

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALLIANCE FOR THE WILD
ROCKIES,

Plaintiff - Appellee,

v.

UNITED STATES FOREST
SERVICE, an agency of the U.S.
Department of Agriculture;
TIMOTHY GILLOON, in his official
capacity as Supervisor of the Idaho
Panhandle National Forests,

Defendants - Appellants.

No. 25-3518

D.C. No.
2:21-cv-00244-
REP

OPINION

Appeal from the United States District Court
for the District of Idaho
Raymond Edward Patricco, Jr., Magistrate Judge, Presiding

Argued and Submitted June 3, 2026
Seattle, Washington

Filed October 9, 2026

Before: Ryan D. Nelson, Danielle J. Forrest, and Jennifer
Sung, Circuit Judges.

Opinion by Judge R. Nelson

SUMMARY*

National Forest Management Act

The panel reversed the district court's summary judgment in favor of the Alliance for the Wild Rockies in the Alliance's action challenging the Hanna Flats Good Neighbor Authority Project (the Project), which seeks to manage vegetation and reduce fuels in the Idaho Panhandle National Forest.

Under the National Forest Management Act (NFMA), the United States Forest Service must ensure that its projects in the Idaho Panhandle National Forest are consistent with a document called the Access Amendments, which limits the miles of roads constructed in areas in and around bear habitat. The Access Amendments regulate four categories of roads: permanent open roads, temporary open roads, permanent total roads, and temporary total roads. The Access Amendments cap road mileage in the Priest Bears Outside Recovery Zone (BORZ) at a baseline set in 2011. The district court concluded that the Project violated the Access Amendments, and therefore the NFMA, because total post-project mileage (338.8 miles) would exceed the 2011 baseline (316.4 miles).

The panel held that the court's decision in *Alliance for the Wild Rockies v. Higgins*, 183 F.4th 671 (9th Cir. 2026), did not render the appeal moot.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Turning to the merits, the panel first considered whether the Project was consistent with provisions of the Access Amendments controlling the construction of permanent roads. The panel held that the district court erred in considering only the number of noncompliant miles in the Priest BORZ without reference to the causal relationship between those noncompliant miles and the Project. The Forest Service showed that the entire difference between the post-project 338.8 miles of total roads and the Access Amendments' baseline of 316.4 miles was not caused or contributed to by the Project. Accordingly, the district court erred by finding that the Project was inconsistent with the permanent road requirements in the Access Amendments.

Second, the panel held that Alliance failed to show that the Project was inconsistent with the temporary road provisions of the Access Amendments. Alliance's argument that the temporary road provisions obligated the Forest Service to remediate BORZ-wide background noncompliance failed because that provision governed only the temporary roads a project uses. Alliance's challenges to the Forest Service's road-closure practices failed absent any factual finding to the contrary.

Accordingly, the panel reversed the district court's order and remanded for further proceedings.

COUNSEL

Rebecca K. Smith (argued), Public Interest Defense Center PC, Missoula, Montana, for Plaintiff-Appellee.

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OPINION

R. NELSON, Circuit Judge:

Under the National Forest Management Act (NFMA), the Forest Service must ensure that its projects in the Idaho Panhandle National Forest are consistent with a document called the Access Amendments, which limits the miles of roads constructed in areas in and around bear habitat. The Access Amendments cap road mileage in the Priest Bears Outside Recovery Zone (BORZ) at a baseline set in 2011.

Appellee Alliance for the Wild Rockies (Alliance) challenges the Hanna Flats Good Neighbor Authority Project (Hanna Flats Project, or the Project), which seeks to manage vegetation and reduce fuels in the Idaho Panhandle National Forest. The Project reduces road mileage in the

BORZ by 1.2 miles. But the Priest BORZ currently contains another 23.6 miles of road that were discovered after 2011 but before the Project. Alliance asserts that these additional miles of roads cause the Project to violate NFMA and the Access Amendments.

The district court granted summary judgment for Alliance, concluding that the Project violated the Access Amendments and therefore NFMA because total post-project mileage (338.8 miles) would exceed the 2011 baseline (316.4 miles). The Forest Service appeals, arguing that the district court erred by failing to address whether the Project caused or worsened any noncompliance with the 2011 baseline.

We agree with the Forest Service. Under *Lands Council v. Powell*, 395 F.3d 1019, 1035–36 (9th Cir. 2005), a project is consistent with a forest plan when the project does not cause or contribute to noncompliance; we exclude from analysis preexisting background noncompliance caused by other factors. The district court applied a straight before-and-after comparison and never considered causation. That was error. The Forest Service has determined that 23.6 miles of road were on the ground but omitted from the 2011 baseline survey and that the Project reduces the recorded baseline mileage by 1.2 miles.

We reverse the district court’s grant of summary judgment and remand for further proceedings consistent with this opinion.

I

A

Congress passed the National Forest Management Act (NFMA) to ensure “a comprehensive assessment of present

and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests." 16 U.S.C. § 1600(3). But few arborists get elected, so Congress delegated much of the work for managing the Nation's forests to the United States Forest Service. "NFMA and its implementing regulations provide for forest planning and management by the Forest Service on two levels: (1) forest level and (2) individual project level." *Native Ecosystems Council v. Weldon*, 697 F.3d 1043, 1056 (9th Cir. 2012).

NFMA requires the Forest Service to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System." 16 U.S.C. § 1604(a). This is the forest level of NFMA. At this level, the "Forest Service develops a Land and Resource Management Plan (forest plan), which consists of broad, long-term plans and objectives for the entire forest." *Weldon*, 697 F.3d at 1056. "After a forest plan is approved, the Forest Service implements the forest plan when approving or denying site-specific projects." *Id.* When implementing site-specific projects, "the Forest Service's failure to comply with the provisions of a Forest Plan is a violation of NFMA." *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 961 (9th Cir. 2005); *see also* 16 U.S.C. § 1604(i).

Alliance alleges that the Project does not comply with the Idaho Panhandle National Forest Land and Resource Management Plan (IPN Forest Plan), which governs projects within the Idaho Panhandle National Forest (IPN Forest). The IPN Forest Plan sets several objectives for the IPN Forest, including habitat conservation for grizzly bears. Higher densities of motorized roads drive grizzly bears from their preferred habitat and lead to more bear-human conflicts.

Over twenty years ago, Alliance was concerned that the IPN Forest Plan did not do enough to prevent these encounters. So it sued, seeking to reduce the number of roads in grizzly bear habitats. That lawsuit prompted the Forest Service to make some changes. In 2011, the Forest Service amended the IPN Forest Plan to alter the road density in grizzly bear habitat, through a document referred to as the Access Amendments. The Access Amendments established two types of areas in which it would restrict the total linear miles of motorized roads to protect grizzly bears: Grizzly Bear Recovery Zones, the primary bear habitat, and Bears Outside Recovery Zones (BORZ), adjacent areas where curious bears are known to wander. This case concerns the BORZ for the region around Priest River.

As to roads, the Access Amendments require that “there be no increases in permanent linear miles of open road and no net permanent increases in linear miles of total roads” in BORZs. To accomplish this, the Access Amendments provide that “[l]inear miles of open road in a given area will not be able to go above the defined baseline conditions displayed in Table 16 of Appendix B,” which establishes a baseline of 316.4 Total Linear Miles of Road in the Priest BORZ and 314.4 Linear Miles of Open Road in the Priest BORZ. The Access Amendments require the Forest Service to conduct yearly monitoring and report progress made toward the goals of the Amendments as well as any changes in the on-the-ground conditions.

The Access Amendments regulate four categories of roads: permanent open roads, temporary open roads, permanent total roads, and temporary total roads. If the Forest Service chooses to construct or authorize new miles of road in a BORZ, the way those roads count against the

Table 16 baselines differs according to the conditions set for each type of road.

Permanent Open Roads. These roads are open year-round and accessible to the public using motorized vehicles. The Access Amendments provide that the Forest Service “shall ensure no increases in permanent linear miles of open road on National Forest System lands in any individual BORZ, above the baseline conditions” identified in a baseline set in 2011 and specified in Table 16 of Appendix B.¹ The Forest Service may build new roads, but “[p]otential increases in linear miles of open roads must be compensated for with in-kind reductions in linear miles of open road concurrently with, or prior to, project implementation within the same BORZ.”

Temporary Open Roads. The Forest Service can also build new open roads if they are temporary. “Temporary increases in linear miles of open roads are acceptable” in the BORZ under defined conditions, but only during the bear summer season (June 16 through August 31) and only when

¹ The relevant provision of the Access Amendments provides that “[t]he Forest [Service] shall ensure no increases in permanent linear miles of open road on National Forest System lands in any individual BORZ, above the baseline conditions identified in Table 4.” But all parallel provisions of the Access Amendments reference Table 16 of Appendix B. Table 4 in the Access Amendments does not include baselines for individual BORZs, but as we explained in *Alliance for the Wild Rockies v. Bradford*, 856 F.3d 1238, 1240–42 (9th Cir. 2017), Table 4 of the Biological Opinion prepared by the U.S. Fish and Wildlife Service concurrently with the Access Amendments is identical to Table 16 of the Access Amendments. We thus treat this reference to Table 4 as a scrivener’s error, and read it to cross-reference Table 16 of the Access Amendments.

needed for forest harvesting activities during the same active bear year.

Permanent Total Roads. Permanent total roads include all permanent open roads plus permanent roads closed to public use but available for Forest Service administrative use. The Access Amendments provide that the Forest Service “shall ensure no net permanent increases in linear miles of total roads in any individual BORZ area above the baseline conditions identified in Table 16.” As with permanent open roads, any potential increase “must be compensated for with in-kind reductions in linear total road miles concurrently with, or prior to, new road construction or reconstruction of currently bermed or barriered roads.”

Temporary Total Roads. “Temporary increases (not off-set) in linear miles of total roads are acceptable” in the BORZs under three conditions. First, “[n]ewly constructed roads [must] be effectively gated and [must] be restricted with a CFR closure clarifying they are not open for public use.” Second, “[t]hese roads shall be closed immediately upon completion of activities requiring use of the road,” and “[r]oads must be closed with a berm, guardrail or other measure that effectively prevents motorized access, and put in a condition such that a need for motorized access for maintenance is not anticipated for at least 10 years.” Third, “[u]pon completion of a land management project, linear miles of total roads would be returned to or below the baseline levels contained in Table 16.”

B

This appeal is a continuation of the Forest Service’s long-running efforts to implement the Hanna Flats Project in the IPN Forest, and more specifically within the Priest BORZ. The Forest Service approved the Project through a

2018 Decision Memo, which authorized commercial harvests to control the risk of forest fires and insect and disease infestation. The Project will use around 0.5 miles of new temporary road and 0.3 miles of temporary excavated skid trail for project access, both of which are to be closed at project completion. On balance, the Project will reduce the total miles of road in the Priest BORZ by 1.2 miles.

The 2018 Decision Memo concluded in its design features that no “increase in linear miles of open road with the implementation of the . . . Project would occur.” This is partially through the closure of temporary roads. For closure, “front end obliteration is the preferred method” which must occur “immediately upon completion of activities requiring use of the road.”

The Forest Service explained the specific routes in a series of biological assessments. The primary document recording these findings is an August 2020 Revised Biological Assessment (BA). The Revised BA also concluded that the Project would decrease total roads in the Priest BORZ to 1.2 linear miles below existing conditions. The Project will require 9.1 miles of temporary road for equipment access and log hauling. Of those 9.1 miles, 8.4 miles consist of existing “undetermined” routes and as much as 4.6 miles are currently subject to illegal use. The remaining 0.7 linear miles consist of the new temporary road and skid trail construction identified in the Decision Memo, all of which will be closed at project completion. The net reduction of 1.2 miles is due to the closure of a specific route—Road 1395. Of the 1.9 linear miles of Road 1395 to be closed, 0.7 miles are subject to illegal use, while the remaining 1.2 miles are designated as “open” roads under the Access Amendments.

The Revised BA also identifies a problem. After completion of the Project, the total number of linear miles of road in the Priest BORZ will be 338.8, and 336.2 for open roads. Both figures are above the 2011 baselines set in the Access Amendments. But the BA concluded that this increase is not because of the Project. Project surveys revealed several roads inadvertently omitted from the 2011 baselines, or routes illegally used by motorized vehicles previously undetected but “on the ground since before 2010.”

C

This is an appeal of the grant of summary judgment in a single case, which we have referred to as *Hanna Flats II*. See *All. for the Wild Rockies v. U.S. Forest Serv. (Pierson)*, 774 F. Supp. 3d 1253, 1258 (D. Idaho 2025). As the name *Hanna Flats II* suggests, there is a *Hanna Flats I*. Alliance also brought that first case, challenging the 2018 Decision Memo’s conclusion that the Hanna Flats Project is categorically excluded under the Healthy Forests Restoration Act (HFRA) from the National Environmental Policy Act’s (NEPA) requirement to prepare an environmental impact statement. See *All. for the Wild Rockies v. Petrick (Petrick)*, 68 F.4th 475, 482–84 (9th Cir. 2023).

In the first case, the district court agreed, granted summary judgment to Alliance, and remanded for the Forest Service to conduct further review under HFRA. See *id.* at 482. On remand, the Forest Service supplemented its analysis and reapproved the Project in a supplemental memo. *Id.* Alliance sued again (*Hanna Flats II*) and revived its prior suit (*Hanna Flats I*). Both suits maintain Alliance’s argument that the Decision Memos violated HFRA and

revive an argument the district court did not reach in the first case that the Decision Memo violated the Access Amendments. *See Pierson*, 774 F. Supp. 3d at 1262–63. The district court once again agreed with Alliance on the HFRA claim, and issued summary judgment in *Hanna Flats I, All. for the Wild Rockies v. Higgins*, 535 F. Supp. 3d 957, 981 (D. Idaho 2021), and preliminarily enjoined the Forest Service in *Hanna Flats II, All. for the Wild Rockies v. Pierson*, 550 F. Supp. 3d 894, 907 (D. Idaho 2021).

The Forest Service appealed both rulings. In a consolidated opinion, we vacated and remanded both the partial summary judgment ruling and the preliminary injunction. *Petrick*, 68 F.4th at 483. On *Hanna Flats I*, we held that the district court erred in determining whether Alliance’s comments placed the Forest Service on notice of the HFRA claim, and remanded “for the district court to consider in the first instance whether any such comments were necessary to challenge a project exempted from NEPA analysis by a categorical exclusion.” *Id.* at 490. Moving to *Hanna Flats II*, we held that the district court had applied incorrect legal standards in concluding that the Forest Service had violated NEPA and HFRA, and we vacated the preliminary injunction. *Id.* at 490–93, 498.

On remand following *Petrick*, the Forest Service withdrew the supplemental decision memo and “indicated that its October 11, 2018 Initial Decision Memo remained in effect.” *Pierson*, 774 F. Supp. 3d at 1265. Alliance renewed its motion for preliminary injunction in *Hanna Flats II*, which the district court granted pending resolution of the summary judgment motion in *Hanna Flats I*. *Id.* at 1265–66.

The district court entered summary judgment in *Hanna Flats I*, finding that Alliance had waived its HFRA claim by failing to raise it before the agency. *All. for the Wild Rockies v. Higgins*, 2024 WL 113552, at *9 (D. Idaho Jan. 10, 2024). Alliance appealed, and we held in *Higgins* that Alliance’s HFRA claim is not subject to the administrative waiver doctrine. *All. for the Wild Rockies v. Higgins (Higgins)*, 183 F.4th 671, 675 (9th Cir. 2026). As the district court did not reach the merits of Alliance’s argument in *Hanna Flats I*, we remanded for the district court to determine in the first instance “whether the Forest Service can establish that the categorical exclusion applies using the proper definition of wildland-urban interface or whether the Forest Service arbitrarily and capriciously found that the Project is categorically excluded from NEPA review.” *Id.* at 690.

While the *Hanna Flats I* appeal was pending before us, the district court continued work on *Hanna Flats II*.² With its focus solely on *Hanna Flats II*, the district court granted summary judgment on the Access Amendments claim in March 2025. *Pierson*, 774 F. Supp. 3d at 1278. The court held that the Project would violate the Access Amendments because the post-project condition of 338.8 miles of total roads and 336.2 miles of open roads in the Priest BORZ would exceed the 2011 baseline conditions of 316.4 miles of total roads and 314.4 miles of open roads. *Id.* at 1270.

The court rejected the Forest Service’s argument that it updated the baseline through a 2021 administrative change to reflect routes that existed in 2011 but were inadvertently excluded from Table 16. *Id.* at 1274–78. Instead, the court

² On remand after *Petrick*, the parties consented to the jurisdiction of Chief Magistrate Judge Raymond E. Patricco. *Pierson*, 774 F. Supp. 3d at 1265.

concluded that the Forest Service must comply with Forest Plan amendment procedures to formally change the baseline figures in the Access Amendments. *Id.* The district court noted that Alliance continues to advance its claim that the Decision Memo violates HFRA. *Id.* at 1266 n.7. But it determined that it “need not resolve” the HFRA issue “given its consideration of Alliance’s underlying road mileage challenge.” *Id.* Based on the violations of the Access Amendments, the court remanded to the agency without vacatur. *Id.* at 1278.

The Forest Service timely appealed.³

II

The district court had jurisdiction under 28 U.S.C. § 1331, and we have jurisdiction under 28 U.S.C. § 1291. Although neither side suggests that our decision in *Higgins* renders this appeal moot, “we have an independent obligation to ensure that a case is not moot within the meaning of Article III.” *Renee v. Duncan*, 686 F.3d 1002, 1016 (9th Cir. 2012). We conclude that it is not. The Forest Service appeals the district court’s decision remanding the Project to the agency to “decide whether to modify the Project to comply” with the Access Amendments or “amend the 2015 IPNF Forest Plan so that the Project complies with the Access Amendment.” *Pierson*, 774 F. Supp. 3d at 1278. It declined to vacate the 2018 Decision Memo. *See id.* The Forest Service continues to seek to proceed under that memo without amending the Forest Plan. *See Petrick*, 68 F.4th at

³ *Higgins* was pending before us at that time. We invited the parties’ views of whether to consolidate the two appeals. *See Higgins*, 183 F.4th at 678 n.2. Neither party requested that we hold the *Higgins* opinion for our disposition here, and we declined to consolidate the appeals sua sponte. *See id.*

486 (“The Forest Service has consistently claimed it should be allowed to proceed based on the original Decision Memo . . .”).

Our decision in *Higgins* does not foreclose this option. *Higgins* left the 2018 Decision Memo in place, remanding for the district court to determine in the first instance whether the categorical exclusion applies under HFRA. 183 F.4th at 690. The district court’s remand order in this appeal independently forecloses the Forest Service’s preferred course by requiring it to amend the Forest Plan before proceeding. Reversing that order would give the Forest Service concrete relief. See *350 Montana v. Haaland*, 50 F.4th 1254, 1264 (9th Cir. 2022) (live controversy continues as long as the challenged agency action “has neither disappeared nor been replaced”). We thus proceed to the merits.

III

We “review de novo a district court’s grant of summary judgment.” *Petrick*, 68 F.4th at 485 (citation omitted). NFMA does not contain its own cause of action, so Alliance’s claim is subject to “the standard provided by the Administrative Procedure Act.” *All. for the Wild Rockies v. Savage*, 897 F.3d 1025, 1033 (9th Cir. 2018). That means “[a]gency decisions challenged under the NFMA may be set aside only if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” *Weldon*, 697 F.3d at 1056 (citing 5 U.S.C. § 706(2)(A)). “Such review is deferential and narrow . . .” *Savage*, 897 F.3d at 1033 (cleaned up). “When a case involves review of a final agency determination under the Administrative Procedure Act, our review is limited to the administrative

record.” *Petrick*, 68 F.4th at 485 (internal quotation marks omitted).

A

We start by considering whether the Project is consistent with provisions of the Access Amendments controlling the construction of permanent roads. Sections II.A and II.B of the Access Amendments establish parallel limits on the number of linear miles of permanent open roads and the number of linear miles of permanent total roads. Section II.A provides that the Forest Service “shall ensure no increases in permanent linear miles of open road on National Forest System lands in any individual BORZ, above the baseline conditions identified” in Table 16. Section II.B provides that the Forest Service “shall ensure no net permanent increases in linear miles of total roads in any individual BORZ area above the baseline conditions identified in Table 16.” The district court concluded that the Hanna Flats Project violated the IPN Forest Plan because the total miles of roads after completion of the Project would be “338.8 miles of total roads and 336.2 miles of open roads,” above “the Access Amendment’s baseline conditions (316.4 miles of total roads and 314.4 miles of open roads).” *Pierson*, 774 F. Supp. 3d at 1270.

The district court considered only the number of noncompliant miles in the Priest BORZ without reference to the causal relationship between those noncompliant miles and the Project. This was error. Under the APA, we review discrete agency actions, not generalized noncompliance. That means that we must determine whether the Project causes or contributes to the noncompliance. The Forest Service has shown that the entire difference between the post-project 338.8 miles of total roads and the Access

Amendments' baseline of 316.4 miles is not caused or contributed to by the Project.

1

We start with the statutory text. Section 1604(i) provides that “[r]esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.” 16 U.S.C. § 1604(i). The textual command is thus that the Project must be “consistent with” the IPN Forest Plan. The plain, ordinary meaning of the term “consistent” at the time of NFMA’s enactment in 1976 suggested a very close alignment. *See* National Forest Management Act of 1976, Pub. L. No. 94-588, § 6, 90 Stat. 2949, 2952 (1976). One dictionary defined the word when followed by the preposition “with” to mean “marked by agreement and concord” and “showing no noteworthy opposing, conflicting, inharmonious, or contradictory qualities” or “compatible.” Webster’s Third New International Dictionary 484 (1971); *see also* Merriam-Webster’s New Collegiate Dictionary 242 (8th ed. 1977) (“marked by harmonious regularity or steady continuity”).

The Access Amendments provide that the Forest Service “shall ensure no net permanent increases in linear miles of total roads” above baselines set in Table 16. Read together, this tells us little more than that the Project must be generally “harmonious” or “compatible” with the requirement that the Forest Service “shall ensure no net permanent increases.”

When isolated dictionary definitions prove vague, we look at the broader statutory context. *Vericool World, LLC v. Igloo Prods. Corp.*, 175 F.4th 1045, 1057 (9th Cir. 2026). The remainder of § 1604 says little about site-specific projects, so we look to the statutory backdrop to NFMA—

the APA. *See* 16 U.S.C. § 1604(g) (requiring APA notice and comment for adoption of forest management plans). Judicial “review of agency decision-making under NFMA is governed by the judicial review provisions of the APA because NFMA does not contain an express provision for judicial review.” *Native Ecosystems Council*, 418 F.3d at 960 (citing 5 U.S.C. § 706(2)(A)). Under the APA, courts may evaluate the lawfulness of an agency’s conduct only when the agency takes a discrete action. *See, e.g., Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 62 (2004). Thus, as a general proposition, a plaintiff cannot challenge an agency’s compliance with its own plan “until the plan is amended” or until the agency takes a discrete action to “implement” the plan. *Id.* at 69–70. These discrete actions are judicially reviewable because they “can be set aside as contrary to law pursuant to 5 U.S.C. § 706(2).” *Id.* at 69.

In the context of NFMA, the Forest Service implements a forest plan through “site-specific projects.” *Weldon*, 697 F.3d at 1056. General complaints about how the Forest Service is complying with a forest plan are not ripe for Article III adjudication until the agency has “formalized its decision” on a site-specific project. *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1067 (9th Cir. 2002). And to prevent a backdoor around ripeness concerns, we require plaintiffs challenging an agency action to show a “specific connection between the challenged site-specific action and the alleged violation” of the forest plan. *Weldon*, 697 F.3d at 1057 (citation omitted).

To meet that standard, we require plaintiffs to show “that the contested portion of the plan plays a causal role with respect to the Project.” *Hapner v. Tidwell*, 621 F.3d 1239, 1250 (9th Cir. 2010) (cleaned up). In *Hapner*, we refused to review a forest plan amendment that would allow a project

to proceed in an area with a road density of “2.1 miles of road/square mile,” which exceeded the unamended forest plan’s “0.75 limitation.” *Id.* at 1249–50. Because “[t]he Project would use only existing roads, some of which would be permanently closed and rehabilitated at the end of the Project,” and “road density in the Project area would not be increased as a result of the 2006 amendment,” we had “no occasion to evaluate [the amendment’s] lawfulness.” *Id.*

The ripeness concern, which prevents a plaintiff from challenging a forest-plan condition untethered to any project, runs through the merits to the remedy. Whether the question arises at the threshold or on the merits, a court may “set aside” only the “agency action” before it—here, the Decision Memo approving the Project. 5 U.S.C. § 706(2). Even under the broadest possible meaning of “set aside,” the APA limits our remedial power to nullifying the agency action. *See Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 838 (2024) (Kavanaugh, J., concurring). That remedy reestablishes the status quo and “neither compels nor restrains further agency decision-making.” *Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022). Thus, we cannot, by setting aside the Decision Memo, remedy any noncompliance with the IPN Forest Plan that the Project does not cause or worsen. Alliance is not entitled to a remedy that accomplishes nothing. And since we lack power to order the agency to remedy general noncompliance, a remedy that accomplishes nothing is all we can provide if the discrete agency action does not have a causal connection to Alliance’s injury. *Cf. Norton*, 542 U.S. at 69–70 (a plaintiff challenging agency compliance with a plan must identify a discrete agency action).

Our leading case applying this principle is *Lands Council*. There, we rejected the plaintiffs’ attempt to defeat

a project based on background noncompliance with an old-growth forest standard, reasoning that such a rule “would prevent any project from taking place” and was not “a sensible reading of the NFMA.” *Lands Council*, 395 F.3d at 1035–36. The relevant forest plan required that the Forest Service reach at least ten percent old growth trees in the forest area. *Id.* Plaintiffs challenged the project because it “would not allow the Forest Service to reach” the ten-percent threshold. *Id.*

We disagreed, noting that “it cannot be said that the Project itself violates the IPN[] [Forest] Plan’s requirement to maintain ten percent of the forest acreage as old growth forest.” *Id.* The Forest Service could demonstrate this through a simple showing: “[N]o old growth forest [was] to be harvested” as part of the project. *Id.* Thus, *Lands Council* held that a project is consistent with a plan when the agency can determine that the “project itself” does not contribute to an ongoing violation of the plan—even when there is an uncontested failure to follow the plan elsewhere in the project area.

The district court concluded, and Alliance argues, that *Savage*, 897 F.3d 1025, “undercuts *Lands Council*.” *Pierson*, 774 F. Supp. 3d at 1273. This reading of the cases is misguided. *Savage* had a different outcome because the Forest Service could not show that the proposed project would not contribute to background noncompliance with the forest plan. That decision did not change the rule that the Forest Service may exclude background noncompliance when approving a new project.

In *Savage*, the challenged project added new roads to a BORZ above the total number of miles approved by the controlling forest plan. *See Savage*, 897 F.3d at 1035. But

the Forest Service nevertheless approved the project after it “concluded that its construction of 2.2 miles of new road would be more than off-set by decommissioning 0.65 miles of National Forest road and 1.84 miles of ‘undetermined’ road.” *Id.* We vacated and remanded, because we could not determine that the closed roads were part of the original baseline. *Id.* at 1035–36.

We reasoned that if “‘undetermined’ roads were not included in the Access Amendments baseline calculation in the first place, it would be illogical to offset the 2.2 miles of new road construction with the decommissioning of 1.84 miles of ‘undetermined’ road.” *Id.* at 1036. We stressed “that, in some circumstances, it would be possible for the Forest Service to comply with the Access Amendments by measuring the impact of the project on existing roads—but only if the Forest Service additionally determined that the existing roads were included in the Access Amendments baseline measurement.” *Id.*

Savage thus does not control if the agency can show that the affected roads were part of the original baseline. Diminishing the number of roads included in the baseline is consistent with the objectives of the Access Amendments; unrelated roads that exceed the prescribed baselines are just that—unrelated. Under *Lands Council*, the Forest Service may exclude unrelated noncompliance when it has demonstrated that it is truly unrelated. 395 F.3d at 1035–36. But the Forest Service failed to make the predicate showing in *Savage*. The undetermined roads could have been “created—without authorization from the Forest Service—in the interim between the measurement of the Access Amendments baseline and the Forest Service’s survey of existing roads for the Project.” 897 F.3d at 1036 n.18. If so, then the Forest Service’s action would effectively add new

roads against the original baseline, because closing illegal roads to offset the construction of new roads would integrate those illegal roads into a new, noncompliant baseline.

Taken together, *Lands Council* and *Savage* show that when the Forest Service proposes a new project in an area not in compliance with the controlling forest plan, the proposed project is “consistent” with the forest plan under § 1604(i) when the background noncompliance is removed from the analysis. The relevant question is whether the Project causes or worsens noncompliance with the IPN Forest Plan.

We stress that it is not enough, as the Forest Service suggests, merely to show that the post-project conditions are closer to the baseline than the pre-project conditions. Just as background noncompliance cannot count against the Project, reductions in noncompliant mileage not attributable to the Project cannot benefit it. The baseline remains the 2011 baseline set in the Access Amendments until the Forest Service chooses to amend it. *See* 36 C.F.R. § 219.13(a).⁴ So long as the 2011 baseline remains in effect, the agency must meet a more exacting showing to account for background noncompliance and show that no causal relationship exists between that noncompliance and the challenged agency action. *Cf. Savage*, 897 F.3d at 1036. But under the 2011 baseline, the fact that the Priest BORZ is out of compliance with the Access Amendments does not doom every new project. *See Lands Council*, 395 F.3d at 1036.

⁴ The district court rejected the Forest Service’s attempted use of the Revised BA to make an administrative change to amend the Access Amendments, because the change had not gone through notice and comment. *Pierson*, 774 F. Supp. 3d at 1274–78. The Forest Service did not appeal this portion of the order.

Putting all the pieces together, the Access Amendments provide that the Forest Service “shall ensure no increases” in roads above the baseline set in Table 16. To determine whether the Forest Service fails this obligation, we consider whether the Service has approved a project that would add permanent roads to the IPN Forest in excess of the approved baseline. Any project that adds miles to the forest is not “consistent” with the Amendments, 16 U.S.C. § 1604(i), and we must “set aside” the decision as “not in accordance with law,” 5 U.S.C. § 706(2). But the APA allows us to review only discrete agency actions; we do not set aside projects if the Forest Service shows that the project does not cause “increases” above the Access Amendments baseline.

The Forest Service must thus show that the total of post-project miles of road is under the 2011 baseline after excluding from consideration all miles above the baseline not caused by the Hanna Flats Project. *Savage*, 897 F.3d at 1035–36.

2

With the relevant standard under § 1604(i) established, we consider whether the 2018 Decision Memo is “consistent” with the Access Amendments. The Decision Memo specifies that “[i]ncreases in linear miles of open roads must be compensated for with in-kind reductions in linear miles of open road concurrently with, or prior to, project implementation within the same BORZ occupancy area.” The Decision Memo set a similar design feature for linear miles of total roads. The memo observed that both provisions were standard under the 2011 Access Amendments to the IPN Forest Plan. This conclusion was based on the decision to close 1.2 miles of administrative road system at the end of the Project.

To execute the Project, the Forest Service commissioned a series of biological surveys. The Revised BA for the Project found that it would decrease the total roads by 1.2 linear miles below existing conditions. The Project will require 9.1 miles of temporary road, including 8.4 miles of undetermined roads and the construction of 0.7 linear miles of new road the Forest Service will close at the end of the Project. Another 1.9 linear miles of a road designated as Road 1395 will also be closed. This point is critical. As to the Road 1395 closure, 0.7 miles are being used illegally, while the remaining 1.2 miles are designated as “open.” The “open” portion of Road 1395 is a system road in the database of known roads counted in the 2011 baseline.

The Forest Service has further shown that the Hanna Flats Project will have no other effect on the level of noncompliance with the 2011 baseline. Backing up slightly, the Access Amendments establish a baseline for a total of 316.4 linear miles of roads and 314.4 linear miles of open roads in the Priest BORZ. The district court concluded that the Project was inconsistent with this baseline because the total number of linear miles in the Priest BORZ after the Project would be “338.8 miles of total roads and 336.2 miles of open roads.” *Pierson*, 774 F. Supp. 3d at 1270. In other words, the total number of linear miles after the Project is 22.4 miles over the 2011 baseline.

That 22.4-mile gap between the post-project total (338.8) and the 2011 baseline (316.4) is fully accounted for by 23.6 linear miles of roads the Forest Service has determined were on the ground in 2010 but not counted in the 2011 baseline. The Forest Service’s surveys show that, since 2011, it has discovered several miles of road that existed in 2011 yet were not included in the 2011 database. In 2012, the Forest Service discovered 2.6 miles of road “inadvertently missed

in the 2010 environmental baseline.” The Forest Service added another 0.2 miles of inadvertently omitted road in 2015. Finally, shortly before scoping the Project, the Forest Service discovered another 20.2 miles of motorized trails and 0.6 miles of special use permit roads. The Forest Service determined that “[n]one of these motorized trail miles were in the [Project] area and have been on the ground since before 2010.” These noncompliant miles not caused by the Project add up to 23.6 miles—or 1.2 miles more than the difference between the 2011 baseline and the post-project total.⁵

Those 1.2 miles come from Road 1395, which was part of the 2011 baseline and will be closed at Project completion. Thus, the Forest Service has met its burden to exclude unrelated improvements from the analysis. *See Savage*, 897 F.3d at 1036 (the Forest Service may credit road closures against the baseline if it confirms the closed roads “were included in the [Access Amendments] baseline measurement”).⁶ The district court erred by finding that the

⁵ Alliance also argues that the Project adds another 9.54 miles of total roads to the Project area as part of the maintenance of cross-country ski trails. But the Revised BA determined that improved trail conditions will benefit only “cross-country skiing and snowshoeing” and that “Project activities are not anticipated to increase over-snow motorized use of the area.” Alliance does not challenge this finding. Because the Project does not increase motorized use of these routes, any exceedance associated with them is a background condition the Project neither causes nor contributes to.

⁶ Alliance also argues that the Forest Service’s decision to close 30.4 miles of unauthorized, illegal roads should be set aside, because the plan under the Decision Memo will not install effective barriers to those roads. Under this argument, the Decision Memo functionally authorizes 373.3 miles of total roads and 373.3 miles of open roads. We reject this argument for the reasons discussed *infra* Section III.B.2.

Hanna Flats Project was inconsistent with the permanent road requirements in the Access Amendments.

B

To execute the Decision Memo, the Revised BA prescribes a “temporary increase” of 9.1 miles of road to allow equipment to access “treatment units and log hauling.” “All the temporary roads are currently and will remain closed to public use with gates, would not temporarily increase the amount of total open linear miles of routes, and will be permanently closed after project activities.”

Alliance also presents two arguments for why these temporary roads are inconsistent with the temporary road provisions of the Access Amendments. First, because the Priest BORZ exceeds the 2011 baseline, Alliance argues that the provision authorizing temporary exceedance for a project requires the Forest Service to return the entire BORZ to the baseline at Project completion, not merely to remove the temporary roads used for that project. Second, Alliance argues that the Forest Service’s prior practice of closing roads demonstrates that roads closed during the Project will not be “effectively gated” and thus must count against the 2011 baseline. Neither argument succeeds.

1

Section II.B.1. of the Access Amendments provides that “[t]emporary increases (not off-set) in linear miles of total roads are acceptable” under certain “conditions.” Subsection c. provides the final condition: “Upon completion of a land management project, linear miles of total roads would be returned to or below the baseline levels contained in Table 16.” As with the provisions governing permanent roads, Alliance argues that the Project is

inconsistent with this requirement because the linear miles of total roads will not return to baseline after the Project. We reject this argument for two reasons.

a

Alliance forfeited this argument by failing to include it in its summary judgment briefing before the district court. In the district court, Alliance argued that the Project violated “the Access Amendment Standards for permanent roads” because post-project conditions would not remedy background noncompliance. But it did not reference background noncompliance when it argued that the Project violates the Access Amendments’ temporary roads provision. Indeed, Alliance argued that the Project failed the first condition under Section II.B.1. because “the roads must be both (1) ‘effectively gated’ and (2) ‘restricted with a CFR closure clarifying they are not open for public use.’” Alliance did not brief the return-to-baseline argument to the district court. This is not merely a failure to make the argument “sufficiently for the trial court to rule on it”; Alliance selectively cited only one of the three conditions and did not mention the return-to-baseline requirement now advanced on appeal. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010) (quoting *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 515 (9th Cir. 1992)).

On appeal, Alliance’s brief lumps Section II.B.1. with its overall argument that the Project violates the Access Amendments’ permanent roads provisions. But these are distinct arguments that require different analyses. Noncompliance with the permanent roads provisions of the Access Amendments requires different judicial remedies than noncompliance with Section II.B.1. The district court remanded to the agency to “address the deficiencies” it

identified and “decide whether to modify the Project to comply with [the] 2015 IPN[] Forest Plan, reject the Project, or amend the 2015 IPN[] Forest Plan so that the Project complies with the Access Amendment.” *Pierson*, 774 F. Supp. 3d at 1278. The district court did not identify failure to comply with Section II.B.1.c. as a deficiency.

The Forest Service has different options to address the different alleged deficiencies. The text of Section II.B.1. is more limited than the other road requirements. Subpart II.B.1.c. of the Access Amendments is indented, while the general provisions for permanent roads are not. “Material within an indented subpart relates only to that subpart; material contained in unindented text relates to all the following or preceding indented subparts.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 156 (2012). Thus, even assuming the provision creates an affirmative obligation, the requirement that “linear miles of total roads would be returned to or below the baseline levels” only applies if the discrete agency action authorizes temporary total roads. This provides a narrower option than the options the district court did not consider: allowing the Forest Service to elect not to authorize 9.1 miles of temporary roads as part of the Project.

Because Alliance did not raise this argument below, the district court did not have an opportunity to consider it. *Mercury Interactive*, 618 F.3d at 992. We could end our analysis there, because a party’s failure to pursue an argument in its summary judgment briefing ordinarily amounts to forfeiture. *Lui v. DeJoy*, 129 F.4th 770, 780 (9th Cir. 2025); see *Damiano v. Grants Pass Sch. Dist. No. 7*, 140 F.4th 1117, 1150 n.15 (9th Cir. 2025).

But “we have discretion to reach an otherwise-forfeited issue in appropriate circumstances, especially when the issue presented is purely one of law and either does not depend on the factual record developed below, or the pertinent record has been fully developed.” *Cascadia Wildlands v. Scott Timber Co.*, 105 F.4th 1144, 1154 (9th Cir. 2024) (cleaned up). We exercise that discretion here.

b

On the merits of this argument, we agree with Alliance that the temporary total roads requirement in the Access Amendments imposes an affirmative obligation on the Forest Service to reduce the miles of road associated with a discrete project. The verb “returned” carries an affirmative obligation that the other requirements in the Access Amendments lack. Whereas “shall ensure no net permanent increases” speaks to limits, “returned” speaks to action. But the question is how far the obligation stretches.

We disagree with Alliance’s assertion that the provision imposes an affirmative obligation to remedy unrelated noncompliance as part of every project that uses temporary roads. Instead, the plain, ordinary meaning of the provision suggests that temporary roads in excess of the baseline are allowed so long as any noncompliance caused by those roads is corrected at the completion of the project.

It bears repeating that the indented text of Section II.B.1.c. is only operational as one of three “conditions” under which the Forest Service may elect to construct temporary roads. We cannot ignore two colons and an independent sentence specific to temporary roads to apply the subsection’s requirement to permanent total roads. Scalia & Garner, *supra*, at 159–60 (citing *United States v. Hayes*, 555 U.S. 415, 431 (2009) (Roberts, C.J., dissenting)).

The problem with Alliance’s reading is that, if the Forest Service had intended to establish a broad requirement to clean up noncompliant permanent roads existing before the Project, we would expect that provision to appear in the provisions governing permanent roads in the individual BORZs. *Cf. Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001) (“[T]he fundamental details of a regulatory scheme” are generally not altered through “ancillary provisions”). Indeed, of the four sets of requirements for categories of roads regulated by the Access Amendments, Section II.B.1.c. controls the category of roads with the most specific, restrictive conditions—temporary total roads. This is the last place we would expect to find a general, BORZ-wide clean-up obligation. *Cf. Atl. Richfield Co. v. Christian*, 590 U.S. 1, 22 (2020) (characterizing a broad remedial requirement as “an elephant”).

The better reading is that Section II.B.1.c. requires the Forest Service to close temporary roads which caused a temporary increase in noncompliance above baseline. The focus of the condition is on the introductory “completion of a land management project.” Whereas the primary provisions on permanent roads emphasize that the Forest Service “shall ensure no net permanent increases,” Subpart II.B.1.c. is in the passive voice. *See Bartenwerfer v. Buckley*, 598 U.S. 69, 76 (2023) (“[T]he passive voice signifies that ‘the actor is unimportant’ or ‘unknown.’” (quoting Bryan A. Garner, *Modern English Usage* 676 (4th ed. 2016))). The emphasis of the provision means that temporary increases above baseline conditions are limited to the duration of the project.

As explained, the Hanna Flats Project does what Subpart II.B.1.c. requires. Of the 9.1 miles of temporary road the Project uses, 8.4 miles are existing undetermined routes, and

the remaining 0.7 miles consist of newly constructed roads and skid trails. Thus, all 9.1 miles will cause a temporary increase in noncompliance above baseline and must be closed at Project completion. And they will be. *See infra* Section III.B.2. That means “linear miles of total roads” attributable to the Project will be “returned to or below the baseline levels contained in Table 16.” That is all Subsection II.B.1.c. requires. We thus reject Alliance’s first argument under the temporary roads provision.

2

Alliance separately challenges how the Forest Service will close the temporary total roads. Alliance argues the Forest Service’s past practices show that it will fail to ensure temporary roads are “effectively gated” and “restricted with a CFR closure” during the Project. And after the Project, the Forest Service will allegedly drag trees across closed routes rather than installing “a berm, guardrail or other measure that effectively prevents motorized access.” Neither complaint attacks the Decision Memo.

The Decision Memo provides that temporary total roads must be properly closed during the Project. “All roads not designated as open on the motor vehicle use map would be effectively gated and would require a Code of Federal Regulation closure clarifying they are not open for public use.” That meets the Access Amendments’ conditions for this category of roads. In the same vein, the Decision Memo provides that the Forest Service must close all roads “not designated as open” with “a berm, guardrail or other measure that effectively prevents motorized access” “immediately upon completion of activities.” The Decision Memo adds that “front end obliteration is the preferred method.” This is

also consistent with the relevant requirement in the Access Amendments.

Indeed, the Decision Memo incorporates language almost identical to the Access Amendments. We cannot set aside the Decision Memo based on Alliance's suggestion of past practices which the Decision Memo expressly disclaims. These accounts of past practices are not "evidence to refute the Forest Service's assertion" that it "will effectively prevent motorized use." *Bradford*, 856 F.3d at 1243. Without that evidence, we "take the Forest Service at its word." *Id.*

Alliance fails to show that the Hanna Flats Project is inconsistent with the Access Amendments' requirements for temporary total roads.⁷

IV

The district court erred by concluding that the Hanna Flats Project was inconsistent with the Access Amendments based solely on a comparison of total post-project road mileage to the 2011 baseline. The district court overlooked whether the Project caused or contributed to the noncompliance. Alliance's argument that the temporary-roads provision obligates the Forest Service to remediate BORZ-wide background noncompliance fails because that

⁷ Alliance also argues that the Project fails NEPA's hard look requirement. We do not reach that argument. The district court did not address it, reasoning that its holding in *Hanna Flats I* likely mooted the claim. *Pierson*, 774 F. Supp. 3d at 1266 n.7. But we have since vacated its decision in *Hanna Flats I* and remanded for the district court to determine "whether the Forest Service can establish that the categorical exclusion applies" under HFRA. *Higgins*, 183 F.4th at 690. We thus remand for the district court to consider in the first instance whether *Higgins* alters its analysis of the NEPA claim in *Hanna Flats II*.

provision governs only the temporary roads a project uses. Alliance's challenges to the Forest Service's road-closure practices fail absent any factual finding to the contrary. We thus reverse the district court's order and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.