the Department's suggestion that effects mitigated with design criteria "should no longer be analyzed in detail."

Because the Department's carve-out for design criteria is inconsistent with NEPA and with other portions of its regulations, the agency should strike the "should no longer be analyzed" sentence from the definition of "design criteria."

XIII. The IFR's Approach to Mitigated Findings of No Significant Impact is Inconsistent with NEPA and Other Provisions within the IFR.

The Department's new regulations provide that a finding of no significant impact ("FONSI") may be supported by "voluntary mitigation commitments." 7 C.F.R. § 1.6b. This

provision is not only inconsistent with decades of prior practice, but is also inconsistent with NEPA itself, as well as other portions of the IFR.

Under NEPA, agencies "shall issue an environmental impact statement" if an action has a reasonably foreseeable significant effect on the human environment. 42 U.S.C. § 4336(b)(1). In making this determination, agencies must make use of "reliable data source[s]," *id.* § 4336(b)(3), and "ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document," *id.* § 4332(D). Agencies relying on voluntary mitigation measures, however, cannot ensure the integrity of their analyses—much less ensure the integrity of their FONSI. That is because agencies have *no assurance* that activities will take place in a way that avoids significant effects unless those measures are *required*. *See Pres. Coal., Inc. v. Pierce*, 667 F.2d 851, 860 (9th Cir. 1982) (mitigation measures performed by third parties "must be more than mere vague statements of good intentions"). For that very reason, CEQ told agencies for decades that "[m]itigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal." *See Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026-01. Because the IFR greenlights FONSIs based on purely voluntary activity, it is inconsistent with NEPA.

The IFR's mitigated FONSI provision is also inconsistent with other portions of its regulations. Under 7 C.F.R. § 1b.6(3), a responsible official must document the reasons why a proposed action "*will not* have a reasonably foreseeable impact." *Id.* (emphasis added). And if the official finds no significant impacts based on mitigation, they must "state the authority for any mitigation." *Id.* (emphasis added). But the responsible official "cannot make this [NEPA] finding by relying on mitigation that the [agency] cannot enforce." *Cf. Klamath-Siskiyou Wildlands Ctr. v. Nat'l Oceanic & Atmospheric Admin.*, 99 F. Supp. 3d 1033, 1054 (N.D. Cal. 2015) (concluding nearly identical language in the ESA forbade reliance on voluntary mitigation measures).

In sum, the Department's reliance on voluntary mitigation "commitments" is unlawful and inconsistent with its own Rule. The Department should revise its regulations to eliminate its reference to "voluntary mitigation commitments."

XIV. Conclusion

The Interim Final Rule represents a grave attempt by the Department of Agriculture to cut the public out of time-tested public processes. The Department paints NEPA as a cumbersome box-checking exercise, but decades of meaningful public engagement bear out the truth: Public involvement and robust environmental review are critical to ensuring the efficient and successful use of federal resources. In short, the IFR trades away time-honored procedural safeguards that have proven effective at protecting national forest resources in exchange for less oversight, less accountability, more controversy, and more environmental impact.

The undersigned are committed to ensuring the responsible management of our nation's public lands. And we, unequivocally, believe in the ideals that public lands represent. The IFR places these ideals on the chopping block by accelerating the scope and impact of management while simultaneously discarding the guardrails that protect against unwarranted harm. The IFR is, thus, both reckless and hazardous for all people who benefit from healthy national forest lands, and it directly flies in the face of the statute it purports to implement.

The IFR is not only bad policy but illegal. As discussed above, the Department has failed to provide the factual or legal basis for amending its NEPA regulations. As the Department has previously recognized, it would secure more efficiencies in its decision-making processes by addressing operational issues associated with funding, staffing, training, and budgeting, which are external to the NEPA regulatory framework. The Department should abandon this effort and pursue those avenues, and we stand ready to work with the agency if it does so. Bottom line, the IFR will not improve national forest management. It will make it worse, eroding public trust in the process. We ask the Department to reconsider this approach.

Sincerely,

With regards on behalf of the undersigned organizations and individuals,

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