

**PUBLIC INVOLVEMENT IN FOREST SERVICE PROJECT-LEVEL
DECISION-MAKING: A QUALITATIVE ANALYSIS OF PUBLIC COMMENTS,
ADMINISTRATIVE APPEALS, AND LEGAL ARGUMENTS FROM CASE
STUDIES ON THE GEORGE WASHINGTON AND JEFFERSON
NATIONAL FORESTS**

by

Anthony V. Scardina

Thesis submitted to the Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of

MASTER OF SCIENCE

in

Forestry

Michael J. Mortimer, Chair

Gregory Buhyoff

Larkin Dudley

April 29, 2004

Blacksburg, Virginia

Keywords: Forest Service, Public Involvement, Public Comments, Administrative Appeals, Legal Arguments

Copyright 2004, Anthony V. Scardina

**PUBLIC INVOLVEMENT IN FOREST SERVICE PROJECT-LEVEL
DECISION-MAKING: A QUALITATIVE ANALYSIS OF PUBLIC COMMENTS,
ADMINISTRATIVE APPEALS, AND LEGAL ARGUMENTS FROM CASE
STUDIES ON THE GEORGE WASHINGTON AND JEFFERSON
NATIONAL FORESTS**

Anthony V. Scardina

ABSTRACT

Public involvement and participation in Forest Service decision-making is a contentious issue attended by charges and countercharges, unsubstantiated accusations and counterclaims, and value-based arguments by all entities involved. Yet, the numbers of studies to substantiate the debate is relatively minimal and tend to be sporadic, reoccurring during times of national forest management crises, which is inappropriate and shortsighted. Moreover, the studies tend to be quantitative or anecdotal in nature and have largely failed to identify or resolve the problems associated with public involvement and participation in Forest Service decision-making, as well as litigation, and yet researchers continue to advocate for comprehensive, systematic, empirical examinations without considering the possible benefits that comprehensive, systematic, qualitative research could contribute to identifying and possibly resolving such problems. Thus, a comprehensive, systematic, in-depth, qualitative analysis of public comments, administrative appeals, and legal arguments from 12 Forest Service project-level activities, and their seven associated lawsuits, on the George Washington and Jefferson National Forests, was conducted. The results suggest that there is an interested and vocal minority of individuals and environmental special-interest groups that dominate project-level public involvement and participation processes on the George Washington and Jefferson National Forests, and that these public involvement and participation processes work in reverse, providing incentives for post-decisional challenges and discouraging pre-decisional information-sharing, collaboration, and compromise. Therefore, the public, the academic community, the Forest Service, and Congress, must challenge the status quo and make needed changes to ensure that public involvement and participation processes are truly democratic and to reduce incentives for post-decisional challenges.

ACKNOWLEDGEMENTS

This research was made possible by a research assistantship from Virginia Polytechnic Institute and State University, College of Natural Resources, Department of Forestry; and by the cooperation and assistance of the United States Department of Agriculture Forest Service, George Washington and Jefferson National Forests, Forest Supervisor's Office, Roanoke, Virginia.

The knowledge and enthusiasm of my major professor, Dr. Michael J. Mortimer, provided the assistance and encouragement needed to complete this project, and I thank him for his time and commitment. The willingness to listen to my thoughts and the helpful criticisms of my writing, offered by two of my committee members, Dr. Larkin Dudley and Dr. Gregory Buhyoff, kept the project objective and scholarly, and I thank them for their commitment to the project. Although a game-theory model was not included in the thesis, I also have to thank Dr. Mark Stegeman for all of the hours spent in his office working on a model, which will hopefully be published sometime in the near future. Once again, thank you all.

Finally, I would like to express my gratitude to Bill Damon, Dave Plunkett, and Jobeth Brown of the U.S. Forest Service at the George Washington and Jefferson National Forests, Forest Supervisor's Office. Without their assistance, this project would have been nearly impossible, and I would not have been able to attend the 2004 American Society for Public Administration National Convention in Portland, Oregon, to present my research. More specifically, I am especially indebted to Dave Plunkett who provided me with all my research materials, took extensive time to explain issues pertaining to the study, and was always willing to help when needed. Once again, thank you all.

TABLE OF CONTENTS

Chapter		Page
I.	INTRODUCTION AND BACKGROUND	1
	The Advent of Public Involvement in National Forest Management Decision-making	1
	The Problem	1
II.	REVIEW OF RELEVANT LITERATURE AND RESEARCH	4
	Review of Relevant Literature	4
	The Administrative Appeals Process Controversy	4
	Critics of the Administrative Appeals Process	4
	Proponents of the Administrative Appeals Process	5
	The Litigation Controversy	7
	Critics of Litigation against the Forest Service	7
	Proponents of Litigation against the Forest Service	7
	Review of Relevant Research	8
	Research on National Forest Public Comments	9
	Research on National Forest Administrative Appeals	9
	Research on National Forest Litigation	10
III.	PROJECT DESIGN	11
	Justification for the Study	11
	Objectives of the Study	12
	Project Materials	13
	Project Methods	14
	Investigation and Narration of Case Procedures	14
	Public Comment, Administrative Appeal, and Legal Argument Analyses	14
	Matrix Design	15
	Classification of Commenter and Appellants	16
	Project Limitations	17
IV.	ADMINISTRATIVE CASE STUDY PROCEDURES AND REGULATIONS	18

	Introduction	18
	Proposed Actions under 36 C.F.R. § 215(a)	18
	Proposed Actions under 36 C.F.R. § 215.3(b)	19
V.	THE RUCKER LAP TIMBER SALE	21
	Introduction	21
	Administrative Procedures	22
	Scoping Procedures and Public Comments	22
	Environmental Assessment Procedures and Public Comments	22
	Administrative Appeal Procedures and Public Appeals	22
	Legal Procedures	23
	Analysis of the Primary Commenter, Appellant, and Litigant	23
	Primary Commenter, Appellant, and Litigant Profile	23
	Analysis of Robert Fener’s Comments on the RLTS SN	24
	Analysis of Robert Fener’s Comments on the RLTS EA	24
	Analysis of Robert Fener’s Administrative Appeal of the RLTS DN/FONSI	26
	Analysis of the Informal Disposition Meeting	29
	Analysis of Robert Fener’s Legal Arguments	29
VI.	THE HEMATITE TIMBER SALE	31
	Introduction	31
	Administrative Procedures	32
	Scoping Procedures and Public Comments	32
	Environmental Assessment Procedures and Public Comments	32
	Administrative Appeal Procedures and Public Comments	32
	Legal Procedures	33
	Analysis of the Primary Commenter, Appellant, and Litigant	34
	Primary Commenter, Appellant, and Litigant Profile	34
	Analysis of Steven Krichbaum’s Comments on the HTS SN	34
	Analysis of Steven Krichbaum’s Comments on the HTS EA	35
	Analysis of Steven Krichbaum’s Administrative Appeal of the HTS DN/FONSI	37

	Analysis of Steven Krichbaum’s Legal Arguments	40
VII.	THE ALBA SALVAGE TIMBER SALE	42
	Introduction	42
	Administrative Procedures	43
	Scoping Procedures and Public Comments	43
	30-day Review Notice Procedures and Public Comments	43
	Administrative Appeal Procedures and Public Appeals	43
	Legal Procedures	44
	Analysis of the Primary Commenter, Appellant, and Litigant	45
	Primary Commenter, Appellant, and Litigant Profile	45
	Analysis of Steven Krichbaum’s Comments on the ASTS SN	45
	Analysis of PAW/VFW/Heartwood/Steven Krichbaum’s	
	Administrative Appeal of the ASTS DM	46
	Analysis of Steven Krichbaum’s Legal Arguments	48
VIII. – Part I	THE ARNEY GROUPS PROJECT	49
	Introduction	49
	Administrative Procedures	50
	Scoping Procedures and Public Comments	50
	Environmental Assessment Procedures and Public Comments	51
	Administrative Appeal Procedures and Public Appeals	51
	Administrative Revisions	52
	Analysis of the Primary Commenter, Appellant, and Litigant	52
	Primary Commenter, Appellant, and Litigant Profile	52
	Analysis of SEDG’s Comments on the Second AGP SN	53
	Analysis of SEDG’s Comments on the AGP EA	53
	Analysis of PAW/Heartwood/VFW/SEDG’s Administrative	
	Appeal of the AGP DN/FONSI	55
VIII. – Part II	THE TERRAPIN MOUNTAIN PROJECT	60
	Introduction	60
	Administrative Procedures	61
	Scoping Procedures and Public Comments	61

	Environmental Assessment Procedures and Public Comments	62
	Administrative Appeal Procedures and Public Appeals	62
	Analysis of the Primary Commenter, Appellant, and Litigant	63
	Analysis of SEDG’s Comments on the TMP SN	63
	Analysis of SEDG’s Comments on the TMP EA	63
	Analysis of TWS/Heartwood/PAW/SEDG’s Administrative Appeal of the TMP DN/FONSI	64
VIII. – Part III	THE WILSON MOUNTAIN PROJECT	67
	Introduction	67
	Administrative Procedures	68
	Scoping Procedures and Public Comments	68
	Environmental Assessment Procedures and Public Comments	68
	Administrative Appeal Procedures and Public Appeals	68
	Administrative Revisions	69
	Analysis of the Primary Commenter, Appellant, and Litigant	70
	Analysis of SEDG’s Comments on the WMP SN	70
	Analysis of TWS/Sierra Club/Heartwood/PAW/SEDG’s Administrative Appeal of the WMP DN/FONSI	70
VIII. – Part IV	LEGAL PROCEDURES AND ANALYSES FOR THE AGP, TMP, AND WMP	73
	Introduction	73
	Analysis of the Primary Commenter, Appellant, and Litigant	73
	Analysis of SEDG et al.’s Legal Arguments	73
IX.	THE CHESTNUT RIDGE #2 TIMBER SALE	75
	Introduction	75
	Administrative Procedures	76
	Scoping Procedures and Public Comments	76
	Environmental Assessment Procedures and Public Comments	76
	Administrative Appeal Procedures and Public Appeals	76
	Revised Environmental Assessment Procedures and Public Comments	78

	Administrative Appeal Procedures and Public Appeals	79
	Legal Procedures	80
	Analysis of the Primary Commenter, Appellant, and Litigant	81
	Primary Commenter, Appellant, and Litigant Profile	81
	Analysis of SEDG’s Comments on the CRTS EA	81
	Analysis of Heartwood/SEDG’s Administrative Appeal of the CRTS DN/FONSI	82
	Analysis of Heartwood/JMP/PAW/SEDG’s Administrative Appeal of the Revised CRTS DN/FONSI	84
	Analysis of SEDG et al.’s Legal Arguments	86
X. – Part I	THE GYPSY MOTH PHEROMONE RESEARCH STUDY	87
	Introduction	87
	Administrative Procedures	87
	Scoping Procedures and Public Comments	87
	Environmental Assessment Procedures and Public Comments	88
	Administrative Appeal Procedures and Public Appeals	88
	Analysis of the Primary Commenter, Appellant, and Litigant	89
	Primary Commenter, Appellant, and Litigant Profile	89
	Analysis of SABP’s Comments on the GMPRS SN	89
	Analysis of SABP’s Comments on the GMPRS EA	90
	Analysis of SABP’s Administrative Appeal of the GMPRS DN/FONSI	91
X. – Part II	THE BUFFALO BRANCH FUELWOOD SALE	93
	Introduction	93
	Administrative Procedures	94
	Scoping Procedures and Public Comments	94
	30-day Review Notice Procedures and Public Comments	94
	Administrative Appeal Procedures and Public Appeals	94
	Environmental Assessment Procedures and Public Comments	95
	Administrative Appeal Procedures and Public Appeals	95
	Analysis of the Primary Commenter, Appellant, and Litigant	96

	Analysis of SABP’s Comments on the BBFS EA	96
	Analysis of SABP’s Administrative Appeal of the BBFS DN/FONSI	96
X. – Part III	THE TAYLOR BRANCH SALVAGE SALES	98
	Introduction	98
	Administrative Procedures	99
	Scoping Procedures and Public Comments	99
	Administrative Appeal Procedures and Public Appeals	99
	30-day Review Notice Procedures and Public Comments	100
	Administrative Appeal Procedures and Public Appeals	100
	General Administrative Procedures	101
	Environmental Assessment Procedures and Public Comments	102
	Administrative Appeal Procedures and Public Appeals	102
	Administrative Revisions	103
	Analysis of the Primary Commenter, Appellant, and Litigant	104
	Analysis of SABP’s Comments on the TBSS 30-day Review Notice	104
	Analysis of SABP’s Administrative Appeal of the Revised TBSS DM	105
	Analysis of SABP’s Comments on the TBSS EA	106
	Analysis of SABP’s Administrative Appeal of the TBSS DN/FONSI	109
X. – Part IV	THE CUBA TIMBER SALE	112
	Introduction	112
	Administrative Procedures	113
	Scoping Procedures and Public Comments	113
	30-day Review Notice Procedures and Public Comments	113
	Administrative Appeal Procedures and Public Appeals	113
	General Administrative Procedures	114
	Environmental Assessment Procedures and Public Comments	115
	Administrative Appeal Procedures and Public Appeals	115

	Administrative Revisions	116
	Analysis of the Primary Commenter, Appellant, and Litigant	116
	Analysis of SABP’s 30-day Review Notice Comments,	
	Administrative Appeal of the DM, and EA Comments	
	for the CTS	116
	Analysis of SABP’s Administrative Appeal of the CTS	
	DN/FONSI	117
X. – Part V	LEGAL PROCEDURES AND ANALYSES FOR GMPRS, BBFS, TBSS, AND CTS	119
	Introduction	119
	Analysis of the Primary Commenter, Appellant, and Litigant	120
	Analysis of SABP’s Legal Arguments	120
XI.	THE MCJENNINGS PROJECT	122
	Introduction	122
	Administrative Procedures	123
	Scoping Procedures and Public Comments	123
	Environmental Assessment Procedures and Public Comments	123
	Administrative Appeal Procedures and Public Appeals	124
	Legal Procedures	125
	Analysis of the Primary Commenter, Appellant, and Litigant	125
	Primary Commenter, Appellant, and Litigant Profile	125
	Analysis of VFW/AV’s Comments on the MJP SN	125
	Analysis of VFW/AV’s Comments on the MJP EA	126
	Analysis of VFW/AV’s Administrative Appeal of the MJP	
	DN/FONSI	128
	Analysis of VFW/AV’s Legal Arguments	132
XII. – Part I	COMPARATIVE FINDINGS OF THE CASE STUDIES	133
	Introduction	133
XII. – Part II	COMPARATIVE FINDINGS OF CASE ATTRIBUTES	134

XII. – Part III	COMPARATIVE QUANTITATIVE FINDINGS OF PUBLIC COMMENTS, ADMINISTRATIVE APPEALS, AND LITIGATION	135
	Introduction	135
	Public Comments	135
	Scoping Notice Comments	135
	30-day Review Notice Comments	136
	Environmental Assessment Comments	137
	Total Public Comments	138
	Administrative Appeals	138
	Litigation	139
	Problems with Quantifying Public Comments and Administrative Appeals	140
XII. – Part IV	COMPARATIVE QUALITATIVE FINDINGS OF PUBLIC COMMENTS, ADMINISTRATIVE APPEALS, AND LEGAL ARGUMENTS	143
	Introduction	143
	Public Comments	143
	Scoping Notice Comments	143
	Environmental Assessment Comments	144
	Administrative Appeals	146
	Legal Arguments	148
XII. – Part V	COMPARATIVE FINDINGS OF PUBLIC PARTICIPATORY EVENTS	150
XII. – Part VI	COMPARATIVE FINDINGS OF CASE LENGTH	152
	Administrative Procedures	152
	Legal Procedures	153
	Administrative and Legal Procedures	153
XIII.	CONCLUSIONS	155
	Introduction	155
	Conclusion I	155

Case Attributes	155
Suggested Solution	156
Conclusion II	156
Quantitative Research Methodologies	156
Quantitative Data Presentation	157
Individuals vs. Special-Interest Groups	157
Suggested Solution	158
Conclusion III	158
Qualitative Research Methodologies	158
Public Comments	159
Administrative Appeals	159
Suggested Solution	159
Public Comments and Administrative Appeals	160
Suggested Solution	160
Conclusion IV	161
Administrative Deficiencies	161
Suggested Solution	161
Conclusion V	162
Legislative Reform	162
Suggested Solution	163
Conclusion VI	164
The New Forest Service Project-Level Regulations	164
Effects and Suggested Solutions	164
Summary	165
REFERENCES	168
APPENDICES	172
VITA	510

LIST OF TABLES

Table		Page
1	Public Scoping Notice Comment Characteristics	136
2	30-day Review Notice Comment Characteristics	136
3	Environmental Assessment Comment Characteristics	137
4	Administrative Appeal Characteristics	139
5	Litigation Characteristics	140

LIST OF FIGURES

Figure		Page
1	Ranger Districts on the George Washington and Jefferson National Forests	13

LIST OF APPENDICES

Appendix		Page
A	MATRIX KEYWORDS	172
B	THE RUCKER LAP TIMBER SALE	176
C	THE HEMATITE TIMBER SALE	194
D	THE ALBA SALVAGE TIMBER SALE	220
E	THE ARNEY GROUPS PROJECT	238
F	THE TERRAPIN MOUNTAIN PROJECT	271
G	THE WILSON MOUNTAIN PROJECT	308
H	THE CHESTNUT RIDGE #2 TIMBER SALE	340
I	THE GYPSY MOTH PHEROMONE RESEARCH STUDY	393
J	THE BUFFALO BRANCH FUELWOOD SALE	402
K	THE TAYLOR BRANCH SALVAGE SALES	417
L	THE CUBA TIMBER SALE	461
M	THE MCJENNINGS PROJECT	479
N	CASE ATTRIBUTES	505
O	CASE LENGTH TRENDS	507

LIST OF ACRONYMS AND ABBREVIATIONS

ADO	Appeal Deciding Officer
ADP	Allegheny Defense Project
AFMG	Appalachian Forest Management Group
AFSEE	Association of Forest Service Employees for Environmental Ethics
AGP	Arney Groups Project
APA	Administrative Procedure Act of 1946
ARA	Appeals Reform Act of 1993
ARC	Appalachian Restoration Campaign
ARO	Appeal Reviewing Officer
ASTS	Alba Salvage Timber Sale
AT	Appalachian Trail
ATC	Appalachian Trail Conference
ATVs	All-terrain Vehicles
AV	Appalachian Voices
AVOA	Arnold Valley Opportunity Area
AVOAA	Arnold Valley Opportunity Area Analysis
BA	Basal Area
BBFS	Buffalo Branch Fuelwood Sale
BE	Biological Evaluation
BMPs	Best Management Practices
BO	Biological Opinion
CA	Conservation Agreement
CABP	Central Appalachian Biodiversity Project
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CISC	Continuous Inventory of Stand Conditions
CRTS	Chestnut Ridge #2 Timber Sale
CTF	Citizens Task Force
CTL	Cut-to-length

CTS	Cuba Timber Sale
CWA	Clean Water Act
CWD	Coarse Woody Debris
DBH	Diameter at Breast Height
DFC	Desired Future Condition
DM	Decision Memo
DN	Decision Notice
DOI	United States Department of the Interior
DRD	Deerfield Ranger District
DRRD	Dry River Ranger District
DWSRD	Deerfield and Warm Springs Ranger Districts
EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act of 1973
ESH	Early Successional Habitat
FCC	Forest Conservation Council
FDR	Federally Designated Road
FEIS	Final Environmental Impact Statement
FLRMP	Final Land and Resource Management Plan
FONSI	Finding of No Significant Impact
FP	Forest Plan
FSH	Forest Service Handbook
FSM	Forest Service Manual
FSR	Forest Service Road
GMPRS	Gypsy Moth Pheromone Research Study
GPC	Georgia Pacific Corporation
GPRD	Glenwood and Pedlar Ranger District
GRD	Glenwood Ranger District
GWJNF	George Washington and Jefferson National Forests
GWNF	George Washington National Forest
HCA	Habitat Conservation Agreement

HTS	Hematite Timber Sale
HWA	Hemlock Woolly Adelgid
IB	Indiana Bat
IBRS	Indiana Bat Recovery Strategy
ID	Interdisciplinary
IDM	Informal Disposition Meeting
JMP	John Muir Project
JNF	Jefferson National Forest
JRRD	James River Ranger District
LRMP	Land and Resource Management Plan
LWD	Large Woody Debris
MA	Management Area
MBF	Thousand Board Feet
MBTA	Migratory Bird Treat Act of 1918
MIS	Management Indicator Species
MJP	McJennings Project
MMBF	Million Board Feet
MUSYA	Multiple-Use Sustained-Yield Act of 1960
MVP	Minimum Viable Population
NBATC	Natural Bridge Appalachian Trail Club
NEPA	National Environmental Policy Act of 1969
NF	National Forests
NFMA	National Forest Management Act of 1976
NFPA	National Forest Protection Alliance
NFS	National Forest System
NOA	Notice of Appeal
NPS	Unites States National Parks Service
NRCD	New Castle Ranger District
NRGSC	New River Group Sierra Club
NRHP	National Register of Historic Places
NRT	National Recreation Trail

NTMB	Neo-tropical Migratory Birds
OAA	Opportunity Area Analysis
OG	Old Growth
OHVs	Off-highway Vehicles
OIG	Office of the Inspector General
OTA	Office of Technology Assessment
PA	Project Area
PAW	Preserve Appalachian Wilderness
PCTS	Pearcey Creek Timber Sale
PETS	Proposed Endangered and Threatened Species
POS	Peaks of Otter salamander
PRD	Pedlar Ranger District
RATC	Roanoke Appalachian Trail Club
RD	Ranger District
RHL	Rock Haven Lodge
RLRMP	Revised Land and Resource Management Plan
RLTS	Rucker Lap Timber Sale
RPA	Forest Rangeland and Renewable Resources Planning Act of 1974
SABP	Southern Appalachian Biodiversity Project
SAFC	Southern Appalachian Forest Coalition
SC	Sierra Club
SEDG	Shenandoah Ecosystems Defense Group
SELC	Southern Environmental Law Center
SN	Scoping Notice
TBSS	Taylor Branch Salvage Sales
TES	Threatened and Endangered Species
TMDL	Total Maximum Daily Load
TMP	Terrapin Mountain Project
TRO	Temporary Restraining Order
TSI	Timber Stand Improvement
TWS	The Wilderness Society

USDA	United States Department of Agriculture
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
VDCR	Virginia Department of Conservation and Recreation
VDGIF	Virginia Department of Game and Inland Fisheries
VDHR	Virginia Division of Historic Resources
VDNH	Virginia Division of Natural Heritage
VFW	Virginia Forest Watch
VQO	Visual Quality Objective
VSHPO	Virginia State Historic Preservation Office
WMP	Wilson Mountain Project
WORO	White Oak Ridge Opportunity Area
WOROAA	White Oak Ridge Opportunity Area Analysis

CHAPTER I

INTRODUCTION AND BACKGROUND

The Advent of Public Involvement in National Forest Management Decision-making

Since the environmental movement began in the 1960s and 1970s, the public has demanded a greater voice in decisions affecting public lands and national forests, and Congress has responded by passing the National Environmental Policy Act (NEPA) of 1969, the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, the National Forest Management Act (NFMA) of 1976, and the Appeals Reform Act (ARA) of 1993 – all four mandating public involvement in national forest management decision-making, directing the Forest Service to formally obtain the views of the public about possible management decisions, and providing an avenue of redress for citizens or groups dissatisfied with agency decisions (Baldwin, 1997; Floyd, 1999; Coulombe, 2004; Gericke & Sullivan, 1994; Jones & Callaway, 1995; Steelman, 1999; Tipple & Wellman, 1991).

Together, these laws and processes advocate citizen empowerment and legitimate public involvement; they reflect the desire of citizens to influence agency decisions and the intent of Congress to direct how national forests should be managed; and they indeed appeared to address conflicts over wilderness, clearcutting, biodiversity, herbicide use, and other contentious national forest issues (Floyd, 1999). However, these laws and processes have simply identified problems rather than solved them, they have defined procedures rather than goals, they have polarized conflicts over national forest issues, and they have caused public involvement in national forest management decision-making to become increasingly complex, costly, and ineffective (Floyd, 1999). More simply, national forest management conflicts, administrative appeals, and litigation have continued to escalate, public involvement has largely failed to resolve disputes, and the future of national forest management will depend on new approaches to address these tribulations.

The Problem

To remedy national forest management conflicts, many scholars and practitioners have proposed that increased public involvement in national forest management decision-making may reduce national forest management disputes and restore public trust in the

Forest Service by better ensuring that decisions are made in the public interest. Although this may be true, national forest legislation, public involvement and participation processes, and litigation have impeded the possible benefits of public involvement in national forest management decision-making. Of these impediments, this thesis focuses on public involvement and participation processes and litigation.

For example, the pre-decisional comment and post-decisional administrative appeals process of the Forest Service has been found, at times, to discourage collaboration and to foster and encourage post-decisional questioning of proposed actions (57 Fed. Reg. 10444, 1992). Thus, the assumption that public comments and administrative appeals will diminish national forest management conflicts because they provide citizens with the opportunity to challenge a line officer's decision to proceed with a project has often failed, leading the Forest Service to believe that in spite of their "best efforts," the administrative appeals process tends to feed distrust rather than build on shared values and goals (USDA Forest Service, 2002). Furthermore, litigation often exacerbates the controversy and polarization surrounding resource use dilemmas and impedes positive working relationships between the agency and outside interests. For example, Jones and Taylor (1995) found that judicial interpretations of NEPA and NFMA decisions have favored those seeking non-consumptive uses of the national forests. Thus, environmentalist interests are much more likely and encouraged than commodity interests to use litigation as a tool to seek the changes they desire in national forest management, especially since most environmental statutes emphasize environmental protection (Jones & Taylor, 1995; Malmshemer, Keele, & Floyd, 2004). As a result, those in favor of commodity production are less likely to find litigation against the agency useful (Jones & Taylor, 1995), causing them to denounce non-consumptive advocates who find the judicial process beneficial to their agendas. Clearly, this scenario will only extend the controversy between consumptive and non-consumptive users of the national forests.

Despite these claims, however, there remains much debate about the need for and usefulness of public involvement and participation processes and litigation. And for the past few decades, all stakeholders involved in national forest management decision-making have battled for and against public involvement and participation in national

forest management decision-making, and the opportunity to litigate the Forest Service, without resolve. Thus, it is necessary to recognize this debate before proceeding with this thesis.

CHAPTER II
REVIEW OF RELEVANT LITERATURE AND RESEARCH

Review of Relevant Literature

The Administrative Appeals Process Controversy

The controversy over the Forest Service's administrative appeals process has long been attended by charges and countercharges, unsubstantiated accusations and counterclaims, and value-based arguments by all entities involved (Tobias, 1992; Vining & Ebreo, 1991). On one side, representatives of the timber industry and others accuse environmentalists and others of using the administrative appeals process to exploit substantive or procedural technicalities, thereby delaying National Forest Land and Resource Management Plans (LRMPs), timber sales, and other project-level activities on the national forests (Tobias, 1992). On the other side, environmentalists and others allege that the Forest Service authorizes timber cutting without adequately considering environmental factors in violation of the agency's statutory mandates, and that the timber industry cuts timber without concern for the environment, so they must use the administrative appeals process to prevent resource exploitation on the national forests (Tobias, 1992). Altogether, stories are recounted by all participants involved in the process, and practically all of them are anecdotal in nature (Tobias, 1992).

Critics of the Administrative Appeals Process

Critics of the administrative appeals process assert that administrative appeals are increasing every year, regardless of management decisions; that they are stopping or unacceptably slowing the decision-making process and the use of federal lands and resources; that many are "frivolous" and brought for the purpose of frustrating rather than improving land management actions; and that they greatly increase management costs (Baldwin, 1997; Manring, 1998; Manring, 2004; Teich, Vaughn, & Cortner, 2004; Tobias, 1992). Stimulated by these criticisms, those industries engaged in extracting resources from the national forests, certain recreational users of the forests, a number of politicians, and some Forest Service officials have advocated that the administrative appeals process be abolished or truncated (Tobias, 1992).

More often than not, the Forest Service also takes a negative view of administrative appeals, maintaining that they have become a "significant generator of

paperwork and a time-consuming, procedurally onerous, confrontational, and costly effort, diverting resources that otherwise might be directed to substantive on-the-ground resource management needs and accomplishments (57 Fed. Reg. 10444, 1992). In June 2002, the Forest Service published an internal review called “The Process Predicament,” which criticized the administrative appeals process for greatly delaying Forest Service projects, which, for time-sensitive projects, “can be disastrous” (USDA Forest Service, 2002, p. 28). Furthermore, the agency described how the opportunity to appeal can discourage collaboration:

If a group’s only chance to affect an outcome is before a decision is made, its incentive to engage from the outset in collaborative decision-making will be strong. However, if the group can later appeal the decision, it can ignore opportunities for pre-decisional collaboration and focus instead on post-decisional challenges. Instead of helping parties work out their differences, the appeals process can all too easily become a tool for obstruction. (USDA Forest Service, 2002, p. 28)

Selin, Schuett, and Carr (1997) seem to supplement this argument, finding that a number of Forest Service managers contend that many advocacy organizations lack incentives to participate in collaborative forums and prefer instead to achieve their objectives through administrative appeals and litigation. In addition, Jones and Taylor (1995) found that only about 1% of unsuccessful administrative appeals actually make it to litigation in the court system, which has resulted in a widespread belief in the agency that the primary impact of the administrative appeals process is to delay decisions, not change them.

Proponents of the Administrative Appeals Process

Proponents of the administrative appeals process assert that administrative appeals have not been excessive or unwarranted; that few appeals are “frivolous,” and that there are current means to deal with such administrative appeals; and that Congress intended to include the review of agency decisions to ensure public participation, and that the agency adequately takes into account the various laws and policies that Congress intended to implement (Baldwin, 1997). Under the scope of these statements, environmentalists, conservationists, other recreational users, a number of politicians, and

some Forest Service officials have argued that administrative appeal procedures can be improved without eliminating opportunities that administrative appeals allow for additional and meaningful public participation (Baldwin, 1997; Manring, 1998), and that initiatives to reduce access to the process would sharply reduce Forest Service accountability to the public and increase exploitation of the national forests (Jones & Taylor, 1995; Manring, 1998; Tobias, 1992).

In response to “The Process Predicament” report (USDA Forest Service, 2002), Cortner, Teich, and Vaughn (2003) note that the report provided largely anecdotal evidence to support the argument that administrative appeals greatly delay planning and project-level activities. They agreed that administrative appeals may prolong the process because the fear of administrative appeals often forces Forest Service officials to go through the “painfully slow process of document preparation (‘bullet-proofing’)” (Cortner et al., 2003, p. 53). However, they proposed, as well as others (Culhane, 1981; Jones & Taylor, 1995; Teich et al., 2004), that this fear can also prompt the agency to build a stronger scientific justification for its decisions and to be more sensitive to public objections to proposed projects (Cortner et al., 2003). This observation can also be supported by a 1990 Forest Service study, which claimed: “It would be safe to say that the appeals process has made us better implementers of the NEPA, which results in better decision-making. This, in turn, results in better land management” (USDA Forest Service, 1990, p. 15). In addition, an Office of Technology Assessment (OTA) report concluded that the administrative appeals process promotes sound decision-making and has helped the Forest Service meet evolving NFMA requirements (OTA, 1992).

Finally, access to the administrative appeals process is advocated by the Association of Forest Service Employees for Environmental Ethics (AFSEE), which claims that “the current appeals process has been positive because it has given citizens an additional oversight role in national forest management ... The agency should be trying to figure out why so many community and environmental groups are appealing ... rather than trying to stop the appeals process altogether” (Inner Voice, 1992, p. 3). Goodman (1994) also believes limitations to the administrative appeals process may exacerbate, rather than alleviate, the problems of national forest management because such changes would address a symptom and not the problem.

The Litigation Controversy

The use of the court system to challenge actions or inactions of the Forest Service has evolved through the combination of laws enacted during the past few decades to facilitate citizen access to judicial review, and legal precedent set through case law (Jones & Taylor, 1995). For example, the passage of the NEPA, the Endangered Species Act (ESA) of 1973, and the NFMA have facilitated the use of the judicial system as a tool for citizen groups to force changes in agency behavior (Ackerman, 1990). In addition, the judicial system is being used by a variety of interests to seek change within the Forest Service, including both those seeking greater resource protection, and to a lesser extent, those seeking consumptive resource use or development on the national forests (Jones & Taylor, 1995). However, there are opposing views on the usefulness and necessity of such litigation.

Critics of Litigation against the Forest Service

Dale Robertson, former Chief of the Forest Service, complained that overly technical conservationists unnecessarily delay timber production, that everyone is suing the Forest Service, and that the agency can be 99.9% correct, yet lose on a minor detail, usually implicating some procedural nicety (Tobias, 1992). Robertson added that the plethora of procedural and substantive requirements, which individuals demand that the Forest Service satisfy perfectly, have created a difficult working environment for Forest Service personnel (Tobias, 1992). Behan (1990) indirectly supplements this argument, stating that the NFMA is impossible to administer without legal challenges because the law is so complex and so laden with vague provisions that virtually any contested LRMP can be shown to be illegal.

Other critics of litigation against the Forest Service argue that federal courts have not consistently applied the confusing and overlapping elements of standing in cases involving review of Forest Service decisions (Loose, 1989). Moreover, they complain that the requirement of standing to sue is practically nonexistent for citizens and special-interest groups (Siegel, 1972), opening the floodgates for challenges to agency decisions.

Proponents of Litigation against the Forest Service

Most individuals or special-interest groups who commonly use the court system to challenge agency actions probably follow the philosophy of one environmental group

who reports: “Given the Forest Service’s history of non-compliance with federal regulations, citizen enforcement is crucial to the effectiveness of any legislation regarding our federal lands” (Save America’s Forest, 1992, p. 1). Thus, they are likely to use the court system for reasons identified by Jones and Taylor (1995) and Malmshemer et al. (2004): (1) litigation appears to change the time frame under which the agency addresses a problem by forcing the issue onto the agency’s policy agenda and pushing the agency to view the situation in a new way; (2) court decisions against the Forest Service appear to play a clear role in catalyzing, and sometimes directly causing, substantive changes in on-the-ground management of the national forests; and (3) environmental statutes’ emphasis on environmental protection encourages environmental interests to litigate. The increasing amount of litigation used to challenge agency actions over the past two decades (Jones & Taylor, 1995; Malmshemer et al., 2004; Mortimer, 2003) seems to reflect this viewpoint.

Unlike critics of litigation against the Forest Service, however, proponents of litigation believe that they begin at a disadvantage and face a heavy burden in the courts (Goodman, 1994). They believe that standing has become an increasingly difficult hurdle for challenging federal agency actions (Bobertz & Fischman, 1993), and they argue that the rules for supplementing the administrative record, and the guidelines for judicial review, diminish fair opportunities to due process. For example, Goodman (1994) argues that given the agency’s history of mismanagement of resources, courts should allow supplementation of the agency’s administrative record, instead of passively deferring to agency expertise. Altogether, proponents of litigation against the Forest Service view these barriers as major deterrents to citizen involvement in the judicial process (Jones & Taylor, 1995).

Review of Relevant Research

Studies on public comments, administrative appeals, and litigation pertaining to Forest Service planning and projects seem to have begun in the late 1960s and 1970s, in conjunction with the rise of national forest management disputes and the passage of landmark environmental legislation, such as the Multiple-Use Sustained Yield Act (MUSYA) of 1960, the NEPA, the ESA, the RPA, and the NFMA. However, the number of studies specifically addressing public comments, administrative appeals, and litigation

is minimal, especially for such a contentious issue. Unfortunately, such studies tend to be sporadic, reoccurring during times of national forest management crises, which is inappropriate and shortsighted (Mortimer, Scardina, & Jenkins, 2004). Moreover, the studies tend to be quantitative or anecdotal in nature, and yet researchers continue to advocate for comprehensive, systematic, empirical examinations without considering the possible benefits that comprehensive, systematic, qualitative research could contribute to identifying and possibly resolving the problems associated with public involvement and participation processes in Forest Service decision-making, as well as litigation.

Research on National Forest Public Comments

After conducting an in-depth literature review, only one qualitative study appears to have been directed at pre-decisional national forest public comments. In the study, Steelman (1999) analyzed public comments received on the draft forest plan for the Monongahela National Forest in West Virginia, which spanned a six month period from December 1984 to May 1985. In addition, extensive interviews with the Monongahela planners and staff were conducted to evaluate the types of public comments that were valued by the Forest Service.

Research on National Forest Administrative Appeals

In the past, studies of national forest administrative appeals have only been quantitative in nature, focusing on how many administrative appeals the Forest Service processes each year, where the administrative appeals were located, who the appellants are, what types of projects are appealed, the frequency and nature of the administrative appeal decisions rendered by the agency, and how much administrative appeal processes cost (Baldwin, 1997; Cortner et al., 2003; Gericke & Sullivan, 1994; Jones & Taylor, 1995; Teich et al., 2004; US GAO, 2001). These variables have been used to describe problems or benefits of the administrative appeals process, but the result has been numerous studies that show different numbers of administrative appeals over time, different characterizations of appellants, different financial costs attributed to administrative appeals, and different conclusions about their usefulness. This type of analysis has largely failed to clearly identify the problem, resolve the problem, or ameliorate the conflicts. Thus, it may be safe to assume that quantitative variables are largely irrelevant for resolving the problems associated with administrative appeals.

Research on National Forest Litigation

Research on national forest litigation is also minimal, and we know very little about litigation challenging the Forest Service's management decisions for the national forests (Malmsheimer et al., 2004). Unlike national forest administrative appeal research, however, national forest litigation research has been much more qualitative in nature. For example, numerous authors have qualitatively examined the impact of national forest management judicial opinions (Alden & Ellefson, 1997; Parent, 1992; Parker, 1995; Wenner, 1982; Wenner & Dutter, 1988), while others have quantitatively and qualitatively examined national forest litigation to analyze trends in the use of courts to force agency change, to assess the on-the-ground impact of successful lawsuits against the Forest Service, and to attempt to establish a cause-and-effect relationship between legal challenges and agency change (Jones & Taylor, 1995; Malmsheimer et al., 2004).

CHAPTER III PROJECT DESIGN

Justification for the Study

Forest Service administrators and managers would like to know how best to cope with expressions of dissatisfaction with their decisions emanating from their various clientele groups, to avoid expensive and time-consuming administrative and judicial reviews so that they can carry out their mission of “Caring for the land and serving the people.” The question is: Can they formulate “administrative remedies” that will keep initially small disagreements from becoming expensive and time-consuming administrative appeals or lawsuits? More importantly, the question is not whether the public should be involved in Forest Service decision-making, but when should they be involved; how much should they be involved; how should they be involved; and how can such involvement best be achieved for the benefit of everyone. Seeking answers to these questions served as the primary reason for conducting this thesis.

The second reason for conducting this thesis was based on the lack of comprehensive, systematic, in-depth, qualitative analyses of public comments, administrative appeals, and legal arguments involving Forest Service project-level activities. With such an analysis, the content of public comments, administrative appeals, and legal arguments were identified, revealing their merit and contribution to Forest Service decision-making. It may be more important to understand what commenters, appellants, and litigants are saying, instead of just knowing how many there are or who they are. It is important to know whether public comments, administrative appeals, and legal arguments contribute to better land management decisions that are scientifically sound and in accordance with the public interest. Above all, it is important to know if there is a nexus between the opportunities for the public to comment, appeal, and litigate; and what effect these opportunities have on the behavior of public participants and the content of their comments, administrative appeals, and legal arguments.

The only study attempting to understand this nexus was designed to determine if a connection existed between an absence of opportunities for public involvement in Forest Service decision-making and the presence of litigation initiated by citizens’ groups to obtain judicial review of agency decisions (Cutler, 1972), yet it does not analyze public

comments and administrative appeals. We must also be mindful that this study was conducted under different public comment and administrative appeal regulations, and before the passage of the NEPA, the RPA, the NFMA, the ARA, and many other important land management-related statutes.

Objectives of the Study

Based on these identified problems, deficiencies, and questions, the objectives of this study were to:

- (1) Investigate and qualitatively analyze Forest Service project-level public comments, administrative appeals, and legal arguments.
- (2) Demonstrate how an in-depth investigation of the content of public comments, administrative appeals, and legal arguments *can supplement* the anecdotal evidence and quantitative studies on Forest Service administrative appeals and litigation.
- (3) Investigate and describe methods of public participation used by the Forest Service throughout the decision-making process.
- (4) Investigate and seek answers to a series of questions, including:
 - (a) Are there particular forest attributes that prompt public comments, administrative appeals, and litigation?
 - (b) Do individuals or special-interest groups change their claims of dissatisfaction with Forest Service projects throughout different stages of the public involvement process?
 - (c) Do individual(s) and special-interest group(s) coordinate efforts with each other?
 - (d) Do public comments, administrative appeals, or the threat of litigation effect Forest Service decisions?
 - (e) What were the legal bases for the lawsuits?
 - (f) Do these cases have any common denominators?
- (5) Suggest possible solutions for resolving identified problems.

Project Materials

The thesis investigated public comments and administrative appeals for Forest Service project-level activities (pursuant to 36 C.F.R. § 215 – Notice, Comment and Appeal Procedures for National Forest System Projects and Activities, effective January 3, 1994 through June 4, 2003), as well as legal arguments in lawsuits filed against the agency, by analyzing seven lawsuits, including a total of 12 project-level activities, and their administrative records, collected from Forest Service officials at the George Washington and Jefferson National Forests (GWJNF) Headquarters in Roanoke, Virginia.

These cases, which took place on various Ranger Districts of the GWJNF (Figure 1), represent 7 out of 10 lawsuits filed (and decided) against the GWJNF from 1994 to the present day. Two of the omitted lawsuits had administrative records that were unavailable for this study, and one of the omitted lawsuits involved Special-Use Authorization, pursuant to 36 C.F.R. § 251, Subpart C, which is outside the scope of this study.

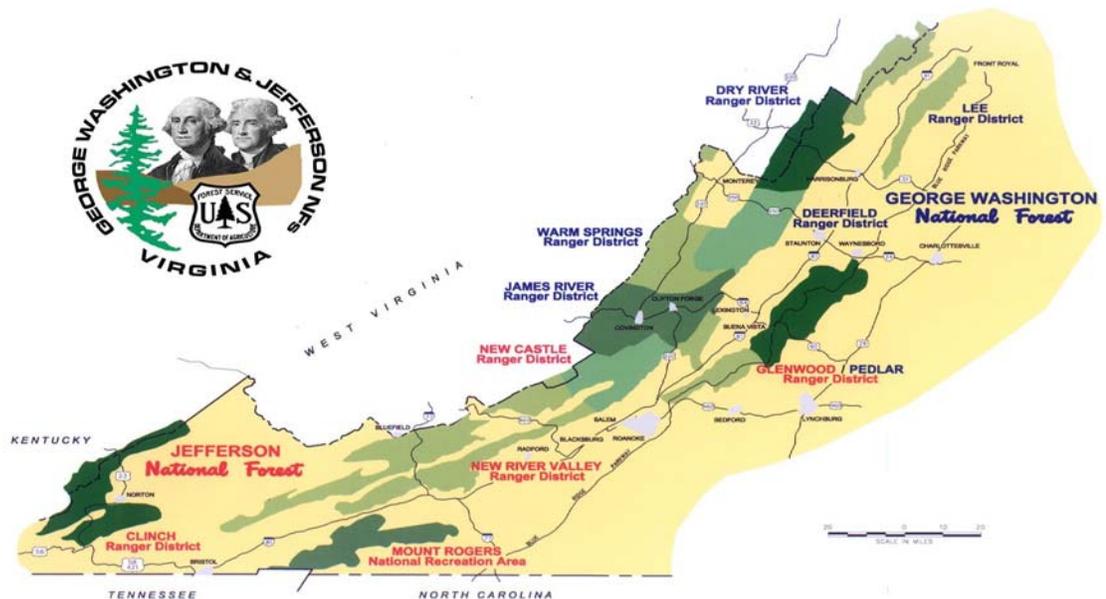


Figure 1. Ranger Districts on the George Washington and Jefferson National Forests

Project Methods

Investigation and Narration of Case Procedures

The court documents and administrative records were used to investigate and narrate the entire procedural, public involvement, and decision-making processes from beginning to end for each case. More specifically, the administrative records were used to investigate and narrate: (1) public comment and administrative appeal procedures; (2) public comments and administrative appeals; (3) public participation methods used by the Forest Service; and (4) the decisions rendered by Forest Service officials after receiving public comments and administrative appeals, and the court documents were used to investigate and narrate: (1) legal procedures; (2) the basis for legal complaints; (3) legal arguments filed by the plaintiffs; and (4) the decisions rendered by the court after reviewing the legal arguments.

Public Comment, Administrative Appeal, and Legal Argument Analyses

To investigate and analyze public comments, administrative appeals, and legal arguments, in-depth qualitative and contextual research methodologies were employed, as well as a combination of traditional legal research techniques, utilizing plaintiffs' and defendants' briefs and pleadings, and court proceedings and judicial opinions. Such investigation and analyses were conducted individually, as well as comparatively for the cases, allowing for a detailed analysis of public comments, administrative appeals, and legal arguments filed by individuals or special-interest groups within each case and among the cases.

More importantly, to qualitatively analyze public comments, administrative appeals, and legal arguments, it was first determined that not all public comments and administrative appeals filed could be analyzed in a reasonable time or manner. As a result, it was determined that the public comments, administrative appeals, and legal arguments of the individual or special-interest group who filed the lawsuit in each case would be analyzed. Thus, a primary commenter, appellant, and litigant in each case was identified. Four lawsuits were filed by only one individual or special-interest group, making it simple to identify the primary commenter, appellant, and litigant in those cases. One lawsuit was filed by two special-interest groups, so they were both classified as the primary commenter, appellant, and litigant, and their public comments and administrative

appeals were combined and analyzed as one. Two lawsuits were filed by several special-interest groups and individuals, and it was determined that not all of their public comments and administrative appeals could be analyzed in a reasonable time or manner; thus, the first group or individual listed on the lawsuit, which in these cases was the same special-interest group, was classified as the primary commenter, appellant, and litigant. To ensure that such selection had no effect on study results, the public comments and administrative appeals, if present, of the other litigants listed on the suits were reviewed and integrated into the analyses.

Finally, it is important to note that simple comparative quantitative analyses of public comments, administrative appeals, and legal arguments were conducted. Such analyses were meant to identify some trends and commonalities among all the cases, but more importantly, were meant to illustrate problems with such analyses.

Matrix Design

To qualitatively analyze public comments and administrative appeals filed by the primary commenter, appellant, and litigant in each case, at every stage of public involvement, it was necessary to design and create matrices that could be used to organize, analyze, and track their public comments and administrative appeals. Thus, the comments or appeal issues in each public comment or administrative appeal filed by the primary commenter, appellant, and litigant in each case, at every stage of public involvement, were broken down and placed into designated categories and numbered within categories. The categories were self-designed, based on keywords (Appendix A, pp. 172-175) and content, and in no way affect the results of the study because the categories were simply a way to organize, analyze, and track comments and appeal issues, not to reach major conclusions.

Furthermore, the matrices include the Forest Service's response to project-specific comments and appeal issues, found in appendices to the Environmental Assessments (EAs), Decision Memos (DMs), Decision Notices (DNs), and administrative appeal decision(s). Again, these responses were used to organize, analyze, and track Forest Service responses to specific comments and appeal issues filed by the primary commenter, appellant, and litigant in each case, at every stage of public involvement. As the study demonstrates, the Forest Service either: (1) specifically responded to project-

specific comments or appeal issues; (2) did not specifically address project-specific comments, but classified them as significant issues to be addressed in the EA; (3) did not specifically address non-specific comments or appeal issues; or (4) determined specific comments or appeal issues to be outside the scope of the project.

To summarize, each matrix has a Category, Comment or Appeal Issue, and Forest Service (USFS) or Appeal Deciding Officer (ADO) response column, with comments or appeals issues, and the Forest Service's response to such comments or appeal issues, categorized and numbered in the rows. These matrices can be found in Appendices B – M (pp. 176-505).

Finally, separate matrices were formulated to illustrate and compare all of the issues raised in every public comment and administrative appeal in each case, at every stage of public involvement. These issues were organized into the categories previously mentioned, and again, the matrices were simply used for illustration and comparison. These matrices can be found in Appendices B – M (pp. 176-505).

Classification of Commenters and Appellants

One of the most difficult parts of the study was the classification of commenters and appellants. Since there appears to be no set standards or guidelines for such classifications, it was determined, after discussion with several Forest Service officials, that the opening sentence of public comments and administrative appeals was the primary criterion for classifying commenters and appellants. Thus, to be classified as a special-interest group, public comments and administrative appeals had to include opening sentences stating:

1. "On behalf of Special-Interest Group X, I would like to submit..."
2. "Special-Interest X submits the following..."
3. "We would like to submit the following..."

Without such opening sentences, even a public comment or administrative appeal, for example, with a special-interest group letterhead, references to terms such as "we" and "us" in the body, or a signature by a special-interest group member, the public comment or administrative appeal was classified as being filed by an individual. Such classification is based on the assumption that most individuals are members of organizations and are sometimes inclined to recognize their organization, and without

opening sentences such as those previously mentioned, one can only assume that they were not authorized by the organization to submit public comments or administrative appeals on behalf of the organization. Thus, it is appropriate to classify them as individuals. In addition, it can be noted that some public comments and administrative appeals were filed on behalf of numerous special-interest groups and individuals. In these instances, the special-interest group or individual who filed the public comment or administrative appeal was counted as a commenter or appellant, and the special-interest group(s) or individual(s) filed on behalf of, were also recorded as commenter(s) or appellant(s). For example, if an individual filed a public comment on behalf of five special-interest groups and four individuals, the public comment was recorded as being filed by a total of five special-interest groups and five individuals.

Project Limitations

From the standpoint of scientific investigation, qualitative analyses of the court documents and their administrative records provided sufficient data for investigating public comments, administrative appeals, and legal arguments, as well as procedures. However, using case studies from 2 of 155 National Forests will limit the opportunity for generalizing the findings of the study. Moreover, it must be recognized that all cases in this study resulted in litigation, thus there is a lack of comparison between administrative appeals that did and did not result in litigation. Thus, it is suggested that the findings of this study be compared to cases where administrative appeals were filed but did not result in litigation.

Regardless of these limitations, qualitative analyses provided in-depth, detailed information that was used to verify some of the anecdotal evidence and quantitative studies that have been used to characterize administrative appeals and litigation, as well as lend needed depth to quantitative studies that fall short of truly identifying or suggesting remedies to the problem.

CHAPTER IV
ADMINISTRATIVE CASE STUDY PROCEDURES AND REGULATIONS

Introduction

The administrative procedures described in all of the cases for this study follow the general guidance of the Council on Environmental Quality (CEQ) Regulations for the NEPA, and the requirements for the ARA, for Forest Service project-level activities. However, there are slight differences in procedures for proposed actions, depending on whether an action is classified under 36 C.F.R. § 215.3(a) or 36 C.F.R. § 215.3(b) regulations. Such differences will be explained and are important to understand.

Proposed Actions under 36 C.F.R. § 215(a)

Proposed actions under the 36 C.F.R. § 215.3(a) regulation involve actions implementing national forest LRMPs for which an environmental analysis is prepared, and are subject to notice, comment, and administrative appeal. Such actions generally involve three administrative procedure and public involvement stages.

First, the Forest Service must decide to prepare an EA or environmental impact statement (EIS) (pursuant to 40 C.F.R. §§ 1501.3 and 1501.4), and thereafter, conduct scoping pursuant to 40 C.F.R. § 1501.7, which is generally used for determining the scope of issues to be analyzed and addressed in environmental analyses and for identifying the significant issues related to a proposed action. More specifically, the Forest Service must publish a public scoping notice (SN) of a proposed action, pursuant to 36 C.F.R. § 215.5; accept public SN comments on proposed actions subject to 36 C.F.R. § 215.3 for 30 days, pursuant to 36 C.F.R. § 215.6(a); and respond to public SN comments received during the comment period in an appendix to the environmental analysis, pursuant to 36 C.F.R. § 215.6(d)(e).

Second, the Forest Service must complete an EA or EIS and publish a public notice, pursuant to 36 C.F.R. § 215.5; accept public EA or EIS comments subject to 36 C.F.R. § 215.3 for 30 days, pursuant to 36 C.F.R. 215.6(a); and respond to public EA or EIS comments received during the comment period in an appendix to the environmental analysis, pursuant to 36 C.F.R. § 215.6(d)(e).

Finally, the Forest Service must publish a public notice of any decision which is subject to notice and comment under 36 C.F.R. § 215.3, pursuant to 36 C.F.R. § 215.9.

Thereafter, the Forest Service must accept written administrative appeals of decisions, pursuant to 36 C.F.R. § 215.7, within the 45 day administrative appeal filing period specified in the public notice, pursuant to 36 C.F.R. § 215.9, filed by any person who submitted written comment in response to a project environmental assessment, or provided comment or otherwise expressed interest in a particular proposed action by the close of the comment period specified in 36 C.F.R. § 215.6 (36 C.F.R. § 215.11). If no administrative appeal is filed, implementation of decisions subject to administrative appeal may occur five business days after the close of the administrative appeal filing period, and if a project is not appealable, pursuant to 36 C.F.R. 215.8, implementation may occur immediately upon publication of the notice of the decision (36 C.F.R. § 215.10(a)(c)). If an administrative appeal is filed, the Forest Service can dismiss administrative appeals without review, pursuant to 36 C.F.R. § 215.15, but if administrative appeals are accepted, the Forest Service must make attempts at informal disposition, pursuant to 36 C.F.R. § 215.16. If administrative appeals are not resolved through informal disposition meetings, the Responsible Official must notify the ADO in writing, and the ADO shall then advise the appeal reviewing officer (ARO) to proceed with formal review of the administrative appeal (36 C.F.R. § 215.16(e)). After reviewing the administrative appeal(s), the ARO makes recommendations to the ADO, and then the ADO must issue an administrative appeal decision not later than 45 days after the end of the administrative appeal filing period, pursuant to 36 C.F.R. § 215.17, either affirming or reversing the Responsible Official's decision, in whole or in part, and may include instructions for further action (36 C.F.R. § 215.18). This decision constitutes the final administrative determination of the United States Department of Agriculture (USDA), and implementation may occur 15 days following the date of the last administrative appeal decision (36 C.F.R. § 215.10(b)).

Proposed Actions under 36 C.F.R. § 215.3(b)

Categorical exclusions, in general, refer to “a category of actions which do not individually or cumulatively have a significant effect on the human environment...and for which, therefore, neither an EA or EIS is required” (40 C.F.R. § 1508.4; Forest Service Handbook (FSH) 1909.15, Chapter 30). Proposed actions under the 36 C.F.R. § 215.3(b) regulations involve proposed timber harvests categorically excluded from

documentation as described in FSH 1909.15, § 31.2(4), for which a project or case file and Decision Memo are required. Such timber harvests include: (1) removing 250,000 board feet or less of merchantable wood products, or salvage that removes 1 million board feet or less of merchantable wood products; (2) one mile or less of low standard road construction; and (3) regeneration of harvested or salvaged areas, where required (36 C.F.R. § 215.2). Such actions generally involve two or three administrative and public involvement stages.

First, the Forest Service must follow the scoping procedures previously described for proposed actions under 36 C.F.R. § 215.3(a). Second, the Forest Service may or may not provide a 30-day Review Notice comment period, since there is no EA or EIS to comment on. Finally, the Forest Service must follow the administrative appeal procedures previously described for proposed actions under 36 C.F.R. § 215.3(a).

CHAPTER V
THE RUCKER LAP TIMBER SALE

Introduction

The Rucker Lap Timber Sale (RLTS) on the Pedlar Ranger District (PRD) of the George Washington National Forest (GWNF) (Figure 1, p. 13) involved the decision to implement Alternative 2 in Management Area (MA) 17, after considering a total of two action alternatives and a no-action alternative. MA 17 comprised approximately 91,000 acres (approximately 8.3%) of the approximately 1.1 million total acres of the GWNF, with approximately 63,000 acres (approximately 69%) in the MA classified as suitable for timber production (GWNF Revised LRMP (RLRMP), pp. 2-14 and 3-88). MA 17 contains portions of the GWNF that were to be more intensively managed for timber using even-aged and uneven-aged timber cutting methods, and meant to provide a range of timber products in as efficient and economical a manner as consistent with multiple-use management (GWNF RLRMP, p. 3-88).

Alternative 2 included: (1) harvesting a total of approximately 47 acres in two cutting units using the modified shelterwood method, leaving approximately 20 to 30 square feet of basal area (BA) uncut; (2) thinning a total of approximately 59 acres in three cutting units; (3) pre- and/or post-harvest chainsaw site preparation on approximately 47 acres for natural regeneration in hardwood stands; and (4) planting wildlife food and cover, shrubs, and trees on five log landings. Together, these treatments produced approximately 569,000 board feet of wood products worth an estimated \$50,209. The net project revenue was estimated at \$36,514, after the reduction of estimated costs (\$13,695); so the RLTS was not below-cost.

The justification for the proposed action was to meet the direction set forth in the GWNF Revised Land and Resource Management Plan (GWNF RLRMP), as well as the Desired Future Condition (DFC) for MA 17, which was to have: (1) a balanced age class distribution of forest stands containing native tree species capable of sustained, high value timber production; (2) an association of mostly deciduous upland and cove hardwood species with white pine occurring as a minor or partial component and some small stringers of southern yellow pine; and (3) commodity outputs which contribute to the social and economic well-being of the people living in the area and help maintain a

way of life long associated with those living in the area (GWNF RLRMP, pp. 3-88 and 3-89).

Administrative Procedures

Scoping Procedures and Public Comments

On January 12, 1995, the Forest Service mailed the SN for the proposed RLTS to 70 interested members of the public. The Forest Service welcomed public involvement in helping to design and evaluate alternative courses of action and asked for specific comments on the proposal by February 16, 1995. The Forest Service received only eight public SN comments from four special-interest groups, three individuals, and one forest products industry. The primary issues raised in these comments seemed to focus on ecological, regeneration, and timber harvesting concerns, and a majority of the commenters generally opposed the proposed RLTS (Appendix B, Table 1B, p. 177).

Environmental Assessment Procedures and Public Comments

On October 30, 1995, the Forest Service mailed the RLTS EA and Comment Notice to 12 interested members of the public, including those who submitted public SN comments. On November 2, 1995, the EA comment period was opened for 30 days, until December 2, 1995. The Forest Service received only one public EA comment from an individual who previously submitted public SN comments and was generally opposed to the proposed RLTS.

Administrative Appeal Procedures and Public Appeals

On February 20, 1996, the Forest Service mailed the RLTS DN/Finding of No Significant Impact (DN/FONSI) to 12 interested members of the public, including those who submitted public SN and EA comments. On March 1, 1996, the administrative appeal period was opened for 45 days, until April 14, 1996. The Forest Service received only one public administrative appeal from the individual who previously submitted public SN and EA comments, and it was accepted.

On April 29, 1996, an Informal Disposition Meeting (IDM) was held at the PRD Office between an Acting District Ranger, the PRD Silviculturalist, and Robert Fener (the appellant). Mr. Fener did not wish to compromise or drop his administrative appeal; thus, the administrative appeal review continued.

On May 15, 1996, the ARO mailed the administrative appeal review to the ADO, recommending that the RLTS DN/FONSI be affirmed. On June 7, 1996, the ADO mailed the administrative appeal decision to Mr. Fener, and informed him that: (1) the District Ranger adequately addressed the issues raised by the appellant and documented those issues in the DN; (2) the disclosures in the EA and record supported the District Ranger's conclusions; and (3) the selected action would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the DN/FONSI, constituting the final administrative determination of the USDA.

Legal Procedures

After the DN/FONSI was affirmed, Robert Fener filed a complaint in the U.S. District Court for the Western District of Virginia on April 16, 1997, requesting a Temporary Restraining Order (TRO) and a Preliminary Injunction to prohibit the Forest Service from executing the RLTS. On June 24, 1997, the District Court Judge granted Summary Judgment in favor of the Forest Service and denied Mr. Fener's Motion for a TRO and Preliminary Injunction (*Fener v. Hunt*, 1997). Thereafter, Mr. Fener filed an Emergency Motion for Stay Pending Appeal and Temporary Injunction in the U.S. Court of Appeals for the Fourth Circuit on November 12, 1997, to prohibit logging, ground breaking, and road building activities associated with the RLTS. The Fourth Circuit Judge granted the Stay and Temporary Injunction until the Fourth Circuit could resolve the appeal. Finally, on June 23, 1998, the Fourth Circuit Judge affirmed the decision of the District Court, ending the dispute (*Fener v. Hunt*, 1998).

Analysis of the Primary Commenter, Appellant, and Litigant

Primary Commenter, Appellant, and Litigant Profile

The primary commenter, appellant, and litigant in this case is Robert Fener, who is an individual owning 95 acres of land surrounded by the GWNF. Mr. Fener's inholding was approximately 200 feet west of cutting Unit 2, which comprised 26 acres that was to be cut using the modified shelterwood method. Based on indications from the administrative record, court documents, and supplemental investigation via the Internet, there is no evidence that Mr. Fener is affiliated with any group; thus, he can be classified solely as an individual with a vested interest due to the proximity of his property in relation to the RLTS.

Mr. Fener's involvement in the RLTS began as he attempted to gather community opposition, before the SN was released, by hanging bulletin boards on the GWNF with a letter explaining reasons to oppose the timber sale and a petition to sign to support the opposition. In response to this effort, the Forest Service gave Mr. Fener a "warning notice" for violating 36 C.F.R. § 261.10(g) and removed his bulletin boards from the GWNF. More importantly, the Forest Service expressed that it was premature to present his concerns to the public without a finalized proposed action; that a petition with a group of signatures had no more weight than a letter from one public with specific comments, since they do not count votes for actions proposed through the environmental process; and that the public can provide input for project proposals during the SN and EA periods, in addition to their administrative appeal rights after a decision is issued.

Analysis of Robert Fener's Comments on the RLTS SN

In his SN comments, Mr. Fener submitted Access, Aesthetics, Archaeological/Natural Heritage Resources, Climatic, Community Opposition, Hydrological, Old Growth, Regeneration, Timber Harvesting, and Water Resources categories, with comments, which seemed to be adequately addressed by the Forest Service (Appendix B, Table 2B, pp. 178-179). For example, Mr. Fener's aesthetics (1) SN comment stated:

Portions of Section 2 are within 200 feet of my home and are highly visible.

This will destroy the view from the front of my house and potentially devalue the resale value of my property. (Appendix B, Table 2B, p. 178)

The Forest Service's response to this comment stated:

The southern 2/3 of Unit 2 will be visible from the dwelling on the inholding, private property to the west of Unit 2. Sale layout will minimize the visual concerns by leaving several clumps in the unit and feathering the top edge of the unit. (Appendix B, Table 2B, Aesthetics (1), p. 178)

Analysis of Robert Fener's Comments on the RLTS EA

In his EA comments, Mr. Fener dropped the Hydrological, Old Growth, and Regeneration categories, with comments, submitted in his SN comments, and he specifically dropped the access (1) and timber harvesting (1 and 2) comments submitted in those categories in his SN comments (Appendix B, Table 2B, pp. 178-179), which suggest that the Forest Service adequately addressed these comments.

However, Mr. Fener submitted many new comments in his EA comments, which is expected because the EA provides the public with much new information. For example, Mr. Fener added Adjacent Landownership, Ecological, Exotic/Invasive Species, and TES/PETS/MIS categories, with comments, in his EA comments (Appendix B, Table 3B, pp. 180-183), which were not categories with comments in his SN comments, and he specifically added the access (1), archaeological/natural heritage resources (2 and 3), and timber harvesting (1) comments in his EA comments, which were not previously submitted in those categories in his SN comments (Appendix B, Table 3B, pp. 180-183).

Finally, the aesthetics (1 and 2), archaeological/natural heritage resources (1), climatic (1), community opposition (1), and water resources (1) comments in Mr. Fener's EA comments (Appendix B, Table 3B, pp. 180-183), were comments previously submitted and specifically addressed by the Forest Service in his SN comments, which suggests that Mr. Fener was either not satisfied or simply disagreed with the Forest Service's responses. However, in most instances, the Forest Service seemed to adequately address these comments, but thereafter, Mr. Fener added more detail to or changed the direction of his SN comments in his EA comments, or simply disagreed with the Forest Service's responses to his SN comments in his EA comments. For example, Mr. Fener's access (1) SN comment stated:

In summer months the tall canopy provides a cool place to walk when fields and clearcuts are neck deep in ticks. In winter, when snow makes the road impassable, the forest provides the route I take between my home and where I park my vehicle. If this area is cut, the brush will be so thick a hound dog will have to back up to bark. (Appendix B, Table 2B, p. 178)

The Forest Service's response to this comment stated:

The sale will be administered in such a way as to provide for slash treatment between Units 1 and 2 so as to allow foot travel to the inholding in bad weather, and to keep an old road open in Unit 2 for the same reason. (Appendix B, Table 2B, p. 178)

Instead of raising this comment again in his EA comments, Mr. Fener submitted a new comment in the Access category, stating:

If hunters are unable to use the proposed cutting areas, this will result in greater incursions on my property. (Appendix B, Table 3B, Access (1), p. 180)

In addition, he changed the direction of his access (1) SN comment in his EA comments, stating:

I appreciate the consideration to my concerns about accessibility, but I am curious why the space between compartments was held to 330 feet (minimum) but not considered for adjoining edges of private properties. (Appendix B, Table 3B, Adjacent Landownership (1), p. 180)

Analysis of Robert Fener's Administrative Appeal of the RLTS DN/FONSI

In his administrative appeal, Mr. Fener dropped the Exotic/Invasive Species, Hydrological, and Old Growth categories, with comments, submitted in his SN or EA comments (Appendix B, Tables 2B and 3B, pp. 178-183), and he specifically dropped the access (1) and regeneration (1) comments submitted in those categories in his SN comments (Appendix B, Table 2B, p. 178) and the archaeological/natural heritage resources (2 and 3) and timber harvesting (1) comments submitted in those categories in his EA comments (Appendix B, Table 3B, pp. 180-183), which suggests that the Forest Service adequately addressed these comments.

However, Mr. Fener added Alternatives, Cumulative Effects, Economics, Environmental Analyses/Documentation, Riparian Areas, Roads, and Wildlife categories, with appeal issues (Appendix B, Table 4B, pp. 184-193), which were not categories with comments in his SN or EA comments, and he specifically added the aesthetics (3), ecological (4 and 5), regeneration (1), TES/PETS/MIS (2 through 4), and water resources (2) appeal issues (Appendix B, Table 4B, pp. 184-193), which were not previously submitted in those categories in his SN or EA comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, Mr. Fener's water resources (2) appeal issue stated:

Pursuant to 36 C.F.R. 219.5(a-b) the Forest Service must have a scientifically substantiated method of predicting the sediment produced as a result of logging

and road building; to fail to do so violates the USFS policy requiring habitat management on a sound factual basis...The EA failed to provide an estimate of the number of tons of sediment which will occur during and after the proposed cutting... (Appendix B, Table 4B, pp. 192-193)

If Mr. Fener would have submitted this comment in his EA comments, the Forest Service may have been able to address it before a decision was issued. It seems reasonable to suggest that Mr. Fener and the Forest Service would benefit if such issues were raised earlier in the process, and it seems reasonable to assume that Mr. Fener could have done so because the information was available from the EA for his EA comments.

The access (1), adjacent landownership (2), aesthetics (1 and 2), archaeological/natural heritage resources (1 through 3), climatic (1), community opposition (1), ecological (1 through 3), TES/PETS/MIS (1), timber harvesting (1), and water resources (1) appeal issues in Mr. Fener's administrative appeal (Appendix B, Table 4B, pp. 184-193), were issues previously submitted and specifically addressed by the Forest Service in Mr. Fener's SN or EA comments, which suggests that he was either not satisfied or simply disagreed with the Forest Service's responses. However, in most instances, the Forest Service seemed to adequately address these comments, but thereafter, Mr. Fener added more detail to or changed the direction of his previous comments in his administrative appeal, or simply disagreed with the Forest Service's responses to his previous comments in his administrative appeal. For example, Mr. Fener's water resources (1) comment in his SN comments stated:

It is a matter of great concern that oil, diesel, fuel, herbicides, or pesticides, etc., will be above my water source. (Appendix B, Table 2B, p. 179)

The Forest Service's response to this comment stated:

During timber sale administration, enforcement of standard timber sale contract provisions will serve to protect nearby water courses from contamination by oil or other chemical pollutants. (Appendix B, Table 2B, Water Resources (1), p. 179)

Mr. Fener was not satisfied with this response, stating in his EA comments that:

Although the EA did address my concerns of water quantity, it ignored my concerns that pollutants will be above my water source and seeping into my aquifer. (Appendix B, Table 3B, Water Resources (1), p. 183)

The Forest Service's response to this comment stated:

Herbicides and pesticides are not part of this proposal. The landings are a quarter of a mile from his property, and contract provisions will ensure that any spills of oil or diesel fuel will be minimal and quickly cleaned up. (Appendix B, Table 3B, Water Resources (1), p. 183)

In his administrative appeal, Mr. Fener added more detail to and changed the direction of this comment, stating:

The stream protection standards referenced in the DN/FONSI will not eliminate the hazard that the appellant's water source will be polluted, nor have the protection provisions which will govern the contractors operating in the area been specified. The protection provisions by which the contractor operates are not specified. The use of the cutting units as sources of firewood will result in continual chainsaw noise and fuel contamination in the immediate vicinity of the appellant's property, and there is no provision for monitoring and enforcing appropriate restrictions against private individuals who may choose these areas to obtain firewood. (Appendix B, Table 4B, Water Resources (1), p. 192)

The ADO's response to this appeal issues stated:

I find that the Forest standards and contractual requirements are sufficient to limit impacts to water quality and stream habitats from the hazard of fuel or other hazardous materials that may be associated with activities. During implementation of the project, the District should consult with you as to the location of your private water intake and/or well and make sure refueling or other transfer of these materials within the immediate vicinity of your private property are safe and secure locations. In addition, any follow-up silvicultural activities should be aware of your concerns, including protection to your water supply and private property. (Appendix B, Table 4B, Water Resources (1), p. 192)

Finally, it is important to note that the increased number of appeal issues, and the fact that Mr. Fener's administrative appeal was in the exact form of a legal document, possibly indicates that he was attempting to delay the project and prepare for future legal action. For example, Mr. Fener's administrative appeal had "Robert F. Fener v.

GWNF...” in the top left-hand corner on the front page and a blank to fill in the “Case No.” on the top right-hand side of the front page.

Analysis of the Informal Disposition Meeting

At the IDM, Mr. Fener made an initial offer to withdraw his administrative appeal if Unit 2 was removed from the project (not harvested). The Acting District Ranger conferred with the PRD Silviculturalist, and then offered to compromise with Mr. Fener by reducing the harvesting intensity in Unit 2 to result in a residual BA of 40 square feet per acre, instead of 20 square feet per acre. In addition, no trees smaller than 16.0 inches diameter at breast height (DBH) would be harvested in a 50 foot-wide band along the lower boundary of Unit 2 (closest to Mr. Fener’s property and parallel to the drainage), even if that would have resulted in a higher residual BA than 40. Despite the Forest Service’s effort to compromise and potentially resolve the administrative appeal, Mr. Fener did not wish to compromise or drop his administrative appeal.

In addition to the meeting, Mr. Fener wrote a letter to former Vice President Al Gore, asking for assistance to resolve the issue, as well as attempting to get a Virginia Tech Wildlife Management Professor to mediate another meeting between Mr. Fener and the Forest Service to resolve the dispute. There is no indication in the administrative record that the former Vice President responded to Mr. Fener’s letter, and the Forest Service sent a letter to the professor expressing that they found no reason to hold another meeting with Mr. Fener and a mediator because a decision had been reached, project implementation was underway, and attempting to bargain away the decision already rendered would be in violation of NEPA regulations and policy requirements. This response seemed appropriate.

Analysis of Robert Fener’s Legal Arguments

In the U.S. District Court for the Western District of Virginia, Mr. Fener filed a complaint nearly identical to his administrative appeal, and for the most part, simply had to change the term “appellant” to “plaintiff.” These issues are reflected in the Final Order from the District Court Judge.

In the Final Order, the District Court Judge held that: (1) the decision of the Forest Service not to prepare an EIS for the proposed timber sale was adequately supported by the record and thus was not arbitrary and capricious; (2) the Forest Service

did not act arbitrarily and capriciously in its evaluation of the cumulative effects of the proposed sale on the national forest, the no action alternative, the profitability of the harvest, the landowner's offer to purchase trees, the even-aged cutting method, the citizen petition opposing the timber sale, the visual quality issues, the archeological resources, the wind issues, the hydrological factors, the hazards of pollution to the landowner's water source, the regeneration/accessibility considerations, wildlife, and tree diversity; and (3) the NFMA and its implementing regulations did not require the Forest Service to use scientifically substantiated methods of sediment prediction when considering timber harvest. Thus, Summary Judgment was granted in favor of the Forest Service, and the plaintiff's Preliminary Injunction motion was denied (*Fener v. Hunt*, 1997), clearly indicating that the Forest Service complied with all rules, regulations, and statutory requirements for project-level activities.

CHAPTER VI
THE HEMATITE TIMBER SALE

Introduction

The Hematite Timber Sale (HTS) on the James River Ranger District (JRRD) of the GWNF (Figure 1, p. 13) involved the decision to implement Alternative 4 in MA 17, after considering a total of three action alternatives and a no-action alternative. MA 17 comprised approximately 91,000 acres (approximately 8.3%) of the approximately 1.1 million total acres of the GWNF, with approximately 63,000 acres (approximately 69%) in the MA classified as suitable for timber production (GWNF RLRMP, pp. 2-14 and 3-88). MA 17 contains portions of the Forest that were to be more intensively managed for timber using even-aged and uneven-aged timber cutting methods, meant to provide a range of timber products in as efficient and economical a manner as consistent with multiple-use management (GWNF RLRMP, p. 3-88).

Alternative 4 included: (1) harvesting a total of approximately 187 acres in eight cutting units using the modified shelterwood method; (2) site preparation on approximately 187 acres by hand tools for natural regeneration; (3) construction of approximately 1 mile of system road; and (4) harvesting trees and removing brush along the roadside of system roads within the project area. Together, these treatments produced approximately 3.1 million board feet of wood products worth an estimated \$207,028. The net project revenue was estimated at \$145,673, after the reduction of estimated costs (\$61,355); so the HTS was not below-cost.

The justification for the proposed action was to meet the direction set forth in the GWNF RLRMP, as well as the DFC for MA 17, which was to have: (1) a balanced age class distribution of forest stands containing native tree species capable of sustained, high value timber production; (2) an association of mostly deciduous upland and cove hardwood species with white pine occurring as a minor or partial component and some small stringers of southern yellow pine; and (3) commodity outputs which contribute to the social and economic well-being of the people living in the area and help maintain a way of life long associated with those living in the area (GWNF RLRMP, pp. 3-88 and 3-89). More specifically, the proposed action was designed to: (1) provide a variety of wood products at the least cost, which would contribute to the economic and social

vitality of the Forest's neighbors; (2) improve the unbalanced age-class distribution of the timber; (3) reduce the susceptibility and vulnerability of timber stands to gypsy moth damage before they were defoliated and killed; and (4) improve forest user safety on system roads.

Administrative Procedures

Scoping Procedures and Public Comments

On February 10, 1995, the Forest Service mailed the SN for the proposed HTS to 83 interested members of the public. The Forest Service welcomed public involvement to provide input and asked for specific comments on the proposal by March 15, 1995. The Forest Service received only five public SN comments from three special-interest groups and two individuals. The primary issues raised in these comments seemed to focus on cumulative effects, economics, forest health, timber harvesting, and wildlife concerns, and the acceptance of the proposed HTS was generally split between the commenters (Appendix C, Table 1C, p. 195). In addition, a second SN was published in the *Virginian Review* on May 2, 1995, asking for public comments on the proposal by May 30, 1995. The Forest Service did not receive public comments during this time period.

Environmental Assessment Procedures and Public Comments

On March 1, 1996, the Forest Service mailed the HTS EA and Comment Notice to eight interested members of the public, including those who submitted public SN comments. On March 3, 1996, the EA comment period was opened for 30 days, until April 2, 1996. The Forest Service received only one public EA comment from an individual who previously submitted SN comments and was generally opposed to the proposed HTS.

Administrative Appeal Procedures and Public Appeals

On May 17, 1996, the Forest Service mailed the HTS DN/FONSI to eight interested members of the public, including those who submitted public SN and EA comments. On May 21, 1996, the administrative appeal period was opened for 45 days, until July 6, 1996. The Forest Service received only one public administrative appeal from the individual who previously submitted public SN and EA comments, and it was accepted.

On July 18, 1996, an IDM was held at the JRRD Office between the Interdisciplinary (ID) Team Leader/District NEPA Coordinator, the Ecology Staff Officer for the GWJNF, the Ecosystem Group Leader for the JRRD, the Wildlife Biologist for the JRRD, Bill Liechter from the Appalachian Forest Management Group (AFMG) (interested party), Mike Jones (interested party), and Steven Krichbaum (the appellant). The meeting focused on the issues raised in Mr. Krichbaum's administrative appeal, and after discussion, Mr. Krichbaum did not wish to drop his administrative appeal. Thus, the administrative appeal review continued.

On August 13, 1996, the ARO mailed the administrative appeal review to the ADO, recommending that the HTS DN/FONSI be affirmed. On August 22, 1996, the ADO mailed the administrative appeal decision to Mr. Krichbaum, and informed him that: (1) the Forest Supervisor adequately addressed the issues raised by the appellant in the EA and DN; and (2) the environmental effects disclosure in the EA was appropriate and adequate for the project and supported the Forest Supervisor's conclusion that the selected actions would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the DN/FONSI, constituting the final administrative determination of the USDA.

Legal Procedures

After the DN/FONSI was affirmed, Steven Krichbaum filed a complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Western District of Virginia, Roanoke Division, on November, 19, 1996, and on February 6, 1997, he filed a Motion for Preliminary Injunction to enjoin the Forest Service from implementing road building and logging activities on any other timber sale actions in the HTS project area. On July 3, 1997, the District Court Judge granted Motion to Limit Review to the Administrative Record and Summary Judgment in favor of the Forest Service and denied Mr. Fener's Motion for Summary Judgment (*Krichbaum v. USFS*, 1997). Thereafter, Mr. Krichbaum filed a Motion for an Injunction Pending Appeal of the District Court's order granting Summary Judgment to the Forest Service in the U.S. District Court for the Western District of Virginia, Roanoke Division, and on October 8, 1997, the District Court Judge denied Mr. Krichbaum's motion. As a result of this ruling, Mr. Krichbaum filed an appeal in the U.S. Court of Appeals for the Fourth Circuit on March 31, 1998.

Finally, on April 9, 1998, the Fourth Circuit Judge affirmed the reasoning of the District Court, ending the dispute (Krichbaum v. USFS, 1998a).

Analysis of Primary Commenter, Appellant, and Litigant

Primary Commenter, Appellant, and Litigant Profile

The primary commenter, appellant, and litigant in this case is Steven Krichbaum, a resident of Staunton, Virginia, who has been actively involved in public participation activities regarding management activities on the GWJNF since 1990 (Krichbaum v. USFS). Mr. Krichbaum believed that implementation of the HTS would irreparably and adversely affect his interest in observing, learning from, hiking through, and deriving spiritual sustenance from the area's relatively undisrupted state (Krichbaum v. USFS).

In this case, Mr. Krichbaum has been classified as an individual based on the criteria set for this study, but evidence from the administrative record and supplemental investigation via the internet, clearly shows that Mr. Krichbaum is actively involved with numerous special-interest groups, including Appalachian Restoration Campaign (ARC), Preserve Appalachian Wilderness (PAW), Virginia Forest Watch (VFW), Appalachian Voices (AV), and Heartwood. For example, Mr. Krichbaum's SN comment included PAW above his return address on the front page and under his name on the return address on the envelope. In addition, there are several references to the term "we" throughout the comments. However, Mr. Krichbaum never states that his comments are on behalf of the organization, and he files individually in court.

Analysis of Steven Krichbaum's Comments on the HTS SN

In his SN comments, Mr. Krichbaum submitted Alternatives, Cumulative Effects, Ecological, Economics, Ecosystem Management, Environmental Analyses/Documentation, Forest Health, Old Growth, Riparian Areas, Silviculture, TES/PETS/MIS, Timber Harvesting, and Water Resources categories, with comments, which seemed to be adequately addressed by the Forest Service (Appendix C, Table 2C, pp. 196-198). For example, Mr. Krichbaum's cumulative effects (1) comment stated:

Cumulative impacts are a major concern – particularly to the Peters Mountain ecosystem and Management Areas. (Appendix C, Table 2C, p. 196)

The Forest Service's response to this comment stated:

The comment lacks specific information related to what specific ecosystem on Peters Mountain the commenter is concerned with. There is not enough information available to permit the ID team to determine what specific effects need to be addressed. (Appendix C, Table 2C, Cumulative Effects (1), p. 196)

Although the response may not have been helpful to Mr. Krichbaum, it seems to be a reasonable and appropriate answer.

Analysis of Steven Krichbaum's Comments on the HTS EA

In his EA comments, Mr. Krichbaum dropped the Economics category, with comments, submitted in his SN comments, and he specifically dropped the alternatives (1), cumulative effects (1), ecological (1), environmental analyses/data collection (1 through 3), forest health (1), silviculture (1 and 2), TES/PETS/MIS (1 and 2), and timber harvesting (1 through 3) comments submitted in those categories in his SN comments (Appendix C, Table 2C, pp. 196-198), which suggests that the Forest Service adequately addressed these comments.

However, Mr. Krichbaum submitted many new comments in his EA comments, which is expected because the EA provides the public with much new information. For example, Mr. Krichbaum added Air Quality, Aquatic Communities, Hydrological, Mitigation, Recreation/Tourism, Regeneration, Roads, Soils, Vegetation, Visitor Safety, and Wildlife categories, with comments, in his EA comments (Appendix C, Table 3C, pp. 199-211), which were not categories with comments in his SN comments, and he specifically added the alternatives (1 and 2), cumulative effects (1), ecological (1 through 7), environmental analyses/documentation (1 and 2), forest health (1 through 4), silviculture (1), TES/PETS/MIS (1 through 5), timber harvesting (2 through 4), and water resources (2 through 4) comments in his EA comments (Appendix C, Table 3C, pp. 199-211), which were not previously submitted in those categories in his SN comments.

Finally, the ecosystem management (1), old growth (1), riparian areas (1), and water resources (1) comments in Mr. Krichbaum's EA comments (Appendix C, Table 3C, pp. 199-211), were comments previously submitted and specifically addressed by the Forest Service in his SN comments, which suggests that Mr. Krichbaum was either not satisfied or simply disagreed with the Forest Service's responses. However, in most

instances, the Forest Service seemed to adequately address these comments, but thereafter, Mr. Krichbaum added more detail to or changed the direction of his SN comments in his EA comments, or simply disagreed with the Forest Service's responses to his SN comments in his EA comments. For example, Mr. Krichbaum's ecosystem management (1) SN comment asked and stated:

How will ecosystem management be implemented here? The scoping information leads us to believe that this requirement emphasis is to believe that this requirement emphasis is not to be incorporated into and reflected by the decision. This project should be dropped at least until ecosystems are delineated here and studied. Does anybody in this office have the courage to say not to Westvaco? (Appendix C, Table 2C, p. 196)

The Forest Service's response to this comment stated:

Ecosystem management is the management of natural resources to maintain or restore the sustainability of ecosystems, thereby providing multiple benefits for present and future generations. This means the agency must approach project planning with increased emphasis on analyzing ecosystems at various spatial scales. Ecosystem management will be addressed during this project-level analysis through cumulative effects analysis. (Appendix C, Table 2C, Ecosystem Management (1), p. 196)

Mr. Krichbaum simply disagreed with this response, so in his EA comments he stated:

This is not ecosystem management. It's the same old preoccupation with "timber production," "growing timber," and roading to "produce timber." The process is not "open and equitable." Sickening. (Appendix C, Table 3C, Ecosystem Management (1), p. 202)

And again, the Forest Service seemed to adequately address this comment by stating:

Ecosystem management must be viewed on a larger scale than just this one management area. We are managing for all types of ecosystems over the forest when you consider all management areas. This area is allocated to producing timber, not wilderness, not recreation, not roadless, not old growth. There are management areas both on the District and Forest which are allocated to these uses. The commenter is correct with the statement that the proposed action is

looking at growing timber – that is the goal of this area. (Appendix C, Table 3C, Ecosystem Management (1), p. 202)

Analysis of Steven Krichbaum's Administrative Appeal of the HTS DN/FONSI

In his administrative appeal, Mr. Krichbaum dropped the Air Quality, Ecological, Economics, Ecosystem Management, Forest Health, Hydrological, Recreation/Tourism, Regeneration, TES/PETS/MIS, Timber Harvesting, Vegetation, Visitor Safety categories, with comments, submitted in his SN or EA comments (Appendix C, Tables 2C and 3C, pp. 196-211), and he specifically dropped the cumulative effects (1) and silviculture (2) comments submitted in his SN comments (Appendix C, Table 2C, pp. 196-198) and the aquatic communities (3), cumulative effects (1), mitigation (1), roads (1 and 2), silviculture (1), water resources (4), and wildlife (1 through 6) comments submitted in his EA comments (Appendix C, Table 3C, pp. 199-211), which suggests that the Forest Service adequately addressed these comments.

However, Mr. Krichbaum added a Public Involvement category, with appeal issues (Appendix C, Table 4C, p. 216), which was not a category with comments in his SN or EA comments, and he specifically added the alternatives (4 and 5), cumulative effects (1 and 2), environmental analyses/documentation (1 through 3), mitigation (1), old growth (1 through 6), roads (1 and 4), and wildlife (1) appeal issues (Appendix C, Table 4C, pp. 212-219), which were not submitted in those categories in his SN or EA comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, Mr. Krichbaum's wildlife (1) appeal issue stated:

The decision allows logging to take place during bird nesting season. Such activity will directly result in the deaths of migrants nesting on the ground and in trees. Such direct killing is prohibited by the MBTA. To allow such an occurrence is an abuse of discretion and a violation of the APA. (Appendix C, Table 4C, p. 219)

If Mr. Krichbaum would have submitted this comment in his EA comments, the Forest Service may have been able to address it before a decision was issued. It seems reasonable to suggest that Mr. Krichbaum and the Forest Service would benefit if such

issues were raised earlier in the process, and it seems reasonable to assume that Mr. Krichbaum could have done so because the information was available from the EA for his EA comments.

The alternatives (1, 3 and 6), aquatic communities (1), riparian areas (1), roads (2, 3 and 5), silviculture (1), and water resources (1) appeal issues in Mr. Krichbaum's administrative appeal (Appendix C, Table 4C, pp. 212-219), were issues previously submitted and specifically addressed by the Forest Service in Mr. Krichbaum's SN or EA comments, which suggests that he was either not satisfied or simply disagreed with the Forest Service's responses. However, in most instances, the Forest Service seemed to adequately address these comments, but thereafter, Mr. Krichbaum added more detail to or changed the direction of his previous comments in his administrative appeal, or simply disagree with the Forest Service's responses to his previous comments in his administrative appeal. For example, Mr. Krichbaum's riparian areas (1) SN comment asked:

Please supply us with a map of MA 18 (riparian areas) in this project area so that we can monitor your actions. (Appendix C, Table 2C, p. 197)

The Forest Service's response to this comment stated:

The EA discloses the streams that were identified as having riparian areas. Designation of actual riparian areas will be done at the time the units are delineated on the ground based on MA 18 direction in the RLRMP. An EA map showing all the delineated riparian areas and their precise locations and dimensions is not necessary. (Appendix C, Table 2C, Riparian Areas (1), p. 197)

Mr. Krichbaum was not satisfied with this response, stating in his EA comments that:

You assert that riparian areas were avoided 'as delineated on the ground.' Meaning that the delineation has already been done – otherwise how could you honestly assert that riparian areas have been avoided? The appendix asserts that riparian area designation has taken place. So where are the riparian areas? Who designated/delineated them? When? How? Send us copies of all surveys and supporting documentation used to make this delineation/designation. Send us a map clearly showing these delineated/designated areas – otherwise we can not monitor your actions, nor can we be involved in the process. I don't trust you.

Mere assertions are not enough. What are you trying to hide? This is an official MA and I need to know precisely where it is and how it was so delineated/designated. I can't be anymore clear than this. The EA is an insufficient traversy as regards this significant issue. (Appendix C, Table 3C, Riparian Areas (1), p. 205)

The Forest Service's response to this comment stated:

The Forest Plan states in standard 18-38 on page 3-98 which lands are classified as riparian areas and are unsuitable for timber production. This standard is used by field personnel when the unit boundaries are determined. The process of unit layout is taking place at the present time. We welcome the commenter to visit any of the units in this project and monitor if this standard is followed. (Appendix C, Table 3C, Riparian Areas (1), p. 205)

In his administrative appeal, Mr. Krichbaum continued to express dissatisfaction with the Forest Service's response, stating:

Planners pointedly refuse to divulge the location of MA 18 (riparian areas) to the public. This violates the APA. (Appendix C, Table 4C, Riparian Areas (1), p. 217)

The ADO's response this appeal issue stated:

The response to your comment from the 30-day notice and comment period refers to the Forest Plan standard for MA 18 in riparian areas. Also, the topographic maps in the EA show riparian area locations. I find no failure to disclose the location of MA 18 and that the APA was not violated. (Appendix C, Table 4C, Riparian Areas (1), p. 217)

Although it was found that the Forest Service seemed to adequately respond to most of Mr. Krichbaum's comments and appeal issues, it is important to point out that the ADO found a slight mistake in the Forest Service's consideration of a reasonable range of alternatives. In Mr. Krichbaum's alternatives (1) appeal issue it was stated that:

Agency planners have avoided the proper and adequate hard look at the public's clearly stated concern regarding the development of alternatives for managing this area. These pertinent issues and reasonable opportunities are apparently

mistakenly considered to be outside the scope of analysis or otherwise misrepresented or disregarded. (Appendix C, Table 4C, p. 212)

After reviewing this appeal issue, the ADO responded:

The record shows that the alternative you suggested both during scoping and during the 30-day comment period was addressed in response to comments as an appendix to the EA. However, it is not clear why this was not included in the EA along with other alternatives that were either considered in detail or not considered in detail. Your point that an alternative should have been developed to address harvesting is appropriate. While the alternatives section of the EA only addresses this issue from a “system road” perspective, a no roading alternative is addressed in the appendix to the EA in response to your comment. Again, it is not clear why this alternative was not included in section II. A or B. I find that, although Section II. A or B of the EA maybe should have included your suggested alternative along with others not considered in detail, the record shows that a reasonable range of alternative was considered, including your suggestion. (Appendix C, Table 4C, Alternatives (1), p. 212)

This finding did not change the outcome of the ADO’s final decision, but it appears that the Forest Service could have made more of an effort to consider the alternative suggested in Mr. Krichbaum’s SN and EA comments. Such mistakes could be costly to the Forest Service in terms of time, money, and its relationship with the public.

Analysis of Steven Krichbaum’s Legal Arguments

In the U.S. District Court for the Western District of Virginia, Roanoke Division, Mr. Krichbaum filed a complaint incorporating several, but fewer of, the issues raised in his comments and administrative appeal, as well as general procedural violations of the Administrative Procedure Act (APA) of 1946, the NEPA, the NFMA, and the GWNF RLRMP. These issues are reflected in the Final Order from the District Court Judge.

In the Final Order, the District Court Judge held that: (1) the decision regarding the impact of the sale on old growth forest was not arbitrary and capricious, and the public was notified of the issue; (2) the Forest Service considered the relevant factors and took the required look at the effects the sale would have on management indicator species (MIS) and threatened and endangered species (TES); (3) the Forest Service considered

sufficient information to comply with its statutory and regulatory obligations and to make a reasonable decision to proceed with the sale; (4) the determination that the HTS would have no significant impact on Crow Run and Little Crow Run was not arbitrary and capricious; (5) the FONSI, and the decision not to prepare a full-blown EIS, were not arbitrary and capricious; (6) the Forest Service considered an adequate range of alternatives in making the decision; (7) the Forest Service's rejection of the "no action" alternative was not arbitrary or capricious; (8) the Forest Service's disclosure and analysis of the riparian areas affected by the project were sufficient; (9) the proposed sale was not arbitrary or capricious; and (10) the sale was consistent with the GWNF RLRMP. Thus, the District Court Judge granted Motion to Limit Review to the Administrative Record and Summary Judgment in favor of the Forest Service and denied Mr. Krichbaum's Motion for Summary Judgment (*Krichbaum v. USFS*, 1997), clearly indicating that the Forest Service complied with all rules, regulations, and statutory requirements for project-level activities.

CHAPTER VII
THE ALBA SALVAGE TIMBER SALE

Introduction

The Alba Salvage Timber Sale (ASTS) on the Dry River Ranger District (DRRD) of the GWNF (Figure 1, p. 13) involved the decision to implement Alternative 1 in MA 13, after considering an action and no-action alternative. MA 13 comprised approximately 42,000 acres (approximately 3.8%) of the approximately 1.1 million total acres of the GWNF, with approximately 4,000 acres (approximately 9.5%) in the MA classified as suitable for timber production (GWNF RLRMP, pp. 2-14 and 3-69). MA 13 contains lands that receive heavy dispersed recreation use and were managed to provide a variety of dispersed recreation opportunities and experiences, to enhance and interpret unique natural resources, and to provide the facilities necessary to prevent degradation of the natural and aesthetic resources of the area (GWNF RLRMP, p. 3-69).

The project area was defoliated by gypsy moth in 1995, and contained approximately 20 acres of damaged upland oak forest type timber with white oak, chestnut oak, scarlet oak, and pine being the dominant species in the overstory. The District Ranger felt that it was urgent to capture the economic value of the timber before it was lost, to rehabilitate the scenic resource, and to utilize the coppice sprouting potential of the remaining live trees before susceptible trees were defoliated. Thus, Alternative 1 included: (1) salvage of the merchantable timber (defined in this case as only those stems in excess of 8 inches in DBH) of those species preferred by gypsy moth, while leaving stems of the non-preferred species (maple, gum, etc.) in place; and (2) chainsaw site preparation to remove only heavily damaged mid and understory stems. Together, these treatments produced approximately 200,000 board feet of wood products worth an estimated \$19,750. The net project revenue was estimated at \$15,250, after the reduction of estimated costs (\$4,500); so the ASTS was not below-cost.

In general, the justification for the proposed action was to meet the direction set forth in the GWNF RLRMP, as well as the DFC for MA 13, which was to have: (1) a variety of dispersed recreation opportunities and experiences; (2) a continuous cover of hardwoods over most MA 13 lands; (3) occasional small openings created for wildlife habitat or basic facilities for visitor use and resource protection; (4) vegetation

manipulation to the extent needed to provide safety for visitors or scenic rehabilitation and enhancement (GWNF RLRMP, pp. 3-69 and 3-70). In addition, the GWNF RLRMP stated that damage to natural resources from forest pest organisms, especially gypsy moths, were also to be minimized when such damage prevented the attainment of other natural resource objectives (GWNF RLRMP, p. 2-35). The gypsy moth damage resulted in the area not meeting its Retention Visual Quality Objective (VQO); thus, the trees needed to be harvested to rehabilitate the scenic landscape (GWNF RLRMP, Standard 13-1, p. 3-71).

Administrative Procedures

Scoping Procedures and Public Comments

On August 5, 1996, the Forest Service mailed the SN for the proposed ASTS to 57 interested members of the public. The Forest Service welcomed public involvement in helping to design and evaluate alternative courses of action and asked for specific comments on the proposal by August 30, 1996. The Forest Service received only two public SN comments from one special-interest group and one individual. The issues raised in these comments showed no real trend, except one of the comments being in favor of and one of the comments being opposed to the proposed ASTS (Appendix D, Table 1D, p. 221).

30-day Review Notice Procedures and Public Comments

Since the project qualified for categorical exclusion, an EA or EIS was not prepared for the proposed project. Therefore, on September 3, 1996, the Forest Service mailed a 30-day Review Comment Notice to three interested members of the public, including those who submitted public SN comments. On September 6, 1996, the 30-day Review Notice comment period was opened for 30 days, until October 5, 1996. The Forest Service did not receive public comments during this time period.

Administrative Appeal Procedures and Public Appeals

On October 17, 1996, the Forest Service mailed the ASTS DM to three interested members of the public, including those who submitted public SN comments. On October 20, 1996, the administrative appeal period was opened for 45 days, until December 3, 1996. The Forest Service received only one public administrative appeal from a total of three special-interest groups and one individual, and it was accepted.

On December 5, 1996, the District Ranger contacted Steven Krichbaum (representing himself and PAW/Heartwood/VFW), by telephone, in an attempt to arrange an IDM. Mr. Krichbaum stated that he was not sure of his schedule but would call the DRRD Office to set up a meeting on either December 11 or 12, 1996. The 15 day post-administrative appeal period for meeting to reach an informal disposition was extended from December 4 to December 18, 1996, and Mr. Krichbaum did not call to schedule the meeting as of December, 19, 1996. Thus, the District Ranger concluded that Mr. Krichbaum did not wish to meet to discuss the administrative appeal; therefore, the administrative appeal review continued.

On December 18, 1996, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's DM be affirmed. On January 11, 1997, the ADO mailed the administrative appeal decision to Mr. Krichbaum, and informed him that: (1) the District Ranger adequately addressed the issues raised by the appellants and documented those issues in the decision; (2) the finding of no extraordinary circumstances in the DM supported the District Ranger's conclusion; and (3) the selected actions would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the District Ranger's DM, constituting the final administrative determination of the USDA.

Legal Procedures

After the DM was affirmed, Steven Krichbaum filed a complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Western District of Virginia, Harrisonburg Division, on April 30, 1997. On January 13, 1998, Mr. Krichbaum filed a Motion for a TRO and Preliminary Injunction in the U.S. District Court for the Western District of Virginia, Harrisonburg Division, to enjoin the Forest Service from harvesting any trees or undertaking any actions preparatory to logging in the ASTS project area, and on January 22, 1998, the District Court Judge denied the motion. On August 27, 1998, the District Court Judge granted Summary Judgment in favor of the Forest Service and denied the Mr. Krichbaum's Motion for Summary Judgment and Motion for a Stay pending the outcome of cases in other circuits (*Krichbaum v. USFS*, 1998b).

Thereafter, Mr. Krichbaum filed a Motion for Reconsideration of the District Court's August 27, 1998, order in the U.S. District Court for the Western District of

Virginia, Harrisonburg Division, on September 9, 1998, and on September 30, 1998, the District Court Judge denied the motion. Finally, Mr. Krichbaum filed an appeal in the U.S. Court of Appeal for the Fourth Circuit, and on January 8, 1999, the Circuit Court Judge granted Motion to Dismiss the appeal in favor of the Forest Service and vacated the District Court's order on grounds of mootness, ending the dispute (Krichbaum v. USFS, 1999).

Analysis of the Primary Commenter, Appellant, and Litigant

Primary Commenter, Appellant, and Litigant Profile

The primary commenter, appellant, and litigant in this case is Steven Krichbaum, a resident of Staunton, Virginia, who has been actively involved in public participation activities regarding management activities on the GWJNF since 1990 (Krichbaum v. USFS). Mr. Krichbaum has been classified as an individual based on the criteria set for this study, but evidence from the administrative record, the administrative appeal, and supplemental investigation via the internet, clearly shows that Mr. Krichbaum is actively involved with numerous special-interest groups, including ARC, PAW, VFW, AV, and Heartwood.

Analysis of Steven Krichbaum's Comments on the ASTS SN

In his SN comments, Mr. Krichbaum submitted Categorical Exclusions, Public Involvement, Riparian Areas, Roadless Areas, TES/PETS/MIS, and Timber Harvesting categories, with comments, which seemed to be adequately addressed by the Forest Service (Appendix D, Table 2D, pp. 222-224). For example, Mr. Krichbaum's timber harvesting (1) SN comment stated:

It is not clear from the maps that this area is even "suitable" for logging. Send us a map showing precisely the boundaries of suitable-unsuitable lands in this project area. (Appendix D, Table 2D, p. 222)

The Forest Service's response to this comment stated:

For this proposal, the "project area" is the "sale area" as shown on the Scoping Notice map. "Suitable" in MA 13 was defined as "large, contiguous areas with level terrain"; level terrain was considered to be terrain where individual tree selection could be conducted with minimal damage to residual trees (usually less than 20% slope). The project area is on ground where such activity can occur; it

also meets the criteria for “suitability” relative to timber types, site index, etc. as listed in Appendix A (page A-5) of the Forest Plan. The Scoping Notice states that all activity would take place on suitable land. The “suitability” or “unsuitability” of land outside the project (sale) area is outside the scope of this project. Another map of the project area showing it as “suitable” would be redundant. (Appendix D, Table 2D, pp. 222-223)

*Analysis of PAW/VFW/Heartwood/Steven Krichbaum’s
Administrative Appeal of the ASTS DM*

In their administrative appeal, the appellants only dropped the public involvement (1) and riparian areas (1) comments submitted in those categories in Mr. Krichbaum’s SN comments (Appendix D, Table 2D, pp. 222-224), which suggest that the appellants were either not satisfied or simply disagreed with many of the Forest Service’s responses. Many new appeal issues were submitted in their administrative appeal, which is expected because an EA or EIS is not performed for projects that qualify for categorical exclusion. For example, the appellants added Aesthetics, Alternatives, Cumulative Effects, Environmental Analyses/Documentation, Mitigation, Recreation/Tourism, Regeneration, Silviculture, Water Resources, and Wildlife categories, with appeal issues, in their administrative appeal (Appendix D, Table 3D, pp. 225-237), which were not categories with comments in Mr. Krichbaum’s SN comments, and they specifically added the public involvement (1 and 2), riparian areas (1), TES/PETS/MIS (1 through 3, and 11 through 13), and timber harvesting (1) appeal issues in their administrative appeal (Appendix D, Table 3D, pp. 225-237), which were not previously submitted in those categories in Mr. Krichbaum’s SN comments. In addition, it is important to note that the categories and appeal issues in the administrative appeal filed by the appellants for this case are very similar to the categories and appeal issues in Mr. Krichbaum’s administrative appeal of the HTS DN/FONSI (Appendix C, Table 4C, pp. 212-219).

Finally, the categorical exclusions (1 and 2), roadless areas (1), TES/PETS/MIS (4 through 10), and timber harvesting (2 through 5) appeal issues in the appellants’ administrative appeal (Appendix D, Table 3D, pp. 225-237), were comments previously submitted and specifically addressed by the Forest Service in Mr. Krichbaum’s SN comments, which suggests that the appellants were either not satisfied or simply

disagreed with the Forest Service's responses. However, in most instances, the Forest Service seemed to adequately address these comments, but thereafter, the appellants added more detail to or changed the direction of Mr. Krichbaum's SN comments in their administrative appeal, or simply disagreed with the Forest Service's responses to Mr. Krichbaum's SN comments in their administrative appeal. For example, Mr. Krichbaum's roadless areas (1) SN comment stated:

The project area is part of a large Roadless Area that was not inventoried during the Plan revision. It needs to be analyzed now at the project level and added to the forest inventory. (Appendix D, Table 2D, pp. 222)

The Forest Service's response to this comment stated that "such an analysis is outside the scope of this document" (Appendix D, Table 2D, Roadless Areas (1), p. 222). The appellants were not satisfied with this response, stating in their administrative appeal that:

Through projects such as this proposed action, impacts to roadless areas are taking place throughout the area, the Forest, and the Appalachians. This project is scheduled to take place in a large tract of the GWJNF that qualifies for the Roadless Area Inventory. These ecologically critical lands are increasingly precious, vulnerable, and rare in the landscape...The DM does not consider or explain the reasoning for not now adding this area to the inventory. In fact, it totally ignores the issue. Asserting that this is a "Forest Plan level" issue is unavailing as it ignores the fact that the issue was not resolved at the programmatic stage and ignores the multi-level process of forest planning... (Appendix D, Table 3D, Roadless Areas (1), pp. 231-232)

The ADO's response to this appeal issues stated:

The Appeal Record discloses that an issue concerning a Roadless Area was identified during the scoping process...The DM discloses that the scope of the proposed action is to salvage approximately 200,000 board feet of sawtimber and poletimber in the North River area within the next one to two years. The DM does not disclose that the proposed project area is in an inventoried roadless area. I find that the analysis that was done is appropriate to the decision. The scope of the decision did not include, nor did it need to include, an analysis of the area for

inclusion into roadless area inventory. (Appendix D, Table 3D, Roadless Areas (1), pp. 231-232)

Analysis of Steven Krichbaum's Legal Arguments

In the U.S. District Court for the Western District of Virginia, Harrisonburg Division, Mr. Krichbaum filed a complaint incorporating several, but fewer of, the issues raised in his SN comments and the administrative appeal, as well as general procedural violations of the APA, the NEPA, the NFMA, and the GWNF RLRMP. These issues are reflected in the Final Order from the District Court Judge.

In the Final Order, the District Court Judge held that: (1) none of the Mr. Krichbaum's allegations that the ASTS was not in keeping with the NEPA or the GWNF RLRMP can succeed on review under the arbitrary and capricious standard; (2) the Forest Service followed the procedures it had followed in the past in analyzing the effects of a proposed action, relying on trained experts and acceptable methodologies; (3) the Forest Service's decision to conduct the ASTS was reasonable under the NEPA, the NFMA, and the relevant regulations and were not arbitrary and capricious within the meaning of that standard in the APA. Thus, Summary Judgment was granted in favor of the Forest Service, and Mr. Krichbaum's Motion for Summary Judgment and Motion for a Stay pending the outcome of cases in other circuits was denied (*Krichbaum v. USFS*, 1998b), clearly indicating that the Forest Service complied with all rules, regulations, and statutory requirements for project-level activities.

CHAPTER VIII – PART I
THE ARNEY GROUPS PROJECT

Introduction

The Arney Groups Project (AGP) on the Glenwood Ranger District (GRD) of the Jefferson National Forest (JNF) (Figure 1, p. 13) involved the decision to implement Alternative 4 in MA 7 of the Arnold Valley Opportunity Area (AVOA), after considering a total of four action alternatives and a no-action alternative. The AVOA contained a total of approximately 32,167 acres, with approximately 26,000 acres in National Forest ownership. There are also two wildernesses in the AVOA, which total approximately 11,230 acres. The DFC for MA 7 of the AVOA is to: (1) regulate the harvest and maintenance of a healthy vigorous forest capable of producing quality sawtimber and other wood products; (2) control the rate of spread of insects and diseases through manipulation of the timber resource; and (3) provide for wildlife habitat diversity, a variety of recreational opportunities, and mineral resources development (JNF RLRMP, AVOA Analysis (AVOAA), p. 3).

Alternative 4 included: (1) harvesting approximately 40 acres in Compartment/Stand 3001/7 using a clearcutting harvest method; (2) harvesting approximately 8 acres in Compartment/Stand 3002/15 using a group selection harvest method, with an emphasis on removing older and/or declining oaks; (3) harvesting approximately 4 acres in Compartment/Stand 3001/18 using a group selection harvest method, with an emphasis on removing older and/or declining oaks; (4) thinning approximately 14 acres between groups in Compartment/Stand 3001/18, which would remove approximately one-quarter to one-third of existing trees; (5) harvesting approximately 33 acres in Compartment/Stand 3002/2 using a combination of overstory removal and shelterwood with reserves harvest methods; (6) overstory removal of approximately 90% of existing dominant and codominant trees in the northern two-thirds of Compartment/Stand 3002/2 to allow existing intermediate pole size trees to form a new stand; (7) a shelterwood with reserves treatment in the southern third of Compartment/Stand 3002/2, leaving approximately one-third of the existing canopy (primarily white pine) to serve as a seed source for the future stand; (8) harvesting approximately 125 acres in Compartments/Stands 3001/8, 3002/17, 3002/30, 3005/2, and 3005/6, using a shelterwood with reserves harvest method,

removing approximately two-thirds of the existing canopy in the treated stands; (9) the use of 2,500 feet of forwarder trail to access Compartment/Stand 3005/2; (10) mechanical site preparation on all regenerated acres; (11) construction of two wildlife waterholes; (12) creation of additional grass/forb habitat through seeding of log landings, skid trails, and the forwarder trail; (13) eradication of a small (approximately 1 acre) kudzu patch located near the entrance to Cave Mountain Lake Recreation Area using the herbicide Transline; (14) creation of a small (approximately ¼ acre) dispersed recreation parking area in the Cedar Bottom area; and (15) spot planting of white pine. Together, these treatments produced approximately 1.9 million board feet of wood products worth an estimated \$294,500. The net project revenue was estimated at \$36,378, after the reduction of estimated costs (\$258,122); so the AGP was not below-cost.

In general, the justification for the proposed action was to provide wood and fiber for society, while improving the health and vigor of the trees within affected stands (JNF RLRMP, p. IV-24). More specifically, the action was needed to provide a non-declining sustained yield of forest products (JNF RLRMP, p. IV-167), while regenerating mature forests stands and protecting visual and watershed resources, as well as meet the DFC for MA 7 of the AVOA (JNF RLRMP, AVOAA, p. 3).

Administrative Procedures

Scoping Procedures and Public Comments

On May 18, 1995, the Forest Service mailed the SN for the proposed AGP to 55 interested members of the public. The Forest Service expressed that the environmental analysis for the project would utilize public comments and issues received from scoping to develop alternatives and guide the analysis, and asked for specific comments on the proposal by June 19, 1995. The Forest Service received only three public SN comments from two special-interest groups and one individual. The primary issues raised in these comments seemed to focus on economics, ecosystem management, forest health, old growth, regeneration, silviculture, timber harvesting, and wildlife concerns, and all commenters had differing opinions about the appropriateness of the proposed AGP (Appendix E, Table 1E, p. 239).

On May 28, 1996, the Forest Service mailed a second SN for the proposed AGP to 85 interested members of the public, including those who submitted public comments

in response to the first SN. The purpose of the letter was to provide an update on the preparation of an environmental document for the proposed action, and the Forest Service asked for specific comments on the proposal by June 28, 1996. The Forest Service received only seven public comments for the second SN from four individuals and three special-interest groups. The primary issues raised in these comments seemed to focus on aesthetics, timber harvesting, and wildlife concerns, and a majority of the commenters generally opposed the proposed AGP (Appendix E, Table 2E, p. 240).

Environmental Assessment Procedures and Public Comments

On February 10, 1997, the Forest Service mailed the AGP EA and Comment Notice to 14 interested members of the public, including those who submitted public SN comments. On February 14, 1997, the EA comment period was opened for 30 days, until March 16, 1997. The Forest Service received only three public EA comments from two individuals and a special-interest group. The primary issues raised in these comments seemed to focus on economics, hydrological, timber harvesting, and water resources concerns, and a majority of the commenters generally opposed the proposed AGP (Appendix E, Table 3E, p. 241).

Administrative Appeal Procedures and Public Appeals

On March 20, 1997, the Forest Service mailed the AGP DN/FONSI to 12 interested members of the public, including those who submitted public SN and EA comments. On March 25, 1997, the administrative appeal period was opened for 45 days, until May 9, 1997. The Forest Service received only one public administrative appeal from a total of four special-interest groups, and it was accepted.

On May 21, 1997, a conference call, at the request of Sherman Bamford of PAW, was held between the GRD District Ranger, the NEPA Coordinator, Sherman Bamford of PAW, and Steven Krichbaum of Heartwood and VFW, regarding informal resolution of the administrative appeal. Jason Halbert of Shenandoah Ecosystems Defense Group (SEDG) was expected to participate but failed to connect, and the group mutually agreed to proceed with the discussion. Despite a lengthy discussion, no informal resolution of the administrative appeal was reached; thus, the administrative appeal review continued.

On May 29, 1997, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's DN/FONSI be affirmed. On July 3, 1997, the

ADO mailed the administrative appeal decision to Sherman Bamford of PAW, and informed him that: (1) the District Ranger adequately addressed the issues raised in the administrative appeal in the EA and DN; (2) the environmental effects disclosure in the EA/Biological Evaluation (BE) did not adequately address the Peaks of Otter salamander (POS), the coal skink, or the Indiana bat, which were documented, or were known, as occurring in the project area; (3) the rationale for not analyzing the species in detail needed to be included; and (4) prior to implementation of the project, the Responsible Official had to conduct the appropriate analysis and document the findings per the FSH 1909.15, §§ 18.1 and 18.4. Thus, the ADO affirmed the District Ranger's DN/FONSI, contingent upon completion of the above instructions, constituting the final administrative determination of the USDA.

Administrative Revisions

On September 24, 1997, the Forest Service notified 12 interested members of the public, including those who submitted public SN comments, EA comments, and administrative appeals, that pursuant to the direction given by the Regional Forester, the EA was revised, the BE was amended, and a revised FONSI was issued to clarify the effects analysis pertaining to the POS, the coal skink, and the Indiana bat. The Revised FONSI and EA pages were enclosed with the notification, and the amended BE was placed in the project file. In the Revised FONSI, the District Ranger expressed that the original decision would remain in effect and unchanged, that implementation of Alternative 4 would proceed in accordance with the DN/FONSI, and that the analysis was not subject to administrative appeal.

Analysis of the Primary Commenter, Appellant, and Litigant

Primary Commenter, Appellant, and Litigant Profile

The primary commenter, appellant, and litigation in all parts of this chapter is SEDG. SEDG, classified as a special-interest group, is a group of citizens concerned about the management of public forestlands in western Virginia who frequently participate in Forest Service public involvement activities. Although others were included in the court complaint, SEDG is listed first on the complaint, so their comments and administrative appeals will be qualitatively analyzed.

Analysis of SEDG's Comments on the Second AGP SN

In their SN comments, SEDG submitted Alternatives, Economics, Exotic/Invasive Species, Forest Health, Old Growth, Public Involvement, Roadless Areas, Roads, Timber Harvesting, and Wilderness categories, with comments, which seemed to be adequately addressed by the Forest Service (Appendix E, Table 4E, pp. 242-244). For example, SEDG's roadless areas (1) SN comment stated:

In general, our group considers the violation of roadless areas with logging and/or road building to be unacceptable. Although there are no inventoried roadless areas here, stands 3001/7, 3001/8, 3001/18, 3002/15, 3002/19, and 3002/30 appear to be in *de facto* roadless areas immediately adjacent to the James River Face Wilderness. (Appendix E, Table 4E, p. 243)

The Forest Service's response to this comment stated:

Inventories of potential roadless areas have been performed for the Forest Plan Revision. None of the proposed actions would occur in an area eligible for this designation. This issue is beyond the scope of this analysis. (Appendix E, Table 4E, Roadless Areas (1), p. 243)

Analysis of SEDG's Comments on the AGP EA

In their EA comments, SEDG did not drop any of their SN comments, which suggests that they were either not satisfied or simply disagreed with the Forest Service's responses to all of their SN comments. However, they added several new comments, which is expected because the EA provides the public with much new information. For example, SEDG added Aesthetics, Aquatic Communities, Chemicals, Ecological, Hydrological, Local Communities, Recreation/Tourism, Riparian Areas, Silviculture, TES/PETS/MIS, Water Resources, and Wildlife categories, with comments, in their EA comments (Appendix E, Table 5E, pp. 245-256), which were not categories with comments in their SN comments, and they specifically added the old growth (2), timber harvesting (1 through 3, and 7), and wilderness (2 and 3) comments in their EA comments (Appendix E, Table 5E, pp. 245-256), which were not previously submitted in those categories in their SN comments. The Forest Service seemed to adequately address most of these new comments. For example, SEDG's local communities (1) EA comment stated:

In Alternative One, the EA states that not logging the area will have “negative economic benefit on the local community.” Can you elaborate on your logic? How can doing nothing negatively impact the current condition? (Appendix E, Table 5E, p. 248)

The Forest Service’s response to this comment stated:

Paragraph 5 of page 99 states that the cost of planning the timber sale would be incurred, while no revenues would be generated. Therefore, a negative economic benefit would result. The analysis states that no commodities would be produced. Because a segment of the local economy depends upon the production of timber commodities, the absence of producing such commodities would negatively impact a segment of the local economy. (Appendix E, Table 5E, Local Communities (1), p. 248)

SEDG also submitted all of their SN comments in their EA comments. For example, their economics (1 and 2), old growth (1), public involvement (1), roadless areas (1), timber harvesting (5), and wilderness (1) comments in their EA comments (Appendix E, Table 5E, pp. 245-256), were comments previously submitted and either specifically addressed or “classified as significant issues to be addressed in the EA” by the Forest Service, which suggest that the SEDG was not satisfied or simply disagreed with either the Forest Service’s responses to these comments or how the EA addressed these issues. Furthermore, their alternatives (1), exotic/invasive species (1), forest health (1), roads (1), and timber harvesting (4 and 6) EA comments (Appendix E, Table 5E, pp. 245-256), were comments previously submitted and “not specifically addressed” in their SN comments, which suggests that they wanted the Forest Service to respond to these comments. In some cases, the Forest Service ended up responding to these comments, and in others, they did not, especially when comments seemed to be either vague or more characteristic of statements or opinions, rather than project-specific issues.

For example, SEDG’s exotic/invasive species (1) EA comment, which was previously submitted and “not specifically addressed” in their SN comments, was addressed by the Forest Service. This comment asked:

What are the risks of invasive plants achieving footholds in interior forest due to the unnatural strip of ecological disturbance? (Appendix E, Table 5E, p. 248)

The Forest Service's response to this question stated:

Significant Issue 10 identified a concern for the establishment of invasive species as a result of the proposed actions. The discussions found in paragraph 2 of page 46, paragraphs 3 and 4 of page 48, paragraphs 3 and 4 of page 50, paragraphs 8 and 9 of page 51, paragraph 1 of page 52, and paragraph 1 of page 54 disclose the impacts of the alternatives on the establishment of invasive species. A brief summary of these impacts concludes that while timber harvesting does provide an opportunity for invasive species to establish themselves, potentially reducing native biodiversity in the area, our experience has been that the invasive species die out before the stand reaches maturity and adequate stocking of native species does not seem to be severely limited. Additionally, Alternatives 3 and 4 would eliminate a kudzu patch, which is an invasive species. (Appendix E, Table 5E, Exotic/Invasive Species (1), p. 248)

It seemed appropriate for the Forest Service to respond to this comment because SEDG was asking a specific question about the effects that the proposed action may have on interior forests. However, it is questionable why SEDG submitted this comment again in their EA comments, when it appeared that the EA provided much information about the effects of invasive species.

An example of an EA comment that the Forest Service did "not specifically address" again, includes SEDG's timber harvesting (4) EA comment, which stated:

The logging proposed is not compatible with the benefits the area currently provides for the citizens of this region and nation, for plant and animal species, and for the maintenance of wild nature in America. (Appendix E, Table 5E, p. 253)

Clearly, there is no reason for the Forest Service to respond to this comment because it is a fundamental value-based opinion that is not project-specific.

*Analysis of PAW/Heartwood/VFW/SEDG's
Administrative Appeal of the AGP DN/FONSI*

In their administrative appeal, PAW/Heartwood/VFW/SEDG dropped the Aquatic Communities, Chemicals, Economics, Exotic/Invasive Species, Forest Health, Hydrological, Local Communities, Old Growth, Public Involvement, Recreation/

Tourism, Riparian Areas, Silviculture, Water Resources, and Wilderness categories, with comments, submitted in SEDG's SN or EA comments (Appendix E, Tables 4E and 5E, pp. 242-256), and they specifically dropped the alternatives (1), roads (1), and timber harvesting (1 through 3) comments submitted in SEDG's SN comments (Appendix E, Table 4E, pages 242-244) and the aesthetics (1 through 3), alternatives (1), TES/PETS/MIS (1), timber harvesting (1 through 7), and wildlife (1) comments submitted in SEDG's EA comments (Appendix E, Table 5E, pp. 245-256), which suggest that the Forest Service adequately addressed these comments.

Despite this assumption, PAW/Heartwood/VFW/SEDG submitted a myriad of new appeal issues in their administrative appeal. For example, they added Environmental Analyses/Documentation, Mitigation, and Soils categories, with appeal issues, in their administrative appeal (Appendix E, Table 6E, pp. 257-270), which were not categories with comments in SEDG's SN or EA comments, and they specifically added the aesthetics (1), alternatives (1), ecological (1 through 7), roadless areas (1, 3, and 4), roads (1 and 2), TES/PETS/MIS (1 through 12), timber harvesting (1 through 3), and wildlife (1 through 3) appeal issues in their administrative appeal (Appendix E, Table 6E, pp. 257-270), which were not previously submitted in those categories in SEDG's SN or EA comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, there were two mistakes that the Forest Service made that the ADO identified during the administrative appeal review. The first involved their TES/PETS/MIS (1) appeal issue, which stated:

Agency planners did not thoroughly sample the site for PETS species populations. Not only is there no hard site-specific population data. Planners did not definitively determine such species' existence here. (Appendix E, Table 6E, p. 264)

After reviewing this appeal issue, the ADO responded:

The District took into consideration 19 sensitive species and dropped all from detailed consideration, except for butternut, because there was no suitable habitat in the area; none were seen in the area during field surveys; or the species

distribution did not include the project area. The potential species were identified by reviewing the list of PETS species and their habitat preferences, consulting element occurrence records of PETS maintained by the VA Natural Heritage Program, conducting field surveys, and consulting with appropriate experts. In the 1991 BE developed for this area, an occurrence of the coal skink was documented in compartment 3010. Mitigation measures were recommended for a stand then proposed for shelterwood treatment (100 foot buffer). In addition, mitigation measures were incorporated for the POS due to the close proximity to their species range. The current BE does not explain why these two species were not examined more closely for this project five years later. In addition, the BE makes no mention of the Indiana bat, an endangered species. This project is within the range of this species. The EA/BE make no mention of why this species was not included in the analysis of this project. I find that the District conducted appropriate levels of inventories. However, documentation needs to be further clarified as to why the POS, the coal skink, and the Indiana bat were not considered in detail for this area. (Appendix E, Table 6E, TES/PETS/MIS (1), p. 264)

The second mistake involved their TES/PET/MIS (2) appeal issue, which stated:

The BE is inadequate. Various species that the project potentially affects are unaddressed [specifically Coopers hawk, the sharp-shinned hawk, the coal skink, bats, and ginseng]. Full and intensive surveys were not performed. Site-specific inventories of populations and habitat factors were not obtained. Viability is not assured by such perfunctory evaluation. (Appendix E, Table 6E, p. 265)

And after reviewing this appeal issue, the ADO responded:

As discussed, additional clarification and consideration in the evaluation of the TES species needs to be provided. I find that the proposed activities should not proceed until further clarification and consideration is provided based on this issue. (Appendix E, Table 6E, TES/PETS/MIS (2), p. 265)

Although public involvement was beneficial in pointing out mistakes that the agency had made, if these concerns would have been raised in SEDG's EA comments, the Forest Service may have been able to address them before a decision was issued, possibly

preventing expensive and time-consuming administrative appeals or litigation. It seems reasonable to suggest that the appellants and the Forest Service would benefit if such issues were raised earlier in the process, and it seems reasonable to assume that the appellants could have done so because the information was available from the EA and BE for their EA comments.

Finally, PAW/Heartwood/VFW/SEDG's roadless areas (2) appeal issue (Appendix E, Table 6E, pp. 261-262), was the only appeal issue previously submitted in both SEDG's SN and EA comments and specifically addressed at scoping, which suggests that they were either not satisfied or simply disagreed with the Forest Service's response to this comment. In SEDG's roadless areas (1) SN and EA comment it was stated that:

In general, our group considers the violation of roadless areas with logging and/or road building to be unacceptable. Although there are no inventoried roadless areas here, stands 3001/7, 3001/8, 3001/18, 3002/15, 3002/19, and 3002/30 appear to be in *de facto* roadless areas immediately adjacent to the James River Face Wilderness. (Appendix E, Tables 4E and 5E, pp. 243 and 251)

The Forest Service's response to this comment during scoping stated:

Inventories of potential roadless areas have been performed for the Forest Plan Revision. None of the proposed actions would occur in an area eligible for this designation. This issue is beyond the scope of this analysis. (Appendix E, Table 4E, Roadless Areas (1), p. 243)

In the administrative appeal, their roadless (2) appeal issue expressed similar concern:

The DN/EA/FONSI fails to identify impacts to *de facto* roadless areas as a significant issue...As part of Forest Plan revision, the areas north and west of James River Face Wilderness and north of Thunder Ridge Wilderness have been identified as *de facto* roadless areas by PAW and VFW/Heartwood. Appellants can challenge both the site-specific action and the plan-level decision(s) underlying the specific action at the second stage (*Wilderness Society v. Alcock*, 1996). The current Jefferson Forest Plan is deficient because it does not accurately identify all roadless area in the JNF. The JNF recognizes this fact; it is currently reviewing roadless areas and proposing to identify *de facto* roadless

areas as inventoried roadless area as part of the plan revision. (Appendix E, Table 6E, pp. 262-263)

The Forest Service's original response to this issue seemed appropriate, yet it was brought up again in their EA comments and administrative appeal, in addition to three new roadless area appeal issues in their administrative appeal. Thus, it appeared that the Forest Service could not convince them that roadless areas or potential roadless areas were not present in the project area.

CHAPTER VIII – PART II
THE TERRAPIN MOUNTAIN PROJECT

Introduction

The Terrapin Mountain Project (TMP) on the GRD of JNF (Figure 1, p. 13) involved the decision to implement a Modified Alternative 3 within the White Oak Ridge Opportunity Area (WORO), after considering a total of four action alternatives and a no-action alternative. The Modified Alternative 3 included: (1) harvesting a total of approximately 65 acres in Compartments/Stands 3047/9A, 3047/12, and 3048/9 using a shelterwood harvest method, which removed approximately one-half of the existing canopy in the treated stands; (2) harvesting a total of approximately 45 acres in Compartments/Stands 3046/2 and 3048/9B using the shelterwood with reserves harvest method, which removed approximately 70% of the existing canopy in the treated stands; (3) reconstruction of approximately 2,000 feet of Federally Designated Road (FDR) 3009 and approximately 2,500 feet of an existing old woods road that intersects FDR 3009; (4) mechanical site preparation on all harvested acres; (5) construction of three wildlife waterholes; (6) rehabilitation of 1.5 miles of existing linear wildlife strips; (7) replacement and/or installation of four traffic control structures; (8) creation of additional grass/forb habitat through expansion of log landings; (9) planting of eight conifer clumps; (10) planting of fruit bearing shrubs known to benefit songbirds on 1 acre; and (11) construction of a trailhead for Terrapin Mountain Trail. Together, these treatments produced approximately 1.1 million board feet of wood products worth an estimated \$158,620. The net project revenue was estimated at \$69,882, after the reduction of costs (\$88,738); so the TMP was not below-cost.

The WORO Analysis (WOROAA) identified the compartments/stands in this project as potential timber projects that would help achieve the DFC of the area. And, in general, the justification for the TMP was to move towards this DFC. More specifically, the purpose of the project was to: (1) provide wood and fiber for society while maintaining a healthy and vigorous forest (JNF RLRMP, p. IV-24); and (2) provide a non-declining sustained yield of forest products (JNF RLRMP, p. IV-167) while regenerating mature forest stands, thereby improving age class distributions in the area (JNF RLRMP, p. IV-25).

Administrative Procedures

Scoping Procedures and Public Comments

On May 20, 1996, the Forest Service mailed the SN for the proposed TMP to 60 interested members of the public. The Forest Service expressed that the environmental analysis for the project would utilize the public comments and issues received from scoping to develop alternatives and guide the analysis, and they asked for specific comments on the proposal by June 21, 1996. The Forest Service received only 13 public SN comments from eight individuals and five special-groups. The primary issues raised in these comments seemed to focus on aesthetics, recreation/tourism, roads, and timber harvesting concerns, and a majority of the commenters generally opposed the proposed TMP (Appendix F, Tables 1F and 2F, pp. 272 and 273). However, it can be noted that five of the comments were submitted by the Natural Bridge Appalachian Trail Club (NBATC), two individual members of NBATC, and two individual members of the Roanoke Appalachian Trail Club (RATC), who filed similar, but not duplicate, comments, which likely biased the concerns raised and opposition expressed.

On September 4, 1996, the Forest Service also mailed the same SN to five adjacent landowners and asked for their specific comments on the proposal by October 1, 1996. The Forest Service received four comments from adjacent landowners, which included a total of five individuals. The primary issues raised in their comments seemed to focus on adjacent landownership, aquatic communities, forest health, hydrological, public involvement, recreation/tourism, and water resources concerns, and, in general, half were opposed to the proposed TMP and half were indifferent (Appendix F, Table 3F, p. 274). In addition, it is important to note that a Forest Service official met with Dick Lower and his son, who are adjacent landowners that submitted SN comments, at the request of Mr. Lower, to discuss the TMP proposal. The Lowers expressed aesthetics, ecological, exotic/invasive species, old growth, regeneration, silviculture, water resources, and wildlife concerns, and the Forest Service official explained the possible effects of the proposed action and explained the NEPA process and how they could be involved in the process to express further concerns.

Environmental Assessment Procedures and Public Comments

On March 31, 1997, the Forest Service mailed the TMP EA and Comment Notice to 24 interested members of the public, including those who submitted public and adjacent landowner SN comments. On April 3, 1997, the EA comment period was opened for 30 days, until May 3, 1997. The Forest Service received 14 public EA comments from a total of 121 individuals and four special-interest groups. The primary issues raised in these comments seemed to focus on aesthetics, ecological, exotic/invasive species, recreation/tourism, timber harvesting, and wildlife concerns, and a majority of the commenters generally opposed the proposed action (Appendix F, Tables 4F and 5F, pp. 275 and 276). In addition, it is important to point out that SEDG collected 111 public comments from individuals on postcards and submitted them to the Forest Service, yet they were counted as individual commenters (Appendix F, Table 5F, p. 276).

Administrative Appeal Procedures and Public Appeals

On October 3, 1997, the Forest Service mailed the TMP DN/FONSI to 31 interested members of the public, including those who submitted public SN and EA comments. On October 7, 1997, the administrative appeal period was opened for 45 days, until November 21, 1997. The Forest Service received only one public administrative appeal from a total of four special-interest groups, and it was accepted.

On November 26, 1997, the GRD contacted Christina Wulf of SEDG to discuss an IDM for the administrative appeal. Ms. Wulf called the District Office on December 2, 1997, and informed the agency that the appellants did not wish to have an IDM. Thus, no informal resolution was reached, and the administrative appeal review continued.

On December 22, 1997, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's DN/FONSI be affirmed. On January 12, 1998, the ADO mailed the administrative appeal decision to Christina Wulf of SEDG, and informed her that: (1) the District Ranger adequately addressed the issues raised in the administrative appeal in the EA and DN; (2) the environmental effects disclosure in the EA was appropriate and adequate for the project and supported the District Ranger's conclusion that the selected actions would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the District Ranger's DN/FONSI, constituting the final administrative determination of the USDA.

Analysis of the Primary Commenter, Appellant, and Litigant

Analysis of SEDG's Comments on the TMP SN

In their SN comments, SEDG submitted Aesthetics, Aquatic Communities, Ecological, Economics, Exotic/Invasive Species, Forest Health, Hydrological, Local Communities, Public Involvement, Recreation/Tourism, Riparian Areas, Roadless Areas, Roads, Timber Harvesting, Water Resources, and Wildlife categories, with comments (Appendix F, Table 6F, pp. 277-281). Many comments were “not specifically addressed” or “classified as significant issues to be addressed in the EA,” and other comments seemed to be specifically addressed by the Forest Service in an appropriate manner. For example, SEDG’s economics (1) SN comment asked:

Will income from each unit of the sale offset the costs of analysis, site preparation, and removal of logs from that unit? (Appendix F, Table 6F, p. 277)

The Forest Service’s response to this comment stated:

Many costs associated with timber sales (such as cost of writing an EA, general administration, site preparation, etc.) simply cannot be valued at the harvest unit level. Purchasers of timber sales do not bid on individual units, but rather bid on estimated volumes within species groups. Thus, it is extremely difficult to determine true costs and revenues on a unit by unit basis. Any analysis would not be meaningful in any event. Units are packaged and sold as timber sales; costs are assessed and revenues are received on that basis. An analysis of the benefits and costs at the timber sale level is adequate to determine economic impacts of the proposal. (Appendix F, Table 6F, Economics (1), p. 277)

Analysis of SEDG's Comments on the TMP EA

In their EA comments, SEDG dropped all comments submitted in their SN comments, which suggests that the Forest Service adequately addressed these comments. However, a myriad of new comments were submitted in their EA comments, which is expected because the EA provides the public with much new information. As a result, all of the comments in SEDG’s EA comments were new, and the Forest Service seemed to adequately address these comments (Appendix F, Table 7F, pp. 282-293). For example, SEDG’s TES/PETS/MIS (1) EA comment stated:

We are concerned that the extent of potential impacts of the proposal on PETS species was either not thoroughly investigated or was inadequately documented. We are concerned that the field survey was not extensive enough to determine conclusively the presence or absence of PETS species and suitable habitat. Why were no TES taken into account? Why were all but the sanicle dropped from detailed consideration? (Appendix F, Table 7F, p. 290)

The Forest Service's response to this comment stated:

Field surveys were performed in all stands during the active growing season when PETS or unique habitats would be readily evident. The Division of Natural Heritage and the Regional Forester's list of PETS species were consulted. The impacts to the Indiana bat were analyzed and documented in an amended BE and additional documentation was added to the EA after the 30 Day Notice and Comment period began. No other TES are known to exist in the area of the TMP. All PETS but the sanicle and the Indiana bat were dropped because either their range and/or habitat is well known and does not involve the Terrapin Mountain area or because field surveys did not find the species. The BE is adequate for determining the impact on PETS species and disclosure in the EA is appropriate. (Appendix F, Table 7F, TES/PETS/MIS (1), pp. 290-291)

Analysis of TWS/Heartwood/PAW/SEDG's Administrative Appeal of the TMP DN/FONSI

In their administrative appeal, The Wilderness Society (TWS)/Heartwood/PAW/SEDG dropped the Aquatic Communities, Ecosystem Management, Environmental Analyses/Documentation, Forest Health, Hydrological, Local Communities, Regeneration, Silviculture, Vegetation, and Water Resources categories, with comments, submitted in SEDG's SN or EA comments (Appendix F, Tables 6F and 7F, pp. 277-293), and they specifically dropped the aesthetics (1), ecological (1 and 2), economics (1 and 2), exotic/invasive species (1), public involvement (1 and 2), recreation/tourism (1 through 3), riparian areas (1), roadless areas (1), roads (1 through 3), timber harvesting (1), and wildlife (1 and 2) comments submitted in those categories in SEDG's SN comments (Appendix F, Table 6F, pp. 277-281) and the aesthetics (1 through 3), alternatives (1 through 6), ecological (3), old growth (1 and 2), recreation/tourism (1), roadless areas (1 through 4), TES/PETS/MIS (2), and timber harvesting (1 and 3)

comments submitted in those categories in SEDG's EA comments (Appendix F, Table 7F, pp. 282-293). Thus, it seems that the Forest Service adequately addressed many of SEDG's SN and EA comments.

However, a myriad of new appeal issues were submitted in TWS/Heartwood/PAW/SEDG's administrative appeal. In their administrative appeal, they only added a Cumulative Effects category with appeal issues (Appendix F, Table 8F, pp. 295-296), which was not a category with comments in their SN or EA comments, but they specifically added the aesthetics (1 through 5), alternatives (1 through 6), economics (1), old growth (1), public involvement (1), recreation/tourism (1 through 3), riparian areas (1 through 3), roadless areas (1 through 5), TES/PETS/MIS (2 through 11, and 13 through 15), timber harvesting (1), and wildlife (1 through 5) appeal issues (Appendix F, Table 8F, pp. 294-307), which were not submitted in those categories in their SN or EA comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them in the before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, their TES/PETS/MIS (2) appeal issue stated:

The appellants have video footage of a Butternut (*Juglans cinerea*) within the project area on the face of Terrapin Mountain near units 3047/9B and 3047/12 (see Appendix II video). It is located not far off the trail and is clearly visibly to passers-by. The appellants' video footage also includes False Solomons Seal (*Maianthemum stellatum*). Both Butternut and False Solomons Seal are listed in the BE as USFS sensitive species, but dismissed as not existing in the project area by the BE. (Appendix F, Table 8F, pp. 303)

The ADO's response to this appeal issue stated:

You claim to know of the occurrence of two USFS sensitive species within the project area, although the project record containing earlier public comments makes no reference to this information. You are encouraged to share the locations of these new occurrences with the District Ranger. The additional species you mention are not USFS sensitive species. (Appendix F, Table 8F, TES/PETS/MIS (2), p. 303)

If SEDG would have shared this information in their SN or EA comments, the Forest Service may have been able to address it before a decision was issued. It seems reasonable to suggest that SEDG and the Forest Service would benefit if such issues were raised earlier in the process, as mentioned in the ADO's response, and it seems reasonable to assume that SEDG could have done so.

Finally, TWS/Heartwood/PAW/SEDG submitted several appeal issues that were submitted in SEDG's EA comments. For example, their ecological (1 through 4), roads (1), TES/PETS/MIS (1 and 12), and wildlife (6 and 7) appeal issues (Appendix F, Table 8F, pp. 294-307), were comments previously submitted and specifically addressed by the Forest Service in SEDG's EA comments, which suggest that they were either not satisfied or simply disagreed with the Forest Service's response to these comments. In addition, their exotic/invasive species (1), multiple-use (1), and timber harvesting (2) appeal issues (Appendix F, Table 8F, pp. 294-307), were comments previously raised and "not specifically addressed" in SEDG's EA comments, which suggests that they were concerned about these issues and wanted the Forest Service to address them. However, the ADO chose not to address them again in the administrative appeal decision. This choice seems justified because these appeal issues seemed to be either vague or more characteristic of statements or opinions, rather than project-specific issues.

CHAPTER VIII – PART III
THE WILSON MOUNTAIN PROJECT

Introduction

The Wilson Mountain Project (WMP) on the GRD of the JNF (Figure 1, p. 13) involved the decision to implement Alternative 3 in the AVOA, after considering a total of five action alternatives and a no-action alternative. The AVOA contained a total of approximately 32,167 acres, with approximately 26,000 acres in National Forest ownership. There are also two wildernesses in the AVOA which total approximately 11,230 acres.

Alternative 3 included: (1) harvesting a total of approximately 196 acres in 10 cutting units using a shelterwood with reserves harvest method, which removed up to 80% of the existing overstory trees in the treated stands; (2) construction of 0.2 miles of temporary road; (3) reopening of approximately 0.1 miles of existing road; (4) mechanical site preparation on all harvested stands; (5) construction of three wildlife waterholes; (6) creation of addition grass/forb habitat through expansion of two log landings; (7) rehabilitation of the impacted portion of Wilson Mountain Trail; (8) improvement of the Wilson Mountain Trailhead; and (9) installation of three gates for closing roads. Together, these treatments produced approximately 2.0 million board feet of wood products worth an estimated \$405,400. The net project revenue was estimated at \$35,620, after the reduction of estimated costs (\$369,780); so the WMP was not below-cost.

The AVOAA identified three stands as potential timber sales through fiscal year 1996, and the remaining seven units in the project provided additional opportunities to move towards the DFC of the area. In general, the justification for the WMP was to provide wood and fiber for society while maintaining a healthy and vigorous forest (JNF RLRMP, p. IV-24). More specifically, the action was needed to provide a non-declining sustained yield of forest products (JNF RLRMP, p. IV-167) while regenerating mature forest stands, thereby improving age class distributions in the area (JNF RLRMP, p. IV-25).

Administrative Procedures

Scoping Procedures and Public Comments

On May 20, 1996, the Forest Service mailed the SN for the proposed WMP to 57 interested members of the public. The Forest Service expressed that the environmental analysis for the project would utilize the public comments and issues received from scoping to develop alternatives and guide the analysis, and they asked for specific comments on the proposal by June 21, 1996. The Forest Service received only five public SN comments from four special-interest groups and one individual. The primary issues raised in these comments seemed to focus on ecological, forest health, roadless areas, roads, silviculture, TES/PETS/MIS, timber harvesting, and wildlife concerns, and a majority of the commenters generally opposed the proposed WMP (Appendix G, Table 1G, p. 309).

Environmental Assessment Procedures and Public Comments

On July 14, 1997, the Forest Service mailed the WMP EA and Comment Notice to 12 interested members of the public, including those who submitted public SN comments. On July 18, 1997, the EA comment period was opened for 30 days, until August 17, 1997. The Forest Service received only six public EA comments from a total of 19 special-interest groups and one individual. The primary issues raised in these comments seemed to focus on recreation/tourism, roadless areas, timber harvesting, and wilderness concerns, and a majority of the commenters were generally opposed to the proposed WMP (Appendix G, Table 2G, p. 310).

Administrative Appeal Procedures and Public Appeals

On October 6, 1997, the Forest Service mailed the WMP DN/FONSI to 16 interested members of the public, including those who submitted public SN and EA comments. On October 9, 1997, the administrative appeal period was opened for 45 days, until November 23, 1997. The Forest Service received only one public administrative appeal from a total of five special-interest groups, and it was accepted.

On December 6, 1997, an IDM was held at the GWJNF Forest Supervisor's Office between the GRD District Ranger, Sherman Bamford of PAW, Rosemarie Sawdon of the New River Group Sierra Club (NRGSC), Christina Wulf of SEDG, and Shireen Parsons of TWS. The appellants stated that they did not want to see any activity

in the Wilson Mountain area until the JNF LRMP revision was complete, and Mr. Bamford stated that their absolute bottom line was that no logging should take place in Sprouts Run or Gilmore Hollow watersheds. The District Ranger stated that the Forest Service was not willing to modify the proposed actions to the extent proposed by the appellants, so the meeting ended without resolution, and the administrative appeal review continued.

On December 30, 1997, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's DN/FONSI be affirmed. On January 29, 1998, the ADO mailed the administrative appeal decision to Sherman Bamford of PAW, and informed him that: (1) the District Ranger adequately addressed the issues raised in the administrative appeal; and (2) the environmental effects disclosure in the EA was appropriate and adequate for the project and supported the District Ranger's conclusion that the selected actions would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the District Ranger's DN/FONSI, constituting the final administrative determination of the USDA. However, it can be noted that the ADO questioned the use of the Kentucky warbler as an example of an area sensitive, early successional habitat associate, so he directed the District Ranger, prior to implementation, to correct and edit the EA to delete any reference or inference that the Kentucky warbler was an area sensitive early successional habitat associate.

Administrative Revisions

On March 20, 1998, the Forest Service mailed the Revised FONSI and EA pages to 16 interested members of the public, including those who submitted public SN comments, EA comments, and administrative appeals. These revisions were in response to the Regional Forester's direction, that prior to implementation, to edit the EA to delete any reference that the Kentucky Warbler was an area sensitive early successional habitat associate. Based upon the District Ranger's analysis, the original decision was to remain in effect and unchanged, and implementation of Alternative 3 would proceed in accordance with the DN/FONSI. Thus, the analysis was not subject to further administrative appeal.

Analysis of the Primary Commenter, Appellant, and Litigant

Analysis of SEDG's Comments on the WMP SN

In their SN comments, SEDG submitted Aesthetics, Alternatives, Aquatic Communities, Chemicals, Cumulative Effects, Ecological, Economics, Environmental Analyses/Documentation, Exotic/Invasive Species, Forest Health, Hydrological, Local Communities, Old Growth, Riparian Areas, Roadless Areas, Roads, Silviculture, Soils, TES/PETS/MIS, Timber Harvesting, Water Resources, Wetlands, and Wildlife categories, with comments, and the Forest Service seemed to adequately address most of these comments (Appendix G, Table 3G, pp. 311-316). For example, their timber harvesting (1) SN comment asked:

What are the slopes in all the stands? Are all these sites truly “suitable for timber production?” 3012/30 and 3003/3&10 appear to be very steep. (Appendix G, Table 3G, p. 315)

The Forest Service's response to this comment stated:

Determination and identification of lands suitable for timber harvest was verified by the OAA. This was clearly stated in the scoping letter of May 20. This issue is beyond the scope of this analysis. Rather than amass needless detail by listing this issue as significant; the issue has been made non-significant but will be addressed pursuant to Forest Plan direction. (Appendix G, Table 3G, Timber Harvesting (1), p. 315)

Analysis of TWS/Sierra Club/Heartwood/PAW/SEDG's Administrative Appeal of the WMP DN/FONSI

In their administrative appeal of the DN/FONSI, TWS/Sierra Club/Heartwood/PAW/SEDG dropped the Aquatic Communities, Chemicals, Hydrological, and Silviculture categories, with comments, submitted in SEDG's SN comments (Appendix G, Table 3G, pp. 311-316), and they specifically dropped the alternatives (2), cumulative effects (1), ecological (1 through 4), economics (1 and 2), environmental analyses/documentation (1), exotic/invasive species (1), old growth (2 and 3), riparian areas (1), roadless areas (1 through 3), roads (1), soils (1 and 2), timber harvesting (1 through 6), and water resources (1 and 2) comments submitted in SEDG's SN comments

(Appendix G, Table 3G, pp. 311-316), which suggests that the Forest Service adequately addressed these comments.

However, a myriad of new appeal issues were submitted that were not submitted in SEDG's SN comments. For example, they added Mitigation, Recreation/Tourism, Vegetation, and Wilderness categories, with appeal issues (Appendix G, Table 4G, pp. 317-339), which were not submitted in SEDG's SN comments, and they specifically added the aesthetics (1 and 2), alternatives (1), cumulative effects (1), ecological (1 through 4), economics (1), environmental analyses/documentation (1 through 5), forest health (1), riparian areas (1 and 2), roadless areas (1 through 15), roads (1 and 2), soils (1 through 5), TES/PETS/MIS (1 through 4, 7, and 8), timber harvesting (1 through 5), and water resources (1) appeal issues (Appendix G, Table 4G, pp. 317-339), which were not submitted in those categories in SEDG's SN comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, their soils (4) appeal issue stated:

The EA fails to evaluate the site-specific impacts of cable logging on soils and watersheds (EA, p.27). The USFS must provide enough information for the public to respond to issues intelligently (16 CFR 1604,6(d)). This finding calls into question the USFS's assumption that cable logging does very little harm to soil. (Appendix G, Table 4G, p. 333)

If they would have raised this concern before a decision was issued, the Forest Service may have been able to address it. It seems reasonable to suggest that they and the Forest Service would benefit if such issues were raised earlier in the process, and it seems reasonable to assume that they could have done so because the information was available from the EA for his EA comments.

Finally, TWS/SC/Heartwood/PAW/SEDG submitted several appeal issues that were submitted in SEDG's SN comments, which suggests that they were either not satisfied or simply disagreed with the Forest Service's response to these comments. For example, their aesthetics (3), alternatives (2 and 3), exotic/invasive species (1), forest health (2 through 4), local communities (1), old growth (1), TES/PETS/MIS (5, 6, and 9), and wildlife (1 and 2) appeal issues (Appendix G, Table 4G, pp. 317-339), were

previously submitted in SEDG's SN comments and either specifically addressed or "classified as significant issues to be addressed in the EA." In addition, their local communities (2) and wetlands (1) appeal issues (Appendix G, Table 4G, pp. 324 and 338), were previously submitted and "not specifically addressed" in SEDG's SN comments, and again, they were "not specifically addressed" by the ADO because they seemed to be either vague or more characteristic of statements or opinions, rather than project-specific issues.

CHAPTER VIII – PART IV

LEGAL PROCEDURES AND ANALYSES FOR THE AGP, TMP, AND WMP

Introduction

On April 16, 1998, SEDG, Heartwood, PAW, Sherman Bamford, Steven Krichbaum, and Christina Wulf (SEDG et al.) filed a complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Northern District of Georgia on the AGP, TMP, and WMP. On May 1, 1998, the Forest Service filed a Motion to Transfer the case to the U.S. District Court for the Western District of Virginia, in the U.S. District Court for the Northern District of Georgia. On June 8, 1998, the District Court Judge ordered: (1) the Forest Service’s Motion to Transfer and Motion be granted; (2) the plaintiffs’ Motion for TRO on the AGP be granted; and (3) the plaintiffs shall post \$500 as security for the payment of costs and damages as may be incurred or suffered by the party who is found to have been wrongfully enjoined or restrained. On August 17, 1998, the U.S. District Court Judge for the Western District of Virginia, Roanoke Division, granted Summary Judgment in favor of the Forest Service and denied the plaintiffs’ Motion for Summary Judgment (SEDG et al. v. USFS, 1998). Thereafter, SEDG et al., along with TWS, filed an appeal in the U.S. Court of Appeal for the Fourth Circuit on August 20, 1999, and on September 24, 1999, the Fourth Circuit Judge affirmed that the District Court properly granted Summary Judgment in favor of the Forest Service, ending the dispute (SEDG et al., 1999).

Analysis of the Primary Commenter, Appellant, and Litigant

Analysis of SEDG et al.’s Legal Arguments

In their court complaint, SEDG et al. incorporated several, but fewer of, the issues raised in their comments and administrative appeal, as well as general procedural violations of the APA, the NEPA, and the NFMA. These issues are reflected in the Final Order from the District Court Judge.

In the Final Order, the District Court Judge held that: (1) the Forest Service properly considered the cumulative impacts of the three logging projects; (2) the Forest Service’s decision not to prepare an EIS was not arbitrary or capricious; (3) the Forest Service complied with its duty under the NFMA to inventory the POS and to disclose the impacts to it under the NEPA in deciding to proceed with the TMP; (4) the Forest

Service's decision not to include mentioned areas into its roadless inventory was not arbitrary or capricious; and (5) the Forest Service properly considered alternatives to the proposed actions. Thus, the District Court Judge granted Summary Judgment in favor of the Forest Service and denied the plaintiffs' Motion for Summary Judgment (SEDG et al. v. USFS, 1998), clearly indicating that the Forest Service complied with all rules, regulations, and statutory requirements for project-level activities.

CHAPTER IX
THE CHESTNUT RIDGE #2 TIMBER SALE

Introduction

The Chestnut Ridge #2 Timber Sale (CRTS) on the Deerfield Ranger District (DRD) of the GWNF (Figure 1, p. 13) involved the decision to implement Alternative 2 in MA 15, after considering a total of four action alternatives and a no-action alternative. MA 15 comprised approximately 331,000 acres (approximately 30.1%) of the approximately 1.1 million total acres of the GWNF, with approximately 192,000 acres (approximately 58%) in the MA classified as suitable for timber production (GWNF RLRMP, pp. 2-14 and 3-79). MA 15 contains portions of the Forest that: (1) were managed to maintain or enhance habitat for wildlife favoring a mature forest environment with both temporary and permanent clearings, and freedom from disturbance during nesting, brood-rearing seasons; (2) were managed to provide high quality habitat for these species and high quality forest produces to enable efficient vegetation manipulation through commercial timber sales on lands classified as suitable for timber management; and (3) gave highest consideration to the development of quality habitat and control of motorized access in relation to associated resources (GWNF RLRMP, p. 3-79).

Alternative 2 included: (1) harvesting a total of 86 acres of suitable lands in five cutting units using the modified shelterwood method, leaving approximately 20 square feet of BA uncut in all stands, except for two, where 40 square feet of BA would be left uncut to address the concerns of adjacent landowners on water quality and protection of ponds; (2) thinning a total of 73 acres of suitable land in two cutting units; (3) construction of 1.5 miles of system road; (4) preparing a total of 86 acres after harvest for natural regeneration using chainsaws and handtools in five of the cutting units; (5) construction of 29 acres of permanent wildlife openings; (6) other wildlife treatments, including a total of 25 acres of prescribed burning in one cutting unit, 107 acres of grapevine/mass crop in one cutting unit, and tree release in three cutting units; and (7) an addition buffer zone on the northwest boundary of one cutting unit to provide additional protection of a small intermittent stream. Together, these treatments produced approximately 527,000 board feet of wood products worth an estimated \$40,411. The net

project revenue was estimated at \$3,859, after the reduction of estimated costs (\$36,552); so the CRTS was not below-cost.

The justification for the proposed action was to meet the direction set forth in the GWNF RLRMP for MA 15, as well as the DFC for MA 15, which was to have: (1) breeding, nesting, and fall/winter wildlife habitat in a balanced age class mosaic of hardwood and pine vegetation to provide among other things a continuous supply of hard and soft mast; (2) open, park like understories to promote moderate herbaceous undergrowth; and (3) forest openings and other suitable areas to provide moderate herbaceous ground cover and abundant insect populations (GWNF RLRMP, p. 3-79).

Administrative Procedures

Scoping Procedures and Public Comments

On May 30, 1996, the Forest Service mailed the SN for the proposed CRTS to 57 interested members of the public. The Forest Service welcomed public involvement in helping to design and evaluate alternative courses of action and asked for specific comments on the proposal by July 5, 1996. The Forest Service received only five public SN comments from four individuals and one special-interest group. The primary issues raised in these comments seemed to focus on ecological, economics, timber harvesting, and wildlife concerns, and a majority of the commenters generally opposed the proposed CRTS (Appendix H, Table 1H, p. 341).

Environmental Assessment Procedures and Public Comments

On January 17, 1997, the Forest Service mailed the CRTS EA and Comment Notice to seven interested members of the public, including those who submitted public SN comments. On January 25, 1997, the EA comment period was opened for 30 days, until February 23, 1997. The Forest Service received only four public EA comments from a total of four individuals and one special-interest group. The primary issues raised in these comments seemed to focus on roads, soils, timber harvesting, and water resources concerns, and all of the commenters generally opposed the proposed action (Appendix H, Table 2H, p. 342).

Administrative Appeal Procedures and Public Administrative Appeals

On November 12, 1997, the Forest Service mailed the CRTS DN/FONSI to nine interested members of the public, including those who submitted public SN and EA

comments. On November 17, 1997, the administrative appeal period was opened for 45 days, until December 31, 1997. The Forest Service received 10 public administrative appeals from a total of nine individuals and three special-interest groups. However, only four of the administrative appeals were accepted, and six of the administrative appeals filed by individuals were dismissed because they were either filed after the administrative appeal period closed or because they had not previously participated in the public comment process. In addition, it is important to note that four of the dismissed administrative appeals were filed by individuals who listed themselves as landowners and members of Rock Haven Lodge (RHL). They filed the exact same administrative appeal as James Williams, who previously participated in the public comment process, and asked that all correspondence be sent to James Williams, President. Although their administrative appeals were dismissed, James William's administrative appeal clearly represents their concerns in this case as landowners and members of RHL. For those administrative appeals accepted, the primary issues raised seemed to focus on ecological, public involvement, regeneration, roads, soils, timber harvesting, and water resources concerns (Appendix H, Table 3H, p. 343).

On January 20, 1998, an IDM was held at the DRD Office between the DRD District Ranger, the Forest NEPA Coordinator, the Forest Ecologist, the District Wildlife Biologist, the DRD Timber Sale Assistant, the DRD Support Services Supervisor, and appellants and interested parties, Eric Nielsen (SEDG), Steven Krichbaum, Wade Neely, Mike Jones, James Williams, and John Carter. No major resolution was reached that would have resulted in any of the administrative appeals being dropped, and the appellants indicated they were prepared to move forward; thus, the administrative appeal review continued. However, the District Ranger decided to take steps to review the impacts of harvesting above the pond on Mr. Neely's property as a result of the discussions during the meeting, and expressed that if such analysis showed reason to change or revise the EA, actions would be taken. Although resolution was not reached on any of the administrative appeals, some benefit did come from this meeting.

On January 28, 1998, Heartwood, VFW, and Steven Krichbaum notified the Forest Service that their failure to determine the impact of its plans and decisions on the Indiana bat was in violation of the ESA (16 U.S.C. § 1531, et seq.), and that if they did

not take satisfactory steps to remedy these violations within sixty days, suit may be brought in the U.S. District Court to force compliance. There is no indication in the administrative record that the Forest Service responded to this notification, and on January 29, 1998, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's DN/FONSI be affirmed. On March 13, 1998, the ADO mailed a consolidated administrative appeal decision to all of the appellants, and informed them that the District Ranger had not adequately responded to the issues and questions the public raised regarding water quality in making his decision. Thus, the ADO reversed the District Ranger's DN/FONSI, which meant that the Forest Service had to revise the EA, repeat the NEPA process, submit a new DN/FONSI, and repeat the administrative appeals process.

Revised Environmental Assessment Procedures and Public Comments

On August 20, 1998, the Forest Service mailed the Revised CRTS EA and Comment Notice to 19 interested members of the public, including those who submitted SN comments, EA comments, and administrative appeals. On August 24, 1998, the Revised EA comment period was opened for 30 days, until September 23, 1998. The Forest Service received only nine public Revised EA comments from a total of 10 individuals and nine special-interest groups. The primary issues raised in these comments seemed to focus on alternatives, economics, roads, timber harvesting, and water resources concerns, and a majority of the commenters generally opposed the proposed CRTS (Appendix H, Table 4H, p. 344).

On September 21, 1998, a meeting was held during the 30-day comment period for the Revised EA to help answer any questions or concerns of interested landowners. The meeting took place at the CRTS site between the DRD District Ranger, the DRD Timber Management Assistant, the DRD Wildlife Biologist, and adjacent landowners, James Williams, Earl Cash, and John Carter. Wade Neely was also invited and originally planned to attend, but he called the DRD Timber Management Assistant to cancel out of the meeting. James Williams was the primary spokesperson for the adjacent landowners and raised issues pertaining to the modified shelterwood cutting and the effects on soil and water from timber harvesting on the adjacent landowners. Information was

exchanged between the agency and the adjacent landowners, but no issues or concerns were resolved.

On the same day of the meeting with adjacent landowners just mentioned, Mr. Neely, who earlier called to cancel out of the meeting, contacted the DRD Timber Management Assistant and expressed an interest to still meet with the District Ranger before a final decision was made. The Forest Service agreed to meet, and on October 30, 1998, the District Ranger, the DRD Timber Management Assistant, the DRD Wildlife Biologist, the GWNF Zone Hydrologist, and Mr. Neely met at the CRTS site. Mr. Neely was concerned about water quality and how the project might impact his ponds and desired that any cutting on the GWNF adjoined to his property be eliminated. As a resolution to meet Mr. Neely's concerns on water quality and protection of his ponds, the Forest Service offered to change the cutting method in Stand 741/39 from a "modified shelterwood" to a "selective thinning," plus add an additional buffer zone along the small intermittent stream on the northwest boundary. Mr. Neely declined this offer and still wanted the Forest Service to drop the harvest unit and temporary road construction from the sale.

On November 27, 1998, the DRD Timber Management Assistant also met with Dell Curry, who is an adjacent landowner to the proposed sale, and Mark Davis at the CRTS site. They raised roads, timber harvesting, and water resources concerns, in general, and specifically raised concerns about the affect of timber harvesting on a spring below Mr. Curry's hunting cabin that is used as a main water source, and the modified shelterwood harvest that adjoined his property. The DRD Timber Management Assistant offered thinning as an option to help resolve their concerns; however, no resolution was reached.

Administrative Appeal Procedures and Public Administrative Appeals

On February 1, 1999, the Forest Service mailed the Revised CRTS DN/FONSI to 21 interested members of the public, including those who submitted SN comments, EA comments, administrative appeals, and Revised EA comments. On February 5, 1999, the administrative appeal period was opened for 45 days, until March 17, 1999. The Forest Service received nine public administrative appeals from a total of nine individuals and five special-interest groups. However, only six administrative appeals were accepted,

and three administrative appeals filed by individuals were dismissed for either being filed after the administrative appeal period closed or for a lack of previous interest. For those administrative appeals accepted, the primary issues raised seemed to focus on adjacent landownership, hydrological, public involvement, recreation/tourism, roads, soils, timber harvesting, and water resources concerns (Appendix H, Table 5H, p. 345).

The District Ranger made various attempts to reach informal resolution with all of the appellants via meetings and telephone discussions. The District Ranger spoke with Christian Wulf of SEDG, James Williams of the RHL, Lonny Payne, and Wade Neely via telephone, but no resolution was reached with any of them. In addition, it is important point out that the District Ranger noted that Mr. Neely expressed many expletives in the conversation and came close to hanging up on him, and Mr. Neely, in essence said, "See you in court!" The District Ranger also met at length with Lonny and Maxine Payne and discussed project plans, roads, erosion concerns, etc., but no resolution was reached. As a result, the administrative appeal reviews continued.

On May 4, 1999, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's Revised DN/FONSI be affirmed. On May 18, 1999, the ADO mailed separate administrative appeal decision to the appellants, and informed them that: (1) the issues raised in the administrative appeals of the decision were adequately addressed by the District Ranger in the Revised EA and Revised DN/FONSI; and (2) that the environmental effects disclosure in the Revised EA was appropriate and adequate for the project and supported the District Ranger's conclusion that the selected action would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the District Ranger's Revised DN/FONSI, constituting the final administrative determination of the USDA.

Legal Procedures

After the Revised DN/FONSI was affirmed, SEDG, Wade Neely, Earl Cash, Jimmy Williams, and RHL (SEDG et al.) filed a complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Western District of Virginia, Harrisonburg Division, on February 4, 2000, and amended their complaint on March 31, 2000. On March 19, 2001, the District Court Judge granted Summary Judgment in favor of the Forest Service, dismissed the plaintiffs' claim under the ESA for lack of jurisdiction, and

denied the plaintiffs' Motion for Summary Judgment motion, ending the dispute (SEDG et al. v. USFS, 2001).

Analysis of the Primary Commenter, Appellant, and Litigant

Primary Commenter, Appellant, and Litigant Profile

The primary commenter, appellant, and litigant in this case is SEDG. SEDG, classified as a special-interest group, is a group of citizens concerned about the management of public forestlands in western Virginia who frequently participate in Forest Service public involvement activities. Although others were included in the court complaint, SEDG is listed first on the complaint, so their comments and administrative appeals will be analyzed. Since SEDG did not file SN comments, the analysis will begin with their EA comments.

Analysis of SEDG's Comments on the CRTS EA

In their EA comments, SEDG submitted Alternatives, Aquatic Communities, Archaeological/Natural Heritage Resources, Cumulative Effects, Ecological, Economics, Environmental Analyses/Documentation, Exotic/Invasive Species, Forest Health, Mitigation, Old Growth, Regeneration, Riparian Areas, Roads, Silviculture, Soils, TES/PETS/MIS, Timber Harvesting, Water Resources, and Wildlife categories, with comments, and the Forest Service seemed to adequately address most of the comments (Appendix H, Table 6H, pp. 346-358). For example, their archaeological/natural heritage resources (1) EA comment asked:

What is the heritage resource that exists within one of the harvest units? Which harvest unit is it in? Why is the site considered "non-significant?" Why isn't the public informed what it is? How can the public comment on this resource without being informed as to its nature? (Appendix H, Table 6H, p. 347)

The Forest Service's response to this comment stated:

The effects on heritage resources are disclosed in the EA. The agency normally avoids identifying the type and location of heritage resources discovered during inventories specifically designed to find these resources. Anonymity of sites is necessary for their preservation. As used in this EA, a site is considered "non-significant" when the site is evaluated and found to not meet the eligibility criteria for inclusion in the National Register of Historic Places (NRHP). If a site is not

eligible for the NRHP, then obviously, the sensitivity to protect this site no longer exists and identifying its type and location may be made to the public. For the project area, one historic field clearing site was determined to be non-significant, so the project will have no adverse effects on heritage values. This is consistent with the Secretary of the Interior's standards for identification (48 C.F.R. 44720-44723); Section 106 of the National Historic Preservation Act of 1966. (Appendix H, Table 6H, Archaeological/Natural Heritage Resources (1), pp. 347-348)

Analysis of Heartwood/SEDG's Administrative Appeal of the CRTS DN/FONSI

In their administrative appeal of the DN/FONSI, Heartwood/SEDG dropped the Aquatic Communities, Archaeological/Natural Heritage Resources, Economics, Forest Health, Mitigation, Old Growth, Riparian Areas, Silviculture, and Timber Harvesting categories, with comments, submitted in SEDG's EA comments (Appendix H, Table 6H, pp. 346-358), and they specifically dropped the alternatives (1 through 8), cumulative effects (1 and 2), ecological (1 and 2), environmental analyses/documentation (1 through 3), regeneration (1, 3, and 5), roads (3 and 4), soils (1 and 2), TES/PETS/MIS (1 through 3, and 5), water resources (1 and 2), and wildlife (1 through 4) comments submitted in those categories in SEDG's EA comments (Appendix H, Table 6H, pp. 346-358). This suggests that the Forest Service adequately addressed many of SEDG's EA comments.

In their administrative appeal of the DN/FONSI, however, a myriad of new appeal issues were submitted. For example, they added Public Involvement and Recreation/Tourism categories, with appeal issues (Appendix H, Table 7H, pp. 359-376), which were not submitted in SEDG's EA comments, and they specifically added the alternatives (1 through 4), cumulative effects (1 through 5), ecological (1, 2, and 4), environmental analyses/documentation (1 and 2), exotic/invasive species (1), roads (2 through 4 and 7 through 10), soils (1 and 2), TES/PETS/MIS (1 through 23 and 25 through 31), water resources (1 and 2), and wildlife (1) appeal issues (Appendix H, Table 7H, pp. 359-376), which were not submitted in SEDG's EA comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, their alternatives (4) appeal issue stated:

Although the EA does not discuss the matter, Alternative 3 responds to the concerns of adjacent landowners about increased sedimentation resulting from cuts above their property. Eliminating the cuts on the property boundary on the north side of Chestnut Ridge will lessen, but not eliminate, the impacts felt below. The fact that previous cutting has apparently had detrimental effects on these neighbors should cause the District to at least consider the relative impacts of the alternatives in this regard. (Appendix H, Table 7H, p. 359)

If Heartwood/SEDG would have raised this issue earlier in the process, the Forest Service may have been able to address it before a decision was issued. It seems reasonable to suggest that Heartwood/SEDG and the Forest Service would benefit if such issues were raised earlier in the public involvement process, and it seems reasonable to assume that that they could have done so because the information was available in the EA for their EA comments.

Finally, Heartwood/SEDG submitted several appeal issues that were similar SEDG's EA comments. For example, their ecological (3), environmental analyses/documentation (3), regeneration (1 and 2), roads (1, 5, and 6), and TES/PETS/MIS (24) appeal issues (Appendix H, Table 7H, pp. 359-376), were comments previously submitted and specifically addressed by the Forest Service in SEDG's EA comments, which suggests that Heartwood/SEDG were either not satisfied or simply disagreed with the Forest Service's responses to these comments. However, in most instances, it seemed that the Forest Service adequately addressed these comments, but thereafter, Heartwood/SEDG either added more detail to or changed the direction of SEDG's EA comments in their administrative appeal of the DN/FONSI, or they simply disagreed with the Forest Service's response to SEDG's EA comments in their administrative appeal of the DN/FONSI. For example, SEDG's TES/PETS/MIS (4) EA comment stated:

The EA's claim that although ovenbird populations would decrease, they would remain above minimum viable populations, is entirely unsubstantiated.

Demonstrate this. (Appendix H, Table 6H, p. 355)

The Forest Service's response to this comment stated:

The environmental effects may be disclosed in a quantitative or qualitative manner, or both. The ovenbird is a MIS. It is not a listed TES species. Based on

the habitat requirement for the bird and the kinds of impacts which would occur for each alternative, the estimated environmental effects are presented in a qualitative manner. The effects are based on professional knowledge and consideration of existing research, in light of context and intensity of the actions being considered in each alternative. The intent of NEPA has been met.

(Appendix H, Table 6H, TES/PETS/MIS (4), p. 355)

Heartwood/SEDG simply disagreed with the Forest Service's response to this comment in their administrative appeal of the DN/FONSI, stating:

With regard to a public concern regarding maintenance of minimum viable populations of ovenbird, and the lack of substantiation for the claim that cumulative effects would not result in a loss of viability, the USFS's response makes little sense and appears to imply that there is no obligation to consider the effects of management activities in the project area on ovenbird populations. It seems to relegate the ovenbird to other areas of set-aside unfragmented habitat.

(Appendix H, Table 7H, TES/PETS/MIS (24), p. 374)

The ADO did not respond to this appeal issue.

*Analysis of Heartwood/JMP/PAW/SEDG's Administrative Appeal
of the Revised CRTS DN/FONSI*

In their administrative appeal of the Revised DN/FONSI, Heartwood/John Muir Project (JMP)/PAW/SEDG dropped the Aquatic Communities, Archaeological/Natural Heritage Resources, Economics, Environmental Analyses/Documentation, Forest Health, Mitigation, Old Growth, Riparian Areas, and Silviculture categories, with comments or appeal issues, submitted in SEDG's EA comments or Heartwood/SEDG's administrative appeal of the DN/FONSI (Appendix H, Table 6H and 7H, pp. 346-376), and they specifically dropped the alternatives (1 through 8), cumulative effects (1 and 2), ecological (1 and 2), exotic/invasive species (1 and 2), regeneration (1, 3, and 5), roads (3 and 4), soils (1 and 2), TES/PETS/MIS (1 through 5), timber harvesting (1 through 8), water resources (1 and 2), and wildlife (1 through 4) comments submitted those categories in SEDG's EA comments (Appendix H, Table 6H, pp. 346-358) and the alternatives (1 and 2), cumulative effects (2 and 3), ecological (4), public involvement (1 through 3), roads (2, 3, 7, and 8), soils (2), TES/PETS/MIS (18 through 20, and 23, 26,

29, and 31), water resources (1 and 2), and wildlife (1) appeal issues submitted in those categories in Heartwood/SEDG's administrative appeal of the DN/FONSI (Appendix H, Table 7H, pp. 359-376). This suggests that the Forest Service adequately addressed many of their comments and appeal issues.

However, several new appeal issues were submitted in their administrative appeal of the DN/FONSI, which were not comments or appeal issues submitted in SEDG's EA comments or Heartwood/SEDG's administrative appeal of the DN/FONSI. For example, they added the alternatives (1, 2, and 5), public involvement (1), roads (6), TES/PETS/MIS (2 and 8), timber harvesting (1), and water resources (1) appeal issues in their administrative appeal of the Revised DN/FONSI (Appendix H, Table 8H, pp. 377-392), which were not submitted in previous public comment or administrative appeal stages. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before the Revised DN/FONSI was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, their water resources (1) appeal issue stated:

The Revised EA on pages 32-33 sidesteps (for a second time) the need for site specific analysis on water impacts from timber harvests. (Appendix H, Table 8H, p. 392)

If this issue would have been raised in Revised EA comments, the Forest Service may have been able to address it before the Revised DN/FONSI was issued. It seems reasonable to suggest that the appellants and the Forest Service would benefit if such issues were raised earlier in the process, and it seems reasonable to assume that they could have done so because the information was available in the Revised EA for their Revised EA comments.

Finally, Heartwood/JMP/PAW/SEDG submitted numerous appeal issues in their administrative appeal of the Revised DN/FONSI that were submitted at earlier public involvement stages. For example, their ecological (1), regeneration (1 and 2), and roads (1 and 2), appeal issues (Appendix H, Table 8H, pp. 377-392) were previously submitted and specifically addressed by the Forest Service in SEDG's EA comments and Heartwood/SEDG's administrative appeal of the DN/FONSI, and their soils (1) appeal issue (Appendix H, Table 8H, p. 384) was previously submitted and specifically

addressed in Heartwood/SEDG's administrative appeal of the DN/FONSI, which suggests that they were either not satisfied or simply disagreed with the Forest Service's response to these issues.

Analysis of SEDG et al.'s Legal Arguments

In their complaint and amended complaint, SEDG et al. incorporated several, but fewer of, the issues raised in their comments and administrative appeals, as well as general procedural violations of the APA, the NEPA, and the NFMA. These issues are reflected in the Final Order from the District Court Judge.

In the Final Order, the District Court Judge held that: (1) the Forest Service properly considered the cumulative impacts of the CRTS, including impacts to black bears, neo-tropical migratory birds, and TES; (2) the Forest Service did not act arbitrarily and capriciously by issuing a FONSI instead of requiring an EIS and by approving the CRTS without preparing an EIS; (3) the Forest Service adequately analyzed the timber sale's impacts on the project area's soil and water resources; (4) the Forest Service properly considered the impacts of road construction and did not act arbitrarily or capriciously in determining that the timber sale would have no impact on the existing open road density of MA 15; (5) the plaintiffs did not comply with the ESA's notice requirement and cannot contest the sufficiency of the Revised EA's biological data; (6) the Forest Service considered the relevant CEQ regulations and took the requisite hard look at the environmental consequences of the timber sale; (7) the Forest Service's FONSI was not arbitrary and capricious; and (8) because the plaintiffs failed to exhaust their administrative remedies, the court did not consider two of the plaintiffs' claims pertaining to cumulative effects and economic analyses. Thus, the District Court Judge granted Summary Judgment in favor of the Forest Service, dismissed the plaintiffs' claim under the ESA for lack of jurisdiction, and denied the plaintiffs' Motion for Summary Judgment motion (SEDG et al. v. USFS, 2001), clearly indicating that the Forest Service complied with all rules, regulations, and statutory requirements for project-level activities.

CHAPTER X – PART I
THE GYPSY MOTH PHEROMONE RESEARCH STUDY

Introduction

The Gypsy Moth Pheromone Research Study (GMPRS) on the Deerfield and Warm Springs Ranger Districts (DWSRD) of the GWNF (Figure 1, p. 13) involved the decision to implement Alternative 2 in MAs 7, 14, and 15, after considering an action and no-action alternative. MA 7 has a visual emphasis (GWNF RLRMP, pp. 3-29 through 3-34), while MAs 14 and 15 have wildlife emphases (GWNF RLRMP, pp. 3-74 through 3-84).

Alternative 2 included: (1) treatment of 12 plots equally divided between the two Districts, totaling approximately 740 acres, with gypsy moth pheromone flakes and capsules at various dosages; (2) four untreated plots equally divided between the two Districts, totaling approximately 247 acres, as controls to evaluate gypsy moth mating without any pheromone treatments; (3) single aerial application on all treated plots; and (4) notification to the public about the treatment through news releases to local print media prior to project implementation.

The justification for the proposed action was to permit researchers to compare the effectiveness of two pheromone products (flakes and capsules) and determine if lower doses (flakes) of the gypsy moth pheromone were effective in disrupting mating between the male and female moths. If the study was successful, the Forest Service could possibly reduce the cost of flake application by: (1) using capsules rather than flakes; and (2) using lower doses than had been used in the past. Thus, more acres could be treated for the same cost. In addition, the justification for the proposed action was its consistency with one of goals of the GWNF RLRMP, which was to prevent degradation of the Forest by insects, disease, and wildfire (GWNF RLRMP, p. 2-35).

Administrative Procedures

Scoping Procedures and Public Comments

On December 21, 1999, the Forest Service mailed the SN for the proposed GMPRS to 121 interested members of the public. The Forest Service encouraged public involvement and asked for specific comments on the proposal by January 22, 2000. The Forest Service received only three public SN comments from the County of Bath, one

individual, and one special-interest group. Various issues were raised in these comments, and the majority of commenters did not express an opinion as to the appropriateness of the GMPRS (Appendix I, Table 1I, p. 394).

Environmental Assessment Procedures and Public Comments

On March 1, 2000, the Forest Service mailed the GMPRS EA and Comment Notice to four interested members of the public, including those who submitted SN comments. On March 4, 2000, the EA comment period was opened for 30 days, until April 3, 2000. The Forest Service received only one public EA comment from the special-interest group who previously submitted SN comments.

Administrative Appeal Procedures and Public Appeals

On April 12, 2000, the Forest Service mailed the GMPRS DN/FONSI to six interested members of the public, including those who submitted SN and EA comments. On April 16, 2000, the administrative appeal period was opened for 45 days, until May 31, 2000. The Forest Service received only one public administrative appeal from the special-interest group who previously submitted SN and EA comments, and it was accepted.

On June 6, 2000, an IDM was held via telephone call between the GWJNF Forest Supervisor, the GWJNF Planning Staff Officer, the GWJNF NEPA Coordinator, and Marty Bergoffen of Southern Appalachian Biodiversity Project (SABP) (the appellant). In addition, three individual members of SABP participated. The outcome of the meeting was that the appellant did not wish to drop the administrative appeal; thus, the administrative appeal review continued.

On June 8, 2000, the ARO mailed the administrative appeal review to the ADO, recommending that the Forest Supervisor's DN/FONSI be affirmed. On June 12, 2000, the ADO mailed the administrative appeal decision to Mr. Bergoffen of SABP, and informed him that: (1) the issues raised in the administrative appeal of the DN/FONSI had been adequately addressed by the Forest Supervisor in the EA and DN/FONSI; and (2) the environmental effects disclosure in the EA was appropriate and adequate for the project and supported the Forest Supervisor's conclusion that the selected action would not have a significant impact on the quality of the human environment. Thus, the ADO

affirmed the Forest Supervisor's DN/FONSI, constituting the final administrative determination of the USDA.

Analysis of the Primary Commenter, Appellant, and Litigant

Primary Commenter, Appellant, and Litigant Profile

The primary commenter, appellant, and litigant in all parts of this chapter is SABP. SABP is a regional, non-profit organization dedicated to empowering citizens to appreciate, defend, and restore the native biodiversity of the Southeast United States. Their goals are to: (1) defend public lands as a refuge for ancient forests, native wildlife, and natural beauty; (2) seek permanent protection for the region's public lands and sustainable management of private lands; (3) take legal action to protect critical habitats and assure full enforcement of conservation laws on public lands; (4) educate the public about how forest fragmentation, chronic air and water pollution, and exotic pests and diseases that threaten native forests; (5) promote the reintroduction of native wildlife that has been extirpated from the Southern Appalachians, such as the red wolf; and (6) advocate the end of corporate welfare policies which hurt our economy and natural heritage.

Analysis of SABP's Comments on the GMPRS SN

In their SN comment, SABP submitted Health Effects, Non-target Species, and Research/Studies categories, with comments, and the Forest Service seemed to adequately address these comments (Appendix I, Table 2I, pp. 395-396). For example, their non-target species (1) SN comment stated:

SABP believes that this spraying may have unintended consequences for non-target species. Disparlure has been found to effect multiple moth and butterfly species, including gypsy moth (*Lymantria dispar*) and nun moth (*Lymantria monacha*). (Appendix I, Table 2I, p. 395)

The Forest Service's response to this comment stated:

Lymantria monacha or nun moth is an exotic Lepidoptera, closely related to the gypsy moth, and it is not found in this country. Some information suggests that the nun moth may have some cross-attraction to the gypsy moth pheromone; however, no studies have been done to show that the gypsy moth pheromone might be used to control nun moth populations. There are other Lymantriid moths

that occur in the eastern U.S. as evidenced by the occasional catch in a pheromone trap; however, there is no evidence to suggest that the pheromone actually disrupts mating. The treatment effect on non-target species is discussed in the EA under Environmental Effects of the Alternatives (p. 15, discussion of Significant Issue 1), and in the BE. (Appendix I, Table 2I, Non-target Species (1), 395-396)

Analysis of SABP's Comments on the GMPRS EA

In their EA comments, SABP dropped all comments submitted in their SN comments, which suggest that the Forest Service adequately addressed these comments. However, a myriad of new categories with comments were submitted in their EA comments, which is expected because the EA provides the public with much new information. SABP added Alternatives, Cumulative Effects, Forest Health, TES/PETS/MIS, and Water Resources categories with comments, and the Forest Service seemed to be adequately address these comments (Appendix I, Table 3I, pp. 397-399). For example, their alternatives (1) EA comment stated:

The EA contains only one alternative besides the “no action” alternative, which involves the spraying of pheromone flakes over 740 acres. Thus, the USFS has predetermined that spraying pheromones is the only possibility for controlling gypsy moths. The OIG report of January 1999 demanded that a *range of alternatives* be considered on page 27. Without a range of alternatives, and without a viable no action alternative, the USFS is basically rationalizing a decision already made, instead of analyzing the impacts of different alternatives. (Appendix I, Table 3I, p. 397)

The Forest Service's response to this comment stated:

This is not a gypsy moth control project where there are varying alternative control methods that might be analyzed. This is a research project to evaluate the effectiveness of differing methods of applying gypsy moth pheromone and using different concentrations of the pheromone (EA, page 4). Since the commenter did not provide another alternative for the agency to consider, it would be speculative on the part of the agency to try and determine what other alternatives the commenter wants the agency to consider. (Appendix I, Table 3I, Alternatives (1), p. 397)

Analysis of SABP's Administrative Appeal of the GMPRS DN/FONSI

In their administrative appeal, SABP dropped the TES/PETS/MIS and Water Resources categories, with comments, submitted in their EA comments (Appendix I, Table 3I, pp. 397-399), and they specifically dropped the alternatives (2) and forest health (1) comments that were submitted in those categories in their EA comments (Appendix I, Table 3I, pp. 397-399), which suggest that the Forest Service adequately addressed these comments. No new categories, with appeal issues, were submitted in their administrative appeal, but they specifically added the alternatives (2) and cumulative effects (2) appeal issues (Appendix I, Table 4I, pp. 400-401), which were not submitted in those categories in their EA comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, SABP's cumulative effects (2) appeal issue stated:

SABP has attached pages from the CEQ document "Considering Cumulative Effects." These pages indicated that cumulative effects analysis must expand on the geographical and temporal frames of the proposed project, and are not limited to overlapping. Therefore, the USFS must address actions in the vicinity that occur in the past, present, or reasonably foreseeable future, whether or not any actual overlap occurs. (Appendix I, Table 4I, p. 400)

If SABP would have provided this information earlier in the process, the Forest Service may have been able to integrate it into their decision-making, or assure SABP that such analysis was being conducted. It seems reasonable to suggest that SABP and the Forest Service would benefit if such information was shared earlier in the process, and it seems reasonable to assume that SABP had such information to share and could have done so in their EA comments.

Finally, the alternatives (1), cumulative effects (1), and forest health (1) appeal issues submitted in their administrative appeal (Appendix I, Table 4I, pp. 400-401), were issues previously submitted and specifically addressed by the Forest Service in their EA comments, which suggest that SABP was either not satisfied or simply disagreed with the Forest Service's responses. For example, SABP's cumulative effects (1) EA comment stated:

Cumulative effects are not adequately analyzed. The EA gives no indication of any other USFS projects occurring in the study areas; however, ongoing and proposed timber sales may produce cumulative or synergistic effects. For example, the Grindstone Timber Sale is proposed for the Walker Mountain area. (Appendix I, Table 3I, pp. 397-398)

The Forest Service's response to this comment stated:

The commenter does not make any reference as to what resource should be analyzed cumulatively with regards to the Grindstone timber sale. Additionally, in order for the impacts to be cumulative, the impacts from other listed sales must overlap, both in terms of space and time. The proposed Grindstone timber sale was originally scoped on 11/3/94 and again on 2/11/97. Its proposed cutting units lay on the northwest side of Walker Mountain, while the research plots associated with this project lay on the southeast side. Thus, there is no cumulative effect on, for instance water quality, since the proposed Grindstone sale does not lie within the Little Mill Creek or Clayton Mill Creek watersheds. The proposed Grindstone sale does not overlap in space with the research study plots. (Appendix I, Table 3I, Cumulative Effects (1), pp. 397-398)

In their administrative appeal, SABP filed the same exact comment, and the ADO responded that:

The response to comments (EA, Appendix A, pp. 4-6) explains that there will be no overlap in either space or time between the effects of the pheromone application and the Grindstone timber sale. The drainages are in separate watersheds. Furthermore, the Grindstone timber sale is not planned for implementation until year 2002, well beyond any effects of the pheromone application. The EA (pp. 11-19) discloses the effects on water and other resources to be so slight that there is essentially no effect to add to the effect of any other project, were there one, that could together cause any cumulative effect. I find that the EA adequately discloses cumulative effects (Appendix I, Table 4I, Cumulative Effects (1), p. 400)

It is unclear why SABP submitted the concern again, and it seems that the Forest Service could not have given an answer that would have been acceptable in any form.

CHAPTER X – PART II
THE BUFFALO BRANCH FUELWOOD SALE

Introduction

The Buffalo Branch Fuelwood Sale (BBFS) on the DRD of the GWNF (Figure 1, p. 13) involved the decision to implement Alternative 2 in MA 17, after considering an action and no-action alternative. MA 17 comprised approximately 91,000 acres (approximately 8.3%) of the approximately 1.1 million total acres of the GWNF, with approximately 63,000 acres (approximately 69%) in the MA classified as suitable for timber production (GNWF RLRMP, pp. 2-14 and 3-88). MA 17 contains portions of the Forest that were to be more intensively managed for timber using even-aged and uneven-aged timber cutting methods, and meant to provide a range of timber products in as efficient and economical a manner as consistent with multiple-use management (GNWF RLMRP, p. 3-88).

Alternative 2 included thinning a total of approximately 60 acres in three stands, where harvesting in all stands was accomplished using individual pickup type trucks over existing roads. This treatment produced approximately 165,000 board feet of wood products worth an estimated \$6,000. The net project revenue was estimated at \$3,000, after the reduction of estimated costs (\$3,000); so the BBFS was not below-cost.

The justification for the proposed action was to meet the direction set forth in the GWNF RLRMP, as well as the DFC for MA 17, which was to have: (1) a balanced age class distribution of forest stands containing native tree species capable of sustained, high value timber production; (2) an association of mostly deciduous upland and cove hardwood species with white pine occurring as a minor or partial component and some small stringers of southern yellow pine; and (3) commodity outputs which contribute to the social and economic well-being of the people living in the area and help maintain a way of life long associated with those living in the area (GNWF RLRMP, pp. 3-88 and 3-89). In addition, the proposed action would produce a variety of wood products, which would contribute to the economic and social vitality of the Forest's neighbors by providing fuelwood for home use, as well as capture the economic value of the timber resource.

Administrative Procedures

Scoping Procedures and Public Comments

On March 6, 1998, the Forest Service mailed the SN for the proposed BBFS to 61 interested members of the public. The Forest Service welcomed public involvement in helping to design and evaluate alternative courses of action and asked for specific comments on the proposal by April 3, 1998. The Forest Service received only one public SN comment from a total of two special-interest groups. They raised ecological, economics, and timber harvesting concerns, and were generally indifferent as to the appropriateness of the proposed BBFS (Appendix J, Table 1J, p. 403).

30-day Review Notice Procedures and Public Comments

Since the proposed action qualified for categorical exclusion, an EA or EIS was not prepared. Therefore, on February 22, 1999, the Forest Service mailed a 30-day Review Notice for the proposed BBFS to three interest members of the public, including those who submitted SN comments, and attached a copy of the unsigned DM that the Forest Service was considering for use. The Forest Service invited comments on the BBFS and noted that that it was anticipated that a DM would be utilized to document the decision in accordance with FSH 1909.15, § 31.2(4). On March 1, 1999, the 30-day Review Notice comment period was opened for 30 days, until March 31, 1999. The Forest Service received only one public 30-day Review Notice comment from a total of 10 special-interest groups and six individuals. They raised alternatives, ecological, economics, environmental analyses/documentation, hydrological, timber harvesting, and water resources concerns, and were generally opposed to the proposed BBFS (Appendix J, Table 1J, p. 403).

Administrative Appeal Procedures and Public Appeals

On May 7, 1999, the Forest Service mailed the BBFS DM to four interested members of the public, including those who submitted public SN and 30-day Review Notice comments. On May 13, 1999, the administrative appeal period was opened for 45 days, until June 27, 1999. The Forest Service did not receive administrative appeals during this period, which meant that project implementation could begin 15 days later. Although there is no indication in the administrative record, the Forest Service must not have began project implementation because in October 1999, the Forest Service received

a national adverse ruling regarding claim #3 (Heartwood v. USFS, 1999 (Categorical Exclusion (CE) Promulgation)), which declared null and void Forest Service project decisions approved relative to FSH 1909.15, § 31.2(4), and therefore, an EA had to be completed for the proposed BBFS.

Environmental Assessment Procedures and Public Comments

On February 8, 2000, the Forest Service mailed the BBFS EA and Comment Notice to seven interested members of the public, including those who submitted public SN and 30-day Review Notice comments. On February 14, 2000, the EA comment period was opened for 30 days, until March 16, 2000. The Forest Service received only two public EA comments from two special-interest groups. The primary issues raised in these comments seemed to focus on alternatives, ecological, TES/PETS/MIS, and water resources concerns, and they were both generally opposed to the proposed BBFS (Appendix J, Table 2J, p. 404).

Administrative Appeal Procedures and Public Appeals

On March 17, 2000, the Forest Service mailed the BBFS DN/FONSI to eight interest members of the public, including those who submitted public SN, 30-day Review Notice, and EA comments. On March 24, 2000, the administrative appeal period opened for 45 days, until May 8, 2000. The Forest Service received only one public administrative appeal from a special-interest group, and it was accepted.

On May 22, 2000, the DRD Timber Management Assistant called Marty Bergoffen of SABP (the appellant) to discuss an informal resolution of the administrative appeal. No resolution was reached that would result in the administrative appeal being dropped, and the appellant indicated they did not want to meet. Thus, the administrative appeal review continued.

On June 6, 2000, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's DN/FONSI needed work regarding the range of alternatives. On July 10, 2000, the ADO mailed the administrative appeal decision to Mr. Bergoffen of SABP, and informed him that: (1) the District Ranger adequately addressed the issues raised in the administrative appeal in the EA and DN/FONSI; and (2) the environmental effects disclosure in the EA was appropriate and adequate for the project and supported the District Ranger's conclusion that the selected action would not have a

significant impact on the quality of the human environment. Thus, the ADO affirmed the District Ranger's DN/FONSI, constituting the final administrative determination of the USDA.

Analysis of the Primary Commenter, Appellant, and Litigant

Analysis of SABP's Comments on the BBFS EA

In their EA comments, SABP submitted Alternatives, Ecological, TES/PETS/MIS, Water Resources, and Wilderness categories, with comments, and the Forest Service seemed to adequately address these comments (Appendix J, Table 3J, pp. 405-406). For example, their TES/PETS/MIS (1) SN comment stated:

The mitigation for effects on wildlife and PETS species is clearly based on decisions made as if a blind man were walking through MA 17. Clearly, motorized equipment and large mast trees impacted a previously disturbed area. This is quite the change in terms of habitat. (Appendix J, Table 3J, p. 405)

The Forest Service's response to this comment stated:

This is the opinion of the author. The effects on PETS is disclosed in the BE and EA, pages 10, 11, and 15. (Appendix J, Table 3J, TES/PETS/MIS (1), p. 405)

Analysis of SABP's Administrative Appeal of the BBFS DN/FONSI

In their administrative appeal, SABP dropped the Wilderness category, with comments, submitted in their EA comments (Appendix J, Table 3J, pp. 405-406), and they specifically dropped the alternatives (1 and 2), ecological (1 and 2), TES/PETS/MIS (1), and water resources (1) comments that were submitted in those categories in their EA comments (Appendix J, Table 3J, pp. 405-406), which suggest that the Forest Service adequately addressed most of their EA comments.

However, a myriad of new appeal issues were submitted in their administrative appeal. For example, SABP added Cumulative Effects, Environmental Analyses/Documentation, Soils, and Timber Harvesting categories, with appeal issues, in their administrative appeal (Appendix J, Table 4J, pp. 407-416), which were not categories with comments in their EA comments, and they specifically added the alternatives (1 through 6), ecological (1), TES/PETS/MIS (2 through 13), and water resources (1) appeal issues in their administrative appeal (Appendix J, Table 4J, pp. 407-416), which were not submitted in those categories in their EA comments. These new appeal issues seem to be

problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, SABP submitted nine appeal issues in their administrative appeal pertaining to the endangered Indiana bat (Appendix J, Table 4J, TES/PETS/MIS (4 through 9), pp. 412-415), yet never mentioned the bat in their EA comments. If SABP would have submitted these issues in their EA comments, the Forest Service may have been able to address them before a decision was issued. It seems reasonable to suggest that SABP and the Forest Service would benefit if such issues were raised earlier in the process, and it seems reasonable to assume that SABP had concerns about the Indiana bat before the administrative appeal period, so they could have shared these concerns earlier in the public involvement process.

Finally, the alternatives (6) and TES/PETS/MIS (1) appeal issues in SABP's administrative appeal (Appendix J, Table 4J, pp. 408-412), were comments previously submitted in their EA comments, which suggest that they were either not satisfied or simply disagreed with the Forest Service's responses to these comments. The TES/PETS/MIS (1) appeal issue (pp. 411-412) was specifically addressed by the Forest Service, which suggests that SABP was not satisfied or simply disagreed with the Forest Service's response.

CHAPTER X – PART III
THE TAYLOR BRANCH SALVAGE SALES

Introduction

The Taylor Branch Salvage Sales (TBSS) on the New Castle Ranger District (NCRD) of the JNF (Figure 1, p. 13) involved the decision to implement Alternative 2 in MA 7, after considering an action and no-action alternative. MA 7 comprised approximately 339,600 acres (approximately 4.8%) of the approximately 709,430 total acres of the JNF, with all acreage in the MA classified as suitable for timber production (JNF RLRMP, pp. I-3 and IV-148; Appendix A, A-1). The JNF RLRMP (p. IV-149) designated MA 7 to be managed for multi-resource objectives with an emphasis on timber production and wildlife habitat.

Alternative 2 included: (1) harvesting approximately 60 acres in one unit using the seed tree method; (2) harvesting a total of approximately 20 acres in two units using the group selection method; (3) salvage/sanitation thinning of a total of approximately 50 acres in three units; (4) construction of a total of 1 mile of temporary road through two units; (5) prescribed burning on approximately 60 acres in one unit; (6) precommercial thinning of one unit; and (6) approximately 35,000 board feet of firewood for the public, since the thinnings were to be cut by local citizens who purchased wood permits. Together, these treatments produced approximately 550,000 board feet of wood products worth an estimated \$23,213. The net project revenue was estimated at \$6,475, after the reduction of estimated costs (16,738); so the TBSS was not below-cost.

In general, the justification for the proposed action was to move the area towards its DFC, as specified for each MA in the JNF RLRMP (JNF RLRMP, Chapter IV). More specifically, the purpose of the project was to: (1) salvage dead and dying scarlet oak and black oaks, thereby improving forest health; (2) improve the age class distribution of the timber resource to provide a sustained yield of projects over time; (3) improve wildlife habitat by increasing both structural and vegetative diversity; and (4) provide commercial wood products and fuelwood for the public. In addition, the proposed timber harvesting, prescribed burning, planting, and thinning would provide new oak and pine regeneration.

Administrative Procedures

Scoping Procedures and Public Comments

On August 5, 1998, the Forest Service mailed the SN for the proposed TBSS to 63 interested members of the public. The Forest Service noted that a DM would be documented since the project met the requirements of FSH 1909.15, § 31.2(4), and asked for comments or suggestions on the proposal by September 8, 1998. The Forest Service received only five public SN comments from four individuals and one special-interest group. In addition, it can be noted that the comments received from the first three individuals were nearly identical, so some association was present. The primary issues raised in these comments seem to focus on alternatives, hydrological, timber harvesting, and wildlife concerns, and a majority of the commenters generally opposed the proposed TBSS (Appendix K, Table 1K, p. 418).

Administrative Appeal Procedures and Public Appeals

Since the project qualified for categorical exclusion, an EA or EIS was not prepared. Therefore, on September 29, 1998, the Forest Service mailed the TBSS DM to 61 interested members of the public, including those who submitted public SN comments. On October 3, 1998, the administrative appeal period was opened for 45 days, until November 17, 1998. The Forest Service received only two public administrative appeals from a total of twelve special-interest groups and six individuals. However, one administrative appeal was dismissed because no prior interest was expressed, and the other administrative appeal was dismissed because the District Ranger withdrew the TBSS DM that was being appealed.

On November 9, 1998, Heartwood, VFW, PAW, and Steven Krichbaum sent a “60-day Notice of Intent to Sue for Violation of the Endangered Species Act (Plan Amendments/Biological Opinion (BO)/Sales) – Unpermitted Takings of, Failure to Ensure that Agency Actions Will Not Harm, and Failure to Consult on Programs Affecting the Indiana Bat,” to the GWJNF Forest Supervisor, the Regional Forester for the Forest Service Southern Region, the Chief of the Forest Service, and the Director of the United States Fish and Wildlife Service (USFWS), stating that the USFWS’s BO, and the decision to implement the Indiana Bat Plan amendments on the GWJNF, violated the ESA (including sections 7 and 9) and would result in a “taking” of Indiana bats. Thus, if

the agencies did not take satisfactory steps to remedy the violations within 60 days, suit may have been brought in the U.S. District Court to force compliance. Although the reason could not be found in the administrative record, the NCRD District Ranger ironically issued a letter on January 5, 1999, withdrawing the TBSS DM to provide for an additional 30-day comment period.

30-day Review Notice Procedures and Public Comments

On January 5, 1999, the Forest Service mailed a 30-day Review Notice for the proposed TBSS to 63 interested members of the public. On January 8, 1999, the 30-day Review Notice comment period was opened for 30 days, until February 7, 1999. The Forest Service received only five public 30-day Review Notice comments from a total of five special-interest groups and one individual. The primary issues raised in these comments seemed to focus on alternatives, economics, environmental analyses/documentation, forest health, TES/PETS/MIS, timber harvesting, and water resources concerns, and a majority of the commenters generally opposed the proposed TBSS (Appendix K, Table 2K, p. 419).

Administrative Appeal Procedures and Public Appeals

On March 8, 1999, the Revised TBSS DM was mailed to 62 interested members of the public, including those who submitted SN comments, 30-day Review Notice comments, and administrative appeals of the TBSS DM. On March 11, 1999, the administrative appeal period was opened for 45 days, until April 25, 1999. The Forest Service received only two public administrative appeals from a total of four special-interest groups, and both administrative appeals were accepted. The primary issue raised in these administrative appeals seemed to focus on alternatives, categorical exclusions, cumulative effects, mitigation, roads, TES/PETS/MIS, and water resources concerns (Appendix K, Table 3K, p. 420).

On May 11, 1999, the District Ranger called Marty Bergoffen of SABP (appellant) to discuss informal resolution of their administrative appeal. Mr. Bergoffen stated that the only thing acceptable to him was to withdraw the decision and initiate an EA. The District Ranger was not agreeable, and no resolution was reached; thus, the administrative appeal review continued. On May 14, 1999, the District Ranger called Sherman Bamford of PAW (appellant) to discuss informal resolution of their

administrative appeal. Mr. Bamford stated that he felt the Forest Service should withdraw the decision and do an EA to adequately address the TES issue. The District Ranger was not agreeable, and no resolution was reached; thus, the administrative appeal review continued.

On June 15, 1999, the ARO mailed the administrative appeal review to the ADO, recommending that the Revised DM be affirmed. On July 9, 1999, the ADO mailed administrative appeal decisions to SABP and PAW, and informed them that: (1) the District Ranger adequately addressed the issues raised in their administrative appeals in the record; (2) the finding of no extraordinary circumstances in the DM supported the District Ranger's conclusion; and (3) the DM was an appropriate documentation for the project. Thus, the ADO affirmed the District Ranger's Revised DM, constituting the final administrative determination of the USDA.

General Administrative Procedures

On July 22, 1999, PAW sent a letter to the Regional Forester for the Forest Service Southern Region, requesting that the administrative appeal decision for SABP's administrative appeal of the Revised DM be rescinded, that the entire administrative appeal record be reviewed, and that they be notified of the decision within seven days. On August 9, 1999, the Regional Forester notified PAW, stating that the request to review the entire administrative appeal record must be declined, that the request to rescind the original administrative appeal and restate the language in the original administrative appeal decision must be declined, and that it was the final administrative determination of the USDA.

On August 14, 1999, Marty Bergoffen of SABP sent a "60-day Notice of Intent to Sue Under the Endangered Species Act: Take of Endangered Species and Failure to Consult for James Spiny mussel in the Cuba, Enterprise, Taylor Branch, and Peters Mountain Timber Sales," on behalf of SABP, Heartwood, SEDG, and PAW, to the NCRD District Ranger, the Chief of the Forest Service, the USFWS, and the Secretary of the United States Department of the Interior (DOI). And on September 3, 1999, Tammy Belinsky, Attorney at Law, notified the Regional Forester for the Forest Service Southern Region, the GWJNF Forest Supervisor, and the Inspector General of the USDA, on behalf of Heartwood, PAW, SEDG, and SABP, that they intended to pursue litigation

within 30 days unless the Cuba, Taylor Branch, and Enterprise Sale decisions were withdrawn and adequate NEPA documentation was prepared.

On October 6, 1999, the Forest Service Contracting Officer notified Kenneth Dudding to interrupt all tree cutting and/or felling on the TBSS until further notice, in accordance with Standard Provision 16 – Suspension. Mr. Dudding was told that a court had recently declared some Forest Service project decisions to be null and void (Heartwood v. USFS, 1999), and therefore, the sale had to be immediately suspended until the matter could be finalized with the courts, and that all sale operations which involved cutting and/or felling trees had to stop until further notification. As a result, the Forest Service again notified Mr. Dudding on December 16, 1999, stating that the court decision declared the NEPA decision process utilizing an environmental category which was categorically excluded from documentation in an EA was “null and void” for the sale. Therefore, they told Mr. Dudding that the quickest and best way to comply with the NEPA would be to immediately begin the preparation of an EA for the project, which would involve approximately four months if no administrative appeals were filed on the decision and approximately six months if the decision was administratively appealed.

Environmental Assessment Procedures and Public Comments

On December 29, 1999, the Forest Service mailed the TBSS EA and Comment Notice to 65 interested members of the public, including those who submitted SN comments, 30-day Review Notice comments, and administrative appeals. On December 31, 1999, the EA comment period was opened for 30 days, until January 30, 2000. The Forest Service received only six public EA comments from a total of five special-interest groups and two individuals. The primary issues raised in these comments seemed to focus on alternatives, cumulative effects, ecological, economics, environmental analyses/documentation, forest health, old growth, roads, TES/PETS/MIS, timber harvesting, and water resources concerns, and all commenters generally opposed the proposed TBSS (Appendix K, Table 4K, p. 421).

Administrative Appeal Procedures and Public Appeals

On March 20, 2000, the Forest Service mailed the TBSS DN/FONSI to 65 interested members of the public, including those who submitted SN comments, 30-day Review Notice comments, administrative appeals, and EA comments. On March 22,

2000, the administrative appeal period was opened for 45 days, until May 6, 2000. The Forest Service received only one public administrative appeal from a special-interest group, and it was accepted. On June 26, 2000, the District Ranger contacted Walter Daniels of WildLaw (representing the appellant, SABP) via telephone, and Mr. Daniels rejected to resolve the administrative appeal through IDMs. Therefore, the administrative appeal review continued.

On May 22, 2000, the ARO mailed the administrative appeal review to the ADO, recommending that the Acting District Ranger's DN/FONSI be affirmed. On July 18, 2000, the ADO mailed the administrative appeal decision to Kellam Warren of WildLaw, and informed him that: (1) the issues raised in the administrative appeal of the decision on the TBSS, except for the issue regarding wetlands and floodplains, had been adequately addressed by the Acting District Ranger in the EA and DN/FONSI; (2) with that exception, the environmental effects disclosure in the EA was appropriate and adequate for the project and supported the Acting District Ranger's conclusion that the selected action would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the Acting District Ranger's DN/FONSI, subject to the following requirement: Before implementation, the District Ranger had to verify that the actions would have no significant effect on either wetlands or floodplains and provide the appropriate notice to the appellant and other interested publics.

Administrative Revisions

In response to this requirement, the Forest Service mailed the TBSS Revised FONSI and EA pages on July 24, 2000, to the appellant and 32 interested members of the public, including those who submitted public SN comments, 30-day Review Notice comments, EA comments, and administrative appeals. Since Revised FONSI's are not decision documents, it was expressed that they were not subject to administrative appeal, and that project implementation may take place within 15 days of the Regional Forester's determination.

However, On August 18, 2000, the District Contracting Officer met with the timber sale buyer, Mr. Dudding, and told him that the TBSS had been named in a lawsuit filed in the Northern District of Georgia, which would take approximately four months to

hear to a decision. Therefore, Mr. Dudding volunteered to refrain from operating the sale until the first of 2001 and agreed to give a three weeks notice prior to any operations.

Analysis of the Primary Commenter, Appellant, and Litigant

Analysis of SABP's Comments on the TBSS 30-day Review Notice

In their 30-day Review Notice comments, SABP submitted a myriad of comments, including Aesthetics, Alternatives, Archaeological/Natural Heritage Resources, Cumulative Effects, Ecological, Economics, Ecosystem Management, Environmental Analyses/Documentation, Exotic/Invasive Species, Forest Health, Mitigation, Old Growth, Prescribed Burning, Recreation/Tourism, Regeneration, Riparian Areas, Roadless Areas, Roads, Soils, TES/PETS/MIS, Timber Harvesting, Water Resources, Wild and Scenic Rivers, Wilderness, and Wildlife categories, with comments (Appendix K, Table 5K, pp. 422-430). However, the comments seemed irrelevant to the TBSS and lacked project-specific detail. Thus, the Forest Service's response to all of these comments stated:

Commenter submitted nine pages of comments. No comments were submitted that indicated that the response was relevant to the information submitted to the public in the scoping letter for this project. No comments were specific to the site. No information was provided that would necessitate additional analysis or that identified extraordinary circumstances that would be impacted by the proposed project. All comments were general and appeared to be directed to projects in the forests of North Carolina. Commenter refers to the EIS for this project and submitted these identical comments for two other proposed district projects. All three are small projects that are consistent with the NEPA requirements for a Categorical Exclusion/Memo (FSH 1909.15). The comments submitted are beyond the scope of this project. (Appendix K, Table 5K, p. 430)

This response seemed appropriate because SABP filed the same comments for the Cuba Timber Sale (included in this study), and as the Forest Service pointed out, they refer to, for example, the forests of North Carolina several times throughout their comments:

The ecosystems of the ranger districts of all National Forests in North Carolina have been severely fragmented and in many ways degraded because of past industrial logging. The point is many practices now administered by the USFS

often disregard the interests of ecosystems and non-consumptive forest activities. (Appendix K, Table 5K, Ecological (1), p. 423)

Analysis of SABP's Administrative Appeal of the Revised DM

In their administrative appeal of the Revised DM, SABP dropped the Aesthetics, Archaeological/Natural Heritage Resources, Ecological, Economics, Ecosystem Management, Environmental Analyses/Documentation, Exotic/Invasive Species, Forest Health, Old Growth, Prescribed Burning, Recreation/Tourism, Regeneration, Riparian Areas, Roadless Areas, Soils, Timber Harvesting, Wild and Scenic Rivers, Wilderness, and Wildlife categories, with comments, submitted in their 30-day Review Notice comments (Appendix K, Table 5K, pp. 422-430), and they specifically dropped the alternatives (1), cumulative effects (2 through 5), roads (1, and 4 through 11), TES/PETS/MIS (1, 4, 6, 8, 9, and 11), and water resources (1 through 7) comments submitted in those categories in their 30-day Review Notice comments (Appendix K, Table 5K, pp. 422-430), which suggest that the Forest Service's response to their 30-day Review Notice comments may have forced SABP to be more project-specific in their administrative appeal.

In their administrative appeal of the Revised DM, SABP only added a Categorical Exclusions category, with appeal issues (Appendix K, Table 6K, pp. 431-433), which was not a category with comments in their 30-day Review Notice comments, and they specifically added the alternatives (1), cumulative effects (2), TES/PETS/MIS (2 and 3), and water resources (1) appeal issues (Appendix K, Table 6K, pp. 431-436), which were not submitted in those categories in their 30-day Review Notice comments.

Finally, the cumulative effects (1 and 3), mitigation (1 through 3), roads (1), and TES/PETS/MIS (1 and 4) appeal issues in their administrative appeal of the Revised DM (Appendix K, Table 6K, pp. 431-436), were comments previously submitted in their 30-day Review Notice comments, which suggest that SABP was concerned about these issues and wanted the Forest Service to address them. Therefore, they added more project-specific detail to these comments in their administrative appeal of the Revised DM so that the Forest Service would respond to them. For example, SABP's cumulative effects (1) comment in their 30-day Review Notice comments stated:

We request that cumulative effects be a major focus of your analysis. These sales occur throughout the Ranger District, and will impact a broad area. We believe that if you take a good hard look at the significance of impacts of all past, presently ongoing, and reasonably foreseeable future activities, including those on nearby land of all ownership within and near the project area, additional impacts from the proposed project may be adverse to some resource values. (Appendix K, Table 5K, p. 422)

Then in their administrative appeal of the Revised DM, SABP's cumulative effects (1) appeal issue stated:

Cumulative effects of these timber sales are ignored, in violation of 40 CFR 1508.27(b)(7). As one can see from the enclosed map, the NCRD has three timber sales in the same drainage (Cuba, Enterprise, and Taylor Branch), yet the NEPA documentation for each fails to mention any of the other sales. The USFS has done exactly what the NEPA CFR's forbid; breaking up these timber sales into small component parts. This violation of NEPA cannot be allowed. (Appendix K, Table 6K, p. 433)

Since the appeal issue was more project-specific, it was recognized by the Forest Service, and the ADO responded:

FSH 1909.15, Section 32.3, Format and Content of a Decision Memo, contains no requirements for effects disclosure, other than "findings" required by other laws and a "finding that no extraordinary circumstances exist." However, the DM does find that "[p]ast projects similar to this project have had no significant effects on the quality of the (human) environment, individually or cumulatively" (DM, p. 4). I find that the cumulative effects were adequately considered. (Appendix K, Table 6K, Cumulative Effects (1), p. 433)

Analysis of SABP's Comments on the TBSS EA

In their EA comments, SABP dropped the Aesthetics, Archaeological/Natural Heritage Resources, Ecosystem Management, Exotic/Invasive Species, Mitigation, Old Growth, Prescribed Burning, Recreation/Tourism, Regeneration, Riparian Areas, Roadless Areas, Soils, Water Resources, Wild and Scenic Rivers, and Wilderness categories, with comments or appeal issues, submitted in their 30-day Review Notice

comments or administrative appeal of the Revised DM (Appendix K, Tables 5K and 6K, pp. 422-436), and they specifically dropped the cumulative effects (2 through 5), ecological (1 through 19), environmental analyses/documentation (1), forest health (1 through 5), roads (1 through 11), TES/PETS/MIS (1 through 4, 6, and 8 through 11), timber harvesting (1 through 5), and wildlife (1 through 4) comments submitted in those categories in their 30-day Review Notice comments (Appendix K, Table 5K, pp. 422-430) and the categorical exclusions (2 through 4), cumulative effects (3), roads (1), TES/PETS/MIS (1 and 3) appeal issues submitted in their administrative appeal of the Revised DM (Appendix K, Table 6K, pp. 431-436), which suggest that the Forest Service adequately addressed these comments and appeal issues.

In their EA comments, SABP added no new categories, with comments, that were not categories with comments or appeal issues in their 30-day Review Notice comments or administrative appeal of the Revised DM. However, SABP specifically added the alternatives (1), categorical exclusions (1), cumulative effects (3 and 4), ecological (1 through 3), economics (1 and 2), environmental analyses/documentation (1 through 7), forest health (1 and 2), roads (1 through 3), TES/PETS/MIS (1, 2, and 4 through 12), and wildlife (1) comments in their EA comments (Appendix K, Table 7K, pp. 437-444), which were not submitted in those categories in either their 30-day Review Notice comments or administrative appeal of the Revised DM. Yet, these new comments are expected since the EA provides the public with much new information.

Finally, the alternatives (1) and TES/PETS/MIS (3) EA comments (Appendix K, Table 7K, pp. 437 and 442), were comments submitted in their 30-day Review Notice comments, and the alternatives (2), categorical exclusions (2), cumulative effects (1 and 2), TES/PETS/MIS (3 and 13) EA comments (Appendix K, Table 7K, pp. 437-444), were appeal issues submitted in their administrative appeal of the Revised DM, which suggest that SABP was either not satisfied or simply disagreed with the Forest Service's responses to these comments and appeal issues. For example, SABP's TES/PETS/MIS (7) 30-day Review Notice comment stated:

If the project may affect any federally listed species, the USFS is required to conduct Consultation with the USFWS. (Appendix K, Table 5K, p. 428)

Then their TES/PETS/MIS (2) appeal issue in their administrative appeal of the Revised DM stated:

No consultation under Section 7 of the ESA on endangered James Spiny mussel. 1992 determination of No Affect is inadequate in the face of new information concerning aquatic impacts of logging... (Appendix K, Table 6K, p. 435)

The ADO's response to this appeal issue stated:

The District identified the James Spiny mussel as occurring in John's Creek. The BE provided a discussion of past consultation with the USFWS regarding streamcourse and riparian area protection measures in the Potts Mountain Opportunity Area. The results of that consultation determined that those measures would adequately protect the James Spiny mussel. Those same protection measures are applied for this project. These mitigation measures are provided in Appendix A. For that reason, a "No Affect" finding was made for this species and the other two aquatic sensitive species identified. I find that the determination of effects findings for the federally listed James Spiny mussel and other aquatic sensitive species was adequately disclosed and rationale provided. (Appendix K, Table 6K, TES/PETS/MIS (2), p. 435)

Then in their EA comments, SABP's TES/PETS/MIS (3) comment stated:

The USFS cannot rely on a report from 1992 to serve as consultation required under the ESA for the James spiny mussel. The USDA Inspector General's Report of 1/15/99 specifically forbade the USFS from relying on archaic "white paper" analysis. Further, NEPA requires that detailed site-specific analysis occur for timber sales. SABP filed a 60-day notice of intent to sue for this ESA violation, and we intend to enforce the ESA by all means necessary. (Appendix K, Table 7K, p. 442)

The Forest Service did "not specifically address" this restated concern, probably because the ADO previously addressed it, which seems appropriate. Regardless, it is clear that this was a major concern for SABP, and they were either not satisfied or simply disagreed with the Forest Service's responses throughout the process.

Analysis of SABP's Administrative Appeal of the TBSS DN/FONSI

In their administrative appeal of the DN/FONSI, SABP dropped the Aesthetics, Archaeological/Natural Heritage Resources, Categorical Exclusions, Ecosystem Management, Exotic/Invasive Species, Old Growth, Prescribed Burning, Regeneration, Riparian Areas, Roadless Areas, Roads, Wild and Scenic Rivers, and Wilderness categories, with comments or appeal issues, submitted in their 30-day Review Notice comments, administrative appeal of the Revised DM, or EA comments (Appendix K, Tables 5K, 6K, and 7K, pp. 422-444). More specifically, they dropped the cumulative effects (1 through 5), ecological (1 through 8, and 11 through 19), economics (1 through 3), environmental analyses/documentation (1), forest health (1 through 5), recreation/tourism (2 through 5), soils (1 through 3), TES/PET/MIS (1 through 4, 6, and 8 through 11), water resources (1 through 3, and 5 through 7), and wildlife (1 through 4) comments from their administrative appeal of the DN/FONSI, which were submitted in those categories in their 30-day Review Notice comments (Appendix K, Table 5K, pp. 422-430); the cumulative effects (2 and 3) and TES/PETS/MIS (3) comments from their administrative appeal of the DN/FONSI, which were submitted in those categories in their administrative appeal of the Revised DM (Appendix K, Table 6K, pp. 431-436); and the cumulative effects (2 through 4), ecological (1 through 3), economics (1 and 2), environmental analyses/documentation (1 through 7), forest health (1 and 2), TES/PETS/MIS (1, 2, and 4 through 12), timber harvesting (1), and wildlife (1) comments from their administrative appeal of the DN/FONSI, which were submitted in those categories in their EA comments (Appendix K, Table 7K, pp. 437-444). Thus, it appears that the Forest Service adequately addressed several issues submitted by SABP.

However, SABP added several new appeal issues in their administrative appeal of the DN/FONSI. For example, they added Air Quality and Wetlands categories, with appeal issues (Appendix K, Table 8K, pp. 445-460), which were not categories with comments or appeal issues in their 30-day Review Notice comments, administrative appeal of the Revised DM, or EA comments, and they specifically added the alternatives (6), cumulative effects (2 through 4), ecological (2), economics (1 through 4), environmental analyses/documentation (1 through 7), forest health (1 and 2), mitigation (1 through 3), soils (1 through 3), TES/PETS/MIS (1, 5, and 7 through 9), timber

harvesting (1), water resources (1 and 3 through 5), and wildlife (1) appeal issues (Appendix K, Table 8K, pp. 445-460), which were not submitted in those categories in their 30-day Review Notice comments, administrative appeal of the Revised DM, or EA comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, SABP's wetlands (1) appeal issue in their administrative appeal of the DN/FONSI stated:

In addition to legal requirements imposed by NEPA, NFMA (and their implementing regulations), Executive Orders 11988 and 1190 require the USFS to consider impacts of management activities on floodplains and wetlands, and to ensure that management actions will not adversely effect the natural and beneficial values of the floodplains and wetlands. The Taylor Branch EA provides absolutely no data or analysis concerning the "natural wetland/pond area located in the southern end of the compartment near private land" referred to on page 3 of the EA. Nor does the EA discuss whether the action alternative will be in compliance with Executive Order 11988 and USFS policy in relation to floodplains or whether there are wetland/pond areas which will be affected by the proposed actions. Thus, the Taylor Branch EA violates both of the above referenced Executive Orders. Therefore, the EA is legally insufficient to support the Final DN/FONSI, and thus, the EA must be remanded to the District Ranger unless or until site-specific facts and analysis concerning wetlands and floodplains in the Taylor Branch project area are provided in this EA. (Appendix K, Table 8K, pp. 459-460)

The ADO's response to this appeal issue stated:

You correctly point out that the EA does not discuss compliance with Executive Orders on wetlands and floodplains. The EA does disclose that "there is a natural wetland/water area in the southern end of the compartment near private land" (EA, p.17). The EA (Appendix A, pp. A-1 and A-2) discloses mitigation measures to ensure protection of the intermittent streams in the compartment. Indications are, from the protections given to aquatic resources, that there are no adverse effects on wetlands or floodplains. Although the EA discloses project

design and mitigations that ensure protection of streams – and likely the adjacent floodplains and any wetlands, the EA does not clearly state that wetlands or floodplains are not adversely affected. (Appendix K, Table 8K, Wetlands (1), pp. 459-460)

As a result of this finding, the ADO affirmed the Acting District Ranger's DN/FONSI, but required that before implementation the District Ranger had to verify that the actions would not have no significant effect on either wetlands or floodplains and provide the appropriate notice to the appellant and other interested publics. And as a result of this requirement, the Forest Service had to revise the FONSI and EA. If SABP would have submitted this concern in their EA comments, the Forest Service may have been able to address it before the DN/FONSI was issued, possibly preventing the need to revise the FONSI and EA and the need for expensive and time-consuming administrative appeals or litigation. It seems reasonable to assume that SABP could have done so because the information was available from the EA for their EA comments, and it is a concern that problems with the EA are being brought up in the administrative appeal, after decisions are issued.

CHAPTER X – PART IV
THE CUBA TIMBER SALE

Introduction

The Cuba Timber Sale (CTS) on the NCRD of the JNF (Figure 1, p. 13) involved the decision to implement Alternative 2 in MA 7, after considering an action and no-action alternative. MA 7 comprised approximately 339,600 acres (approximately 4.8%) of the approximately 709,430 total acres of the JNF, with all acreage in the MA classified as suitable for timber production (JNF RLRMP, pp. I-3 and IV-148; Appendix A, A-1). The JNF RLRMP (p. IV-149) designated MA 7 to be managed for multi-resource objectives with an emphasis on timber production and wildlife habitat.

Alternative 2 included: (1) harvesting of approximately 40 acres in one unit using the modified shelterwood method; (2) prescribed burning on a total of approximately 70 acres in two units; and (3) 0.3 miles of temporary road construction. Together, these treatments produced approximately 213,000 board feet of wood products worth an estimated \$7,760. The net project revenue was estimated at \$624.50, after the reduction of estimated costs (\$7,135.50); so the CTS was not below-cost.

In general, the justification for the CTS was to move the area towards its DFC as specified for each MA in the JNF RLRMP (JNF RLRMP, Chapter IV). The primary objectives were to: (1) improve the age class distribution of the timber resource to provide a sustained yield of projects over time; (2) improve wildlife habitat by increasing both structural and vegetative diversity; (3) enhance forest health; and (4) provide commercial wood products and fuelwood for the public. The third objective seemed most crucial because Stand 15, scheduled for timber harvest, was infested with southern pine beetle, and because of its age and density was highly susceptible to southern pine beetle attack. Thus, the timber harvest cut the pine and left the hardwoods, and subsequent prescribed burning released the pine seed and bear oak understory to provide for new regeneration.

Administrative Procedures

Scoping Procedures and Public Comments

On September 29, 1998, the Forest Service mailed the SN for the proposed CTS to 61 interested members of the public. The Forest Service noted that a DM would be documented since the project met the requirements of FSH 1909.15, § 31.2(4), and asked for comments or suggestions on the proposal by October 29, 1998. The Forest Service received only two public SN comments from one special-interest group and one individual. The primary issues raised in these comments seemed to focus on alternatives, aquatic communities, cumulative effects, ecological, economics, environmental analyses/documentation, forest health, hydrological, old growth, prescribed burning, recreation/tourism, roads, TES/PETS/MIS, timber harvesting, and wildlife concerns, and both commenters generally opposed the proposed CTS (Appendix L, Table 1L, p. 462).

30-day Review Notice Procedures and Public Comments

Since the project qualified for categorical exclusion, an EA or EIS was not prepared. Therefore, on January 6, 1999, the Forest Service mailed a 30-day Review Notice for the proposed CTS to 83 interested members of the public, including those who submitted public SN comments. On January 9, 1999, the 30-day Review Notice comment period was opened for 30 days, until February 8, 1999. The Forest Service received only six public 30-day Review Notice comments from a total of seven special-interest groups and one individual. The primary issues raised in these comments seemed to focus on alternatives, ecological, economics, environmental analyses/documentation, forest health, prescribed burning, recreation/tourism, TES/PETS/MIS, and water resources concerns, and half of the commenters were generally opposed to the proposed CTS while the other half were indifferent (Appendix L, Table 2L, p. 463).

Administrative Appeal Procedures and Public Appeals

On February 24, 1999, the Forest Service mailed the CTS DM to 61 interested members of the public, including those who submitted public SN and 30-day Review Notice comments. On February 27, 1999, the administrative appeal period was opened for 45 days, until April 13, 1999. The Forest Service received only two public administrative appeals from a total of three special-interest groups. PAW/Heartwood's administrative appeal was accepted, and SABP's administrative appeal was dismissed

due to untimeliness. On May 14, 1999, the District Ranger called Sherman Bamford of PAW (appellant) to discuss an informal resolution, and after discussion, no resolution was reached. Therefore, the administrative appeal review continued.

On May 28, 1999, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's DM be affirmed. On June 18, 1999, the ADO mailed the administrative appeal decision to Sherman Bamford of PAW, and informed him that: (1) the District Ranger had adequately addressed the issues raised in the administrative appeal in the record; (2) the finding of no extraordinary circumstances in the DM supported the District Ranger's conclusion; and (3) the selected actions would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the District Ranger's DM, constituting the final administrative determination of the USDA.

General Administrative Procedures

On August 14, 1999, Marty Bergoffen of SABP sent a "60-day Notice of Intent to Sue under the Endangered Species Act: Take of Endangered Species and Failure to Consult for James Spiny mussel in the Cuba, Enterprise, Taylor Branch, and Peters Mountain Timber Sales," on behalf of SABP, Heartwood, SEDG, and PAW, to the NCRD District Ranger, the USFWS, the Chief of the Forest Service, and the Secretary of the DOI. And on September 3, 1999, Tammy Belinsky, Attorney at Law, notified the Regional Forester for the Forest Service Southern Region, the GWJNF Forest Supervisor, and the Inspector General of the USDA, on behalf of Heartwood, PAW, SEDG, and SABP, that they intended to pursue litigation within 30 days unless the Cuba, Taylor Branch, and Enterprise Sale decisions were withdrawn and adequate NEPA documentation was prepared.

On October 6, 1999, the Forest Service Contracting Officer notified W.R. Bess to interrupt all tree cutting and/or felling on the CTS until further notice, in accordance with Standard Provision 16 – Suspension. Mr. Bess was told that a court had recently declared some Forest Service project decisions to be null and void (*Heartwood v. USFS*, 1999), and therefore, the sale had to be immediately suspended until the matter could be finalized with the courts, and that all sale operations which involved cutting and/or felling trees had to stop until further notification. As a result, the Forest Service again notified

Mr. Bess on December 16, 1999, stating that the court decision declared the NEPA decision process utilizing an environmental category which was categorically excluded from documentation in an EA was “null and void” for the sale. Therefore, they told Mr. Bess that the quickest and best way to comply with the NEPA would be to immediately begin the preparation of an EA for the project, which would involve approximately four months if no administrative appeals were filed on the decision and approximately six months if the decision was appealed.

Environmental Assessment Procedures and Public Comments

On January 21, 2000, the Forest Service mailed the CTS EA and Comment Notice to 65 interested members of the public, including those who submitted public SN comments, 30-day Review Notice comments, and administrative appeals of the DM. On January 25, 2000, the EA comment period was opened for 30 days, until February 24, 2000. The Forest Service received only four public EA comments from a total of four special-interest groups and one individual. The primary issues raised in these comments seemed to focus on alternatives, cumulative effects, environmental analyses/documentation, and timber harvesting concerns, and a majority of the commenters generally opposed the proposed CTS (Appendix L, Table 3L, p. 464).

Administrative Appeal Procedures and Public Appeals

On March 28, 2000, the Forest Service mailed the CTS DN/FONSI to 65 interested members of the public, including those who submitted public SN comments, 30-day Review Notice Comments, administrative appeals of the DM, and EA comments. On April 1, 2000, the administrative appeal period was opened for 45 days, until June 16, 2000. The Forest Service received only one public administrative appeal from a special-interest group, and it was accepted. On June 26, 2000, the District Ranger contacted Walter Daniels of WildLaw (representing the appellant, SABP) via telephone, who rejected to resolve the administrative appeal through IDMs. Therefore, the administrative appeal review continued.

On June 19, 2000, the ARO mailed the administrative appeal review to the ADO, recommending that the Acting District Ranger’s DN/FONSI be affirmed. On July 18, 2000, the ADO mailed the administrative appeal decision to Kellam Warren of WildLaw, and informed him that: (1) the issues raised in the administrative appeal, with the

exception of Issue 4 – Wetlands and Floodplains – were adequately addressed by the Acting District Ranger in the EA and DN/FONSI; and (2) with that exception, the environmental effects disclosure in the EA was appropriate and adequate for the project and supported the Acting District Ranger’s conclusion that the selected action would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the Acting District Ranger’s DN/FONSI, subject to the following requirement: Before implementation, the District Ranger had to verify that the actions would have no significant effect on either wetlands or floodplains and provide the appropriate notice to the appellant and other interested publics.

Administrative Revisions

In response to this requirement, the Forest Service mailed the CTS Revised FONSI and EA pages on July 24, 2000, to the appellant and 32 interested members of the public, including those who submitted public SN comments, 30-day Review Notice comments, administrative appeals of the DM, EA comments, and administrative appeals of the DN/FONSI. Since Revised FONSI are not decision documents, it was expressed that they were not subject to administrative appeal, and that project implementation may take place within 15 days of the Regional Forester’s determination.

On August 18, 2000, the District Contracting Officer met with the timber sale buyer, Mr. Bess, and told him that the CTS had been named in a lawsuit filed in the Northern District of Georgia, which would take approximately four months to hear to a decision. Therefore, Mr. Bess volunteered to refrain from operating the sale until the first of 2001 and agreed to give a three weeks notice prior to any operations.

Analysis of the Primary Commenter, Appellant, and Litigant

Analysis of SABP’s 30-day Review Notice Comments, Administrative Appeal of the DM, and EA Comments for the CTS

For the CTS, SABP’s 30-day Review Notice comments, administrative appeal of the DM, and EA comments were exactly the same as those filed for the TBSS, except for one comment in their EA comments. The Forest Service’s response to SABP’s 30-day Review Notice comments in this case was exactly the same for SABP’s TBSS 30-day Review Notice comments (Appendix K, Table 5K, p. 430), and since the agency did not respond to SABP’s administrative appeal of the DM because it was dismissed due to

untimeliness, the reader can refer to the responses of SABP's administrative appeal of the TBSS Revised DM (Appendix K, Table 6K, pp. 431-436). In their EA comments, SABP's environmental analyses/documentation (8) comment, which was not submitted in their EA comments for the TBSS, stated:

SABP has hired a biologist to conduct an independent assessment on the proposed project area. The findings of this independent study are strikingly different than the ones performed by the USFS. The survey showed that Roland's Run floodplain area contains the endangered Phlox Buckleyi...

The Forest Service's response to this comment, and all other EA comments filed by SABP for the CTS, stated:

The USFS found that the commenter submitted comments essentially identical to those they previously submitted for the Taylor Branch Salvage Sale Project. Thus, they should refer to the USFS's response to their comments on the Taylor Branch project. In response to the commenter's statement in the *Environmental Analyses/Data Collection* section that a biologist was hired, the USFS responded that there will be no timber harvesting in the floodplain. Stand 15, proposed for harvest, is on the bluff above and will be accessed by a temporary road. Phlox Buckleyi has been found on other sites on the District, and the District is currently proposing a prescribed burn along the Wildlife Road to stimulate growth of this plant. The BE has been amended to acknowledge that there will be no negative impacts to the plant. (italicized wording added to the response to coincide with the study)

Since SABP's 30-day Review Notice comments, administrative appeal of the DM, and EA comments are so similar to those filed for the TBSS, it seems unnecessary to analyze them, and the reader can refer to the analysis performed for the TBSS case.

Analysis of SABP's Administrative Appeal of the CTS DN/FONSI

In their administrative appeal of the DN/FONSI, SABP filed exactly the same appeal issues as those filed in their administrative appeal of the TBSS DN/FONSI. However, there were some new appeal issues submitted that were not mentioned in their administrative appeal of the TBSS DN/FONSI, and there are some appeal issues that were dropped that were submitted in their administrative appeal of the TBSS DN/FONSI.

For example, they added the cumulative effects (1) appeal issue in their administrative appeal of the CTS DN/FONSI (Appendix L, Table 4L, p. 467), which was not submitted in their administrative appeal of the TBSS DN/FONSI. They also dropped the Timber Harvesting and Wildlife categories, with appeal issues, submitted in their administrative appeal of the TBSS DN/FONSI (Appendix K, Table 8K, pp. 445-460) in their administrative appeal of the CTS DN/FONSI, and they specifically dropped the ecological (2) and water resources (3 and 4) appeal issues that were submitted in their administrative appeal of the TBSS DN/FONSI (Appendix K, Table 8K, pp. 445-460) in their administrative appeal of the CTS DN/FONSI. The cumulative effects (1) appeal issue added to their administrative appeal of the CTS DN/FONSI was adequately addressed by the Forest Service (Appendix L, Table 4L, pp. 467-468), and all other appeal issues were responded to exactly, or in a similar manner, as the responses to the appeal issues in their administrative appeal of the TBSS DN/FONSI (Appendix K, Table 8K, pp. 445-460).

CHAPTER X – PART V
LEGAL PROCEDURES AND ANALYSES
FOR THE GMPRS, BBFS, TBSS, AND CTS

Introduction

On August 9, 2000, SABP filed a complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Northern District of Georgia, Atlanta Division, on the GMPRS on the DRRD of the GWNF, the BBTS on the DRD of the GWNF, the TBSS on the NCRD of the JNF, the CTS on the NCRD of the JNF, and the Pearcey Creek Timber Sale (PCTS) on the GrandFather Ranger District of the Pisgah National Forest (North Carolina). On October 31, 2000, the Forest Service filed a motion in the U.S. District Court for the Northern District of Georgia, Atlanta Division, for Change of Venue to the Western District of Virginia. On June 22, 2001, the District Court Judge ruled that: (1) due to the Court's involvement in an ongoing and lengthy criminal trial, the case shall be re-assigned to the Honorable Marvin H. Shoob as of June 25, 2001; (2) SABP's Motion for a TRO with respect to the CTS be granted for 10 days from the date of the order, or until such time as Judge Shoob schedules a hearing to address the Motion for Preliminary Injunction; and (3) the Forest Service's Motion to Transfer Venue be denied.

On July 17, 2001, District Court Judge, Marvin H. Shoob, for the U.S. District Court for the Northern District of Georgia, Atlanta Division, ruled that: (1) SABP's Motion for Preliminary Injunction with respect to Taylor Branch, Buffalo Branch, and Pearcey Creek be denied; and (2) SABP's Motion for Preliminary Injunction with respect to the CTS be granted (SABP v. USFS, 2001a). More simply, the Court granted in part and denied in part SABP's Motion for Preliminary Injunction, and preliminarily enjoined the Forest Service from commencing logging, road construction, burning, and associated activities and from authorizing such activities on the CTS, and directed the defendants to serve a copy of the order on the purchaser of the CTS. Finally, on September 21, 2001, the District Court Judge permanently enjoined the Forest Service from commencing logging, road construction, burning, and associated activities and from authorizing such activities on the CTS and TBSS until legally sufficient EAs were developed for the projects (SABP v. USFS, 2001b).

Analysis of the Primary Commenter, Appellant, and Litigant

Analysis of SABP's Legal Arguments

In their court complaint, SABP incorporated several, but fewer of, the issues raised in their comments and administrative appeals, as well as general procedural violates of the APA and the NEPA. These issues are reflected in the Final Orders from the District Court Judge.

In the July 17, 2001, Final Order, the District Court Judge explained that to prevail on a motion for a preliminary injunction, the plaintiff must demonstrate: “(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction were not granted; (3) that the threatened injury to the plaintiff outweighs the harm an injunction may cause to the defendant; and (4) that granting the injunction would not disserve the public’s interest” (Church v. City of Huntsville, 1994). As to the first prong, the Judge concluded that SABP is likely to succeed on the merits because the Forest Service only considered two alternatives in the EA for each project and had entered into sales contracts with respect to the CTS and TBSS prior to the preparation of EAs, suggesting that the Forest Service may not have properly analyzed the environmental ramifications of the proposed sales. Regarding the second prong, the Judge concluded that there was a substantial threat of irreparable injury with respect to the CTS. With respect to the third prong, the Judge concluded that the threatened injury outweighed the harm that the Forest Service may suffer as a result of the injunction. And as to the fourth prong, the Judge concluded that an injunction would not disserve the public interest in any way. As a result, the District Court Judge ruled that: (1) SABP’s Motion for Preliminary Injunction with respect to Taylor Branch, Buffalo Branch, and Pearcey Creek be denied; and (2) SABP’s Motion for Preliminary Injunction with respect to the CTS be granted (SABP v. USFS, 2001a).

Finally, on September 21, 2001, District Court Judge Shoob ruled on SABP’s Motion for Summary Judgment and assertion that the Forest Service did not consider a reasonable range of alternatives in the EAs. For the BBTS and PCTS EAs, the Judge, in short, concluded that the EAs considered a reasonable range of alternatives. With respect to the TBSS and CTS, SABP argued that because the Forest Service had entered into agreements to sell timber prior to developing EAs, the EAs were biased and must be set

aside. The Forest Service responded to this allegation, stating that SABP was estopped from making this argument because they had not made it during the administrative appeals process and did not include such an allegation in their complaint and that the EAs are not biased in any way. The Judge concluded that SABP was not estopped from making this argument because their position throughout the appeals process and in the complaint was that the Forest Service did not consider a reasonable range of alternatives in formulating the EAs. Moreover, the Judge stated that the Ninth Circuit rejected EAs that were prepared subsequent to contracts being signed and quoted (*Metcalf v. Daley*, 2000), and found that the Forest Service did not comply with this timing requirement in this case. He expressed that the Forest Service was obligated to begin the entire process anew rather than merely develop EAs. He further added that the EAs demonstrate that only the proposed sale and the No Action alternatives were considered in detail, and all other options were rejected after only a brief discussion. Thus, he concluded that the existence of contracts prior to the development of EAs injected bias into the entire EA process such that the EAs amount to a post hoc rationalization of the Forest Service's preference for moving forward with the sales. As a result, the District Court Judge permanently enjoined the Forest Service from commencing logging, road construction, burning, and associated activities and from authorizing such activities on the TBSS and CTS until legally sufficient EAs were developed for the projects (*SABP v. USFS*, 2001b).

CHAPTER XI
THE MCJENNINGS PROJECT

Introduction

The McJennings Project (MJP) on the Glenwood and Pedlar Ranger District (GPRD) of the JNF (Figure 1, p. 13) involved the decision to implement a Modified Alternative 3 in MA 7, after considering a total of four action alternatives and a no-action alternative. MA 7 comprised approximately 339,600 acres (approximately 4.8%) of the approximately 709,430 total acres of the JNF, with all acreage in the MA classified as suitable for timber production (JNF RLRMP, pp. I-3 and IV-148; Appendix A, A-1). The JNF RLRMP (p. IV-149) designated MA 7 to be managed for multi-resource objectives with an emphasis on timber production and wildlife habitat.

The Modified Alternative 3 included: (1) harvesting a total of approximately 179 acres in six units using the shelterwood with reserves harvest method, removing approximately 75-85% of the existing overstory canopy in each unit; (2) reopening approximately 0.5 miles of existing decommissioned temporary road to access a helicopter log landing and to provide access to a wildlife opening; (3) construction of 0.4 miles of a new temporary road to access cable landings; (4) mechanical site preparation of approximately 179 acres using chainsaws to remove any understory vegetation that interfered with the regeneration of more desirable hard mast producing species; (5) heavy site preparation of a total of approximately 52 acres in two units, which involved felling and leaving stems 8 inches DBH and larger. Together, these treatments produced approximately 1.7 million board feet of wood products worth an estimated \$553,850. The net project revenue was estimated at \$142,004, after the reduction of estimated costs (\$411,846); so the MJP was not below-cost.

The justification for the proposed action was to ensure regeneration of desirable species and capture mortality (JNF RLRMP, p. IV-25) in advance of a second season of gypsy moth defoliation in the McFalls and Jennings Creek areas through the implementation of timber harvests. This expectation was based on the existing species composition (primarily oak), the crown condition (indicative of low vigor trees), and the number of egg masses found throughout the proposed harvest areas. In addition, the harvesting of trees at the time, prior to subsequent defoliation event(s), preserved the

sprouting capacity of the oaks, helping to ensure adequate stocking of the stand within five years.

Administrative Procedures

Scoping Procedures and Public Comments

On November 8, 2000, the Forest Service mailed the SN for the proposed MJP to 84 interested members of the public. The Forest Service welcomed public involvement to hear concerns to better serve the public in addressing the regeneration of stands threatened by gypsy moth infestations, and they asked for specific comments on the proposal by December 7, 2000. The Forest Service received only ten public SN comments from a total of six special-interest groups and five individuals. The primary issues raised in these comments seemed to focus on aesthetics, forest health, old growth, recreation/tourism, roads, TES/PETS/MIS, and timber harvesting, and a majority of the commenters were generally opposed to the proposed MJP (Appendix M, Table 1M and 2M, pp. 480-481).

In addition, the Forest Service mailed the MJP SN to nine adjacent landowners on November 20, 2000, and asked for specific comments on the proposal by December 18, 2000. The Forest Service received only one adjacent landowner SN comment from Gardner Bond, whose concerns are listed on Table 2M (Appendix M, Table 2M, p. 481), in conjunction with the other public SN comments.

Environmental Assessment Procedures and Public Comments

On August 16, 2001, the Forest Service mailed the MJP EA and Comment Notice to 10 interest members of the public, including those who submitted public SN comments. On August 21, 2001, the EA comment period was opened for 30 days, until September 19, 2001. The Forest Service received only four public EA comments from a total of three special-interest groups and the individual adjacent landowner who filed SN comments. However, VFW's EA comments were dismissed due to untimeliness. Although the Forest Service did not respond to these comments, the Forest Service informed VFW that they reviewed the comments and identified nine numbered issues that were likely to be addressed in either the EA or the responses to those who submitted EA comments in a timely manner. Regardless, the primary issues raised in these comments seemed to focus on economics, environmental analyses/ documentation, forest health, old

growth, recreation/tourism, and timber harvesting, and a majority of the commenters were generally opposed to the proposed MJP (Appendix M, Table 3M, p. 482).

Administrative Appeal Procedures and Public Appeals

On September 26, 2001, the Forest Service mailed the MJP DN/FONSI to 14 interested members of the public, including those who submitted public SN and EA comments. On October 2, 2001, the administrative appeal period was opened for 45 days, until November 15, 2001. The Forest Service received only one public administrative appeal from two special-interest groups, and it was accepted.

On November 27, 2001, the Forest Service attempted to set up an IDM with Tammy Belinsky of WildLaw (representing the appellants, VFW and AV) to discuss the possibility of informal resolution of the administrative appeal. On November 28, 2001, the Forest Service received a call from Christina Wulf of VFW, and she indicated that they did not wish to meet to discuss informal resolution of the administrative appeal. Thus, the administrative appeal review continued.

On December 11, 2001, the ARO mailed the administrative appeal review to the ADO, recommending that the District Ranger's DN/FONSI be affirmed. On January 14, 2002, the ADO mailed the administrative appeal decision to Ms. Belinsky of WildLaw and Steven Krichbaum (interested party), and informed them that: (1) the issues, except Issue 2, raised in the administrative appeal of the decision were adequately addressed by the District Ranger in the EA and DN/FONSI; (2) as proposed, the project was not in compliance with the JNF RLRMP standards, but delaying the implementation of 31 acres or more for a year would bring the proposal into compliance; and (3) the environmental effects disclosure in the EA was appropriate and adequate for the project and supported the District Ranger's conclusion that the selected action would not have a significant impact on the quality of the human environment. Thus, the ADO affirmed the District Ranger's DN/FONSI, with instructions to delay implementation of 31 acres or more of harvest until it was in compliance with the JNF RLRMP. As a result, the District Ranger decided to delay the sale of timber in two cutting units, and subsequent harvest of 64 acres in these units during or after 2003 would put the Forest Service in compliance with the JNF RLRMP, allowing stands harvested in 1982 to grow out of the 0-20 year old age class.

Legal Procedures

After the DN/FONSI was affirmed, AV and VFW filed a complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Western District of Virginia on March 21, 2002. On October 15, 2002, the District Court Judge granted Summary Judgment in favor of the Forest Service and denied the plaintiffs' Motion for Summary Judgment. However, on October 22, 2002, the District Court Judge vacated the October 15, 2002, order and reopened the case. Finally, on December 13, 2002, the District Court Judge made a final ruling, and again, granted Summary Judgment in favor of the Forest Service and denied the plaintiffs' Motion for Summary Judgment, ending the dispute (*Appalachian Voices v. USFS*, 2002).

Analysis of the Primary Commenter, Appellant, and Litigant

Primary Commenter, Appellant, and Litigant Profile

The primary commenter, appellant, and litigant in this case was somewhat difficult to profile. For example, WildLaw filed SN comments on behalf of VFW and AV, and VFW also filed separate SN comments. Then WildLaw filed EA comments on behalf of VFW, AV, and SABP, and VFW also filed separate EA comments. In the administrative appeal of the DN/FONSI, WildLaw filed on behalf of VFW and AV, and in court, VFW and AV filed together, without mention of WildLaw. So, the difficulty was determining the status of WildLaw. Since they are an environmental law firm filing on behalf of special-interest groups, it was decided that the primary commenter, appellant, and litigant was VFW and AV. It is also important to note that VFW's separate SN and EA comments were incorporated into VFW/AV's SN and EA comments.

Analysis of VFW/AV's Comments on the MJP SN

In their SN comments, VFW/AV submitted Aesthetics, Aquatic Communities, Archaeological/Natural Heritage Resources, Cumulative Effects, Ecological, Economics, Environmental Analyses/Documentation, Forest Health, Mitigation, Old Growth, Recreation/Tourism, Regeneration, Roads, Silviculture, Soils, TES/PETS/MIS, and Timber Harvesting categories, with comments, which seemed to be adequately addressed by the Forest Service (Appendix M, Table 4M, pp. 483-491). For example, their timber harvesting (2) SN comment stated:

Concern that cut-to-length (CTL) equipment be used for this logging. USFS and other studies show that CTL can accomplish the same work with much less impact to soils and nearby waterways. (Appendix M, Table 4M, p. 490)

The Forest Service's response to this comment stated:

In the context of "cut to length" versus "whole tree" harvesting, whole tree harvesting has not been utilized on this District and is not expected to be used anytime in the future...we restrict skidding to a 2 log length maximum. Such a restriction reduces the number of turns that would need to be made in skidding were a single log length to be skidded, thus reducing impacts to the soil and water resource...Rather than amass needless detail, this issue has been deemed non-significant. (Appendix M, Table 4M, Timber Harvesting (2), p. 490)

Analysis of VFW/AV's Comments on the MJP EA

In their EA comments, VFW/AV dropped the Aesthetics, Aquatic Communities, Archaeological/Natural Heritage Resources, Roads, Silviculture, and Soils categories, with comments, submitted in their SN comments (Appendix M, Table 4M, pp. 483-491), and they specifically dropped the cumulative effects (1 through 3), ecological (1 and 2), economics (3 and 5), environmental analyses/documentation (1 and 3), forest health, 1, 2, and 4), mitigation (1), old growth (2), recreation/tourism (2), TES/PETS/MIS (3, 4, and 7), and timber harvesting (1, 2, and 6) comments submitted in those categories their SN comments (Appendix M, Table 4M, pp. 483-491), which suggest that the Forest Service adequately addressed these comments.

However, VFW/AV submitted many new comments in their EA comments, which is expected because the EA provides the public with much new information. For example, they added a Water Resources category, with comments, in their EA comments (Appendix M, Table 5M, p. 499), which was not a category with comments in their SN comments, and they specifically added the cumulative effects (1 and 2), ecological (1), economics (1), environmental analyses/documentation (1), mitigation (1), old growth (2), recreation/tourism (3), and timber harvesting (1) comments in their EA comments (Appendix M, Table 5M, pp. 492-499), which were not submitted in those categories in their SN comments.

Finally, the economics (2 and 3), forest health (1), old growth (1), recreation/tourism (1 and 2), regeneration (1), TES/PETS/MIS (1 through 3), and timber harvesting (2 and 3) comments in their EA comments (Appendix M, Table 5M, pp. 492-499), were comments submitted in their SN comments and either specifically addressed by the Forest Service or “classified as significant issues to be addressed in the EA,” which suggest that VFW/AV were either not satisfied or simply disagreed with the Forest Service’s responses. However, in most instances, the Forest Service seemed to adequately address these comments, but thereafter, VFW/AV added more detail to or changed the direction of their SN comments in their EA comments, or simply disagreed with the Forest Service. For example, their recreation/tourism (1) SN comment stated:

Concern that timber harvesting is given preference over recreational uses.

Concern that impact to recreation from active logging operations are downplayed and considered inconsequential merely because they are temporary. District needs verifiable information that recreational users are not adversely impacted by logging operations before such impacts are dismissed. (Appendix M, Table 4M, p. 487)

The Forest Service’s response to this comment stated:

Any analysis should not provide value-based judgments. The McJennings analysis is no different and will strive to maintain objectivity by describing or displaying effects in an absolute or objective form. Value judgments or preferences are made at the time of Decision and are the purview of the Deciding Official. Thus this issue pertains primarily to the DN/FONSI and is beyond the scope of the analysis. The Deciding Official will consider the impacts, both positive and negative, to all uses before reaching a Decision. The longevity of impacts will certainly be considered in reaching that decision. (Appendix M, Table 4M, Recreation/Tourism (1), p. 487)

VFW/AV seemed to find this response inadequate, so in their recreation/tourism (1) EA comment they stated:

The EA identifies effects that will result from the sale upon significant recreational and cultural resources. The impacts to these resources will be significant, particularly to the interpretive and recreational experience currently

available on the horse trail. These impacts demand analysis under a full EIS. (Appendix M, Table 5M, p. 496)

The Forest Service's response to this comment stated:

The determination of significant impact is the sole discretion of the Deciding Official based on the analysis of impacts contained within the EA. That determination has yet to be made and would be documented in a FONSI if that conclusion is reached. The EA has disclosed the impact to the recreation experience on the horse trail on pages 95 and 96: The impacts to the H/T would be somewhat more severe. The portion of the H/T from Welch Hollow Road to McFalls Creek Road, approximately 5 miles, would be closed during operation of the sale, primarily during harvesting in stands 27, 33, and 34 of compartment 3026. Again, this impact would be short-term in nature; approximately 6 to 8 months once harvesting operations begin. Once re-opened, impacts to the horse trail would be primarily of a visual nature. As previously discussed in the Visual Quality section of this document, the relatively lighter harvesting proposed for stands 27 and 33 would comply with the VQO for these stands. Visual impacts are not expected to severely adversely impact the recreation experience on the H/T. Elsewhere on the H/T in this study area, primarily as the trail traverses Chestnut Mountain, impacts would be limited to noise impacts. These impacts would be very similar to those described for the noise impacts on the A/T above given that the distances and positions would be comparable. (Appendix M, Table 5M, Recreation/Tourism (1), pp. 496-497)

Analysis of VFW/AV's Administrative Appeal of the MJP DN/FONSI

In their administrative appeal, VFW/AV dropped the Aesthetics, Aquatic Communities, Archaeological/Natural Heritage Resources, Cumulative Effects, Economics, Forest Health, Mitigation, Old Growth, Recreation/Tourism, Roads, Silviculture, Soils, Timber Harvesting, and Water Resources categories, with comments submitted in their SN or EA comments (Appendix M, Tables 4M and 5M, pp. 483-499), and they specifically dropped the ecological (1 and 2), environmental analyses/documentation (1 through 3), and TES/PETS/MIS (5 and 6) comments submitted in those categories in their SN comments (Appendix M, Table 4M, pp. 483-491) and the

environmental analyses/documentation (2), TES/PETS/MIS (2 and 3) comments submitted in those categories in their EA comments (Appendix M, Tables 5M, pp. 492-499), which suggest that the Forest Service adequately addressed these comments.

In their administrative appeal, VFW/AV only added an Alternatives category, with appeal issues (Appendix M, Table 6M, p. 500), which was not a category with comments in their SN or EA comments, and they specifically added the environmental analyses/documentation (2) and TES/PETS/MIS (2, 7, and 10) appeal issues (Appendix M, Table 6M, pp. 500-504), which were not submitted in those categories in their SN or EA comments. These new appeal issues seem to be problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. For example, their alternatives (1) appeal issue stated:

The District is in a hurry to implement the project due to gypsy moths, however, they do not dine on poplar, and yet, the poplar is included in the harvest. The District should have included an alternative that proposes harvest of impacted tree species only. In some stands, retaining poplars would mitigate the visual impacts from this project. The “no action” alternative needs to be given fair treatment. It is apparent from the language of the Draft EA the “no action” alternative is nothing more than legalistic window dressing. In fact, using the language included in the EA to discuss the impacts of a “no action” alternative, the USFS will never choose this alternative. It is clear that some alternatives that should have been given full consideration are harvest of only those tree species susceptible to gypsy moth, a plan for regeneration through uneven-aged management, and an alternative that used only CTL equipment. The appellants object to the lack of a reasonable range of alternatives. (Appendix M, Table 6M, p. 500)

If VFW/AV would have raised this concern in their EA comments, the Forest Service may have been able to address it before a decision was issued. It seems reasonable to suggest that VFW/AV and the Forest Service would benefit if such issues were raised earlier in the process, and it seems reasonable to assume that VFW/AV could have done so because the information was available in the EA for their EA comments.

Finally, the ecological (1), environmental analyses/documentation (1), regeneration (1), TES/PETS/MIS (3 through 6, and 8, 9, and 11) appeal issues in their administrative appeal (Appendix M, Table 6M, pp. 500-504), were issues previously submitted and either specifically addressed by the Forest Service or “classified as significant issues to be addressed in the EA,” which suggest that they were either not satisfied or simply disagreed with the Forest Service’s responses. Although the Forest Service seemed to adequately respond to most of these comments, VFW/AV had a clear right to be unsatisfied with the Forest Service’s response to their regeneration (1) EA comment, and they were justified in submitting it again in their administrative appeal. More specifically, VFW/AV’s regeneration (1) EA comment stated:

On page 57 of the EA the concern in regard to the concentration of regeneration sites in the vicinity is addressed citing a standard in the Forest Plan of no more than one-third of each square mile being within the 1-20 year age class. The EA further identifies 178 acres currently in the 0-20 ages class and concludes the area is currently meeting the standard. In addition to the absence of any description of the one square mile radius, what is missing from this statement is any determination of compliance with the standard after adding the acreage in the proposed project to the analysis. When the total 179 acres proposed in this project are added to the figure, the total acreage exceeds and violates the standard. (Appendix M, Table 5M, p. 497)

The Forest Service’s response to this comment stated:

Significant issue 5 expressed a concern that the proposed harvesting would result in a concentration of regenerated stands in this area as there appears to have been significant previous harvesting around stands 27, 33, and 34. As the commenter has stated, the existing condition regarding this issue is presented on page 57 of the EA. On page 64 of the EA, the proposed action is added to this existing condition, stating: The square mile area in and around stands 27, 33, and 34 would contain approximately 242 acres in the 0-20 age class, about 31 acres more than is desired. However, after one year this concentration of regenerated areas would drop to approximately 192 acres because two stands harvested in 1982 would become older than 20 years. Thus, after one year, the area would again

meet the DFC identified in the Forest Plan. (Appendix M, Table 5M, Regeneration (1), p. 497)

VFW/AV was rightfully not satisfied with this response, so they raised the issue again in their administrative appeal, stating:

The Plan requires harvest units to be distributed such that no more than one-third of each square mile is in the 0-20 age class. The Notice states this project will violate that standard for a year until the nearby sites harvested in 1982 catch up to the next age class. Failure to implement the standards and guidelines in accordance with the Forest Plan violates the NFMA and as such the decision cannot be implemented. (Appendix M, Table 6M, Regeneration (1), p. 501)

In response to this valid concern, the ADO, in short, stated:

Therefore, in order to be in compliance with the Forest Plan, the implementation of a portion of the selected alternative (31 acres or more) will need to be delayed for one year until the stands harvested in 1982 become older than 20 years and the direction to have no more than one-third of each square mile in the 0-20 age class will continue to be met. I find that, as proposed, the selected alternative is not in compliance with the JNF LRMP. (Appendix M, Table 6M, Regeneration (1), pp. 501-502)

As a result of this finding, the ADO included instructions to delay implementation of 31 acres or more of harvest until it was in compliance with the JNF LRMP. Therefore, the District Ranger decided to delay the sale of timber in two cutting units to put the Forest Service in compliance with the JNF RLRMP by allowing stands harvested in 1982 to grow out of the 0-20 year old age class. Thus, it seemed that the public involvement was helpful because the Forest Service's mistake was identified by the appellants; however, the Forest Service's attempt to correct their mistake was not enough to prevent litigation, which suggests that the appellants possibly would have litigated regardless of the agency's efforts. Regardless, it seems reasonable to suggest that the Forest Service would have been better off by not trying to implement this portion of the project, possibly avoiding expensive and time-consuming administrative appeals.

Analysis of VFW/AV's Legal Arguments

In the U.S. District Court for the Western District of Virginia, VFW and AV filed a complaint incorporating several, but fewer of, the issues raised in their comments and administrative appeal, as well as general procedural violations of the APA, the NEPA, the NFMA, and the JNF RLRMP. These issues are reflected in the Final Order from the District Court Judge.

In the Final Order, the District Court Judge held that: (1) it seems difficult under arbitrary and capricious standard of review to declare that the Forest Service was required by law to do more than it in fact did as regards monitoring MIS populations in the Forest as required by the NFMA; (2) the actions of the Forest Service in regard to the POS were not arbitrary and capricious; (3) the Forest Service took the required hard look in examining the possible environmental impacts of the proposed sale and were not in error to determine not to prepare an EIS; and (4) the appropriate alternatives were considered in the EA in accordance with NEPA requirements. Thus, the District Court Judge granted Summary Judgment in favor of the Forest Service and denied the plaintiffs' Motion for Summary Judgment (*Appalachian Voices v. USFS*, 2002).

CHAPTER XII – PART I
COMPARATIVE FINDINGS OF THE CASE STUDIES

Introduction

After conducting in-depth qualitative and contextual analyses of public comments administrative appeals, and legal arguments for 12 Forest Service project-level activities, as well as their relative seven lawsuits, there are several issues, trends, and commonalities among the cases that warrant analysis and further discussion. In addition, there are some simple quantitative findings that supplement the qualitative findings, as well as point out the deficiencies with quantitative research methodologies. In this chapter quantitative and qualitative comparative findings of case attributes; public comments, administrative appeals, and legal arguments and litigation; and case length, will be analyzed, discussed, and evaluated to formulate the conclusions of the thesis.

CHAPTER XII – PART II

COMPARATIVE FINDINGS OF CASE ATTRIBUTES

Although we know, for example, that herbicide use, old growth, prescribed burning, timber harvesting (especially with even-aged methods), and road construction, tend to be provocative issues for public participants in national forest management, each case has elements of these issues, as well as its own special set of attributes, that may have been likely to prompt administrative appeals or litigation. The primary attributes for each case are highlighted on Table 1N (Appendix N, Table 1N, p. 506), and after review, it seems difficult to conclude that there are true commonalities in these cases that may have prompted administrative appeals or litigation.

Despite this finding, it is also important to point out that, in general, all of the cases entailed some type of timber management, except for the GMPRS, and for those cases not categorically excluded, EAs were prepared, not EISs. More importantly, it is somewhat surprising that these cases were administratively appealed and litigated because they were so relatively small in size. For example, the acreage harvested ranged from only 20 acres (ASTS) to only 210 acres (AGP), the volume harvested ranged from only 165,000 board feet (BBFS) to only 3.1 million board feet (HTS), and the amount of road construction ranged from none (RLTS, ASTS, AGP, GMPRS, BBFS, and TBSS) to only 1.5 miles (CRTS). Thus, the public's motivation for administratively appealing and litigating such cases raises concerns and interesting questions that need to be further investigated.

Finally, it is important to recognize that each case, in general, involved implementation of the Forest Plans for the GWJNF, to achieve the DFCs for specific MAs. Except for the GMPRS, each project was being carried out in MAs designated for emphasis on timber production, wildlife habitat improvement, or recreational and scenic rehabilitation, as well as assurance of forest health, and timber management on lands classified as suitable for timber production was the primary goal for achieving the DFCs in these designated MAs. Thus, it seems that the Forest Service was implementing projects under the guidance of the Forest Plans for the GWJNF, which involve extensive public involvement and participation during and after their approval, and reflect the value-based and multiple resource-use demands on the national forests.

CHAPTER XII – PART III
COMPARATIVE QUANTITATIVE FINDINGS OF
PUBLIC COMMENTS, ADMINISTRATIVE APPEALS, AND LITIGATION

Introduction

Simple comparative quantitative analyses of the cases in this study may reveal certain trends and commonalities, which may prompt future scientific investigation. In this chapter, public comments per comment period, and as a whole; public administrative appeals combined from all administrative appeal stages in each case; and litigation, were quantified with simple statistical methodologies, showing trends and commonalities worthy of identification and discussion. However, several problems with such quantification were discovered and noted.

Public Comments

Scoping Notice Comments

For the 12 cases, the Forest Service received 73 public SN comments from a total of 40 individuals, 33 special-interest groups, one forest products industry, and one Virginia County. Only an average of 6.1 public SN comments were filed per case from an average of 3.3 individuals and 2.8 special-interest groups, which seems to be a minimal level of public involvement (Table 1, p. 136). After removing participant overlap, it was discovered that the 40 individuals actually represented a total of 31 individuals, and the 33 special-interest groups actually represented a total of 16 special-interest groups, further decreasing broad, diverse public involvement. Regardless of this statistical manipulation, individuals filed more SN comments than special-interest groups.

Table 1

Public Scoping Notice Comment Characteristics

Activity	Commenter Type	Case						Total	Average
		RLTS	HTS	ASTS	AGP	TMP	WMP		
SN Comments	Total Filed	8	5	2	10	17	5		
	Individuals	3	2	1	5	13	1		
	Special-interests	4	3	1	4	5	4		
	Forest Industry	1	-	-	-	-	-		
		CRTS	GMPRS	BBFS	TBSS	CTS	MJP	Total	Average
SN Comments	Total Filed	5	3	1	5	2	10	73	6.1
	Individuals	4	1	-	4	1	5	40	3.3
	Special-interests	1	1	2	1	1	6	33	2.8
	County	-	1	-	-	-	-	1	0.08
	Forest Industry	-	-	-	-	-	-	1	0.08

30-day Review Notice Comments

Only 4 out of the 12 cases involved a 30-day Review Notice comment period, and for the four cases, the Forest Service received 12 public 30-day Review Notice comments from a total of 22 special-interest groups and 8 individuals. Only an average of 3.0 public 30-day Review Notice comments were filed per case from an average of 5.5 special-interest groups and 2.0 individuals, which seems to be a minimal level of public involvement (Table 2). After removing participant overlap, it was discovered that the 22 special-interest groups actually represented a total of 16 special-interest groups, and the 8 individuals actually represented a total of 7 individuals, further decreasing broad, diverse public involvement. Regardless of this statistical manipulation special-interest groups filed more 30-day Review Notice comments than individuals.

Table 2

30-day Review Notice Comment Characteristics

Activity	Commenter Type	Case				Total	Average
		ASTS	BBFS	TBSS	CTS		
30-day Review Notice Comments	Total Filed	0	1	5	6	12	3.0
	Individuals	0	6	1	1	8	2.0
	Special-Interest	0	10	5	7	22	5.5

Environmental Assessment Comments

Only 11 out of the 12 cases involved an EA comment period, and for the 11 cases, the Forest Service received 55 public EA comments from a total of 144 individuals and 50 special-interest groups. Only an average of 5.0 public EA comments were filed per case from an average of 13.1 individuals and 4.5 special-interest groups, which seems to be a minimal level of public involvement (Table 3).

Table 3

Public Environmental Assessment Comment Characteristics

Activity	Commenter Type	Case						Total	Average
		RLTS	HTS	AGP	TMP	WMP	-		
EA Comments Filed	Total Filed	1	1	3	14	6	-		
	Individuals	1	1	2	121	1	-		
	Special-interests	-	-	1	4	20	-		
		CRTS	GMPRS	BBFS	TBSS	CTS	MJP		
EA Comments	Total Filed	13	1	2	6	4	4	55	5.0
	Individuals	14	-	-	2	1	1	144	13.1
	Special-interests	10	1	2	5	4	3	50	4.5

After removing participant overlap, it was discovered that the 144 individuals actually represented a total of 136 individuals, and the 49 special-interest groups actually represented a total of 33 special-interest groups, further decreasing broad, diverse public involvement. Regardless of this statistical manipulation, more individuals filed EA comments than special-interest groups.

However, it is important to note that 111 of the EA comments filed by individuals were actually comments collected by SEDG on postcards and collectively submitted to the Forest Service. In this case, each individual was counted as a commenter to ensure that no bias occurred. If these comments were classified as one comment filed by a special-interest group the results would drastically change. Instead of 144 individuals filing EA comments only 33 individuals would have been recorded as filing EA comments, instead of an average of 13.1 individuals filing EA comments per case, only 3.0 individuals would have been recorded as filing EA comments per case, and instead of

136 individuals (after removing participant overlap) filing EA comments, only 25 individuals would have been recorded as filing EA comments. The results would have shown that more special-interest groups filed EA comments than individuals, instead of more individuals than special-interest groups as previously calculated. Thus, statistical manipulation and classification criteria can easily change the outcome of quantitative studies.

Total Public Comments

For all public comment periods combined, there was a total of 192 comments filed by individuals, representing a total of 163 individuals, and 104 comments filed by special-interest groups, representing a total of 40 special-interest groups. Thus, it appears that more individuals filed public comments than special-interest groups, but do not forget that removing the 111 individuals previously mentioned would change this outcome.

The top ten special-interest groups, which were the only groups to file comments more than twice, represented 25% of the total commenters and accounted for 64% of the total comments filed by special-interest groups. The top three individuals, which were the only individuals to file comments more than twice, represented 1.8% of the total commenters and accounted for only 10.4% of the total comments. Thus, it appears that there is more broad participation among individuals, while a much smaller proportion of special-interest groups participate.

Administrative Appeals

For the 12 cases, the Forest Service received 36 administrative appeals, combined from all administrative appeal stages in each case, from a total of 43 special-interest groups and 23 individuals. Twenty-four of the administrative appeals were accepted, and 11 were dismissed for lack of previous interest or untimeliness. Only an average of 3.0 administrative appeals were filed per case from an average of 3.6 special-interest groups and 1.9 individuals, which seems to be a minimal level of public participation (Table 4, p. 139). After removing participant overlap, it was discovered that the 43 special-interest groups actually represented a total of 18 special-interest groups, and the 23 individuals actually represented a total of 20 individuals, further reducing broad, diverse public

participation. Regardless of this statistical manipulation, more special-interest groups filed administrative appeals than individuals.

Table 4

Administrative Appeal Characteristics

Activity	Appellant Type	Case						Total	Average
		RLTS	HTS	ASTS	AGP	TMP	WMP		
Appeals	Total Filed	1	1	1	1	1	1		
	Accepted	1	1	1	1	1	1		
	Dismissed	0	0	0	0	0	0		
	Individuals	1	1	1	-	-	-		
	Special-interests	-	-	3	4	4	5		
Activity	Appellant Type	Case						Total	Average
		CRTS	GMPRS	BBFS	TBSS	CTS	MJP		
Appeals	Total Filed	19	1	1	5	3	1	36	3.0
	Accepted	10	1	1	3	2	1	24	2.0
	Dismissed	9	0	0	2	1	0	11	1.0
	Individuals	14	-	-	6	-	-	23	1.9
	Special-interests	6	1	1	14	3	2	43	3.6

The top seven special-interest group appellants, which were the only groups to file more than once, represented 39% of the total special-interest group appellants and accounted for 74.4% of the total special-interest group administrative appeals. The top two individual appellants, which were the only individuals to file more than once, represented 10% of the total individual appellants and accounted for 25% of the total individual administrative appeals. Thus, it appears that there is more broad participation among individuals, while a much smaller proportion of special-interest groups participate and dominate the process.

Litigation

Out of the 7 lawsuits, one case included three projects (AGP, TMP, and WMP), and one case included four projects (GMPRS, BBFS, TBSS, and CTS). Together, these lawsuits included 8 individuals and 8 special-interest groups, and after removing participant overlap, they actually represented 7 individuals and 7 special-interest groups. Thus, litigant participation was equal among individuals and special-interest groups in these cases. It can also be pointed out that three individuals and one special-interest group litigated separately on their own and two special-interest groups litigated together,

while the other two cases involved a combination of individuals and special-interest groups (Table 5). Clearly these findings reveal no trends or commonalities worth further discussion.

Table 5

Litigation Characteristics

Activity	Litigant Type	Case						Total	Average
		RLTS	HTS	ASTS	AGP	TMP	WMP		
Litigation	Total Filed	1	1	1	1				
	Individuals	1	1	1	2				
	Special-interests	-	-	-	3				
Activity	Litigant Type	CRTS	GMPRS	BBFS	TBSS	CTS	MJP	Total	Average
Litigation	Total Filed	1	1			1		7	1.0
	Individuals	3	-			-		8	1.14
	Special-interests	2	1			2		8	1.14

However, it is important to point out that the Forest Service won in 6 out of the 7 cases, which took place in the U.S. District Court for the Western District of Virginia and sometimes in the U.S. Court of Appeals for the Fourth Circuit. The only case that the Forest Service lost (SABP v. USFS (TBSS and CTS)), in part, took place in the U.S. District Court for the Northern District of Georgia, since a timber sale on the Pisgah National Forest in North Carolina was included in the suit with the GMPRS, BBFS, TBSS, and CTS. This is clearly an example of “venue shopping” and raises concerns about court biases and legal interpretations and their effects on national forest management and policy.

Problems with Quantifying Public Comments and Administrative Appeals

Although there were no problems found with quantifying litigation, problems with quantifying public comments and commenters, as well as administrative appeals and appellants, was primarily four-fold. First, there is an inherent difficulty in determining who is an individual and who is a special-interest group. For example, Steven Krichbaum files comments with: (1) no special-interest group letterhead; (2) special-interest group names on the front page above his return address; (3) references to the terms “we” and “us” in the comments, but not specifically to the groups; (4) only his

signature, with no mention of the groups; and (5) a return address on the envelope with his name and address and *sometimes* special-interest group names. Although Mr. Krichbaum was classified as an individual in such cases, it is likely that other researchers may classify him differently. Similar problems were found in administrative appeals, although such identification was somewhat easier. Since these instances occur frequently, and since there is no apparent standard or regulation for classifying commenters or appellants, researchers can indirectly or directly bias their study based on how they classify commenters and appellants. In this study, the classifications were liberal, in favor of individuals, and strict guidelines were set for special-interest group classification, as mentioned on pages 16 and 17 of Chapter III.

Second, the total number of public comments and commenters, as well as administrative appeals and appellants, will depend on the inclusion or exclusion of special-interest groups or individuals whose comments or administrative appeals were filed on behalf of them by other special-interest groups or individuals. For example, choosing to count SEDG's EA comment, which included comments from 111 individuals, as one, would unquestionably change the results of the quantitative analysis. Another example includes Forest Guardians, who filed comments or administrative appeals on behalf of 6 or 10 special-interest groups and 3 or 6 individuals. Again, the study criteria or methodology for determining commenters appellants can indirectly or directly bias studies if such instances are overlooked.

Third, quantifying public comments and commenters, as well as administrative appeals and appellants, overlooks the interconnected relationship among public participants. Quantification fails to identify individuals and special-interest groups working together to participate, and fails to capture the significance of such networks. For example, it was clear that in some instances Steven Krichbaum and Sherman Bamford worked together with several special-interest groups, such as VFW, PAW, and Heartwood, to corroborate and submit their public comments, administrative appeals, and lawsuits.

Finally, quantifying public comments and commenters, as well as administrative appeals and appellants, overlooks the actual importance of comments and administrative appeals: to possibly improve and enhance Forest Service decision-making. Numbers and

percentages of comments and administrative appeals and who comments and appeals, oversimplifies a complex process with much more meaning than how many and who. To understand commenters and appellants, to recognize what they are saying, and to determine what they contribute to Forest Service decision-making is far more important and can only be accomplished with qualitative research methodologies. In addition, quantifying litigation overlooks the context of legal arguments, which must be connected to public comment and administrative appeal issues to better understand this complex process and the effects that litigation can have on public participant behavior.

CHAPTER XII – PART IV
COMPARATIVE QUALITATIVE FINDINGS OF
PUBLIC COMMENTS, ADMINISTRATIVE APPEALS, AND LEGAL ARGUMENTS

Introduction

The content of public comments, administrative appeals, and legal arguments were illuminated by the in-depth qualitative and contextual analysis of the primary commenter, appellant, and litigant designated in each case, as well as brief reviews of all other public comments administrative appeals in each case. Such analysis revealed several trends and commonalities worthy of identification and discussion.

Public Comments

Scoping Notice Comments

As previously mentioned in Chapter IV, the primary purpose of scoping is to inform the public of a proposed action, to provide opportunity for public comment and input on a proposed action, and to utilize public comments to help design and evaluate alternative courses of action, as well as help direct the emphasis of environmental analyses. In these cases, scoping notices generally provided the public with background information pertaining to the proposed action, the purpose and need of the proposed action, and likely management activities that would possibly occur. Clearly, the Forest Service had predetermined goals and objectives for implementing the Forest Plans for the GWJNF to meet the DFCs set for designated MAs, which seems appropriate since the public was involved in Forest Plan formulation and since MAs were designated for particular resource emphases.

In general, public SN comments in these cases seemed to express broad, fundamental and philosophical value statements, opinions, and concerns about the proposed actions, such as what effect they would have, for example, on aesthetics, recreation, threatened and endangered species, water quality, wildlife, and other forest resources. In some instances, SN comments were directed at the appropriateness of proposed actions and the effects that they could have on the environment and various other forest resources. In other instances, SN comments would ask for specific alternatives to be considered, for specific analyses to be conducted, or for more

information about the proposed action, such as maps of cutting units, old growth stands, riparian areas, roadless areas, water bodies, and other on-the-ground features.

The conclusion is that such comments seem to be appropriate at this stage of public involvement. The public is provided with limited information, basically allowing them to formulate opinions and concerns about the proposed action, and want more information, and the agency looks to utilize such opinions and concerns to determine the scope of environmental analyses and to design alternative courses of action. The latter is made apparent in the Forest Service's response to SN comments, where in general, each comment is designated as either significant or non-significant. Significant comments are "not specifically addressed" by the agency and are "classified as significant issues to be addressed in the EA," which means that these comments directed, and were to be incorporated in, the environmental analyses. If comments were designated as "non-significant," they were specifically addressed by the agency, and it was explained why they were non-significant issues that would not be used to direct environmental analyses. SN comments that seemed either vague or more characteristic of general statements or opinions, rather than project-specific issues, were "not specifically addressed," and comments irrelevant to the case were simply deemed to be "outside the scope of the project," which seemed appropriate. As a whole, it seems that public SN comments are likely to improve Forest Service environmental analyses and enhance decision-making, to the benefit of the public and the agency alike.

Environmental Assessment Comments

In general, public EA comments in these cases included many new comments that were not previously mentioned in earlier comment periods, which is expected because the EA provides the public with much new information, such as all the alternatives considered and environmental effects analyses conducted by the Forest Service. More specifically, these new comments were directed at the adequacy of the EAs, including alternatives considered; inventories, surveys, and analyses conducted; and possible mistakes found. Many questions were asked about cumulative effects; road construction; TES/PETS/MIS inventories, surveys, analyses, and mitigation measures; timber harvesting effects; water quality protections; and other project-specific concerns. All of these comments seemed appropriate in direction; however, the content of some of these

comments seemed inappropriate: asking for more analyses, inventories, surveys, mitigation measures, and other assurances to reach a level of scientific certainty that extends far beyond mandated laws, rule, and regulations, as well as Forest Service capabilities and resources.

Several issues and comments raised in earlier public comment stages were also dropped from EA comments, which suggest that the Forest Service adequately addressed these comments. However, numerous comments specifically addressed and “not specifically addressed” in earlier public comment stages were again raised in public EA comments, suggesting that commenters were either not satisfied or simply disagreed with the Forest Service’s response to these comments. Many of these comments seemed to be adequately addressed by the Forest Service, or they did not warrant response because they were either vague or more characteristic of general statements or opinions, rather than project-specific issues. It is questionable whether these comments would have been raised again in public EA comments if they were addressed differently or addressed at all, but it also seems unreasonable to suggest that the Forest Service address every comment in lengthy detail, or every comment regardless of their content, under the assumption that they will not be raised in later public involvement stages.

The conclusion is that some public EA comments are appropriate and useful, while others are not. Appropriate and useful public EA comments revealed public concerns about the environmental effects analyses, about possible mistakes in analyses, and about the proposed action as a whole. For example, in the MJP case, VFW/AV identified that the Forest Service would be in violation of a JNF RLRMP regeneration standard if implementation occurred in two stands of the project area, which later resulted in a one year implementation delay on 64 acres of the project until they were in compliance with the JNF RLRMP. Although such examples were limited in these cases, information obtained from public EA comments should and seem to enhance current and future agency decision-making. Inappropriate public EA comments are those that asked for an unreasonable level of scientific certainty; a level of certainty that no science or government agency can ensure. Thus, the public must come to understand that government agencies, especially those involved in land management, have to take risks to

perform their legally mandated duties, with as much information legally mandated to make an informed, reasonable decision.

Administrative Appeals

The administrative appeals process allows the public to administratively appeal Forest Service decisions, which in these cases were DN/FONSI or DMs. Such decisions explain why an alternative was chosen for implementation and why it would or would not have a significant effect on the quality of the human environment. As previously mentioned in Chapter I, the literature states that the purpose of administrative appeals is to provide opportunities for citizen redress and to improve Forest Service decision-making, and since this is the last administrative stage before possible project implementation, evaluating and understanding the usefulness of administrative appeals is imperative.

In general, administrative appeals in these cases were lengthy, raising several issues previously submitted in comments, as well as a myriad of issues not previously mentioned. Many appeal issues were directed at the adequacy of the DN/FONSI and DMs, especially pertaining to alternatives chosen and possible mistakes found. In addition, citations to Forest Service rules and regulations and environmental laws, such as the APA, the ESA, the MUSYA, the NEPA, and the NFMA, became much more frequent.

Several issues raised in appellants' previous comments were also dropped from their administrative appeals, which suggest that the Forest Service adequately addressed these comments. However, numerous comments specifically addressed and "not specifically addressed" in earlier public comment stages were again submitted in administrative appeals, suggesting that appellants were either not satisfied or simply disagreed with the Forest Service's response to these comments. Many of these comments seemed to be adequately addressed by the Forest Service, or they did not warrant response because they were either vague or more characteristic of general statements or opinions, rather than project-specific issues. It is questionable whether these comments would have been raised again in administrative appeals if they were addressed differently or addressed at all, but it also seems unreasonable to suggest that the Forest Service address every comment in lengthy detail, or every comment regardless

of their content, under the assumption that if done so they will not be raised in later public involvement stages.

More importantly, several appeal issues not previously mentioned in appellants' comments, raised concerns about issues that should have been brought up far before the administrative appeal stage. For example, numerous appeal issues throughout all of the administrative appeals expressed problems with various aspects of the EAs or BEs. These issues are undoubtedly problematic because the Forest Service could not have addressed them before a decision was issued, possibly preventing expensive and time-consuming administrative appeals or litigation. All problems with the EA should be directly revealed to the agency during or after the EA comment period, before a final decision is made, and it seems reasonable to assume that the public could do so since they have all of the information available about the project once the EA is issued. It also seems reasonable to suggest that the public and the Forest Service would benefit from having concerns raised earlier in the public involvement process to possibly avoid expensive and time-consuming administrative appeals, unless the public's intent is to delay project implementation and prepare for future litigation.

Despite these findings, it is also important to point out that a few administrative appeals did change the outcome of the ADO's final decision. For example, Heartwood/SEDG raised two water resources (1 and 2) appeal issues in their administrative appeal of the CRTS DN/FONSI, and after review, the ADO determined that the District Ranger had not adequately responded to the issues and questions the public raised regarding water quality in making his decision. Thus, the ADO reversed the District Ranger's DN/FONSI, which meant that the Forest Service had to repeat all administrative procedures and public involvement processes. Other such examples include; (1) the AGP case, where the ADO determined that: (a) the environmental effects disclosure in the EA/BE did not adequately address the Peaks of Otter salamander, the coal skink, or the Indiana bat, which were documented, or were known, as occurring in the project area; (b) the rationale for not analyzing these species in detail needed to be included; (2) the WMP case, where the ADO questioned the use of the Kentucky warbler as an example of an area sensitive, early successional habitat associate; (3) the TBSS and CTS cases, where the ADO found that the issues raised in the administrative appeals of

the decisions, except for the issue regarding wetlands and floodplains, had been adequately addressed by the Acting District Ranger in the EA and DN/FONSI; and (4) the MJP case, where the ADO determined that: (a) as proposed, the project was not in compliance with the JNF RLRMP standards, but delaying the implementation of timber harvesting on 31 acres or more for a year would bring the proposal into compliance. Unlike the CRTS case, however, the DN/FONSI was affirmed by the ADO in these cases, with instructions on how to correct the problems prior to project implementation. Therefore, the Forest Service made the necessary revisions, which were not subject to administrative appeal because the original decisions remained in effect and unchanged.

Although these mistakes were found, they are generally procedural, not science-based, and could have been corrected before the administrative appeal stage. Why they were not corrected is a different question, and one can only speculate that either the Forest Service was not responsive enough to public concerns or the public did not raise these concerns early in the process to be resolved before a decision was issued. Regardless of these findings, it seems reasonable to conclude that most administrative appeal issues were not appropriate and did not improve agency decision-making because they should have been raised earlier in the process so that that the Forest Service could have had an opportunity to address them before a decision was issued.

Legal Arguments

All legal arguments were an amalgamation of public comments and administrative appeals, based on procedural, not science-based, allegations. Such allegations pointed to procedural violations of applying the APA, the NEPA, the NFMA, the ESA, and Forest Plans for the GWJNF, which all contain numerous procedures that the Forest Service must follow to implement projects and that can be interpreted in countless ways because of their ambiguity. These procedures, and their ambiguity, provide many options for public participants motivated and willing to litigate Forest Service project-level activities. For example, anyone can allege that the Forest Service did not consider a “reasonable” range of alternatives (NEPA) because the term “reasonable” is value laden. Anyone can allege that the Forest Service did not adequately analyze cumulative effects (NEPA) because “cumulative,” to some, has no boundaries. And anyone can allege that the Forest Service did not properly apply the multiple-use

principle for any given project because many factions of the public interpret this principle to mean that the Forest Service has to manage for every forest resource on every parcel of land that they manage, and that to do otherwise is a violation of the MUSYA. These problems were made apparent after analyzing legal arguments in these cases, which often pointed to the Forest Service's lack of considering a reasonable range of alternative, analyzing cumulative effects and impacts to TES/PETS/MIS, and preparing an EIS instead of an EA.

CHAPTER XII – PART V

COMPARATIVE FINDINGS OF PUBLIC PARTICIPATORY EVENTS

Throughout the administrative procedures in each case, as public involvement was extensive and public participation was largely limited, the distinction between these two must be understood. Public involvement seems to be the exchange of information, without face-to-face communication, which some have described as one-way communication (Blahna & Yonts-Shepard, 1989; Force & Williams, 1989; Gericke, Sullivan, & Wellman, 1992). In other words, the Forest Service provides the public with information about a proposed action, an environmental analysis, and a decision; the public responds with written comments and administrative appeals; and the Forest Service addresses these responses with written responses. Public participation would seem to be the exchange of information via face-to-face communication, which some have described as two-way communication (Blahna & Yonts-Shepard, 1989; Force & Williams, 1989; Gericke et al., 1992). In other words, IDMs are a form of public participation because the Forest Service and the public either discuss disagreements via telephone or face-to-face at meetings.

As mentioned, public involvement in each case was extensive, with the Forest Service providing the public with information, the public providing written comments and administrative appeals in response to this information, and the Forest Service responding to these comments and administrative appeals in writing. However, public participation was nearly absent. In each case, telephone discussions between the Forest Service and the public about project concerns, before the administrative appeal stage, were occasionally found in the administrative records. After administrative appeals were filed, the Forest Service either attempted to set up an IDM with appellants via telephone, attempted to resolve administrative appeals with appellants via telephone, or held an IDM with appellants to attempt informal resolution of administrative appeals. In three cases (ASTS, TMP, and MJP), the Forest Service called the appellants to set up an IDM to attempt informal resolution of their administrative appeals, and the appellants either failed to call back (ASTS) or expressed that they did not wish to meet to attempt informal resolution (TMP and MJP). In five cases, the Forest Service attempted to resolve administrative appeals with appellants via telephone, and in each case, no resolution was

reached. And in three cases, an IDM was held between the Forest Service and the appellants, and again, no resolution was reached. Clearly, these forms of public participation did not resolve disputes in these cases.

As a result of these findings, post-decisional public participation may be an ineffective method for resolving disputes, and it seems reasonable to suggest that the public and the Forest Service would benefit from increasing public participation events at pre-decisional stages. For example, it may be more beneficial to have the Forest Service issue an environmental assessment, conduct a face-to-face meeting to explain and discuss the environmental assessment, and then have the public submit written comments. Regardless, it seems that there is a lack of public participation at pre-decisional stages of decision-making for Forest Service project-level activities.

CHAPTER XII – PART VI
COMPARATIVE FINDINGS OF CASE LENGTH
Administrative Procedures

A simple analysis of the cases revealed the time involved in public comment and administrative appeal procedures, as well as legal procedures. As you can see in Tables 1O and 2O (Appendix O, pp. 508-509), the Forest Service spends substantial time conducting public comment and administrative appeal procedures; from the time that the scoping notice is mailed out to the final administrative appeal decision. However, it is important to remember that a considerable amount of this time involves environmental analyses and document preparation, particularly for cases where EAs were prepared. For these 12 cases, which involved a total of 15 administrative appeal periods, administrative appeal procedures took approximately 3.5 months to complete from the time the decision was mailed to the public to the final administrative appeal decision. More importantly, public comment and administrative appeal procedures combined, as well as environmental analyses and document preparation (time could not be calculated), took an average of approximately 1 year and 6 months for these 12 cases. Yet, when the cases are grouped based on procedural characteristics, the average time changes.

For example, the only case that involved scoping and public comments, EA preparation and public comments, DN/FONSI preparation and administrative appeals, Revised EA preparation and public comments, and Revised DN/FONSI preparation and administrative appeals (CRTS), took approximately 3 years, rather than approximately 1 year and 6 months (Appendix O, Table 2O, p. 509). The cases that involved scoping and public comments, categorical exclusions, 30-day Review Notice and public comments, DM preparation and administrative appeals, EA preparation and comments, and DN/FONSI preparation and administrative appeals (BBFS and CTS), took an average of approximately 2 years and 1 month, rather than approximately 1 year and 6 months (Appendix O, Table 2O, p. 509). The only case that involved scoping and public comments, a categorical exclusion, DM preparation and administrative appeals, EA preparation and public comments, DN/FONSI preparation and administrative appeals, Revised EA preparation and public comments, and Revised DN/FONSI preparation and administrative appeals (TBSS), took approximately 1 year and 11 months, rather than

approximately 1 year and 6 months (Appendix O, Table 2O, p. 509). The cases that involved scoping and public comments, EA preparation and public comments, and DN/FONSI preparation and administrative appeals (RLTS, HTS, AGP, TMP, WMP, GMPRS, and MJP), took an average of approximately 1 year and 5 months, rather than 1 year and 6 months (Appendix O, Table 1O and 2O, pp. 508-509). Finally, the only case that involved scoping and public comments, a categorical exclusion, 30-day Review Notice and public comments, and DM preparation and administrative appeals (ASTS), took approximately 5 months, rather than approximately 1 year and 6 months (Appendix O, Table 1O, p. 508).

These results suggest that it is not only time-consuming, but also expensive for the Forest Service to make mistakes, have decisions reversed, and have to revise environmental analyses and decisions (CTS and TBSS). In addition, it is time-consuming and expensive when landmark court decisions (e.g. *Heartwood v. USFS*, 1999) change Forest Service policy while project-level decision-making is in process, causing the agency to virtually restart the administrative process (BBFS, TBSS, and CTS).

Legal Procedures

A simple analysis of the cases also revealed the time involved in legal procedures. As you can see in Tables 1O and 2O (Appendix O, pp. 508-509), legal procedures are another time-consuming and expensive venture for the agency. For these 12 cases, which involved a total of seven court cases, legal procedures took an average of approximately 1 year and 3 months, regardless of the differences in public comment and administrative appeal procedures mentioned above.

Administrative and Legal Procedures

Finally, a simple analysis of the cases revealed the time involved with administrative and legal procedures combined. As you can see on Tables 1O and 2O (Appendix O, pp. 508-509), the combination is very time-consuming and expensive, taking an average of approximately 3 years and 2 months from beginning to end. But again, this average changes when the cases are grouped based on the procedural characteristics previously described, sharing similar time relationships.

It is also important to point out the effects that litigation can have on certain project-level actions. For example, it only took 5 months to complete public comment

and administrative appeal procedures for the ASTS, which is expected because it qualified for categorical exclusion. However, after litigation, an additional 1 year and 8 months had passed (total of 2 years and 1 month). Such time additions could have negated the economic value of the dead and dying timber defoliated by gypsy moths and jeopardized forest health, since the purpose of the ASTS was to salvage the dead and dying timber, rehabilitate the scenic resource, and utilize the coppice sprouting potential of the remaining live trees before they were defoliated by gypsy moths. This finding must raise concerns because litigation seemed to undermine the purpose of categorical exclusions, and this could be especially troubling, for example, in cases outside of this project that involve categorical exclusions to reduce fuel loads for preventing severe wildfires.

CHAPTER XIII CONCLUSIONS

Introduction

After conducting individual qualitative analyses of 12 Forest Service project-level activities and seven associated lawsuits, as well as quantitative and qualitative comparative analyses of the projects and lawsuits, several conclusions are proposed and possible solutions are suggested. However, it is important to point out that none of the proposed conclusions or suggested solutions are complete answers, and although some may appear extreme, they should prompt meaningful discussion, debate, research, and consideration.

Conclusion I

Case Attributes

Timber harvesting projects (especially those involving even-aged management), regardless of size, seemed to be fundamentally unacceptable to the interested and vocal minority of public participants in these cases, even in MAs designated for timber production on lands classified as suitable for timber production. This is substantiated by the fact that these cases involved projects where the acreage harvested ranged from only 20 acres (ASTS) to only 210 acres (AGP), the volume harvested ranged from only 165,000 board feet (BBFS) to only 3.1 million board feet (HTS), and the amount of road construction ranged from none (RLTS, ASTS, AGP, GMPRS, BBFS, and TBSS) to only 1.5 miles (CRTS). Clearly, these projects are relatively small in size, yet they were still appealed and litigated because the interested and vocal minority of public participants were simply opposed to any timber harvesting.

Public participants in these cases also claimed that the Forest Service was not managing under the multiple-use principle and that they were biased towards timber production. Of course the Forest Service appeared biased towards timber production in these cases because it was agreed at the forest planning phase that such areas were designated for emphasis on timber production or on other forest resources that require timber management activities (e.g. wildlife habitat improvement), while other areas were designated for emphasis on other forest resources such as aesthetics, recreation, wildlife, and wilderness. The Forest Service was simply implementing the Forest Plans in these

cases. Thus, one must question if public participants are more willing to agree on management area designations at the forest planning phase since no real action is being taken. Once implementation of the Forest Plans becomes reality, however, one must ask if these agreements are ignored as participants return to their fundamental and philosophical value principles, disagreeing with the designations and the proposed actions that are compatible with those designations.

Finally, it can be pointed out that no EISs were prepared for any of the projects in this study, which prompts one to question if the public is more likely to administratively appeal, and possibly litigate, simply because EISs are not done. Although no answer can be given to this question, due to a lack of comparison with cases in which EISs are prepared, this question needs to be further investigated.

Suggested Solution

The public must understand that Forest Plans are a reflection of the multiple-use principle, via management area designation and emphasis on a variety of forest resources, while projects implement this overall principle on a smaller scale. The assumption that the Forest Service must and can manage for all forest resources on every parcel of land must be diminished, and the meaning and purpose of the multiple-use principle must be clearly explained to the public.

Conclusion II

Quantitative Research Methodologies

Although quantitative research methodologies may contribute to understanding public comment and administrative appeals processes, there are many deficiencies and gaps that must be resolved before such methodologies can be fully useful. Before one can determine how many public comments and administrative appeals there are each year, who the commenters and appellants are, and what those numbers mean, one must first have more accurate databases and consistent guidelines for classifying and counting commenters and appellants. For example, if readers refer to the discussion on pages 140 through 142, it is clear that problems exist with classifying and counting commenters and appellants, and such problems can lead to inconsistent quantitative findings and directly or indirectly biased studies.

Quantitative Data Presentation

Once these problems are resolved, researchers must then present the appropriate data and information, and make the correct relationships, to justify what those numbers mean. For example, it is questionable to quantitatively determine that administrative appeals are increasing or decreasing on a yearly basis, especially in small time-frames. If these trends are not linked to the number of Forest Plan amendments or projects proposed by the Forest Service on a yearly basis, they lack meaning. In other words, if one points out that administrative appeals decreased or increased from 1999 to 2004, for example, how can the researcher or reader conclude that conflict is decreasing or increasing if we do not know how many plan amendments or projects were proposed during those years. If 80% fewer plan amendments and projects were proposed in 2000, for example, then it is likely that administrative appeals would decrease, regardless of the level of conflict.

Individuals vs. Special-Interest Groups

It is also futile to quantitatively dichotomize individuals and special-interest groups in a manner that describes whether individuals are filing comments and administrative appeals more or less often than special-interest groups. Using such expressions to argue that the opportunity for the public to comment or appeal should or should not be limited or removed overlooks several important factors. For example, there were various individuals in these cases who submitted comments and administrative appeals. However, a large majority of these individuals were opposed to timber harvesting, and a small minority of them submitted multiple comments and administrative appeals, or litigated. Therefore, we must be more concerned about what types of individuals participate, how often they participate, and at what levels of public involvement they participate.

The same concerns must be raised about special-interest groups. For example, only one commodity-related special-interest group (AFMG) participated in these cases, while numerous environmental special-interest groups participated. Moreover, only a few of these environmental special-interest groups were involved in administrative appeal and legal stages, and many of groups, such as Forest Guardians, Forest Conservation Council (FCC), Sierra Club, National Forest Protection Alliance (NFPA), Heartwood, SABP, VFW, and Idaho Sporting Congress, match the 18 most active appellant groups

identified in Teich et al. (2004), respectively, which must raise concerns about certain environmental special-interest groups dominating public involvement processes on the GWJNF, and at a national-scale.

Finally, such a simple dichotomy between individuals and special-interest groups overlooks the interconnected relationship among public participants. Quantification largely fails to identify individuals and special-interest groups working together to participate, and fails to capture the significance of such networks. As mentioned on page 141, such relationships and networks were found in these cases, and there is an absence of research that focuses on their meaning or significance.

Suggested Solution

Regardless of these arguments, public debate and scholarly research must begin to focus on the actual importance of public comments and administrative appeals: to possibly improve and enhance Forest Service decision-making. Numbers and percentages of public comments and administrative appeals, and who comments and appeals, oversimplifies a complex process. To understand commenters and appellants, to recognize what they are saying, and to determine what they contribute to Forest Service decision-making is far more important and can only be accomplished with qualitative research methodologies. In addition, quantifying litigation overlooks the content of legal arguments, which must be connected to public comment and administrative appeal issues to better understand the effects that litigation can have on public participant behavior and the content of their comments and administrative appeals.

Conclusion III

Qualitative Research Methodologies

The qualitative research methodologies in this study were useful for organizing, tracking, and analyzing the content of public comments, administrative appeals, and legal arguments within and among the cases. Without the designed matrices, consistent and accurate analyses, findings, and conclusions would have been nearly impossible, and it is hoped that such a design will prove beneficial for needed and future qualitative research in this study area.

Public Comments

As mentioned on pages 144 through 146, public SN and EA comments in these cases seemed appropriate and likely to improve Forest Service environmental analyses and decision-making, although some EA comments were found to be inappropriate. The Forest Service responded to these comments appropriately and made every attempt to address project-specific issues. As a result, there is no suggested solution pertaining to public comments.

Administrative Appeals

Administrative appeal issues did not seem appropriate or useful for improving agency decision-making in these cases because many issues needed to be raised far before the administrative appeal stage so that the Forest Service could have addressed them before a decision was issued. For example, it was inappropriate for the public to raise original concerns about EAs at the administrative appeal stage because the information was available from the EAs for their EA comments. In addition, the opportunity for the public to administratively appeal Forest Service project-level decisions seemed to discourage pre-decisional information-sharing and collaboration. In other words, it seems that the public recognized that focusing efforts and raising new concerns at post-decisional stages in these cases was advantageous, especially if their intent was to delay projects and possibly have them administratively reversed or stopped in court.

Suggested Solution

Based on these findings, it is reasonable to suggest that the administrative appeal period be curtailed. Removing the administrative appeal period should reduce the incentive for the interested and vocal minority to focus efforts at post-decisional stages, causing the public to raise concerns earlier in the decision-making process so that the Forest Service can address them before a decision is issued. In addition, removing the administrative appeal period should reduce financial costs and delay; therefore, the agency should and will be able to conduct more pre-decisional public participation events, rather than just public involvement. More simply, the agency can better engage the public in face-to-face attempts at conflict resolution (two-way communication), with

hopefully all public concerns on the table. If procedural or scientific mistakes are found thereafter, the public still has the right to litigate.

This suggested solution possibly addresses Mortimer's (2003) question about the need for a sublitigation remedy in light of the proliferation of lawsuits over national forest management, despite major changes in the Forest Service's management regime. In other words, if administrative appeals do not improve agency decision-making, discourage pre-decisional information-sharing and collaboration, and induce cost and delay, and if litigation is proliferating even with this sublitigation opportunity, then removing it should not have a negative net effect either in financial costs or time.

Although some have argued that removing the administrative appeals process will increase litigation, alleging an increase in financial costs to the Forest Service, such assertions are unsubstantiated. We do not have accurate financial cost estimates of the administrative appeals process or litigation, and we may be overlooking the financial costs that will be eliminated by removing the administrative appeal period, which could possibly exceed any increase in litigation costs. Either way, we do not have a solid grasp of these issues, and it seems premature to speculate about the effects and financial costs of removing the administrative appeal period. Such effects and financial costs cannot be realized until we actually remove the administrative appeal period, which has never been done since the Forest Service adopted the procedure in 1906.

Public Comments and Administrative Appeals

In many instances, public comments and administrative appeals in these cases were based on fundamental and philosophical values, and it is inappropriate for the Forest Service to have to resolve such value conflicts during the technical, scientific, and procedural implementation phase of national forest management and decision-making. Thus, we must ask if public involvement during project implementation is appropriate or needed at all.

Suggested Solution

Fundamental and philosophical value concerns and multiple public resource demands on the national forests should be and are addressed at the forest planning phase, where extensive public involvement and participation occurs. Forest Plans, which contain MAs that emphasize the management or protection of various forest resources,

reflect these value-based concerns and multiple public resource demands. If public involvement was entirely removed from the project implementation phase, these value concerns and multiple public resource demands should be accounted for, as long as the agency implements projects in compliance with the Forest Plans, as well as national forest statutes and regulations. If a scientific, procedural, or legal error is made at the project-level, the public still has the right to litigate, which as previously mentioned is becoming more common, even with extensive public involvement during project-level decision-making.

Conclusion IV

Administrative Deficiencies

The decentralized nature of the Forest Service may cause inconsistent procedural documentation; public participant classification; and application of processes, procedures, regulations, and laws, all of which can be problematic. For example, it was found that the EAs were quite different among Ranger Districts in these cases. Format was different, the structured response to public SN comments was different, and the structured response to public EA comments was different. In addition, there was no clear indication of how Ranger Districts classified public participants. These findings are not surprising after talking to a Forest Service official who stated that such differences tend to be commonplace because the agency is so decentralized (J. O' Connor, personal communication, March 30, 2004). This means that there could be different formats and structures for EAs, as well as numerous other procedural documentations, and different classifications of public participants, between, at least, the 155 National Forests, and at the most, the more than 600 Ranger Districts in the United States.

Suggested Solution

Although agency decision-making is decentralized, documentation; public participant classification; and application of processes, procedures, regulations, and laws, could be standardized/centralized to reduce variation, increase consistency, and lessen the chance of mistakes or problems. In addition, it will be easier for the agency, Congress, and researchers to investigate and evaluate such a complex process. For example, all National Forests and Ranger Districts could use the same format for their environmental analyses documentation, although the types of analyses will be different among projects.

Also, establishing more strict guidelines for how the public submits comments and administrative appeals, and setting more strict standards for how public participants are classified, should make it easier for the agency and researchers to accurately determine how many public comments and administrative appeals are filed and who files them. For example, it may prove beneficial to require public commenters and appellants submit comments and administrative appeals solely as individuals or special-interest groups, not blended together or confusingly on behalf of other individuals or special-interest groups. And regardless of these changes, it is imperative to set standards for how public participants are classified. With so much variation in how individuals and special-interest groups submit comments and administrative appeals, it is extremely difficult to accurately classify or count individuals and special-interest groups. Specific examples of this can be found throughout Chapter XII – Part III.

Conclusion V

Legislative Reform

Although the public often refers to legal violations in their comments, administrative appeals, and lawsuits, their concerns and motives seemed to be fundamentally and philosophically value-based in these cases. Thus, it appears that the legislature has delegated the agency the responsibility of trying to resolve these value-based, not legal or science-based, conflicts via public comment and administrative appeals processes. Politicians captured by special-interests seem to have lost sight of the public interest, failing to pass a comprehensive piece of national forest legislation in nearly 35 years that directs national forest management and reflects today's economic, environmental, and societal demands in the United States (Mortimer et al., 2004). This failure is made apparent by the hundreds of ambiguous, overlapping, conflicting, procedurally onerous, and out-of-date environmental laws that the Forest Service must abide by, and by the increasing level of conflict over national forest management.

Forest Service managers must comply with literally hundreds of statutes, executive orders, and regulations that guide the planning and decision-making process (Floyd, 1999). These statutes, drafted by different committees of Congress with different motivations, do not commonly mesh well and tend to overlap, making national forest management decision-making increasingly complex (Floyd, 1999). They are so general,

so sweeping, and so vague that the Forest Service must deal with the problem that different uses of resources more often clash than harmonize (Reich, 1962). Laws such as the NEPA and the NFMA leave room for interpretation of what form public involvement should take (Baldwin, 1997; Steelman, 1999), creating misunderstandings between the agency and its various publics about what the public's appropriate role should be (Steeleman, 1999). The MUSYA has also made national forest management complex by expanding the agency's responsibility to manage the national forests for multiple-uses (e.g. outdoor recreation, range, timber, watershed, and wildlife and fish), and implementation of this mandate has constantly embroiled the Forest Service in controversy (Tipple & Wellman, 1991; Tobias, 1992). Altogether, these legislative mandates for public involvement and resource use have often been written without much appreciation for preexisting bureaucratic structures (Steeleman, 1999), leading to the problems previously described.

Suggested Solution

Legislative reform may be one of the most important changes needed for resolving national forest conflicts, and without integrated and up-to-date national forest legislation that directs and complements national forest management, public involvement processes, and agency decision-making, national forest conflicts are likely to continue regardless of changes to administrative processes. Therefore, Congress must be pressured to pass more specific, integrated, and up-to-date laws.

Forest Service officials and managers follow law and procedure, because doing otherwise may jeopardize the projects in such a litigious society. Thus, diminished administrative discretion, as a result of specific legislative mandates, may help the agency, since they do not seem able to step outside of legal and procedural boundaries in any extent. For example, mandating the Forest Service to consider three alternatives for project-level activities, instead of considering a "reasonable" range of alternatives, may be preferable. There is no room for interpretation, closing the door for those seeking to abuse public involvement processes and legal rights.

Conclusion VI

The New Forest Service Project-Level Regulations

On June 4, 2003, the Forest Service amended the 36 C.F.R. § 215 regulations, which govern how the Forest Service involves the public in project-level activities on the national forests. The major amendments: (1) require individuals or organizations to provide “substantive” comments directly related to the project during the 30-day comment period to be eligible to appeal; and (2) clarify that projects categorically excluded from documentation in an EA or EIS are not subject to appeal (Coulombe, 2004; Neznok, 2004).

Effects and Suggested Solutions

Although the amendments were attempts to streamline procedures and provide relief from burdensome analysis (Neznok, 2004), these are short-term solutions to a long-term, complex problem, and it is questionable if such changes will even produce positive outcomes. For example, requiring the public to provide “substantive” comments to be eligible to appeal has two problems. First, this change does not reduce the incentive for the public to focus efforts at post-decisional stages. If John Doe submits five substantive comments, then he is eligible to wait and submit 50 appeal issues that were not previously submitted. Second, “substantive” is another ambiguous word that leaves room for interpretation and conflict. If John Doe feels that he submitted “substantive” comments, and the Forest Service disagrees, then John Doe cannot appeal. If John Doe cannot appeal after feeling that he submitted “substantive” comments, then he is going to sue the Forest Service for improperly defining and interpreting the word “substantive.” Thereafter, it is up to a judge to interpret the meaning of “substantive” and to determine if the Forest Service properly interpreted and defined the word “substantive.”

Removing the opportunity for the public to appeal projects that are categorically excluded from documentation in an EA or EIS is also problematic. Although the public cannot appeal the project, they can still litigate, which is likely to be more time-consuming than going through the administrative appeals process. For example, administrative appeal procedures only took 3 months for a project in this study that was categorically excluded (ASTS), but after litigation, an additional 1 year and 8 months had passed. Thus, if the purpose of categorical exclusions is to expedite environmental

reviews and project implementation, then it may be necessary to consider removing the public's opportunities to appeal and litigate such projects.

Summary

In 1907, Gifford Pinchot, the first Chief of the Forest Service, published a guide on "The Use of the National Forests," opening with this message to the public:

Many people do not know what National Forests are. Others may have heard much about them, but have no idea of their true purpose and use. A little misunderstanding may cause a great deal of dissatisfaction... (Pinchot, 1907, p. 5)

Furthermore, Pinchot stressed the role of the public in deciding how they are used:

National Forests are made for and owned by the people. They should also be managed by the people... This means that if National Forests are going to accomplish anything worth while the people must know all about them and must take a very active part in their management... What the people as a whole want will be done... It is often necessary for one man to give way a little here, another a little there... There must be hearty cooperation from everyone... (Pinchot, 1907, p. 25)

Nearly 100 years later, it appears that these same statements capture the primary problems with public involvement in Forest Service project-level decision-making identified in this study, and we must begin to challenge and change the status quo to remedy these problems.

Today, most people still do not know what the National Forests are or have no idea of their purpose and use. However, there appears to be an interested and vocal minority of individuals and environmental special-interest groups that know what they are, but often disagree with their purpose and use, and are often unwilling to collaborate or compromise with opposing interests. Since the interested and vocal minority seems to dominate public involvement processes, at least in these cases, it seems difficult to accomplish what people as a whole want, especially when the disinterested and silent majority does not actively participate or commonly voice concerns. Thus, we must begin to question and reevaluate the purpose and need of "public" involvement and participation processes dominated by an interested and vocal minority who have the time

and money to participate, and what effect this has on ensuring that the wants and needs of the disinterested and silent majority are accounted for and protected.

In addition, we must question public involvement processes that appear to work in reverse, providing incentives for post-decisional challenges and discouraging pre-decisional collaboration, compromise, and information-sharing. In this study, public issues of concern were expanded, rather than distilled, as the projects progressed, indicating that public participants recognized that focusing efforts and raising new or expanded concerns at post-decisional stages was advantageous for delaying projects or possibly having them administratively reversed or stopped in court. In other words, it seems that public participants realize that focusing efforts at post-decisional stages make it difficult for the Forest Service to address concerns before decisions are issued, possibly preventing expensive and time-consuming administrative appeals or litigation. Such incentives must be removed, and public participants must be willing to share information, collaborate, and compromise at pre-decisional public involvement stages to resolve conflicts and to help improve agency decision-making. However, we must not rush to the assumption that pre-decisional information-sharing, collaboration, and compromise will resolve all conflicts in an environment with extremely polarized interests often unwilling to compromise.

To fully answer these questions and resolve these problems, however, it is clear that a qualitative analysis of 12 Forest Service project-level activities that resulted in litigation on 2 of the 155 national forests in the United States captures only a minute part of a large, complex situation with a number of other variables that need to be investigated. For example, we need to know more, qualitatively, about projects that did not result in litigation, to compare them, qualitatively, with projects that did result in litigation. Therefore, it can only be hoped that this study will prompt others to discuss and debate these questions, and to challenge and change the status quo. But more importantly, it is hoped that this study will serve as a model for future and needed qualitative analyses of public involvement and participation processes on the GWJNF and other national forests throughout the country. Such analyses may be the only way to further understand what the public is saying and why, and to determine not whether the public should be involved in Forest Service decision-making, but when should they be

involved; how much should they be involved; how should they be involved; and how can such involvement best be achieved for the benefit of everyone.

REFERENCES

- Ackerman, S. (1990). Observations on the transformation of the Forest Service: The effects of the National Environmental Policy Act on U.S. Forest Service decision making. *Environmental Law*, 20(2), 703-734.
- Alden, A., & Ellefson, P. (1997). *Natural resource and environmental litigation in the courts: A review of parties, statutes and circuits involved*. Staff Paper Series Number 125. University of Minnesota, Department of Forest Resources.
- Appalachian Voices v. U.S. Forest Service (USFS), Civ. No. 7:02CV00526 (W.D. Va. 2002).
- Baldwin, P. (1997). *Federal land management: Appeals and litigation* (Report No. CRS 97-274). Washington, DC: Congressional Research Service (CRS), The Library of Congress.
- Behan, R. W. (1990). The RPA/NFMA: Solution to a nonexistent problem. *Journal of Forestry*, 88(5), 20-25.
- Blahna, D. J., & Yonts-Shepard, S. (1989). Public involvement in resource planning: Toward bridging the gap between policy and implementation. *Society and Natural Resources*, 2, 209-227.
- Bobertz, B. C., & Fischman, R. L. (1993). Administrative appeal reform: The case of the Forest Service. *University of Colorado Law Review*, 64, 371-455.
- Church v. City of Huntsville, 30 F. 3d 1332 (11th Cir. 1994).
- Cortner, H. J., Teich, G. M. R., & Vaughn, J. (2003). *Analyzing USDA Forest Service appeals: Phase I, the database*. Flagstaff: Northern Arizona University Ecological Restoration Institute.
- Coulombe, M. J. (2004). Exercising the right to object: A brief history of the Forest Service appeals process. *Journal of Forestry*, 102(2), 10-13.
- Culhane, P. J. (1981). *Public lands politics: Interest group influence on the Forest Service and the Bureau of Land Management*. Baltimore, MD: Johns Hopkins University Press.
- Cutler, M. R. (1972). *A study of litigation related to management of Forest Service administered lands and its effects on policy decisions. Part two: A comparison of four cases*. Unpublished thesis, Michigan State University, Ann Arbor.

- Fener v. Hunt, 971 F. Supp. 1025 (W.D. Va. 1997).
- Fener v. Hunt, No. 97-1963 (4th Cir. June 23, 1998).
- Floyd, D. W. (1999). *Forest of discord: Options for governing our national forests and federal public lands*. Bethesda, MD: Society of American Foresters.
- Force, J., & Williams, K. L. (1989). A profile of national forest planning participants. *Journal of Forestry*, 87(1), 33-38.
- Gericke, K. L., & Sullivan, J. (1994). Public participation and appeals of Forest Service plans – An empirical examination. *Society and Natural Resources*, 7, 125-135.
- Gericke, K. L., Sullivan, J., & Wellman J. D. (1992). Public participation in national forest planning. *Journal of Forestry*, 90, 35-38.
- Goodman, M. (1994). Forest Service appeals reform: Searching for meaningful review. *New York University Environmental Law Journal*.
- Heartwood v. U.S. Forest Service (USFS), 73 F. Supp. 2d 962 (S.D. Ill. 1999).
- Inner Voice. (1992, May/June). An unappealing proposal. *Inner Voice*, 3.
- Jones, E. S., & Callaway, W. (1995). Neutral bystander, intrusive micromanager, or useful catalyst? The role of Congress in effecting change within the Forest Service. *Policy Studies Journal*, 23(4), 337-350.
- Jones, E. S., & Taylor, C. P. (1995). Litigating agency change: The impact of the courts and administrative appeals process on the Forest Service. *Policy Studies Journal*, 23(2), 310-336.
- Krichbaum v. U.S. Forest Service (USFS), 973 F. Supp. 585 (W.D. Va. 1997).
- Krichbaum v. U.S. Forest Service (USFS), No. 97-2187 (4th Cir. Apr. 9, 1998a).
- Krichbaum v. U.S. Forest Service (USFS), 17 F. Supp. 2d 549 (W.D. Va. 1998b).
- Krichbaum v. U.S. Forest Service (USFS), No. 98-2602 (4th Cir. Jan. 8, 1999).
- Loose, A. A. (1989). Forest plan appeal decisions: Guides to the future of the U.S. Forest Service. *Western Wildlands*, 2.
- Malmsheimer, R. W., Keele, D., & Floyd, D. W. (2004). National forest litigation in the US Courts of Appeals. *Journal of Forestry*, 102(2), 20-25.
- Manring, N. J. (1998). Alternative dispute resolution and organizational incentives in the U.S. Forest Service. *Society and Natural Resources*, 11, 67-80.

- Manring, N. (2004). Democratic accountability in national forest planning. *Journal of Forestry*, 102(2), 43-47.
- Metcalf v. Daley, 214 F. 3d 1135 (9th Cir. 2000).
- Mortimer, M. J. (2003). The delegation of law-making authority to the United States Forest Service: Implications in the struggle for national forest management. *Administrative Law Review*, 54(3), 907-982.
- Mortimer, M. J., Scardina, A. V., & Jenkins, D. H. (2004). Policy analysis and national forest appeal reform. *Journal of Forestry*, 102(2), 26-32.
- Nezcek, R. (2004). Healthy Forests Initiative and its effect on appeals. *Journal of Forestry*, 102(2), 5-7.
- Office of Technology Assessment (OTA). (1992). *Forest Service planning: Accommodating uses, producing outputs, and sustaining ecosystems* (Report No. OTA-F-505). Washington, DC: U.S. Government Printing Office.
- Parent, S. (1992). The National Forest Management Act: Out of the woods and back to the courts? *Environmental Law*, 22(2), 699-702.
- Parker, V. (1995). Natural resource management by litigation. In R. Knight & S. Bates (Eds.), *A new century for natural resources management* (p. 209). Washington, DC: Island Press.
- Pinchot, G. (1907). *The use of the national forests*. USDA Forest Service.
- Reich, C. A. (1962). *Bureaucracy and the forests*. Santa Barbara, CA: Center for the Study of Democratic Institutions.
- Save America's Forest. (1992). Administration attaching citizen rights: Forest Service to eliminate appeals process. *Coalition Report*, 1-7.
- Selin, S. W., Schuett, M. A., & Carr, D. S. (1997). Has collaborative planning taken root in the national forests? *Journal of Forestry*, 95(5), 25-28.
- Shenandoah Ecosystems Defense Group (SEDG) v. U.S. Forest Service (USFS), 24 F. Supp. 2d 585 (W.D. Va. 1998).
- Shenandoah Ecosystems Defense Group (SEDG) et al. v. U.S. Forest Service (USFS), 194 F. 3d 1305 (4th Cir. 1999).
- Shenandoah Ecosystems Defense Group (SEDG) et al. v. U.S. Forest Service (USFS), 144 F. Supp. 2d 542 (W.D. Va. 2001).

- Siegel, W. C. (1972). Environmental law and forest management. *Journal of Forestry*, 70(11), 682-686.
- Southern Appalachian Biodiversity Project (SABP) v. U.S. Forest Service (USFS), Civ. No. 1:00-cv-2041-MHS (N.D. Ga. Jul 17, 2001a).
- Southern Appalachian Biodiversity Project (SABP) v. U.S. Forest Service (USFS), Civ. No. 1:00-cv-2041-MHS (N.D. Ga. Sep. 21, 2001b).
- Steelman, T. A. (1999). The public comment process. *Journal of Forestry*, 97(1), 22-26.
- Teich, G. M. R., Vaughn, J., and Cortner, H. J. (2004). National trends in the use of Forest Service administrative appeals. *Journal of Forestry*, 102(2), 14-19.
- Tipple, T. J., & Wellman, J. D. (1991). Herbert Kaufman's Forest Ranger thirty years later: From simplicity and homogeneity to complexity and diversity. *Public Administration Review*, 51(5), 421-428.
- Tobias, C. (1992). Fact, fiction, and Forest Service appeals. *Natural Resources Journal*, 32(3), 649-651.
- US General Accounting Office (GAO). (2001). Forest Service: Appeal and litigation of fuel reduction projects (Report No. GAO-01-1114R). Washington, DC: U.S. Government Printing Office.
- USDA Forest Service. (1990). *Usefulness of forest plans. Critique of land management planning* (vol. 8). Washington, DC: Author.
- USDA Forest Service. (2002). *The process predicament: How statutory, regulatory, and administrative factors effect national forest management*. Washington, DC: Author.
- Vining, J., & Ebreo, A. (1991). Are you thinking what I think you are? A study of actual and estimated goal priorities and decision preferences of resource managers, environmentalists, and the public. *Society and Natural Resources*, 4, 177-196.
- Wenner, L. (1982). *The environmental decade in court*. Bloomington: Indiana University Press.
- Wenner, L., & Dutter, L. (1988). Contextual influences on court outcomes. *Western Political Quarterly*, 41, 133-134.

APPENDIX A
MATRIX KEYWORDS

Access

Keywords: access, impassable, incursions

Aesthetics

Keywords: aesthetics, eyesore, look, natural beauty, noise, visible, visual quality, VQO

Aquatic Communities

Keywords: aquatic abiota/biota, aquatic habitat, fisheries, trout, fisheries,

Archaeological/Natural Heritage Resources

Keywords: archaeological, cultural, heritage resources, historic

Chemicals

Keywords: herbicides, pesticides

Climatic

Keywords: winds, wind velocity

Cumulative Effects

Keywords: cumulative effects/impacts

Ecological

Keywords: age diversity, artificial clearings, biodiversity, biological corridors, biological diversity, early successional habitat, ecosystem, edge-effect, fragmentation, evolutionary process, fungi communities, gamma diversity, grass/brush openings, habitat, habitat diversity, homogenization, landscape, mature forests, micro-ecology, mid-successional habitat, plant/animal interaction, pollination, species richness, structural diversity, unfragmented, viable populations

Economics

Keywords: below-cost, cost-benefit analysis, economic analysis, economic impact, economics, tangible/intangible benefits

Environmental Analyses/Documentation

Keywords: analyze, data, inventory, peer review, proof, survey

Exotic/Invasive Species

Keywords: exotic, invasive, noxious

Forest Health

Keywords: blowdown, DFC, forest health, gypsy moths, health, oak decline, resistance, oak decline, wildfire

Hydrological

Keywords: drainage runoff, flood levels, flooding, flow levels, flow rates, infiltration rates, peak flows, storm-event runoff, surface runoff, water yield, storm-even runoff

Mitigation

Keywords: Best Management Practices (BMPs), mitigation, mitigation measures

Old Growth

Keywords: old growth, old growth forests

Recreation/Tourism

Keywords: all-terrain vehicles (ATVs), fishing, hiking, horse riding, hunting, off-highway vehicles (OHVs), recreation, tourism, trials

Regeneration

Keywords: advanced regeneration, deer browse, growth, planting, regenerate, reproduction, reseeding, revegetating, stump sprout potential, vegetative propagation

Roads

Keywords: road closures, road density, roads, system roads, temporary roads

Silviculture

Keywords: age class distribution, rotation age, site index, timber stand improvement (TSI), tree species mix

Soils

Keywords: microbial activity, nutrient cycles, soil erosion, soil loss, soil moisture, soil productivity, soil temperature

TES/PETS/MIS

Keywords: black bears, common flicker, consultation, eastern cougar, ESA, featured species, incidental take, Indiana bat, indicator species, James spinymussel, MIS, PETS, pileated woodpeckers, sensitive species, squirrels, take, TES, wild turkey

Timber Harvesting

Keywords: cutting, harvest, industrial logging, logging, pulpwood, salvage, shipping skids, suitable/unsuitable, volume, wood products, wood utilization

Vegetation

Keywords: herbaceous understory, plants

Visitor Safety

Keywords: danger, sight distance, visitor safety

Water Resources

Keywords: chemical pollutants, filter strips, natural springs, sedimentation, springs, water source contamination, water quality, water quantity, watershed

Wildlife

Keywords: browse, deer, deer populations, feeding, game management, hard mast, mast production, Migratory Bird Treaty Act (MBTA) of 1918, migratory neotropical songbirds, neo-tropical migratory birds (NTMBs), wildlife

APPENDIX B
THE RUCKER LAP TIMBER SALE

Table 1B

Public Comments on the RLTS SN

Category	Commenter							
	Robert Mueller	AFMG	CTF	GPC	Robert Fener	George Denney	ATC	CABP
Access					•			
Adjacent Landownership					•			
Aesthetics					•		•	•
Alternatives			•					•
Aquatic Communities			•					
Archeological/ Natural Heritage Resources					•			
Climatic					•			
Community Opposition					•			
Cumulative Effects		•	•					•
Ecological	•		•			•		•
Economics			•					
Ecosystem Management								•
Environmental Analyses/Documentation								•
Forest Health		•	•					
Hydrological			•		•			
Old Growth	•				•			
Public Involvement						•		•
Recreation/Tourism						•		
Regeneration		•	•	•	•	•		•
Silviculture		•	•	•				
TES/PETS/MIS			•					•
Timber Harvesting	•	•	•		•	•		
Vegetation								•
Water Resources					•			
Wildlife			•					•
The Proposed Action	-	+	N/A	N/A	-	-	N/A	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 2B

Robert Fener's Comments on the RLTS SN

Category	Comment	USFS Response
Access		
(1)	In summer months the tall canopy provides a cool place to walk when fields and clearcuts are neck deep in ticks. In winter, when snows make the road impassable, the forest provides the route I take between my home and where I park my vehicle. If this area is cut, the brush will be so thick a hound dog will have to back up to bark.	The sale will be administered in such a way as to provide for slash treatment between Units 1 and 2 so as to allow foot travel to the inholding in bad weather, and to keep an old road open in Unit 2 for the same reason.
Aesthetics		
(1)	Portions of Section 2 are within 200 feet of my home and are highly visible. This will destroy the view from the front of my house and potentially devalue the resale value of my property.	The southern 2/3 of Unit 2 will be visible from the dwelling on the inholding, private property to the west of Unit 2. Sale layout will minimize the visual concerns by leaving several clumps in the unit and feathering the top edge of the unit.
Archeological/Natural Heritage Resources		
(1)	Located in the proposed timber harvest areas are archaeological features unique to this area. I am a trained archaeologist, and along with two USFS archaeologists, we have located archaeological areas worthy of further research and protection.	Some areas in this compartment show evidence of historic occupation. A Forest Archaeologist surveyed the project area and found historic and prehistoric cultural resources. The units were flagged out on-the-ground to avoid these areas. The Archaeologist's report is located in the analysis file. In addition, neither action alternative will have any adverse impacts on cultural resources. If evidence of any sites is discovered during project implementation, work will be stopped in and around the discovery. The Forest Archaeologist will be consulted to evaluate the site and determine what measures are needed to protect it. Timber sale contract provisions will be used to protect any such sites found during sale activity.
Climatic		
(1)	Katabatic, or cold downslope winds, are characteristic of a weather pattern known locally as Great Northerns. Tree harvest upslope will accelerate wind velocity and will lead to a zippering effect of adjoining tree and home vulnerability and damage.	Outside the scope of the project.
Community Opposition		
(1)	If it is assumed that my beliefs are	Addressed outside of the EA,

	solely held, I would like to call your attention to the several hundred signatures that I have obtained supporting my position.	DN/FONSI, and Appeal Decision in the administrative record.
Hydrological		
(1)	Will uphill timber harvest change flow rates or levels within my spring or well and potentially other drainage run-off patterns?	Surface runoff does not usually occur in harvested areas because high infiltration rates are retained after harvest has occurred. Increases in peak flows do not usually occur during the winter because there is no difference in soil moisture between harvested and non-harvested areas. Thus, water yield increases are expected to have no significant impact on beneficial uses, peakflows, or flood levels in the area.
Old Growth		
(1)	Is vegetation manipulation a necessary function in this locale? Perhaps it could best function as a test area for older growth tree studies; at least it has a 90 year head start.	Outside the scope of this project.
Regeneration		
(1)	Contrary to the belief that a fast growing tree is more valuable, like a corn crop that comes in five days early, any wood worker will tell you that 20 grain lines per inch is more highly desirable and structural than a loblolly pine with 5 lines per inch.	This project is to regenerate the species already on site. No planting of any pine is proposed.
Timber Harvesting		
(1)	The USFS has not established an actual need for the trees to be harvested. Since the Forest Plan is not site-specific, nor action forcing, it would make more sense to harvest salvageable trees from ice and insect damaged areas that were not previously classified for regenerative growth, not to mention being less wasteful.	This project is in MA 17 and the age class distribution does not approach meeting the DFC for this area. Salvage needs in MAs suitable for timber management/salvage do not yet equal the volume to be marketed annually from the PRD.
(2)	Is it appropriate to take a healthy forest which has survived ice, moths, and beetles, and destroy it for what in all probability will be shipping skids and pulpwood, not something as profound as Noah's Ark?	
Water Resources		
(1)	It is a matter of great concern that oil, diesel, fuel, herbicides, or pesticides, etc., will be above my water source.	During timber sale administration, enforcement of standard timber sale contract provisions will serve to protect nearby water courses from contamination by oil or other chemical pollutants.

Table 3B

Robert Fener's Comments on the RLTS EA

Category	Comment	USFS Response
Access		
(1)	If hunters are unable to use the proposed cutting areas, this will result in greater incursions on my property.	The cutting units will still be available for hunting access after the timber is removed.
Adjacent Landownership		
(1)	I appreciate the consideration to my concerns about accessibility, but I am curious why the space between compartments is held to 330 feet (minimum) but not considered for adjoining edges of private properties.	The 330 feet between regeneration units on National Forest Land is a requirement in the Forest Plan. There are no such requirements for adjacent private property.
Aesthetics		
(1)	The EA does not adequately address the aesthetic impact which Alternatives 2 and 3 would have on me and my property. This harvest is not being done within view of the Appalachian Trail, so why should I be treated considerably worse than the occasional non-resident forest user?	Section III.A.2 on page 17 of the EA addresses the visual resource in relation to the Alternatives, and there is discussion about the private dwelling in both Alternatives. The proposed action in either alternative meets the Scenic Condition Objective for MA 17, and the proposed method of regeneration cutting (modified shelterwood) is the least impacting (visually) when compared to the clearcut and seedtree methods.
(2)	I would be forced under Alternatives 2 and 3 to look at a clearcut eyesore, or virtual clearcut eyesore, for the next 30 years. Leaving "several clumps" of trees in the unit totaling 20-30 square feet of basal area is not an aesthetic solution. I'm still looking at clearcuts from 1970 on Long Mountain, and from 1983 on Piney Mountain, and "it ain't pretty." Diminished aesthetics will have a dramatic effect on the value of my property. If you "modify," "regenerate," or "clearcut," it will profoundly destroy the view from my home. Where a nuisance, i.e. chainsaw noise, poison chemicals, eyesore, etc., diminishes a person's quality of life, then such a person is entitled to compensation.	On page 17 of the EA, it was stated that we would leave several clumps in Unit 2 and feather the top edge of the unit. The remainder of the unit would have a leave BA of 20-30 square feet. The clumps would be in addition to the 20-30 leave BA. The analysis on the proposed alternatives for the project meets the requirements of the NFMA. Chainsaw noise was not raised as an issue in the scoping process. The noise is very short-term and within the range of reasonable, acceptable, and approved procedures for timber management activities. The EA does not propose the use of "poison chemicals" such as herbicides. So called "eyesores" are addressed under Visual Resources under Section III.A.2.
Archeological/Natural Heritage Resources		
(1)	Unfortunately, based on an uncoordinated action between the USFS and the VA Game Commission, the Native American and Historic site at the Jeffries cemetery plot were	The environmental consequences of the Alternatives on heritage resources are covered on pages 17 and 18. It was stated that the Forest Archaeologist surveyed the project area and found

	plowed for a game opening. The EA does not demonstrate that the sites mentioned in my scoping comments have been properly identified and evaluated to prevent what has occurred at the Jeffries site.	historic and prehistoric cultural resources and that the report was in the analysis file. This report is not available to the public.
(2)	The EA does not provide for a means of ensuring that the cutting crews do not destroy these sites.	It was stated that the units were flagged so to avoid these archaeological sites, and included in any timber sale contract provisions. Personnel administering the contract will make sure that crews do not destroy the sites.
(3)	Would it be possible to get one of the local universities to conduct a thorough examination of the archeological areas in question?	The project has been surveyed by the District and the Forest Archaeologist. The respondent showed the Archaeologists the areas he was concerned about. The Archaeologists surveyed all potential impact areas that have a potential to contain heritage resources. Their report has been accepted by the VSHPO and is in the Analysis File for the project.
Climatic		
(1)	The EA does not address the issue of katabatic, or cold downslope winds, which was raised in my original scoping letter. Instead, the EA merely states that the issue is “outside the scope of this project.” No one has contradicted or addressed my concern that the tree harvest upslope will accelerate wind velocity, further endangering my home and land.	The two units to the north of his property are thinning units; Unit 2 is a modified shelterwood unit and is to the east of his property. As the northern surface winds encounter the taller trees in the thinning unit to the north of his property, the wind will be forced upward by the taller trees and will become turbulent. Eddies of wind will be formed directly over the taller trees in the thinning unit (Unit 3) and on the leeward side of the stand being thinned. Since the width of the area is only 1000 feet, the gusty winds should not increase more than 1-3 miles per hour. As the eddies of wind filter back into the untreated trees to the south, the surface winds will return to much the same characteristics as before encountering the taller trees in the thinning unit. The winds will return to normal approximately 1000 feet downwind. Since the private residence is approximate ½ mile from the proposed treatment area, the winds will return to normal approximately ¼ mile from the private residence. Therefore, there will be no negative effect of increased wind speed at the private residence.

Community Opposition		
(1)	I have a petition with an excess of 400 signatures of people opposing the timber sale.	Addressed outside of the EA, DN/FONSI, and Appeal Decision in the administrative record.
Ecological		
(1)	The EA does not address whether grass and brush openings are really necessary when adjoining acreage already provides ample conditions as pasture and copse.	The grass openings are in accordance with the Forest Plan.
(2)	Although the USFS speaks of gypsy moths, it does not acknowledge the overall decline in eastern forest ecosystems, and fails to justify a timber harvest in a sensitive area at this time.	The overall decline in Eastern Forest Ecosystems is outside the scope of this project. The Forest Plan identifies MA 17 to be “intensively managed for timber.” Discussion of the DFC for MA 17 in the Forest Plan (p.3-88, 89) makes it clear that the MA is to be managed for commercial timber production, even in the absence of expected gypsy moth attacks. The EA is in compliance with the Record of Decision (page 32) and Chapter 2 of the Revised Plan (Issue 11), which contains detailed discussion on the gypsy moth.
Exotic/Invasive Species		
(1)	The EA fails to adequately address the issue of exotic plant species that are migrating into or recent introductions to the area. The placement of certified seed and straw in erosion areas will not protect against the rapid spread of these exotic species.	On page 10, the EA does specify that disturbed areas will be revegetated with non-invasive wildlife food and cover, shrubs, and trees. This is also addressed on page 11 where it is stated that certified seed and straw mulch will be used. These management activities will not “promote” introduction of exotic plant species. We are in compliance with Resource Sustainability in the Record of Decision, pages 29 through 31, and Chapter 2 of the Revised Plan under Issue 9. Although these measures will not completely prevent the spread of weedy exotics, they will reduce the possibility.
TES/PETS/MIS		
(1)	The EA does adequately address the reduction in habitat for sensitive species, including certain bird species requiring relatively unfragmented habitat.	The environmental consequences of the Alternative on wildlife, fish, and habitat requirements for the management indicator species are covered on pages 23-29 in the EA, and also on pages 3-159 through 3-167 in the FEIS for the Forest Plan. Implementation of the Forest Plan will provide suitable habitat to maintain viable populations of MIS (Forest Plan, P. 2-9 and EA, P. 24).

Timber Harvesting		
(1)	To cut trees based on scheduling rather than necessity for product is a waste of a natural resource.	Not addressed.
Water Resources		
(1)	Although the EA did address concerns of water quantity, it ignored my concerns that pollutants will be above my water source and seeping into my aquifer.	Herbicides and pesticides are not part of this proposal. The landings are a quarter of a mile from his property, and contract provisions will ensure that any spills of oil or diesel fuel will be minimal and quickly cleaned up.

Table 4B

Robert Fener’s Administrative Appeal of the RLTS DN/FONSI

Category	Appeal Issue	ADO Response
Access		
(1)	The DN/FONSI errs in stating that “the cutting units will still be available for hunting access after the timber is removed.” These areas will be impenetrable thickets with a high density of thorny bushes within a relatively short period of time.	Not specifically addressed.
Adjacent Landownership		
(1)	The DN/FONSI is arbitrary and capricious in failing to consider the ecological value of applying its requirements concerning spacing of regeneration units to adjoining property.	The EA discloses, p.17, consideration and mitigation of planned harvesting next to private property containing a dwelling. The mitigation is to leave clumps of trees and feather the harvesting from the property line into the harvest unit. I find that the decision was not arbitrary and capricious in the way it planned harvesting next to the private property containing a dwelling.
(2)	Appellee has violated 16 U.S.C. 1604 by failing to consider the appellant’s request that a 330 foot corridor be left between his land and the proposed timber harvest areas as the USFS would do in implementing the project within the national forests.	The EA, Appendix E, addresses your request by stating, “the 330 feet between regeneration units on National Forest land is a requirement of the Forest Plan. There is no such requirement for adjacent private property.” I find that the District Ranger adequately considered your request. In fact, he had already provided mitigation for cutting next to your property, but apparently you were not satisfied with that mitigation. I find that the District Ranger is correct; there is no such requirement in the Forest Plan to leave any corridor next to private property.
Aesthetics		
(1)	The fact that the “regeneration cutting” is “less impacting (visually) when compared to the clearcut and seedtree methods” does not render it acceptable. There is no finding, and can be no rational finding, that the proposed action will have not a severe and significant negative environmental impact as viewed from the appellant’s house, property, and the immediately adjacent lands.	The EA on page 5 discloses that effects on visual resources was identified as an issue during the scoping process and is addressed in Section III.A.2. in the EA. The EA on page 11 discloses the mitigation that will be used for visual resources – to minimize effects on visual resources, units are designed to look as natural as possible with the existing landforms. The EA discloses on page 17 that all units will meet the common standards for aesthetics listed on pages 3-119/121 in the Forest Plan. The

		southern 2/3 of Unit 2 will also be visible from the dwelling on inholding, private property to the west of Unit 2. Sale layout will minimize the visual concerns by leaving several clumps in the unit and feathering the top edge of the unit. The effects on visual resources were addressed by disclosing whether the VQO would be met. The EA discloses that the proposed action will meet the VQO of modification. In so doing, the proposed action, which may dominate the characteristic landscape, will be seen from the inholding dwelling. The shape of the unit is modified to blend with the existing landscape characteristics. While the proposed action does modify the landscape, it meets the Forest Plan management objective and does not have a severe and significant negative environmental impact. The effects to visual quality are adequately addressed.
(2)	The DN/FONSI fails to acknowledge that there will be significant ongoing visual impact on the appellant, as well as adverse economic impacts on the value of his property.	Not specifically addressed.
(3)	Implementation of Alternative 2 will effectively eliminate multiple visual resources from the affected areas, notwithstanding the assertions of the DN/FONSI.	Not specifically addressed.
Alternatives		
(1)	The project violates 16 U.S.C. 1604, Denial of good faith consideration to no action alternative. The USFS has never, to the appellant's knowledge, given equal consideration to non-logging alternatives and selected the "no action" alternative except where absolutely prohibited.	The no action alternative is included in the EA and DN. I find that the no action alternative was considered.
(2)	Based on observations of the extensive timber harvesting in the GWNF, and the apparent lack of appreciation for all of the factors raised in the appellant's prior correspondence, the appellant submits that the offering of three alternatives is mere window dressing and a sham.	Not specifically addressed.

Archaeological/Natural Heritage Resources		
(1)	Archeologically significant sites have not been properly addressed by the DN/FONSI.	I find that the EA adequately disclosed the impacts and provides for protection of the cultural resources. Existing and potential heritage resource sites will be protected by avoiding inventoried sites and determining protective measures needed for any new sites found during project implementation. If evidence of new sites is discovered, work will be stopped in and around discovery. Neither Alternative 2 nor 3 will have an adverse impact on cultural resources.
(2)	The DN/FONSI asserts that the project area has been surveyed by USFS archeologists and that their report has been accepted by the VSHPO, without identifying the substance of the report. Additionally, the DN/FONSI asserts that the report is “not available to the public.”	Not specifically addressed.
(3)	The DN/FONSI contains inadequate documentation of measures which would preclude a similar accident to that on the Jeffries site.	Not specifically addressed.
Climatic		
(1)	The DN/FONSI is erroneous in its conclusion that the katabatic winds, which will be created by the action, will not have a significant environmental impact on the appellant’s property.	I agree with the District’s conclusion that this is outside the scope of this project.
Community Opposition		
(1)	The action is not only likely to be, but in fact is, highly controversial, demonstrated by a petition containing in excess 400 signatures in opposition to the timber sale.	In interpreting 40 C.F.R. 1508.27(b)(4), the courts have found: “the term ‘controversial’ apparently refers to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action rather than to an existence of opposition to a use, the effect is relatively undisputed...” (Hanly v. Kleindienst, 1972). I find that while there is opposition to this proposal, there is no significant impact due to the effects of the proposal being highly controversial.
Cumulative Effects		
(1)	Cumulative effects which occur must be considered and analyzed without regard to land ownership boundaries. Consideration must be given to the	Your NOA does not state what cumulative effects are inadequate. It just states that the FS failed to consider the cumulative impacts of the

	incremental effects of past, present, and reasonably foreseeable actions of the USFS as well as other individuals. Under the USFS's mandate of ecosystem management versus resource management, the research done for the Rucker Lap timber sale was inadequate in its narrow focus, and failed to consider the cumulative effect of the USFS's actions.	FS's actions. The EA does include discussions on cumulative effects. I find that the EA adequately addresses cumulative effects.
Ecological		
(1)	The DN/FONSI is arbitrary and capricious in failing to consider the ecological value of Alternative 1 (no action) with respect to the appellant's evidence of existing grassy areas...Appellant's property, and those of his neighbors, provide ample grazing, browse etc...and were not considered in the DN/FONSI, which stresses game openings.	The District documented that the conditions provided will help meet the DFC for MA 17 (DN-2). Your references to the DN/FONSI stressing game openings were not evident. I find that the DN/FONSI is not arbitrary and capricious regarding considerations for early successional habitat.
(2)	The fact that grassy areas are consistent with the LRMP does not provide sufficient justification for the multiple adverse results of Alternative 2.	Not specifically addressed.
(3)	When the overall decline in eastern forests was raised in comments to the EA, the reply in the DN/FONSI at Appendix E, No. 12, was that "The overall decline in eastern forest ecosystems is outside the scope of this project." This is an inadequate response and in violation of 40 C.F.R. 1503.4.	Not specifically addressed.
(4)	16 U.S.C. 1604 (g)(3)(B) is concerned with diversity of plant and animal communities, requiring that to the degree practicable the LRMP provide for preservation of the diversity of tree species similar to that existing in the region. Scientific data has established that tree species that grow back in the cleared areas will probably be less desirable and more opportunistic species such as maples, rather than the desirable oaks and poplars	In reviewing the EA and the process records, I find that a certified silviculturist was involved in the planning of each alternative's silvicultural practices. I also find that the silvicultural practices applied to these stands incorporate the latest scientific research concerning shelterwood cutting in these forest conditions. I find that the practices were based on specific site data that included vegetation conditions, soils, and topographic factors. This information includes the use of silviculture systems and their regeneration methods and treatments that will do the best job in establishing oaks and poplars. It is in my opinion that it will do this better than selection cutting. I find that the decision complies with the NFMA at

		16 U.S.C. 1604 (g)(3)(B), which makes requirements concerning diversity of tree species.
(5)	In terms of fragmentation, the project will isolate a corridor on the east boundary of the appellant's property, which the appellant has personally observed to be a route utilized by numerous animals.	Not specifically addressed.
Economics		
(1)	Appellee has violated 16 U.S.C. 1604 by implementing Alternative 2 because the approved alternative fails to provide a comprehensive justification for pursuing a below-cost or minimally cost-effective timber harvest in view of the numerous factors constituting a negative cumulative impact of the timber harvest. No cost-benefit analysis was projected for the monetary value of an intact forest under the "no action" alternative, yet it cannot be disputed that such a forest has genuine value.	The EA, page 34, discloses that the chosen alternative has revenues that exceed the cost for making this sale of timber available to local wood processing facilities. It is true that there is no monetary value shown for leaving the Forest in tact; however, it is also true for the monetary benefits for Alternatives 2 and 3. The type of economic analysis you are suggesting be done is what is called a cost efficiency analysis. However, NEPA does not state or suggest that this is the way economic effects are to be disclosed. It is left up to the discretion of the decision maker to choose an appropriate way to consider and disclose economic effects. The way chosen by the District Ranger provides relevant economic information on the costs and revenues such that he may make an informed decision. I find that, first, this planned timber sale is not a below cost sale. Second, the District Ranger has chosen appropriate information to consider and disclose on the economic effects. Third, there is no violation of U.S.C. 1604.
(2)	The failure of the DN/FONSI to consider the "overall decline of the Eastern Forest Ecosystems" because it is "outside the scope of this project" fails to establish that the approved alternative provides adequate justification for pursuing a below-cost or minimally cost-effective timber harvest in view of the sensitivity of the existing stands of trees and the numerous factors constituting a negative impact of the timber harvest.	Not specifically addressed.
(3)	Appellant offered to buy the trees adjacent to his property with the intention of allowing them to remain standing. The USFS refused to consider this option as well.	

	<p>However, should implementation of Alternative 2 occur, appellant will have no choice but to seek recourse and compensation for the destruction of the value of his property under inverse condemnation or other legal proceedings. Such proceedings will increase the cost of this program to the USFS and taxpayers; appellant estimates that the cost of compensating him for the loss of his property value will greatly exceed any profit under Alternative 2. The DN/FONSI fails to consider the economic impact of these legal proceedings.</p>	
Environmental Analyses/Documentation		
(1)	An EIS was not performed.	Not specifically addressed.
(2)	The macro rather than micro view of the environment would have brought to light a greater and more accurate image of the site of the proposed timber harvest.	Not specifically addressed.
(3)	The EA clearly indicates that the USFS has avoided an adequate “hard look” at the appellant’s concerns.	Not specifically addressed.
(4)	The DN/FONSI is limited and prematurely forecloses options for managing the area which would better protect, enhance, and restore the project area and/or resolve conflicts.	Not specifically addressed.
Regeneration		
(1)	<p>Scientific data has established that tree species that grow back in the cleared areas will probably be less desirable and more opportunistic species, such as maples, rather than the desirable oaks and poplars. Selection cutting would do a better job of reestablishing desirable oaks and poplars.</p>	<p>In reviewing the EA, I find that a certified silviculturalist was involved in the planning of each alternative’s silvicultural practices. I also find that the silvicultural practices applied to these stands incorporate the latest scientific research concerning shelterwood cutting in these forest conditions. I find that the practices were based on site-specific data that included the vegetation conditions, soils, and topographic factors. This information includes the use of silviculture systems and their regeneration methods and treatments that will do the best job in establishing oaks and poplars. It is my opinion that it will do this better than selection cutting. I find that the decision complies with the NFMA at 16 USC 1604(g)(3)(B), which makes requirements concerning diversity of</p>

		tree species.
Remedies		
(1)	Determine that the DN/FONSI approves a project that is inconsistent with the GW Revised LRMP and with other authorities cited herein.	Not specifically addressed.
(2)	Determine that the DN/FONSI approves a project which fails to meet the reasonableness requirements of NEPA.	
(3)	Determine that the FS has systematically failed to give good faith consideration to Alternative 1 (no action) when considering the proposed timber harvest.	
(4)	Require that the Responsible Officer correct the aforesaid deficiencies in the DN/FONSI.	
(5)	The appellant respectfully request a stay on all ground-breaking activities pending the appeal.	
(6)	Denial of the instant appeal will require appellant to seek relief from the U.S. District Court in the form of a preliminary injunction, which should be probative of the controversial nature of the action.	
Riparian Areas		
(1)	The DN/FONSI is erroneous in its conclusion that Alternative 2 will be consistent with the Forest Plan with respect to riparian areas set forth in the LRMP at 3-92.	None of the areas proposed for activity are within riparian areas (MA 18). Riparian areas along Swapping Camp Creek and perennial tributaries are not part of the area to be harvested (EA, page 12). Concurrent common standards along perennial and intermittent streams protect these from excessive soil disturbance and provide ample shade and soil cover to prevent or minimize impacts. I find that the project is consistent with the Forest Plan direction to avoid riparian areas whenever possible and protect water quality and aquatic habitats by implementing common standards along any other intermittent streams that may have a contributory effect.
Roads		
(1)	The EA erroneously assumes that existing roads will suffice for access to all timber harvest areas. There are no roads which would serve substantial portions of the cutting sites.	You have mis-read the EA and DN. I find that the EA does not contain an erroneous assumption that existing roads will suffice, and discloses that some new roads, which are to be temporary, will be built. The effects of the temporary road construction are adequately disclosed.

TES/PETS/MIS		
(1)	With respect to the appellant’s concerns that the timber harvest will have an adverse impact on sensitive species, including bird species which require unfragmented habitat, the DN/FONSI is flawed to the same extent as the underlying EA and adds no new information or support for its position of no significant impact.	Not specifically addressed.
(2)	There is no evidence cited in the DN/FONSI which would reflect that an adequate BE was conducted in the project areas to identify threatened or endangered plant and animal species, nor is there evidence that individuals qualified to identify such species will be present during timber harvesting activities. It is not permissible for the agency to rely on incomplete or unavailable information.	The DN states that, “[n]o known threatened or endangered species will be affected, since T&E species are known to exist within the project area.” The BE prepared by the Forest follows the appropriate procedures and content for analysis of federally listed species and FS sensitive species. I find the decision made by the Forest is supported by a proper BE and environmental disclosure.
(3)	While conceding that Alternative 2 will result in loss of overstory and unfragmented habitat, and increase understory, the DN/FONSI fails to substantiate its finding of no significant impact, to describe adequate methods of mitigation, or to adequately address cumulative impact. Thus, the USFS’s own research proves that Alternative 2 will have a negative impact on numerous sensitive species, while the only species which it claims (erroneously) would be benefited are deer.	The FONSI is not based on effects on sensitive species. I find that the significance criteria for a FONSI do not include sensitive species and, therefore, an EIS is not required when sensitive species may be impacted.
(4)	No inventory of sensitive vertebrate species has been specified.	Not specifically addressed.
Timber Harvesting		
(1)	The gypsy moth and ice storms have resulted in thousands of dead and dying timber within several miles of the Rucker site; to endorse killing the remaining healthy trees is arbitrary and capricious when millions of board feet of timber can be salvaged from dead and dying timber, and will otherwise go to waste.	The EA (pages 1 and 5) discloses that the Forest Plan’s DFC of MA 17 was the primary basis for selecting harvest areas. This part of the EA discloses that an inventory of existing conditions was obtained, and then was compared to the DFC for MA 17. I find that the need for the timber harvesting adequately supports the harvesting of live trees and leaving dead and dying trees in this part of the Forest. The decision was based on an inventory of the forest resources in this part of the Forest and a multiple resource objective that moves this part of the Forest toward the Forest Plan’s

		DFC.
(2)	As pointed out in the appellant’s letter of December 5, 1995, there is no countervailing environmental, cultural, or aesthetic justification for the destruction of forest land which would result from the “regenerative harvest” under Alternative 2.	Not specifically addressed.
(3)	To destroy a forest for no good reason is a waste and a crime against nature when we don’t need the wood.	Not specifically addressed.
Water Resources		
(1)	The stream protection standards referenced in the DN/FONSI will not eliminate the hazard that the appellant’s water source will be polluted, nor have the protection provisions which will govern the contractors operating in the area been specified. The protection provisions by which the contractor operates are not specified. The use of the cutting units as sources of firewood will result in continual chainsaw noise and fuel contamination in the immediate vicinity of the appellant’s property, and there is no provision for monitoring and enforcing appropriate restrictions against private individuals who may choose these areas to obtain firewood.	I find that the Forest standards and contractual requirements are sufficient to limit impacts to water quality and stream habitats from the hazard of fuel or other hazardous materials that may be associated with activities. During implementation of the project, the District should consult with you as to the location of your private water intake and/or well and make sure refueling or other transfer of these materials within the immediate vicinity of your private property are safe and secure locations. In addition, any follow-up silvicultural activities should be aware of your concerns, including protection to your water supply and private property.
(2)	Pursuant to 36 C.F.R. 219.5(a-b) the Forest Service must have a scientifically substantiated method of predicting the sediment produced as a result of logging and road building; to fail to do so violates the USFS policy requiring habitat management on a sound factual basis. 16 USC 1604(g)(3)(E) provides that timber will be harvested only from lands where soil and water conditions will not be irreversibly damaged, where streams are protected from detrimental changes in water temperature, blockages of water courses, and deposits of sediment. The EA failed to provide an estimate of the number of tons of sediment which will occur during and after the proposed cutting. Alternative 2 will have a negative impact on soil erosion and will introduce pollutants into the stream which borders the appellant’s land directly below the project site.	The information disclosed in the EA indicated an adequate consideration of the protection needs of the soil and water resources and watershed conditions as required in the NFMA and its implementing regulations. The EA used reasonable methods in testing the significance of the erosion and sedimentation concerns, even though specific calculations were not made for the alternatives. No reference indicates that sediment predictions must use a scientifically substantiated method or that failing to do so violates USFS policy for habitat management.

	The slope in section 2 is especially vulnerable to losing top soil; the slope above the appellant's land is excessively steep and rocky in certain areas, with minimal topsoil, creating a high likelihood that significant erosion will occur. The area is unsuitable for cutting.	
Wildlife		
(1)	The EA has failed to give the deer count or consider the fact that deer require hard mast for good survival, nor is there any substantiation for the implied finding that the deer herd is not adequately supplied by browse, soft mast, or hard mast at the present time.	The District provided analysis that included acres of hardwoods capable of producing hard mast (EA-31) and tiered back to the FLRMP. I find that the analysis for hard mast is adequate and appropriate.
(2)	The justification of Alternative 2 on the ground that it supplies deer browse is purely pretextual.	Not addressed.

APPENDIX C
THE HEMATITE TIMBER SALE

Table 1C

Public Comments on the HTS SN

Category	Commenter				
	Jim DeMoss	AFMG	CABP	Steven Krichbaum	CTF
Aesthetics		•			
Alternatives			•	•	•
Aquatic Communities		•			•
Chemicals			•		
Cumulative Effects		•	•	•	•
Ecological		•	•		•
Economics	•	•		•	•
Ecosystem Management			•	•	
Environmental Analyses/ Documentation			•	•	
Exotic/Invasive Species			•		
Forest Health	•	•	•	•	•
Hydrological					•
Mining		•			
Mitigation			•		
Old Growth		•	•	•	
Recreation/Tourism		•			
Regeneration	•	•	•		•
Riparian Areas				•	•
Roads			•	•	
Silviculture		•		•	•
Soils			•		
TES/PETS			•	•	•
Timber Harvesting	•	•		•	•
Vegetation		•	•		
Water Resources				•	
Wildlife	•	•	•		•
The Proposed Action	+	+	-	-	N/A

+ = in favor of proposed action

- = opposed to proposed action

N/A = not applicable

Table 2C

Steven Krichbaum's Comments on the HTS SN

Category	Comment	USFS Response
Alternatives		
(1)	A minimal cut alternative needs to be developed – one without road building and an amount of logging that just meets DFC percentage desires.	Not specifically addressed.
Cumulative Effects		
(1)	Cumulative impacts are a major concern – particularly to the Peters Mt. ecosystem and Management Areas.	The comment lacks specific information related to what specific ecosystem on Peters Mt. the commenter is concerned with. There is not enough information available to permit the ID team to determine what specific effects need to be addressed.
Ecological		
(1)	Due to the degree of past intensive manipulative and altering activities, comprehensive surveys and analyses of habitat requirements need to be performed.	Not specifically addressed.
Economics		
(1)	The cost of future timber stand improvement (TSI) in the cut units need to be disclosed and factored into the economic analysis – along with costs and benefits and degradation to amenities.	The consideration of the cost of TSI is outside the scope of the decision being made. The vast majority of regeneration stands do not need any type of TSI, therefore this work is not considered reasonably foreseeable.
(2)	“Construction of ... one mile of ... road” is not consistent with “striving to keep our costs down.” This is a particularly objectionable aspect of this proposal (along with the massive amount of logging proposed).	Not specifically addressed.
Ecosystem Management		
(1)	How will ecosystem management be implemented here? The scoping information leads us to believe that this requirement emphasis is not to be incorporated into and reflected by the decision. This project should be dropped at least until ecosystems are delineated here and studied. Does anybody in this office have the courage to say not to Westvaco?	Ecosystem management is the management of natural resources to maintain or restore the sustainability of ecosystems, thereby providing multiple benefits for present and future generations. This means the agency must approach project planning with increased emphasis on analyzing ecosystems at various spatial scales. Ecosystem management will be addressed during this project-level analysis through cumulative effects analysis.
Environmental Analyses/Data Collection		
(1)	Why wasn't the southern end of Snake Run Ridge included in the planning area? Is this an example of gerrymandering	The project area is selected based on site examination. The inclusion of the southern end of Snake Run Ridge would

	project areas?	increase the size of the project area, which would then show a need to cut even more acres.
(2)	VDGIF non-game biologists need to be formally consulted. Game biases are no longer sufficient – we’re in a new era.	The VDGIF was consulted as part of this analysis.
(3)	Is the information presented on page 3 relevant at all to this sale, or does it refer to the “Wylies Run Timber Sale?” Is this another example of the generic style of “analysis” performed by this office?	Not specifically addressed.
Forest Health		
(1)	The DFC as regards amounts and percentages of areas degraded by logging could be met by cutting one to two units (~32 acres).	Not specifically addressed.
Old Growth		
(1)	Cutting of old age stands is a concern – as is degradation and/or preclusion of old growth complexes.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Riparian Areas		
(1)	Please supply us with a map of MA 18 (riparian areas) in this project area so that we can monitor your actions.	The EA discloses the streams that were identified as having riparian areas. Designation of actual riparian areas will be done at the time the units are delineated on the ground based on MA 18 direction in the RLRMP. An EA map showing all the delineated riparian areas and their precise locations and dimensions is not necessary.
(2)	Impacts to riparian areas and resources are a concern.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Silviculture		
(1)	Cutting trees outside the rotation age is a concern.	The word “rotation” is referring to one criteria involved in determining sustained yield timber production with an even-aged management system. The rotation is used to determine when a particular group of species having common growing conditions and management requirements is expected to <u>reach</u> (from age 1) <u>the LRMP’s objectives which include the timber product objectives</u> . It is true that some hardwood stands are proposed for regeneration harvest cutting before they have reached the rotation range given in the LRMP standard. However, the LRMP (pp. 2-36 and 3-152, standard 100) states that silvicultural practices are considered as a means of reducing the susceptibility and vulnerability of timber stands to damage caused by pests. Stands with high gypsy moth mortality or <u>stands with a high probability of gypsy moth mortality</u> will receive priority in scheduling regeneration harvests and other silvicultural practices

		on lands suitable for timber production. These stands with a high probability are not required to attain the rotation age. Also, the LRMP's common standard 259 on page 3-152 states, "Harvesting trees to meet the desired future condition of a particular management area may occur prior to rotation age."
(1)	Send us a map showing the age of stands in this area.	Not specifically addressed.
TES/PETS/MIS		
(1)	Adverse impacts to PETS and disturbance sensitive species are a concern.	Not specifically addressed.
(2)	Adverse impacts to MIS are a concern – the agency's intent is to turn this into a sacrifice area apparently.	Not specifically addressed.
Timber Harvesting		
(1)	This area has already been heavily logged (220 acres) – give it a rest.	Not specifically addressed.
(2)	The overkill proposed (249 acres) is entirely unnecessary.	Not specifically addressed.
(3)	It looks like the timber sale would result in even more logging devastation acres than allowed by the Plan.	Not specifically addressed.
(4)	Adverse impacts to non-suitable lands are probable. What mitigation will completely compensate for this?	Not specifically addressed.
Water Resources		
(1)	Adverse impacts to Little Crow and Crow Runs are a concern.	Not specifically addressed.

Table 3C

Steven Krichbaum's Comments on the HTS EA

Category	Comment	USFS Response
Alternatives		
(1)	<p>Here's a suggestion to improve your final EA and decision, fully consider the following alternative (a revised Alternative 3) and choose it for action. Drop Unit 1 – it's much too old and valuable – it's the oldest mixed mesophytic site in the PA. Drop Unit 2 – it's next to a native trout stream, and it has heritage sites which are costly to survey. Drop Unit 3 – it's next to a native trout stream. Drop Units 7 & 8 – they require road construction. That leaves Units 4, 5, and 6 - without road construction and heritage surveys, the economic return will be similar to Alternative 3 (\$35,000) and a subsidized timber sale is still there (~1.3 million board feet). It's to the taxpayer that any fiscal responsibility is due, not Westvaco or any logging outfit. We're the shareholder here.</p>	<p>The above alternative would only harvest 795 MBF not 1.3 million. This alternative would meet the purpose and need for the project but would not address any significant issue. The taxpayers were responsible for the current Forest Plan, which is driving this project. This area was allocated to a management area in which timber production is the main goal.</p>
(2)	<p>In the absence of choosing a restoration alternative, or no action alternative, the above alternative would be far preferable to any of the narrow range of alternatives presented.</p>	<p>The restoration alternative and no action alternative do not meet the purpose and need for this project, nor move the area towards the Forest Plan's goals for this area.</p>
Air Quality		
(1)	<p>There are no past actions that are having an effect on the air resource within the project area. Whoever came up with this statement should be chained to one of the gas effluent stacks at Westvaco. I wonder if they would notice any effect from the past action that constructed what you're chained to.</p>	<p>There are no direct effects to the air resource due to the implementation of this project. Effects to the air resource related to Westvaco will take place with our without this sale, therefore there is no cause and effect relationship.</p>
Aquatic Communities		
(1)	<p>What is the present state of brook trout populations? How will the project directly, indirectly, and cumulatively impact brook trout individuals, populations, and habitat? Numbers and citations, surveys, and studies need to be referenced. The EA is not forthcoming.</p>	<p>At present, data does not exist to determine the present state of brook trout populations other than that Crow Run and Little Crown Run are designated as native wild brook trout streams. BMPs will be in place throughout the proposed timber sale harvest to mitigate any impact of runoff. Refer to the question on aquatic communities previously addressed.</p>
(2)	<p>What is the present state of aquatic communities and habitat? The EA tells us nothing. What is here? What is the</p>	<p>RBP samples and LWD samples have been collected to monitor certain attributes of stream ecology. The field</p>

	state of health?	work was collected by district wildlife technicians and the analysis is being done by the district wildlife biologist and forest fisheries biologist. Stream macroinvertebrates populations are planned to be monitored prior to, during, and after harvest implementation. Macroinvertebrate listing will follow upon RBP analysis. Crow Run and Little Crown Run are listed as native wild trout streams. The DFC in the Plan states that cold water assemblages of fish and macroinvertebrates have 125 to 300 pieces of LWD per mile stream (page 3-93). Stream LWD surveys conducted in Crown Run and Little Crown Run (July 1995) indicated that 58 and 126 pieces of LWD were present in each stream respectively. However, stream LWD surveys were conducted in Crow Run and Little Crown Run (April 1996) indicated that 31 and 67 pieces of LWD were present in each stream respectively, a pointed change over a short period of time and number well below the minimum.
(3)	What data was used to make the assertion as to “beneficial uses or aquatic habitat” here? Who gathered it? When? How? Reference to falling “within the scope of earlier analyses” is meaningless and a dereliction of duty. Stop jerking the public around with pathetic word games and tell us what is happening here and now and what projected impacts will be.	Refer to the previous question. BMPs are required to be in place prior to harvesting and maintained until the end of the project. It is expected that minimal negative impacts from siltation will occur.
Cumulative Effects		
(1)	There are future projects planned for this project area, contrary to the assertion of “future actions” (page 44). You intend to regulate the entire suitable base of “balance age classes,” so by ignoring this fact your cumulative impacts analysis is faulty.	The law and regulations require the analysis to consider all reasonably foreseeable action. At this time there are no foreseeable actions planned. In the future the area will be considered for harvest to continue moving towards the DFC called for in the Forest Plan. However, the Forest Plan could be changed or amended or re-written prior to the time this area is re-entered.
Ecological		
(1)	I’ve read and re-read your assertions as to “increase in richness” as regards to the issue of diversity (page 14) and have no idea as to what you are talking about. This isn’t an explanation or presentation of data, its gobbledegook. Providing “long-range diversity richness for approximately 20 years” (page 45).	Richness is a measure of number of species within the area. The proposed sale would create a more diverse landscape and thereby allow all native species to occupy part of the project area. The regeneration areas will be better able to withstand defoliation by gypsy moth. These younger stands will

	What are you talking about? Where did this figure come from? How about after 20 years?	help to ensure an oak component within the project area. This effect will last approximately 20 years.
(2)	Tell us plainly and clearly the present nature of site-specific diversity, how and to what extent in time and space this diversity will be altered by your actions if implemented, what your negative impacts will be.	Diversity is discussed in relation to all alternatives on pages 43-45 of the EA.
(3)	Biological diversity is the fundamental reality of this project area, and all you have presented to us are equivocations and assertions without substantiation and perfunctory talking about the issue. This isn't site specific analysis and disclosure. What are you trying to hide?	There is nothing to comment on in this statement.
(4)	11% of the area is already in early succession (this does not include private lands, edges, natural canopy gaps). Bird and animal species that use this habitat and need it are not rare here. The "composition would dramatically change" (page 24), yet this major issue is just glossed over. Viable populations well distributed in the project area (required by NFMA) are thus disregarded. Sickening. Yet no mitigation is offered for this.	Refer to the Plan page 2-3 and 2-4. It discusses the composition change creating habitat suitable for some species and unsuitable for others.
(5)	Nothing on the ecological value of dead and dying trees (page 41). Do maps, CWD, and soil generation (to say nothing of food and shelter for myriads of creatures) not enter into your assessment of "the resource?"	Within this management area the main goal is to produce wood products. To meet this goal an effort is made to capture as much volume before it dies or as soon after as possible. The value of dead and fallen trees as habitat for the myriads of creatures is a very important aspect of forest management. Within the project area there are over 1,600 acres of unsuitable land. These acres will provide this resource in this area. This is a question of not being able to manage for every resource on every acre. However, over the landscape, which would include many different management areas, these needs are being met.
(6)	The discussion of "diversity" (page 44-45) ignores research that shows actions such as proposed for here diminish diversity in various ways. Your analysis and disclosure is not open and equitable. It is no wonder then that a faulty decision results.	The discussion of diversity in the EA is considered complete.

	(7) Only around half the project area is of rotation age. We propose to further reduce this by 10%. So, “ecological processes are [not] balanced” (page 6). The proposed logging will prevent “the attainment of the natural resource objectives” (page 6). Sickening.	The proposed action moves the area towards the DFC for this management area as called for in the Forest Plan.
Ecosystem Management		
	(1) This is not ecosystem management. It’s the same old preoccupation with “timber production,” “growing timber,” and roading to “produce timber” (page 5). The process is not “open and equitable.” Sickening.	Ecosystem management must be viewed on a larger scale than just this one management area. We are managing for all types of ecosystems over the forest when you consider all management areas. This area is allocated to producing timber, not wilderness, not recreation, not roadless, not old growth. There are management areas both on the District and Forest which are allocated to these uses. The commenter is correct with the statement that the proposed action is looking at growing timber – that is the goal of this area.
Environmental Analyses/ Documentation		
	(1) Thank you for reaching a new low in producing an EA unmatched in distortion, equivocation, ignorance, and contempt for the public, and for the forests interested to your care. Please send me 4 extra copies – it’s a wonderful education tool.	The public was fully involved in the creation of the current Forest Plan which allocated this area to timber production. The commenter is free to make as many copies of the EA as he would like.
	(2) I especially like the fact that you used 60 sheets of paper for printing the EA when 30 would have done the job (I’m referring to the fact that you use one side of a sheet to print this sickening mess). Who made the decision to treat our nation’s precious resources in such a wasteful, frivolous, and contemptuous manner?	The fact that the EA was copied on only one side was an over sight. The EAs are normally sent out copied on both sides.
	(3) You assert that “there are no future projects planned within the project area” (page 19). Utter garbage. You intend to “regulate” this forest and you know it (see your statements regarding the DFC).	At this time we have no documented plans to enter this area for 5 or more years. The law requires that we consider reasonably foreseeable actions. At this time there are no future actions planned within the project area.
Forest Health		
	(1) Reference is made to “a need to achieve a species mix which will be more resistant to future gypsy moth defoliations” (page 8). The cove hardwood sites possess and achieve just such a mix. Don’t cut these acres – they	Most of the area being considered for harvesting is not cove hardwoods. Only Units 1 and 2 contain some poplar.

	are important source sites for overall sustainability and health of the area (that is, if you are really concerned about possible gypsy moth impacts). The USFS’s own research shows the value in not cutting areas and thus allowing them to become more resistant (e.g. Gansner et al. NJAF 10(4) 1993).	
(2)	A major rationale for the high impact industrial strength even-age logging proposed here is that the stands supposedly “exhibit moderate to high levels of oak decline and mortality” (page 35). This is surprising, given that Unit 2 is only 76 years old and is a mesic (cove hardwood) site. Specific information as to the oak decline purported is lacking. Give us hard data and analysis. What is oak decline doing in a young, rich site? Who, how, and when was the determination made? Unit 8 has no oak decline (page 13). It doesn’t need the “regeneration harvest” discussed on page 35.	Site visits were made by district personnel to determine the level of oak decline present in the stands to be harvested. Unit 2 is one of the younger stands to be harvested; however, the age of many of the oaks is a bit higher. This stand is showing moderate levels of oak decline. Unit 8 was shown to contain a very small amount of decline as shown in the chart on page 36. The presence of oak decline was only one factor in the decision as to which stands to harvest.
(3)	Forest health in the EA centers on oak decline, gypsy moth, and economic value (pages 41-43). This ecosystem management perspective is the same old song and dance as for decades previous.	There is no statement to respond to in this comment.
(4)	Who exactly made the decision not to cite research and data regarding gypsy moth that does not conform to the decision to log here? Do you consider this decision to be “open and equitable?”	The effects that gypsy moth will have on this area are based on current effects on the northern end of the GWNF. Research by Gottschalk and Herrick and Ganser was used to identify how much of the area has a high hazard rating for defoliation and mortality. The commenter does not state what research he feels needs to be added.
Hydrological		
(1)	You deny that storm-event runoff and flooding doesn’t occur in harvested areas. Sickening. Do you consider deceit to be an open and equitable way to deal with the publics’ concerns?	The EA makes no statements that storm event runoff and flooding doesn’t occur in the harvest area. The flood on 1/19/96 of which I assume the commenter is referring to was a result of a very deep snow pack 30+ inches followed by a warm heavy rain. This combination was the cause of the flooding.
Mitigation		
(1)	No mitigation for directly killing migratory songbirds during nesting seasons – in violation of MBTA. Why is this?	The court has already decided, in Decision No. 91-35528 (Seattle Audubon Society v. Evans, 9th Circuit Court, December 23, 1991) that forest management activities such as logging or similar alteration of habitat do not

		constitute a “taking” under the MBTA. Therefore, the planned activity is not in violation of the MBTA.
Old Growth		
(1)	As regards old-aged stands/old growth – past timber sales have harvested virtually the total project area, not just 7%.	The chart of page 39 states that 7% of the suitable land base has been harvested in recent history, i.e. during the period of time this land has been in National Forest management. The EA also states on page 35 what may have happened within the project area prior to NF ownership. This area may have been logged, high-graded, and had been subjected to wildfire. The EA must be read as a whole and statements not taken out of context.
Recreation/Tourism		
(1)	Your proposal to not mitigate for the Allegheny Trail is reprehensible. You are saying that a forest that isn’t being logged and roaded is not working. People are not taking to the woods in increasing numbers in order to view and hear heavy machinery. The trail is not even marked on a map. Another issue to keep hidden from the public.	This trail is being designed and constructed by a public group. They have set the goal for this trail to show forest management, rather than place the trail only in areas with a wilderness management goal. They would like the American people to see and understand the importance of good forest management, as can be seen in this area. The map does not show the location of the trail since the trail has not been fully marked on the ground and its location is subject to change. The fact that a trail is proposed in this area was not hidden, rather it was fully addressed in the recreation section of the EA.
(2)	No mention made of long-term recreation increases under no action. Do you really believe that people will stop visiting our forests if the subsidized logging program were to close here? I guess this is more of your fair and balanced analysis, right?	There is no data to support the comment that recreation would increase under the no action alternative. The EA states the effects the proposed action would have on the current recreation use of the area. Since no significant issues were raised concerning recreation use of this area, this issue was not covered in detail.
(3)	No mention of reduced opportunities for recreation as a direct result of greatly diminished mast production for decades. How about that effect on hunting and wildlife viewing?	The issue of effects on hunting and wildlife viewing were not considered in this EA since they were not raised as issues during the scoping period for this project. Since this area is allocated to producing timber products and not wildlife management, effects on hunting and wildlife viewing were not considered to be significant issues in this EA. Since no significant issues were raised concerning recreation use of this area, this issue was not covered in detail.
(4)	You intend to increase use of this area for “hunting” [and poaching] (page 46,	Since this area is allocated to producing timber products and not recreation,

	25). You neglect to mention that promotion (whether intentional or not) of such uses makes the area less attractive for other outdoor recreators due to noise and fear for life and limb. This is not a desirable situation.	effects on recreators of this area were not considered to be a significant issue in this EA.
Regeneration		
(1)	No acorn reproduction for 20-30 years in logging units is particularly objectionable. The loss of mast valuable for wildlife is a direct/indirect/associated adverse impact that needs to be mitigated.	The logging units will not be devoid of food items as soft mast species that are sun loving will become abundant and available for a host of wildlife species in addition to an increase insect population that is needed by many forms of wildlife such as neo-tropical migrant birds, resident songbirds, bats, wild turkey, grouse, and salamanders. As gypsy moth infestations become a reality the virtual same relationship most likely will exist...loss of oak mast with an increase of soft mast but the oaks are expected to be producing mast within the 20-30 year time frame.
(2)	You write of “hard mast producing trees died” under no action (page 46). Are you saying that mast is not produced if the area is not logged again? That hard mast producing trees do not regenerate under no action? What is this gobbledygook all about?	The effect of not harvesting trees during this sale would be that they would die in the future. The stand would regenerate; however, all forest products would be lost to the people of the United States. This management area is allocated to producing timber.
Riparian Areas		
(1)	You assert that riparian areas were avoided “as delineated on the ground.” Meaning that the delineation has already been done – otherwise how could you honestly assert that riparian areas have been avoided? The appendix asserts that riparian area designation has taken place. So where are the riparian areas? Who designated/delineated them? When? How? Send us copies of all surveys and supporting documentation used to make this delineation/designation. Send us a map clearly showing these delineated/designated areas – otherwise we can not monitor your actions, nor can we be involved in the process. I don’t trust you. Mere assertions are not enough. What are you trying to hide? This is an official MA and I need to know precisely where it is and how it was so delineated/designated. I can’t be anymore clear than this. The EA is an insufficient travesty as regards this significant issue.	The Forest Plan states in standard 18-38 on page 3-98 which lands are classified as riparian areas and are unsuitable for timber production. This standard is used by field personnel when the unit boundaries are determined. The process of unit layout is taking place at the present time. We welcome the commenter to visit any of the units in this project and monitor if this standard is followed.

Roads		
(1)	<p>Shady roads are good – for wildlife, for scenic beauty, and for visitor enjoyment. Harvesting timber along FDR 277 and 277A is unnecessary and overkill. Leaving the trees there conveys numerous benefits which the documentation ignores. The NEPA requirement of fair, balanced, objective disclosure is absent. These roads are open seasonally and yet you intend to degrade their character and this section of the forest for 100-150 years. This is overkill.</p>	<p>The safety of the forest visitor is an important aspect of National Forest management. Every effort will be made to ensure visitor safety along the National Forest System road. This area is allocated to timber management and there is a need to maintain a good transportation system in this area. Reducing shade on the road and increasing sight distance are considered safety and maintenance issues.</p>
(2)	<p>The EA misrepresents Std.183. This standard refers to maintaining a road, not logging a roadside.</p>	<p>The standard is used correctly. The road side is considered a part of the road and is considered when road maintenance needs are addressed.</p>
(3)	<p>Alternative 3 as proposed is a sham. Supposedly, this alternative was formulated to address the issue (raised by myself) of building more roads in an already massively over-roaded project area. You distorted this into dealing only with “system roads” construction (page 10). Yet, Alternative 3 would entail 0.8 miles of temporary road construction (page 11). These so called temporary roads remain apparent in the forest for many decades, if not centuries. They come with an array of detrimental impacts. Alternative 3 does not address this issue. Honestly and openly address it.</p>	<p>This alternative was developed to address the issue of not harvesting the maximum number of acres allowed by the Forest Plan and the issue of not constructing additional system road. This alternative addresses both these concerns in that it harvests less than allowed acreage under the Forest Plan and will not construct any system roads.</p>
(4)	<p>The present open road density in this area is excessive. It impedes and prevents the attainment and maintenance of natural resource objectives. These negative impacts to the ecosystems of the area at a variety of scales goes unmentioned in the EA. Now you propose to add even more to the area. This issue is not being addressed openly, equitably, or adequately.</p>	<p>This project is taking place in MA 17, which has no standard for open road density. The commenter does not state what natural resource objectives are being impeded by this project. The effects of this project on the larger scale of the entire forest are contained in the Forest Plan and EIS.</p>
(5)	<p>11.6 miles of roads within the PA. ~2.2 miles/1000 acres. And you propose even more. Sickening. Almost 10X that recommended for bears (referring to the road density). And this doesn’t even include all your so-called temporary roads.</p>	<p>This management area is not managed for bear and has no open road density goal or standard.</p>

Silviculture		
(1)	There's more to consider than just "tree species ... in the regeneration areas." This is a perfect example of the outmoded trees = forest ideology that apparently still permeates this RD.	This management area is allocated to the production of timber products. As timber production is the goal of the area the species mix within the regeneration units is important. By monitoring past cutting in the area, the effects on species composition in the areas being proposed for harvest in this project can be estimated.
Soils		
(1)	The section on soil loss, erosion, and productivity is a mess of meaningless gibberish. Exactly what are the projected amounts of soil loss from each alternative? Numbers are what we need.	The exact amounts of soil loss have not been calculated for any of this alternative. In an effort to shorten our analysis, a study was done on a large number of timber sales. The outcome of this study is a paper which sets a range for the number of acres harvested, roads constructed, and areas already impacted in the analysis area. We can stat that as long as there is nothing unusual in the analysis area, and we are within these ranges, there will not be a significant environmental effect. As shown on page 18, the alternative falls within the ranges set in the white paper. The goal of the EA is to allow the decision maker to state there will not be any significant environmental effects caused by the project along with other past, present, or future actions. The analysis will show the decision maker to make that determination.
TES/PETS/MIS		
(1)	It's amazing that professional foresters and biologists can go out in this project area and not find any habitat that could support any TES species. It's good knowing our public lands are in such incompetent hands. I'm ready to make a federal case out of this one.	A BE was complete for the project area. The find of that BE can be found in the analysis file. These findings are considered correct.
(2)	What is it about this PA and the specific cutting unit areas that makes it habitat not capable of supporting ginseng, butternut, coal skink, coopers hawk, and sapsuckers? Be precise.	Through the BE field investigation no evidence of the above were found, none were seen. This is not to say these organisms do not exist as every square foot of the project area was not surveyed. The VDNH databases were consulted. BE investigations were concentrated on the proposed harvest units.
(3)	The Monongahela EAs and BEs go through the list of TES species and determine habitat capabilities and presence possibilities. The analysis here on the GW is cursory as to be worthless.	The GWJNF have a set way to conduct BEs. In this case this procedure was followed.

(4)	The BE I received doesn't even have a list of species for the county. Page 3 is even missing.	They should have been included and have no answer why page 3 was missing. A copy of the BE and county TES listing is in the project filed in the James River office. We can provide a copy if requested.
(5)	All the gobbledegook as regards ovenbirds to try and disguise your destructive ways. Your project will destroy their habitat and increase predation. You offer no mitigation for this. But don't let a little thing like viable populations well distributed stop you. Here we have an MIS that indicates nothing to you.	Refer to Plan pages 2-1 to 2-10. Viable populations and MIS are discussed.
Timber Harvesting		
(1)	Because of the conditions at this particular site (e.g. amount of roads, cove hardwood sites, proximity to trout streams, gypsy moth/species mix considerations), further site specific decisions as to "suitability" of cutting units are necessary. Blind allegiance to programmatic plan level analysis is not sufficient or proper. Site specific, project level suitability analysis is required (see LRMP 4-6).	The EA states that only 3,916 acres of the total 5,602 project area is suitable for timber production. This determination was made based on the site condition of each stand.
(2)	The oldest timber stands (81-100 years old) are said to occupy 53% of the suitable areas (page 30). But the chart on page 35 says only 24%. What's this discrepancy?	The chart on page 35 is correct. There is a total of 3,812 acres or 68% of the total area in stands of 81 years or older.
(3)	Your explanation of "irreversible commitments" is ridiculous. You are certainly irreversibly committing resources here. Once these stands are cut, these particular trees, these particular combinations, are gone forever. Something else may grow up here, but regardless of what replaces them, these specific stands will be gone for good. If not, you'd be able to put it back just the way it was. You can not do this. Your delusions of godlike grandeur are sickening. It takes long periods of time for wild old growth forests to develop. Longer than our lifetimes. We're not just talking "timber production" (p. 51). Once the wild living creatures who presently call these sites home have their living guts squashed out by your logging equipment, they are gone forever. And that's irreversible. What do you think, that you can sign a decision memo and bring them back to life? "I apparatchik of the	** Defined as a Communist secret agent. The commenter does not understand the legal meaning of irreversible as used in NEPA. While the trees in the area and in some cases the wildlife in the area will be removed, the area can be returned to its present state in time. In the case of this sale the area will be reforested and placed back into timber stands. There is no irreversible commitment of resources in this timber sale as defined by NEPA and CEQ.

	almighty Forest Service, order you to exist again. Stop lying to the public about the life destroying and negating nature of your activities here.	
(4)	This “visitor safety” and “site disturbance” 11(sic) malarkey is just another rationalization to cut more trees. Do you have no sense of shame or decency? Sickening.	The cutting of trees to provide for lower road maintenance is the most cost effective way to reach the forest goals.
Vegetation		
(1)	No past actions have had an effect on vegetation in the project area (page 34). So is the area like pristine wild old growth forests in composition, structure, and looks?	The statement on page 34 states that there are no past actions having an effect on the vegetation in the area, and also states that all past cutting units have been fully regenerated. The EA must be read and understood as a whole rather than taking one sentence out of context.
Visitor Safety		
(1)	If you are really concerned about our safety, put up signs urging drivers to SLOW DOWN, and enforce this.	Placing of signs will not ensure safe sight distance or speed drying of road surface which is the need being addressed. The speed of forest visitors is considered outside the scope of the decision being made.
(2)	You are vague as to how much “sight distance” is necessary and how this is measured. When will it ever be enough?	Trees that are shading the road surface or blocking safe sight distance will be cut and removed, in most cases tress will be within 10 to 15 feet of the road. In most cases the material to be cut will be small brush.
(3)	Your proposal will make conditions out here more dangerous as now you intend to make it easier to drive even faster. Thanks for nothing.	The issue of speed is a law enforcement concerns and is considered outside the scope of the decision being made.
(4)	If you are really concerned about visitor safety, examine permanently closing these roads to the public – plenty of DFC access will still be available.	Not addressed.
Water Resources		
(1)	How much additional soil will enter Crow Run and Little Crow Run from each alternative? For how long? What are the present baseline numbers?	The amount of soil reaching Crow Run and Little Crow Run will be at a non-significant level. See page 18 of the EA.
(2)	As to past actions having no “effect on water quality” (page 20) – so the water quality here is the same as in an unroaded, uncut watershed (or analysis unit)?	The EA states on page 21 that there is some localized erosion typical of unpaved roads coming from the project area. The level of this erosion is at a non-significant level.
(3)	Is this water of drinking quality all the time? If not, then your assertions of “no significant effect on beneficial uses” is incorrect (page 21.)	The waters of these creeks are not used for drinking.
(4)	Reference to a “white paper” is meaningless. This is a circular logic loop, not detailed site specific analysis.	Monitoring of these past sales has provided data which supports our assertion that there will be a non-

	Basically, all you are doing is saying “this timber sale is similar to one where we asserted there was no significant impact from our actions, and we can make the same assertions.” This is not the open, honest, clear disclosure the public needs to participate. Or is that your objective?	significant increase in soil reaching either of these creeks.
Wildlife		
(1)	“Deer numbers are expected to increase, but not to the extent that would be degrading” – what is the substantiation for this assertion? What numbers now, what numbers later? You avoid the issue of increasing impacts from an increasing herd by speculating that sport killing will increase. And of course, you say nothing about the negative impact to other forest visitors from such a situation. The EA avoids the issue. The decision doesn’t mitigate for this, but instead admittedly makes a bad situation worse. Sickening. “Pronounced browse lines” are already here (page 30).	As stated elsewhere in this analysis, it is not the intent of this timber sale to produce more deer but to comply with a congressional mandate in producing a wood product for the citizens of the United States. A biological/ecosystem relationship exists within areas that contain herbivores such as deer and that is that deer populations usually respond positively to increased food supply and cover. Mitigation measures in controlling deer numbers overlap with other functions of the National Forest objectives and those are to provide, besides timber production, hiking, fishing, botanizing, hunting, scientific study, solitude, and a host of others to a host of other kinds of forest users. Through one of these objectives, legal hunting, the deer numbers will be checked somewhat. The browse line most likely will still be present.
(2)	To add further contempt for the public, you assert that an area already densely roaded (2.2 miles/1000 acres), with only half the area even in rotation age stands, will benefit by more road construction and the removal of more mast (for 20-30 years at least). Your contempt for bears and for our intelligence is noted. A sickening disregard for direct, indirect, and cumulative impacts (e.g. more access, more disturbance, more hunters, fewer big trees, diminished hard mast). Absolutely sickening. You have reached new lows in dishonesty with this one (page 32 “The habitat would be much improved” (for bears). Congratulations.	Bears need a variety of habitats, early, mid, and late successional in which they can thrive and are very adaptable. Early successional timber stands offer excellent escape cover opportunities in addition to additional soft mast such as blackberry, blackraspberry, sassafras, greenbrier, polkweed, and blueberry in increased amounts over forested stands where the effect of sunlight is much reduced as these plant species are in need of full sun exposure. Once again this area is a timber emphasis area and wildlife will still benefit from timbering activity.
(3)	The assertion that roads aren’t a problem as regards black bear habitat and populations is sickening in the extreme (page 25). Following this reasoning, if we roaded every acre, and then just kept people out, bears would find the area pleasing.	Every acre is not being roaded and people are not being kept out. The emphasis is timber production in MA 17. Habitat beneficial to bear will be present in the form of increased escape cover, increased soft mast, and an increase in potential denning sites in logging slash and brush piles.

(4)	I've raised the issue before of the Pornelized et al. paper in Conservation Biology (research that took place in Ridge and Valley oak forests much closer to home than Missouri), which differs from the no impact from logging papers you cite as regards birds. Why do you refuse to acknowledge this study? Is this another example of your open and equitable disclosure?	Not familiar with this study. Please provide literature citation of this publication so it can be evaluated.
(5)	Bats are known to use and breed in the very habitat you are proposing to destroy – old, mosaic forests along riparian areas and rich forests. This current state of knowledge as regards bats is ignored in the EA. Why is this? Mitigation?	The complete area is not proposed for destruction. Ample old mesic forest along riparian areas and rich forests will still exist in this area to satisfy the needs. One by product from the proposed timber sale is an increase in herbaceous plant and conversely an expected increase in insect populations thus providing supplemental food source for bats.
(6)	You say “wildlife leave the area” if it isn't logged some more (page 46). Why is there no mention made of wildlife being attracted to and entering the area if you don't log it more? Why do you ignore these species and populations? Why don't they count? Why don't the benefits to people from their presence enter into the discussion? Why is such an unfair disbalanced view as regards wildlife and recreation under no action presented in an official document? Is this another example of the “open and equitable process” spoken of in Appendix A-3? Shameful.	While it is true that wildlife that enjoy older timber ages would increase if the area was left un-harvested, wildlife that require younger stands would leave the area. By providing both young, middle aged, and older stands of timber in the project area, the overall diversity of wildlife species in the area will increase. It is important to remember that the goal of the area is timber management. The analysis focuses on the effects to wildlife due to the proposed action and alternative action, and the need for this action is not driven by the needs of wildlife.

Table 4C

Steven Krichbaum's Administrative Appeal of the HTS DN/FONSI

Category	Appeal Issue	ADO Response
<p>Alternatives</p> <p>(1)</p>	<p>Agency planners have avoided the proper and adequate hard look at the public's clearly stated concern regarding the development of alternatives for managing this area. These pertinent issues and reasonable opportunities are apparently mistakenly considered to be outside the scope of analysis or otherwise misrepresented or disregarded.</p>	<p>The record shows that the alternative you suggested both during scoping and during the 30-day comment period was addressed in response to comments as an appendix to the EA. However, it is not clear why this was not included in the EA along with other alternatives that were either considered in detail or not considered in detail. Your point that an alternative should have been developed to address significant issue 12 (harvesting) is appropriate. While the alternatives section of the EA only addresses this issue from a "system road" perspective, a no roading alternative is addressed in the appendix to the EA in response to your comment. Again, it is not clear why this alternative was not included in section II. A or B. I find that, although Section II. A or B of the EA maybe should have included your suggested alternative along with others not considered in detail, the record shows that a reasonable range of alternative was considered, including your suggestion.</p>
<p>(2)</p>	<p>Appellant clearly and explicitly raised this concern regarding alternative development. "A minimal cut alternative needs to be developed – one without road building and an amount of logging that just meets DFC percentage desires" over a year ago. See also SN comment #1.</p>	<p>Not specifically addressed.</p>
<p>(3)</p>	<p>The issue of alternative development so as to properly address the public's issues and concerns was also raised over a year ago (see SN comment #1 and 16). This was totally ignored by the planners (see EA-10-12). These particular comments are not even acknowledged to exist (see EA Appendices A-3 and A-8).</p>	<p>Not specifically addressed.</p>
<p>(4)</p>	<p>The action alternatives receiving detailed scrutiny are unduly narrow in scope. All three involve major logging (removal of from 2.7 to 3.7 million board feet) and roading (from 0.8 to 2.1 miles of temporary and/or system construction, plus opening up of "woods roads") and concomitant disturbance to habitat and wildlife. All three include 6 miles of road daylighting.</p>	<p>Not specifically addressed.</p>

(5)	This reasonable alternative was totally avoided. It is not even acknowledged to exist by the agency (see EA-10-12 and Appendix A-3 and A-8).	Not specifically addressed.
(6)	The developed alternatives do not adequately respond to various issues that were raised about the project. The action alternatives concentrate exclusively on the issue of removing a large amount of timber from the area. While the issue is significant, the agency's focus on it in developing alternatives is unresponsive to many concerns and objections to the project.	Not specifically addressed.
Aquatic Communities		
(1)	The health of the biotic communities in these streams is unknown and undisclosed. Planners do not tell how close stream quality is to threshold levels for MIS brook trout. Actual anticipated sediment loads are undisclosed. The significant issue of "water quality" (EA-7) is turned into concern for "water quantity" (EA-13). Wild trout streams such as these are the highest quality and most sensitive of aquatic/riparian habitats. They need more rigorous analysis and protection so as to assure compliance with LRMP MA 18 guidelines and NFMA 219.19, 219.27(a)(5), and 219.27(e). Reliance upon comparisons to "white paper" criteria does not address the site specific issues of concern raised for this specific proposal.	The EA discloses the effects to aquatic habitat, including habitat for the brook trout, to Crow Run and Little Crow Run Creeks. The EA stated that these habitats would not be affected in any alternative. I find the effects to brook trout have been addressed.
Cumulative Effects		
(1)	The record on its face makes apparent that the agency has failed to take a hard look at the cumulative impact of the proposed project. Reasonably foreseeable actions are ignored, such as future logging projects (see NEPA 40 C.F.R. 1508.7).	Each environmental effect discussion in the EA includes consideration of reasonably foreseeable future actions. I find that the cumulative impacts, including reasonably foreseeable actions, have been adequately considered.
(2)	The dismissive agency "consideration" on display reveals an attempt to disregard significance and avoid the proper performance of analytic and disclosure duties. These foreseeable concerns must also be analyzed and disclosed. Reliance upon programmatic EIS findings is insufficient (see Donham v. FS, 1995).	Not specifically addressed.

Environmental Analyses/ Documentation		
(1)	The agency has not adequately analyzed or disclosed the proposal’s environmental impacts, nor has the agency complied with current laws and regulations governing the preparation of EAs, public participation, and the protection of forest attributes.	Not specifically addressed.
(2)	Key goals, objectives, and concerns regarding old-growth forest, forest mgt., wildlife, habitat, road construction, road “daylighting”, water quality, and alternative development are disregarded, twisted around, and/or undisclosed. In this way, consistency with the laws, regulations, and planning documents is avoided. The process is biased and incomplete and thus a well informed decision is not possible, nor can the public meaningfully participate in the process.	Not specifically addressed.
(3)	Planners claim that since this “area is allocated to producing timber” other issues and concerns need not be fully considered (e.g. see EA A-8 pg. 16). This single-use management conflicts with the NFMA and MUSYA.	Not specifically addressed.
Mitigation		
(1)	To support its FONSI for this project, the agency offers some mitigation measures. However, this mere listing is insufficient to qualify as the reasoned discussion demanded by NEPA. And even more importantly, the offered mitigation measures do not completely compensate for all foreseeable possible adverse environmental impacts, nor is there a detailed analysis and disclosure of their effectiveness. See NEPA 40 C.F.R. 1502.14(f) and 1502.16(h).	Mitigation is presented in the EA as part of the proposal and the alternatives. The environmental effects take these into account. Under this proposal and alternatives, mitigation measures are not needed to reduce significant effects. I find that mitigation measures are properly considered in the proposal.
Old Growth		
(1)	The mishandling of the issue of old growth (OG) is deeply disturbing from a standpoint of public involvement. The public was not notified of the natural heritage findings and the inaccuracy of the agency’s inventory data until after the decision was made. This was raised as an issue over a year ago (see SN comment #4, 5, 10, and 11).	EA-44 discloses the inventory of possible old growth used in the environmental analysis for this project. In addition, through scoping for the issues and in the public comment period just prior to making the decision, additional information about other areas of possible old growth were discussed with staff of the VDCR. These documents are part of the public record, and addressed in Appendix A-8. In find that there was no “mishandling” of the issues and

		information obtained from the public, including the VDCR. Notification occurred to the public as required about the decision and the availability of the EA with its response to the comments received during the 30-day comment period.
(2)	The VDNH have identified 10 acres of Units 5 and 6 as being parts of an OG complex (see EA A-8 pg. 1-2). The agency does not dispute this finding. It is clearly apparent that the agency's CISC data are inaccurate and/or deficient. However, the planners have chosen not to improve their stand inventory data, nor have these acres been added to the OG inventory (see 36 C.F.R. 219.12(d)).	The EA discloses that the age of Units 5 and 6 are over 100 years in age and is considered an inventoried area for possible old growth. The VDCR also identified the areas as old growth. I find no inaccurate or deficient inventory in the CISC data.
(3)	The public was led to believe that all OG was not to be suitable for logging (see FEIS 2-44). The public was also led to believe that OG identified at the project level would be added to the inventory (see LRMP 2-6).	Not specifically addressed.
(4)	The issue was correctly identified by the agency, but the issue is avoided by simply not properly considering the new information brought to the agency's attention, since the public is told that "The alternatives do not take place within any of these stands or adjacent to any of the listed old age stands. There would not be any effect to the old aged stands within the project area" (see EA-44).	Not specifically addressed.
(5)	This acreage is significant due to its age and rarity in the landscape. The overall complex is also not free from harm and cumulative impacts. This land is inappropriate for the suitable timber base. See 36 C.F.R. 219.14(c).	Not specifically addressed.
(6)	To cut these trees from these stands is to irretrievably commit resources or foreclose options. It is irreparable in that it can be undone either through law nor monetary remedies. It is irreversible in that OG is renewable only over long periods of time. To cut these acres will forego opportunities for OG before a regional policy is completed (see LRMP 2-3). The DN is in error (see #1 at DN-5).	Not specifically addressed.

Public Involvement		
(1)	Appellant raised pertinent issues during the planning for this proposal. The agency's refusal to adequately respond to the Publics' concerns violates the NFMA, the NEPA, and the APA.	Not specifically addressed.
(2)	Agency planners have failed to respond in a meaningful and proper manner to significant issues, concerns, and opportunities raised by the public. This not only is a failure to respond to the public, it is also a failure to allow the public, and give it enough information, to participate intelligently in the forest planning process. See 16 U.S.C. 1604 Sec. 6(d) and 36 C.F.R. 219.6, 219.1 (11 and 14).	The record shows that public concerns were considered. They are properly responded to in the EA, including the response to public comments in the appendix. I find that the EA properly addresses the public concerns.
(3)	Concern/issue of impacts to riparian areas, water quality, aquatic habitat species, and Crow and Little Crow Runs specifically (see SN comment #12 and EA comments #23 and 31) are shifted by planners into an issue of Dunlap Creek. See EA – 7 and 22. The effect is to not respond to the publics' significant issue.	Not specifically addressed.
Remedies		
(1)	All activities pertaining to the Hematite Timber Sale must be halted until the FS complies with rules, regulations, and statutes. Appellant requests a stay for the duration of this appeal of the Hematite Timber Sale. Appellant request the FS to halt all on-the-ground activities pertaining to this project, with the exception of biological surveys. Commencing with the project could negate the importance of the issues raised in this appeal, irreversibly commit resources, as well as not protect the appellant's interest.	Not specifically addressed.
(2)	Reverse the decision – withdraw the DN/EA.	Not specifically addressed.
(3)	Full protection of OG identified by VDNH.	Not specifically addressed.
(4)	Should the project be reevaluated, comply with all laws, regulations, and concerns discussed in this appeal – e.g. roading, leave Unit 1 uncut, analyze and choose the alternative action of appellant.	Not specifically addressed.
(5)	The ARC was libeled – the views expressed were S. Krichbaum's. Issue correction regarding ARC.	Not specifically addressed.

Riparian Areas		
(1)	Planners pointedly refuse to divulge the location of MA 18 (riparian areas) to the public. See SN comment #12 and EA comment #33. This violates the APA.	The response to your comment from the 30-day notice and comment period refers to the Forest Plan standard for MA 18 in riparian areas. Also, the topographic maps in the EA show riparian area locations. I find no failure to disclose the location of MA 18 and that the APA was not violated.
Roads		
(1)	The rationale behind choosing to build another mile of system road is not disclosed. A “need” is asserted (EA-41) but is not explained. A major expenditure for just one unit is hardly justified. Or are other projects foreseeable which “need” this road? But if that is the case, then the disclaimer “There are no future projects planned within the project area ...” used throughout the EA is disingenuous and the cumulative effects analysis is severely flawed.	As explained in the EA (and inferred in the DN), Alternative 4 was chosen partly for the reason of not impacting potentially sensitive heritage sites in the cutting units. There was a trade-off of using the existing roads for the harvest (Alternative 3) and impacting some of these sensitive areas, or build an additional mile of system road so that none of these areas would be disturbed. Alternative 4 is a compromise from the proposed Alternative 2, which would have harvested 249 acres and constructed 1 mile of existing road, and Alternative 3, which would have harvested 160 acres using no new roads but would potentially impact sensitive sites (EA-10). The cost of the road is identified in the District’s financial analysis (EA-50). Also, the 187 acres of harvest under Alternative 4 returns a positive benefit-cost ratio. I find that the EA thoroughly analyzed the consequences of all the alternatives and gave reasons for the need of system road construction. The decision maker used this information in his trade-off analysis in choosing Alternative 4 as a compromise to Alternative 2.
(2)	As the EA makes explicitly clear, with 11.6 miles of road already here, “Access to the project area is now in place” (EA-15).	Not specifically addressed.
(3)	This public issue regarding road construction (see SN comment #8 and EA comment #14 and 15) was altered into a concern for system road building (see EA-9 and 14). But even with this distorted and constrained frame, the decision addresses the issue in a negative way.	Not specifically addressed.
(4)	Closure of present roads to motorized traffic (so as to meet safety concerns) and the obliteration, not improvement (“bladed” and “seeded”) of the abandoned roads in the area, and/or less daylighting were not examined.	Not specifically addressed.

(5)	When the sub-issue regarding roads was again raised (see EA comment #14-16), the issue was avoided by referring only to “system roads” and stating there is “no open road density goal or standard.” The selected alternative even addresses the identified issue (see #12 on EA-9) in a negative way (1 mile of system road construction – see EA-11). The overriding need to build this road is not explained in the EA.	Not specifically addressed.
Silviculture		
(1)	The cutting of trees outside the LRMP designated rotation age was raised as an issue (see SN comment #4). In response, the planners refer to “the LRMP (pp. 2-36 and 3-152 [132?], standard 100).” They also state that “stands with a high probability are not required to attain the rotation age” (see Appendix A-3). However, there is nothing in these guidelines about ignoring rotation ages. Anyway, the two sites at particular issue, Units 1 and 2, are not at a high probability relative to other stands here. No. 2 due to its young age and No. 1 due to its being a cove hardwood (FT 56) site. Planners finally refer to LRMP std. 259 that refers to cutting “prior to rotation age.” This is totally unresponsive as regards Unit 1 as it exists after the rotation age (see LRMP 3-91 and EA-36) (This is also the case with OG portions of Units 5 and 6). Also, the related issue of site specific suitability analysis (see EA comment #17) is disregarded by the planners.	The Forest Plan is silent on harvesting stands of timber that have an age exceeding the target rotations, which for cove hardwood is 70 to 90 years. The EA discloses that the age of the cove hardwood stand in Unit 1 is 125 years. However, what your NOA misses is that this cove hardwood stand is part of the suitable forest land that is being managed for timber production. Being part of the suitable forest land, rotations are points in time when forest cover types being managed with the even-aged management system will normally be considered to have reached their product objective (Plan standard 17-11) and regeneration harvest should be planned. Many circumstances may cause a stand not to be harvested at its rotation age (opening size limits, not cutting next to an existing opening, insect and disease suppression, etc.). As long as the stand is part of the suitable forest land, even-aged stands that have grown past their rotation age may still be harvested. I find that there is no violation of the Forest Plan. Why a particular stand happens to go beyond the rotation age need not be justified or explained. The fact that it is suitable forest land means that at some point in time the timber will be harvested so its value as a wood product may be utilized by our society.
Water Resources		
(1)	Assertions as to non-impact to the streams found on EA – 18, 21, and 31 are not supported by any evidence. In fact, statements in Appendix A-8 make clear the lack of data and/or the undesirability of the proposed cutting. RPB is still “being done” (page 9). “At present data does not exist ...” (page 13). The “amounts of soil loss have not been calculated ...” (page 7). Also, LWD is below desirable values (page 9). Yet	The EA discloses the effects to water quality for streams in and downstream from the project area for each alternative (EA-21 to 22). Effects to riparian habitats are also disclosed. In addition, the effects to aquatic management indicators was disclosed on page EA-31 and in the BE. I find that effects to aquatic habitats and water quality have been addressed.

	planners propose to cut trees that may fall into the riparian areas. This is particularly the case for Unit 3, which is on steep slopes (see EA-36). Old channel beds are also present.	
Wildlife		
(1)	The decision allows logging to take place during bird nesting season. Such activity will directly result in the deaths of migrants nesting on the ground and in trees. Such direct killing is prohibited by the MBTA. To allow such an occurrence is an abuse of discretion and a violation of the APA.	The MBTA does not provide the appellant with the right of action to challenge this decision. The enforcement of the MBTA is vested with the USFWS. This agency has the discretion to prosecute the USFS for MBTA violations. Because the MBTA can only be enforced against persons, associations, partnerships, and corporations, then by its own terms the MBTA does not apply to federal agency actions, including the USFS. Furthermore, the court in <i>Mahler v. Thomas</i> (1996) has recently held that timber harvesting activities conducted during migratory bird breeding season on the Hoosier National Forest would not violate the MBTA. I find that the proposed action will not result in a violation of the MBTA.

APPENDIX D
THE ALBA SALVAGE TIMBER SALE

Table 1D

Public Comments on the ASTS SN

Category	Commenter	
	AFMG	Steven Krichbaum
Categorical Exclusions		•
Economics	•	
Forest Health	•	
Public Involvement		•
Regeneration	•	
Riparian Areas		•
Roadless Areas		•
Silviculture	•	
TES/PETS/MIS		•
Timber Harvesting	•	•
The Proposed Action	+	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 2D

Steven Krichbaum's Comments on the ASTS SN

Category	Comment	USFS Response
Categorical Exclusions		
(1)	This proposed cut area is within a municipal watershed. Therefore, it can not be categorically excluded from full NEPA analysis (meaning an EA is necessary). Staunton Dam and reservoir is an extraordinary circumstance that is present.	The Hydrologist's report, contained in the Analysis file, states that this project will have insignificant impacts on the watershed. The mere presence of an extraordinary circumstance does not by itself trigger the need for an EA. See discussion in the DM.
Public Involvement		
(1)	We do not accept the statements made in the SN at face value without field examinations. However, you have constrained our ability to do this by using an Aug. 30 cutoff date for comments. You did not sign this SN until Aug. 5, it was mailed Aug. 7, and I received it on Aug. 9 – meaning a 21 day comment period. <u>This is totally improper</u> (and not the first time you have done this). We need at least a <u>30 day</u> comment period.	This comment is not a point of debate or dispute about an environmental effect. This respondent's letter was received on September 3; comments made therein were considered in the preparation of the DM.
Riparian Areas		
(1)	Send us a map showing precisely the boundaries of riparian areas.	Riparian areas (Forest Plan, page 3-92) consist of aquatic areas, wetlands, and riparian area ecosystems associated with ponds, lakes, and perennial streams; these conditions to not exist within the project area, therefore, a map of these features within the project area would be blank and inappropriate. See the Hydrologist's report in the Analysis file.
Roadless Areas		
(1)	The project area is part of a large Roadless Area that was not inventoried during the Plan revision. It needs to be analyzed now at the project level and <u>added to the forest inventory</u> .	Such analysis is outside the scope of this document.
TES/PETS/MIS		
(1)	This area contains habitat known to be used by various PETS species. Thoroughly survey the area.	No PETS species are known to inhabit the area. See the BE in the Analysis file and the discussion in the DM.
Timber Harvesting		
(1)	It is not clear from the maps that this area is even "suitable" for logging. Send us a map showing precisely the boundaries of suitable-unsuitable lands in this project area.	For this proposal, the "project area" is the "sale area" as shown on the Scoping Notice map. "Suitable" in MA 13 was defined as "large, contiguous areas with level terrain"; level terrain was considered to be terrain where individual tree selection could be conducted with minimal

		<p>damage to residual trees (usually less than 20% slope). The project area is on ground where such activity can occur; it also meets the criteria for “suitability” relative to timber types, site index, etc. as listed in Appendix A (page A-5) of the Forest Plan. The Scoping Notice states that all activity would take place on suitable land. The “suitability” or “unsuitability” of land outside the project (sale) area is outside the scope of this project. Another map of the project area showing it as “suitable” would be redundant.</p>
(2)	<p>We totally object to logging of “unsuitable” lands. It’s not needed for visitor safety or scenic concern here.</p>	<p>This is a moot point because lands in the project area are “suitable.”</p>
(3)	<p>According to the plan “salvage cutting” may be permissible here. Such logging is defined as the cutting of trees “killed, damaged, or degraded.” But what you are proposing is not salvage logging. You are proposing to cut and remove “merchantable timber,” meaning you intend to cut living, green trees that are healthy and/or may very well survive into the indefinite future. <u>This is totally improper and not compliant with LRMP direction.</u></p>	<p>MA 13 standards state: (1) on lands unsuitable for timber production, dead trees may be salvaged or cut for firewood. Live or damaged trees and shrubs may be cut and removed for the safety of visitors or for scenic rehabilitation (13-21); (2) on lands suitable for timber production, large contiguous areas with level terrain – as shown on the Lands Suitable for Timber Production by Management Area map – are classified as suitable for timber production. Here, uneven-aged management using group selection and individual tree selection are used (13-22); and (3) intermediate cuttings such as improvement cutting, salvage cutting, and sanitation cutting are permitted as long as progression is maintained toward development of the uneven-aged character of stands. As stated above, timber harvesting in MA 13 is not limited to the removal of “killed, damaged, or degraded” timber. As stated in the DM, the proposed action will move the area towards the desired uneven-aged condition. The Landscape Architect’s report states that the proposed salvage sale is needed to protect and rehabilitate the scenic resources of the area.</p>
(4)	<p>If any logging takes place here it should only be of “killed, damaged, or degraded” trees. Meaning most, if not all of the chestnut oak should be retained, as well as other oaks (e.g. white, red) and other trees even if they are preferred – as long as they are not dead or near death. This is important to do so as to maintain or promote an <u>uneven-aged condition</u> as per Plan direction.</p>	<p>The project area consists of 20 acres from the 38 acres in Stand #04, Compartment #451. The 18 acres of the stand which are not included in the proposed sale have very little gypsy moth-induced damage and a salvage cut would not be appropriate on those acres at this time. Within the 20 acres proposed for treatment, some undamaged trees of gypsy moth preferred species will be harvested in order to create openings in the substantially one-aged</p>

		overstory and help to move the area towards uneven-aged management. See the discussion for the preceding issue and the discussion in the DM.
(5)	It is not clear that any logging is needed here to attain uneven-aged conditions. The area will attain this condition and meet Plan DFC without logging of any kind.	While it is possible that gypsy moth-induced mortality may move the area towards an uneven-aged condition without any logging, there are other important considerations such as scenic rehabilitation, visitor safety, species composition of the future stand for hardwood production to support game populations for hunting, etc., which support the proposal for harvesting in this area. See the discussion in the DM.

Table 3D

PAW/VFW/Heartwood/Steven Krichbaum's Administrative Appeal of the ASTS DM

Category	Appeal Issue	ADO Response
Aesthetics		
(1)	<p>There is nothing in the project record as to the public demanding or wanting logging to occur here so as to “improve” (“rehabilitate”) the scenic quality or recreational capability of our drinking-water watershed. Use of “rehabilitation” is little more than a circular and post hoc attempt to rationalize a controversial logging project. The landscape architect’s report inaccurately claims that this logging is needed for the scenic resources here. But the report makes no mention of the negative effects to scenic quality from the proposed logging. It does not recognize or assess the removal of living trees. It does not acknowledge that the proposed logging and its impacts will be prudent to visitors – instead it refers to “attention [being] ... drawn to the activity”; and it does not disclose if or to what extent even this narrow “objective” will be attained. The report does not disclose the effectiveness of proposed “visual trick[s].” And the report tacitly assumes that stumps and logging operations are more visually pleasing to visitors and dispersed recreators than the presence of some “dead and dying stems” or “dead snags.” The factual basis for this assumption is not disclosed. And we can testify to the opposite.</p>	<p>The DM on page 6 states that the project area has an adopted visual quality objective of Retention. The Retention VQO provides for management activities which are not visually evident. The DM also states that until the Retention VQO can be met, a Rehabilitation VQO has been adopted. Removing the dead stems and allowing net growth to regenerate will ensure that the Retention VQO is met faster than would otherwise occur naturally. Page 6 of the DM also includes mitigation measures that will be used to minimize the visual impact of the project. Landscape Architect Tom Wright, Jr.’s letter in the appeal record states that the visitor may note that the area is different, but not in a negative manner. The scenic qualities of the area may be improved by opening the canopy and providing variety in the foreground. I find that the DM and appeal record contain more than an adequate disclosure of the impacts to visual quality.</p>
(2)	<p>The VQO for this area is “retention.” In a retention area most people are not to be aware that management activities are occurring (see FEIS Glossary-7). However, the proposed logging would be obvious to most visitors (who are not blind).</p>	<p>Not specifically addressed.</p>
Alternatives		
(1)	<p>Agency planners have avoided the proper and adequate hard look at the public’s clearly stated concern regarding the development of alternatives for managing this area and do not fully and fairly assess the “no-action” alternative. These pertinent issues and reasonable opportunities are apparently mistakenly considered to be outside the scope of analysis or otherwise misrepresented or</p>	<p>There is no requirement, in the Handbook or NEPA procedures, to address the issue or the alternatives in the DM. The District did so in this case, however, to better explain the reasoning behind the decision. The District Ranger appropriately used the Categorical Exclusion provision of the NEPA regulations for this project, and adequately documented the decision in</p>

	disregarded.	the DM. Your concerns and issues hold the documentation of this decision to a higher standard of disclosure and analysis than is required.
(2)	Planners do not fully and fairly assess the “no action” alternative (see DM-3). Its benefits to the scenic landscape are disregarded – as are the adverse impacts to visual quality from the proposed logging. Its ability to move the area towards uneven-aged conditions is mischaracterized – it does not “delay” this, such a condition is already happening. Its contribution to the economic and social vitality of the Forest’s neighbors by providing jobs, opportunities, and materials is denied – it provides recreation jobs, mushrooms, berry picking, and firewood gathering, amongst other economic/social benefits.	There is no requirement, in the Handbook or NEPA procedures, to address the issue or the alternatives in the DM. The District did so in this case, however, to better explain the reasoning behind the decision. Your concerns and issues hold the documentation of this decision to a higher standard of disclosure and analysis than is required.
(3)	The issue of alternative development so as to properly address the public’s issues and concerns was also raised over a year ago (see SN comment #4 and 10). This was ignored by the planners (see DM-3 as regards alternatives developed in response to issues).	Not specifically addressed.
(4)	The action alternative receiving detailed scrutiny is unduly narrow in scope. It does not even positively address all the extremely limited “significant issues” identified by the planners (e.g. #5 at DM-2).	Not specifically addressed.
(5)	The “salvage” alternative (see SN comment #4) was not considered at all – even though it would meet the purpose and need for the project as well as address the significant issues (see DM-2). Other alternatives, such as personal firewood gathering from along the road, were not considered.	Not specifically addressed.
(6)	The developed alternatives do not adequately respond to various issues that were raised about the project. The action alternatives concentrate on the issue of removing a large amount of timber from the area, including living trees that add to scenic quality. While the issue may be significant, the agency’s focus on it in developing alternatives is unresponsive to many concerns and objections to the project.	Not specifically addressed.

Categorical Exclusions		
(1)	The logging is proposed to take place in a municipal watershed. Such “municipal watersheds” are identified as “extraordinary circumstances” in the USFS NEPA regulations (1909.15 FSH 30.3(2)(e)). The presence of these conditions were identified in the scoping process (see SN comment #8). These circumstances prohibit the use of a CE. The procedural requirements of NEPA must be strictly interpreted “to the fullest extent possible” (California v. Block, 1982).	Not specifically addressed.
(2)	There are extraordinary circumstances present in the instant case that merit the preparation of at least an EA.	Not specifically addressed.
Cumulative Effects		
(1)	Through projects such as this proposal, and others, impacts to PETS species and habitat, to site-sensitive low-dispersal ability species (e.g. salamanders, herbaceous understory plants, tree frogs), and to neotropical migratory bird populations (e.g. cerulean warblers) and their habitat are taking place (or will take place and have taken place) to this area, the ecosystems here, and the Forest. Claims in the BE/DM that the project will not result in cumulative impacts to these species are conclusory assertions. This finding is not supported by population surveys or data or quantified inventories. The finding is uninformed. The proposed action, in concert with other past, present, and future actions, will result in adverse cumulative impacts to TES species and those other mentioned. The agency’s assertion that significant cumulative impacts will not result is not explained or substantiated.	The BE documented the results of an August 1996 field survey. No sensitive plant or animal species were found. In addition, no habitat with high probability of supporting sensitive species was found. In addition, rationale for considering off-site effects (aquatic habitats) was disclosed. The BE documented a “no effect” determination for federally listed species and a “will not adversely affect” determination for sensitive species. I find that the BE provides the appropriate analysis and disclosure of effects to sensitive species for this project.
(2)	The record on its face makes apparent that the agency has failed to take a hard look at the cumulative impact of the proposed project. Reasonably foreseeable actions are ignored, such as future logging projects (see NEPA 40 C.F.R. 1508.7). The recent past logging of this municipal water supply is glossed over (see DM-4). This roadless area and our watershed have already been degraded by past logging and road building, as well as ongoing atmospheric and precipitation pollutants.	Not specifically addressed.

(3)	<p>The dismissive agency “consideration” on display reveals an attempt to disregard significance and avoid the proper performance of analytic and disclosure duties. These relevant or foreseeable concerns must also be analyzed and disclosed. Reliance upon programmatic EIS findings is insufficient (see Donham v. FS, 1995). The analysis does not consider how the impacts relate, nor explain how the impacts when viewed cumulatively do not add up to significance. There is also no specific analysis of past and future projects at this site. By segregating the analysis the agency obscures and overlooks the interplay between affects and the overall impact to the environment. The issue is not just the cumulative impacts to each of various environmental factors. Lack of cumulative impacts cannot be assumed just because a CE is used.</p>	<p>Not specifically addressed.</p>
<p>Environmental Analyses/ Documentation</p>		
(1)	<p>The agency has not adequately analyzed or disclosed the proposal’s environmental impacts, nor has the agency complied with current laws and regulations governing the preparation of documents, public participation, and the protection of Forest attributes.</p>	<p>Following direction contained in NEPA regulations at FSH 1909.15 Section 11.6, the Responsible Official determined that the proposed action appeared to fit within Category 4 of the Categorical Exclusion at Section 31.2, established by the agency to permit removal of less than 1 million board feet of merchantable wood products without documentation in an EA or EIS. Scoping helped identify the significant issues related to this project and confirm that the proposed action would not have a significant effect on the environment. Analysis indicated that an extraordinary circumstance was present (municipal watershed) but that, with mitigation applied, “the proposed action will not cause any significant impact on the watersheds, the dams, or the environment in general.” (DM, pp.6-7). The decision maker feels he can make this determination with certainty, based upon his knowledge of what will occur, the existing situation, mitigation measures applied, and an estimation of environmental effects (DM, pp.6-7). Therefore, an EA is not needed. The District Ranger appropriately used the Categorical Exclusion provision of the</p>

		NEPA regulations for this project and adequately documented the decision in a DM.
(2)	Key goals, objectives, and concerns regarding “suitability,” “salvage” logging practices, wildlife, habitat, roadless areas, water quality, compliance with Plan guidelines and MA DFCs, and public involvement are disregarded, distorted, and/or undisclosed. In this way, consistency with the laws, regulations, and planning documents is avoided. The process is biased and incomplete and thus a well informed decision is not possible, nor can the public meaningfully participate in the process.	Not specifically addressed.
(3)	As we brought to the agency’s attention in our comments and now have established in this appeal, conclusions of no significant impact on diversity, viability, PETS species, riparian areas, streams/water quality, recreation, aesthetics, and from cumulative impacts, are not based on a reasonably informed judgment and are necessarily arbitrary and capricious.	Not specifically addressed.
(4)	A decision is supposed to disclose “How considerations ... were weighed and balanced” and how the public was involved” – FSH 1909.15, chap.43.2. This has not been performed in this case.	Not specifically addressed.
(5)	The USFS does not have adequate facts or evidence to support its findings of non-significance. It is arbitrary and capricious as it has come without adequate site-specific investigation. There is simply an insufficient basis for the agency’s conclusions. A decision without an explanation is prima facie unreasonable – Environmental Defense Fund v. Ruckelshaus, 1978.	Not specifically addressed.
(6)	The intense industrial logging proposed for the watershed supplying our drinking water would significantly and adversely affect the quality of our environment. At the least, an EA needs to be prepared to examine the potential effects of this proposed project. Planners’ failure to do this constitutes a violation of the NEPA and APA.	Not specifically addressed.
(7)	The limited discussion and view in this BE and DM is the same as that printed in innumerable past BE and environmental documents. The same results and the same language are reiterated. Such	Not specifically addressed.

	canned language is illustrative of a lack of facts, evidence, and analysis (see 1909.15 FSH 13.03). Decisions and FONSI's made on such an insubstantial basis are arbitrary and capricious and an abuse of discretion.	
Mitigation		
(1)	To support its FONSI for this project, the agency offers some programmatic mitigation measures (DM-4, 6). However, this mere listing is insufficient to qualify as the reasoned discussion demanded by NEPA. And even more importantly, the offered mitigation measures do not completely compensate for all foreseeable possible adverse environmental impacts, nor is there a detailed analysis and disclosure of their effectiveness. See NEPA 40 C.F.R. 1502.14(f) and 1502.16(h).	The DM includes the mitigation measures to be used in the project, and they are tiered to the Forest Plan FEIS. I find that the DM provides the appropriate mitigation measures.
(2)	Efficacy of proposed mitigation measures for TES/PETS/MIS are unexplained, nor do they completely compensate for potential adverse effects (see BE and DM). For example, the increased stress placed on populations from running over individuals with heavy machinery is not assessed.	Not specifically addressed.
Public Involvement		
(1)	Agency planners have failed to respond in a meaningful and proper manner to significant issues, concerns, and opportunities raised by the public. These include, but are not limited to those referred to above. This lack of consideration indicates the failure to fairly discuss and fully analyze the proposal alternatives (see 40 C.F.R. 1500.2(b) and 1502.1).	Not specifically addressed.
(2)	This not only is a failure to respond to the public, it is also a failure to allow the public, and give it enough information, to participate intelligently in the forest planning process. See 16 U.S.C. 1604 Sec. 6(d) and 36 C.F.R. 219.6, 219.1 (11 and 14). See 36 C.F.R. 215.4(b). This pervasive failure to adequately respond to the public's comments should be considered a major infraction which requires a remand.	Not specifically addressed.
Recreation/Tourism		
(1)	The negative impacts of the action alternative upon recreation are not fully and fairly disclosed, considered, or assessed. This particularly flaws the	Not specifically addressed.

	decision since this is an officially designated recreation area. The proposed logging area will be an eyesore impediment to recreationists. It will also physically impede our ability to disperse on foot through the area (slash and artificially fabricated regen area).	
(2)	The area (MA 13) is to be managed to provide dispersed recreation opportunities. However, the result of the proposed logging would be to impede and constrain dispersal in this area.	Not specifically addressed.
Regeneration		
(1)	The opening of the canopy to the benefit of shade intolerant species is ignored – and there is nothing in the Plan that does not allow shade tolerant species to be favored from this limited area. The benefits of utilizing the seeding potential of the remaining live oak stems is also not recognized. Such inaccuracies as regards relevant factors violate the standards demanded by the NEPA and APA and subvert reasonable decision-making.	Not specifically addressed.
Remedies		
(1)	Remand the decision – withdraw the DN/FONSI/EA.	Not specifically addressed.
(2)	Should the project be reevaluated, comply with all laws, regulations, and concerns discussed in this appeal.	Not specifically addressed.
Riparian Areas		
(1)	Concern/issue of impacts to riparian areas and a municipal watershed were pointedly raised during scoping. The decision/disclosure does not adequately respond to these significant public issues.	Not specifically addressed.
Roadless Areas		
(1)	Through projects such as this proposed action, impacts to roadless areas are taking place throughout the area, the Forest, and the Appalachians. This project is scheduled to take place in a large tract of the GWJNF that qualifies for the Roadless Area Inventory. These ecologically critical lands are increasingly precious, vulnerable, and rare in the landscape (see SAA reports). The DM does not consider or explain the reasoning for not now adding this area to the inventory. In fact, it totally ignores the issue. Asserting that this is a “Forest Plan level” issue is unavailing as it ignores the fact that the issue was not	The Appeal Record discloses that an issue concerning Roadless Area was identified during the scoping process which states, “[t]his project area is also part of a large Roadless Area that was not inventoried during the plan revision. It needs to be analyzed now at the project level and added to the inventory.” The response to the issue was, “[s]uch analysis is outside the scope of this document.” The DM discloses that the scope of the proposed action is to salvage approximately 200,000 board feet of sawtimber and poletimber in the North River area within the next one to two years. The

	resolved at the programmatic stage and ignores the multi-level process of forest planning (see pages 10-15 of decision for our appeals #93-13-00-0073 and #93-13-00-0076 of the GWNF LRMP).	DM does not disclose that the proposed project area is in an inventoried roadless area. I find that the analysis that was done is appropriate to the decision. The scope of the decision did not include, nor did it need to include, an analysis of the area for inclusion into roadless area inventory.
Silviculture		
(1)	The cutting of trees outside the LRMP designated rotation age was raised as an issue (see SN comment #4). In response, the planners refer to “the LRMP (pp. 2-36 and 3-152 [132?], standard 100).” They also state that “stands with a high probability are not required to attain the rotation age” (see Appendix A-3). However, there is nothing in these guidelines about ignoring rotation ages. Anyway, the two sites at particular issue, Units 1 and 2, are not at a high probability relative to other stands here. No. 2 due to its young age and No. 1 due to its being a cove hardwood (FT 56) site. Planners finally refer to LRMP std. 259 that refers to cutting “prior to rotation age.” This is totally unresponsive as regards Unit 1 as it exists after the rotation age (see LRMP 3-91 and EA-36) (This is also the case with OG portions of Units 5 and 6). Also, the related issue of site specific suitability analysis (see EA comment #17) is disregarded by the planners.	Not specifically addressed.
TES/PETS/MIS		
(1)	The Plan (see Std. 240) and the VMEIS (which it incorporates) require the agency to perform on-site field surveys to obtain adequate inventory information on the TES species that have a high potential for occupying the area. However, the planners have not obtained the relevant population data. The required site-specific suitability analysis (see LRMP 4-6) merely reiterates the Plan level analysis. Site-specific factors are ignored (e.g. presence of PETS and their habitat, a roadless area) that are cogent evidence of these lands being better suited for other uses. See 36 C.F.R. 219.14I(d). The agency offers no explanation for ignoring these factors. In addition, consistency with MA 18C objectives is unclear. Viability can not be assured without first establishing population objectives. These objectives	The BE documented the site-specific field survey conducted for the site and the habitats that occurred there. The basis for the determination of effects findings are provided in the BE. The project tiered to the Forest Plan FEIS related to the desired habitat conditions of MA 13. The District reviewed current population inventories for sensitive species and reviewed the project area in the field. The BE discusses the habitat relationships and consideration of sensitive species. I find that the District conducted the appropriate level of site-specific inventories and analysis and that the District properly tiered from the direction in the Forest Plan FEIS and properly considered the habitat needs for sensitive species.

	have not been established. The cursory consideration of PETS species and superficial examination of the project area do not comply with these FSM objectives.	
(2)	By not performing the needed surveys and inventories of the area necessary for establishing the status of the TES species here, it is clear the agency is not placing the requisite priority on these species and their habitat. Maintenance of NFMA mandated viability is not ensured, let alone reversal of trends and recovery of populations.	Not specifically addressed.
(3)	Anecdotal information or unsubstantiated claims of professional judgment are far from reliable quantitative or inventory data. The agency asserts that this logging project would not significantly impact the diversity or viability of TES species in the project area and the Forest. This conclusion is rationalized by using the claim that these species also exist elsewhere in the Forest. But this conclusion is made without knowing how many of the species are being destroyed or harmed in the project area, and without any hard inventory or population data regarding how many of these already at-risk species exist elsewhere. The USFS does not have sufficient baseline population and quantitative data from which to properly measure and evaluate the significance of their impacts. Without such data, the agency's conclusions are unsubstantiated and/or arbitrary and capricious.	Not specifically addressed.
(4)	Agency planners did not thoroughly sample the site for PETS species populations. Not only is there no hard site-specific population data, they did not even properly determine such species' existence here.	Not specifically addressed.
(5)	There is clearly a possibility of usage of the project area by these species. Because of the presence of suitable habitat, it is clear that these species may be present here. They are known to use forest conditions such as are found in and around the proposed logging areas.	Not specifically addressed.
(6)	The documentation reveals no baseline or quantitative population data for PETS species. The agency has failed to obtain or maintain any past or current population or inventory data for the	Not specifically addressed.

	<p>sensitive species at issue in the area or for the GWJNF as a whole.</p> <p>Distribution, status, and population trends have not been determined. FSM 2670.45. Viability can not be assured without first establishing population objectives. FSM 2670.22(3) and 2672.1 and 32. These objectives have not been established. The FS is required to document and maintain current inventory data and quantitative data – Sierra Club et al. v. Martin et al., 1996. See 16 U.S.C. 1603(g)(3)(B) and 36 C.F.R. 219.26. Current inventory data appropriate for planning for and managing this area need to be obtained and maintained. Use of the “best available data” is not automatically sufficient. Special inventories and studies may have to be prepared. 36 C.F.R. 219.12(d), 219.27(a)(5 and 6).</p>	
(7)	<p>The agency’s limited investigation of the impact of the proposed logging on PETS species was too superficial and inadequate to support its conclusion of lack of significant impact. The facts and analyses that support such a conclusion are not contained, even briefly, in the administrative record. Neither the public nor the Court can review them. In the absence of specific population/inventory data and population trend analyses of sensitive species, summary conclusions of no significant impact on the diversity or viability of these species are not based on an informed judgment and are necessarily arbitrary and capricious. Compliance with the biological and procedural requirements of sensitive species is not ensured – see FSM 2670.46.</p>	Not specifically addressed.
(8)	<p>Agency actions were enjoined when it failed to properly consider effects on PETS species (ONRC v. March, 1995). Actions were enjoined when effects on sensitive species were only summarily examined (Leavensworth Audobon v. Ferraro, 1995). Failure to properly consider effects on sensitive species is an abuse of discretion (Sierra Club et al. v. Martin et al., 1996; and Morgan v. Walter, 1989).</p>	Not specifically addressed.
(9)	<p>The cursory consideration of PETS species and superficial examination of the project area do not comply with FSM objectives. Various species the project</p>	Not specifically addressed.

	potentially effects are unaddressed, full and intensive surveys were not performed, site specific inventories of populations and habitat factors were not obtained. Neither viability and full consideration, nor ESA compliance, are ensured by such a perfunctory evaluation.	
(10)	The BE implicitly concludes that regardless of this proposed action, PETS species have at least a minimum number of reproducing individuals to ensure viability in the project area and Forest. The record contains no facts or analysis to support this determination of no effect.	Not specifically addressed.
(11)	Affecting, and potentially affecting, MIS populations and their habitat is not even mentioned in the DM.	Not specifically addressed.
(12)	The BE does not identify, describe, and analyze the effects on the occupied and unoccupied habitat needed to meet USFS objectives for sensitive species. It does not even mention any objectives for any sensitive species.	Not specifically addressed.
(13)	Population distribution, status, and trend data and objectives are absent from the administrative record. Quantitative or baseline population data for PETS and MIS have not been obtained or disclosed for the specific site or for the Forest as a whole. Reliance upon or vague generalization about “professional judgment” do not assure viability or provide the public, decision-makers, or the Court with reviewable disclosure (see FSM 220.2(3) and 40 C.F.R. 1500.1(b)). There is an absence of real data for the public, decision-makers, and the Court to examine. Such nondisclosure is not compliant with the NEPA. The decision and conclusions of no significant impact are not based on a sufficiently informed judgment and are necessarily arbitrary and capricious – a violation of the APA.	Not specifically addressed.
Timber Harvesting		
(1)	It is not clear from maps or verbal disclosure that this proposed logging area is in the “suitable” base. The assertion on DM-4 is not substantiated with evidence. A site-specific suitability determination is to be done as per NFMA (see LRMP 4-6) (36 C.F.R. 219.14I). This has not been performed. Planners refuse to provide a map of the	The DM is clear that the planned harvesting is to salvage timber that has already died, or is dying as a result of gypsy moth defoliation that occurred in 1995 (DM, p.5). The DM states that the planned salvage falls within category 4 of FSH 1909.15-92-1, Chapter 31.2, which permits salvage that removes less than 1 million board feet of

	precise location of these suitable lands, even though this was pointedly requested (see SN comment #1).	merchantable products (DM, p.7). The NFMA, U.S.C. 1604(k) and its CFR regulations at 36 C.F.R. 219.14 require a determination of suitability for timber production. However, this regulation permits salvage sales to occur regardless of whether the land is suitable or not for timber production. I find that because the sale is for salvage purposes, there was no need to have a suitability finding as part of the DM.
(2)	This proposal is labeled as “salvage” even though what is being proposed is not salvage – see FEIS Glossary-8 and DM-3 and SN comment #3. Planners are not clearly disclosing to the public what they intend to do here, nor is the alternative being properly assessed.	Not specifically addressed.
(3)	Considering and assessing the cutting and removal of just the “dead and damaged” trees (i.e. a true “salvage”) was pointedly raised by the plaintiffs. “Salvage” logging of “killed, damaged, or degraded” trees in this area may be allowed under the Plan. However, planners propose to cut and remove living green trees (“merchantable timber”) that are healthy and/or will survive into the indefinite future.	Not specifically addressed.
(4)	The logging of healthy trees is not needed to create canopy openings or an uneven-aged condition. Nor is it necessary for visual characteristics or the development of existing smaller stems. Nor is it necessary for reducing the vulnerability of the future stand to gypsy moth or for the development of long-term hard mast production. These are improper or misleading rationale (see DM-5, 6).	Not specifically addressed.
(5)	Uneven-aged logging methods may be allowed in this MA. However, cutting and removal of the merchantable trees of preferred species over 8” DBH (which constitute the overwhelming majority of the canopy here) is an even-aged mgt. scheme.	Not specifically addressed.
Water Resources		
(1)	The present water quality and the health of biotic communities in area streams are unknown and undisclosed. Mere comparisons to and reference to past assertions for other timber sales are found in the hydrologist report. Meaningful site specific data and	The level of analysis and environmental effects disclosure is less for a DM than for an EA and DN. Site specific environmental analyses are required for EAs, but not for DMs. The DM states there will be “no significant effects on water quality, soil productivity, water

	analysis are lacking.	yield, or the beneficial uses of the North River or other area streams” (DM, p.3). The BE states, “[a]nalyzes for similar projects have concluded that harvesting activities would not have a significant effect on soil and water quality, thereby protecting the habitat of aquatic species downstream” (BE, p.2)...”State Best Management Practices and...guidelines should be applied...to protect soil and water resources” (BE, p.3). I find that the DM adequately covers the issues and the environmental effects disclosure on water quality and the health of the biotic communities is more than adequate for a DM.
Wildlife		
(1)	The decision allows logging to take place during bird nesting season. Such activity will directly result in the deaths of migrants nesting on the ground and in trees. The mitigation does not compensate for avoidable occurrence. Such direct killing is prohibited by the MBTA. To allow such an occurrence is an abuse of discretion and a violation of the APA.	The MBTA does not provide the appellant with the right of action to challenge this decision. The enforcement of the MBTA is vested with the USFWS. This agency has the discretion to prosecute the USFS for MBTA violations. Because the MBTA can only be enforced against persons, associations, partnerships, and corporations, then by its own terms the MBTA does not apply to federal agency actions, including the USFS. Furthermore, the court in Mahler v. Thomas (1996) has recently held that timber harvesting activities conducted during migratory bird breeding season on the Hoosier National Forest would not violate the MBTA. I find that the proposed action will not result in a violation of the MBTA.

APPENDIX E
THE ARNEY GROUPS PROJECT

Table 1E

Public Comments on the First AGP SN

Category	Commenter		
	AFMG	CTF	Michael Keys
Access		•	
Aesthetics		•	
Alternatives		•	
Aquatic Communities		•	
Cumulative Effects		•	
Ecological		•	
Economics	•	•	
Ecosystem Management		•	•
Environmental Analyses/Documentation		•	
Exotic/Invasive Species			
Forest Health	•	•	•
Hydrological	•		
Old Growth		•	•
Prescribed Burning		•	
Regeneration	•	•	
Riparian Areas		•	
Roads		•	
Silviculture	•	•	
Soils	•		
TES/PETS/MIS		•	
Timber Harvesting	•	•	•
Wildlife	•	•	
The Proposed Action	+	N/A	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 2E

Public Comments on the Second AGP SN

Category	Commenter						
	Joe Olszewski	Rodney Thomas	AFMG	Mike Dawson	Steven Kricbaum	PAW	SEDG
Access							
Adjacent Landownership		•					
Aesthetics	•		•	•		•	
Alternatives					•	•	•
Aquatic Communities						•	
Chemicals						•	
Cumulative Effects					•	•	
Ecological			•		•	•	
Economics	•		•				•
Ecosystem Management					•		
Environmental Analyses/Documentation					•		
Exotic/Invasive Species						•	•
Forest Health			•		•		•
Hydrological					•	•	
Local Communities	•						
Multiple Use						•	
Old Growth			•			•	•
Prescribed Burning							
Public Involvement					•	•	•
Recreation/Tourism				•	•	•	
Regeneration			•			•	
Riparian Areas					•	•	
Roadless Areas					•	•	•
Roads					•	•	•
Silviculture			•		•	•	
Soils					•	•	
TES/PETS/MIS			•		•	•	
Timber Harvesting	•	•	•		•	•	•
Vegetation						•	
Water Resources	•					•	
Wetlands						•	
Wilderness					•	•	•
Wildlife		•	•		•	•	
The Proposed Action	N/A	-	+	N/A	-	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

Table 3E

Public Comments on the AGP EA

Category	Commenter		
	SEDG	Joe Olszewski	Sherman Bamford
Aesthetics	•		•
Alternatives	•		
Aquatic Communities	•		•
Archaeological/Natural Heritage Resources			•
Chemicals	•		•
Cumulative Effects			•
Ecological	•		•
Economics	•	•	•
Ecosystem Management			•
Environmental Analyses/Documentation	•		
Exotic/Invasive Species	•		
Forest Health	•		•
Hydrological	•	•	•
Local Communities	•		
Mitigation			•
Old Growth	•		•
Public Involvement	•		
Recreation/Tourism	•		•
Regeneration		•	
Riparian Areas	•		•
Roadless Areas	•		•
Roads	•		•
Silviculture	•		•
Soils			•
TES/PETS/MIS	•		•
Timber Harvesting	•	•	•
Water Resources	•	•	•
Wetlands			•
Wilderness	•		•
Wildlife	•		•
The Proposed Action	-	N/A	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 4E

SEDG's Comments on the Second AGP SN

Category	Comment	USFS Response
Alternatives		
(1)	While not perfect, Alternative 2 is far preferable to 3 and 4, although we still object to logging immediately adjacent to wilderness areas.	Not specifically addressed.
Economics		
(1)	Another concern of ours is the economic viability of logging these forests. We would like to see a unit by unit economic analysis that includes the costs of all road building. Will income from each unit of the sale offset the costs of logging and removing the logs from that unit? If certain areas are money losers we feel they should be eliminated.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	We also feel that it is important to include in the contract of this and all other sales a clause that prohibits the export of the wood or non-value added wood products from the local area.	The USFS is somewhat limited in its ability to control the fate or wood products after harvest or require loggers to pay a premium for timber on public lands. We have no legal mechanisms whereby we can prevent export of logs harvested on public lands.
Exotic/Invasive Species		
(1)	What are the risks of invasive plants achieving footholds in interior forest due to the unnatural strip of ecological disturbance?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Forest Health		
(1)	What specifically is the DFC of the Arnold Valley Opportunity Area? Will it be known as the Sahara Missed Opportunity Area in the future?	Not specifically addressed.
Old Growth		
(1)	We are concerned about the old growth in 3006/22. Where is it located? Will buffer zones protecting it from ecological disturbance be maintained?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Public Involvement		
(1)	Considering that the Jefferson is currently undergoing a revision of its guiding Forest Plan, taking actions on this scale to alter conditions is unwarranted since the public has not yet had a chance to provide input for the future of this and other areas.	Extensive public involvement has occurred in all aspects of this project including the original Forest Plan, the AVOAA, resource inventories for the Forest Plan Revision, and two scoping letters for this specific project. Additional opportunity for public comment will be provided during a pre-decisional review of this document.

Roadless Areas		
(1)	In general, our group considers the violation of roadless areas with logging and/or roadbuilding to be unacceptable. Although there are no inventoried roadless areas here, stands 3001/7, 3001/8, 3001/18, 3002/15, 3002/19, and 3002/30 appear to be in <i>de facto</i> roadless areas immediately adjacent to the James River Face Wilderness.	Inventories of potential roadless areas have been performed for the Forest Plan Revision. None of the proposed actions would occur in an area eligible for this designation. This issue is beyond the scope of this analysis.
Roads		
(1)	Don't build new roads, "temporary" or not. Often temporary roads are re-opened, and their presence used to justify further logging in an otherwise undisturbed area. Use the existing road structures for logging. Don't reopen old roads, "temporary" or not. Reopening them demonstrates that in fact these roads are not "temporary" and will continue to be used for extractive industry, further fragmenting the forest. Use the existing open roads for logging.	Not specifically addressed.
Timber Harvesting		
(1)	What specifically is an "overstory removal harvest?" How about a "sanitation harvest?" What will be left when you are done with several of these? A "young, vigorous, forest?" A "healthy forest?"	The use of jargon will be avoided in the EA. Terms such as "overstory removal," "young vigorous forest," and "sanitation harvest" will be defined in the document. Rather than amass needless detail, this issue has been deemed non-significant.
(2)	The logging proposed in Alternatives 3 and 4 is not compatible with the benefits the area currently provides for the citizens of this region and nation, for plant and animal species, and for the maintenance of wild nature in America.	Not specifically addressed.
(3)	Logging of 3005/2 would be particularly incompatible with this proposal. At this early stage in the planning process, it seems inappropriate for your District to rule out potentially pragmatic proposals such as this by conducting activities antithetical to them.	Not specifically addressed.
Wilderness		
(1)	The principles of landscape ecology suggest that areas managed as wildernesses should be surrounded by buffer zones where management is minimal if they are to persist. Even more important is the maintenance of wild undeveloped forest between the James River Face and Thunder Ridge	Inventories of potential wilderness have been performed for the Forest Plan Revision. None of the proposed actions would occur in an area eligible for this designation. This issue is beyond the scope of this analysis. Classified as a significant issue to be addressed in the EA (Issue Statement 16).

	<p>Wildernesses (i.e., stands 3005/2 and 3005/6). The value of connectivity of the lands managed as remote areas should be considered.</p>	
	<p>Our group proposes that cutting on this scale not be employed adjacent to wilderness areas, since the areas affected could be reasonably proposed as extensions. We would also like an analysis of the impacts of closing FDR 35 east of the private land it accesses up to Petites Gap. This would allow the closer connection of the James River Face and Ridge Wildernesses, enhancing both of their characteristics.</p>	

Table 5E

SEDG's Comments on the AGP EA

Category	Comment	USFS Response
Aesthetics	(1) The Belfast Trail, as stated in the EA, is one of the most popular recreation trails in the District, as is the Devil's Marbleyard. From atop Devil's Marbleyard at least ten present and recent past clearcuts (including a "cable job" in operation) are clearly visible. Have you considered the cumulative negative impact of these harvests with the additional ones that will be perpetrated by Arney Groups?	Significant Issue 13 identified a concern for the visual impact of the proposed actions from the James River Face Wilderness and other viewpoints. Paragraph 4 of page 81 specifically states that the Devils Marble Yard is a critical viewpoint within the James River Face Wilderness. View models of the viewshed as seen from the Devils Marble Yard were compiled. Paragraph 1 of page 82 discloses which units would be visible from the Devils Marble Yard. Subsequent analysis of the visual impact found on pages 82 through 86 disclose the number of harvested acres seen from critical viewpoints. Cumulative impact analysis of visual quality is disclosed on page 86 and includes the Devils Marble Yard viewpoint. It should be noted that, referring back to paragraph 1 of page 82, the only units that can be seen from the Devils Marble Yard under the preferred alternative are portions of compartment/stand 3002/2 and 3002/30 which are partial harvests. Selection of this alternative is not expected to impact the visual quality as seen from the Devils Marble Yard.
	(2) The old cuts have opened up views of some kind of steel beam warehouse on the James River and industries to the north. Have you considered the negative visual impact of cuts 3001/8 and 3001/7?	Not specifically addressed.
	(3) Have you considered the psychological effects of this vista, filled with decimated forests, on the average recreationist looking for a wilderness experience? If you claim that forestry is an art, then our question for you is: "Why does it look so bad?"	Not specifically addressed.
Alternatives		
	(1) While not perfect, Alternative 2 is far preferable to 3 and 4, although we still object to logging immediately adjacent to wilderness areas.	Not specifically addressed.

Aquatic Communities		
(1)	<p>East Fork Elk Creek and Belfast Creek are wild trout streams. You state in the EA that wild trout “habitat should remain unharmed.” After that the EAs comments cease to make sense. How can you state simultaneously that mitigations applied after the fact and revegetation of the areas that have already been disturbed will somehow allow habitat to REMAIN unharmed when in doing so you have stated indirectly that the area will indeed be revegetated, disturbed, and otherwise in need of mitigation? We find your logic disturbing. You manage to always conclude that overall impacts will be minimal, in order to support your own proposal (this is most apparent in the complete disregard of Alternative 1, no action). Has the Forest Service fooled themselves into believing that they can successfully control the forest, and in doing so control the natural world? If you claim that forestry is a science, the first thing you should do is open your minds to other possibilities than following dogma.</p>	<p>Significant Issue 6 identified a concern for impacts to aquatic species, including trout. Mitigations applied to the various actions intended to minimize the impact of timber harvesting activities on aquatic species can be found in paragraph 6 of page 8, paragraphs 4 through 6 of page 11, paragraphs 3 and 4 of page 12, paragraphs 6 and 7 of page 13, paragraphs 2 and 3 of page 14, paragraphs 5, 7, and 8 of page 15, and paragraphs 2 through 7 of page 16. Impacts to the aquatic resources, including trout, are disclosed on pages 39 through 42. Impact have been determined with mitigations in place, as is standard practice for any EA. The statement the commenter has excerpted from the EA was taken from the analysis of MIS, one of which is trout. Since the aquatic section of the EA disclosed the impacts to trout, the discussion of trout as an MIS was intended to be a summary of the findings in the aquatic analysis. Perhaps the sentences in the trout MIS analysis could have been reorganized to avoid the apparent confusion of the role that mitigation measures play in analyzing impacts, but the impact would not change.</p>
(2)	<p>In a situation such as this, the mitigation measures the EA proposes to protect the trout habitat in these creeks, such as the construction of waterbarring on roads and skid trails, may not be sufficient (this issue has been addressed previously in comment #10’s discussion of your tendency to try and control natural processes. Please refer back to it.)</p>	
Chemicals		
(1)	<p>Your analysis of the impacts of herbicide on human health and safety (not to mention wildlife health and habitat) is incomplete. Because application of the herbicide extends over a three year period and analysis is “somewhat complicated,” no conclusive evidence or negligible or non-existent impact can be stated.</p>	<p>While the impact of herbicide use on human health was not identified as a significant issue, the potential impact of herbicide use on human health was disclosed on pages 95 through 98. The commenter has taken the phrase “somewhat complicated” out of context. The definition of the temporal scope of the analysis is “somewhat complicated” (paragraph 8 of page 95, continued on page 96) by the three consecutive years of application. The analysis and disclosure of impacts to human health as a result of this activity is not at all complicated and is disclosed in paragraphs 3 through 6 of page 97 and</p>

		continues into paragraphs 1, 3, and 5 of page 98. Cumulative impacts are specifically addressed in paragraph 5 of page 98 and states that, since the herbicide has a short half-life, no residual effects are expected to overlap from year to year. Therefore, no cumulative impacts are expected.
	(2) Where Garlon (or the other herbicides you are considering) has previously been used, have there been tests to measure the effects of it on wildlife, soils, and water? If so, what were the results?	Significant issues 6, 9, 10, and 11 do not specifically mention concern for the impacts of herbicide, but are assumed to include those specific actions. Paragraphs 2 and 3 of page 3 identify documents that were tiered to and/or incorporated by reference with regards to analyzing impacts of herbicide use on various resources. Both of these documents include the results of various research on the impacts of the proposed herbicide use and application method on various resources. Mitigation measures discussed in paragraph 7 of page 11, paragraphs 1 through 4 of page 12, paragraph 8 of page 13, and paragraphs 1 through 3 of page 14 are concerned with minimizing the impact of herbicide application on the environment. Paragraph 2 of page 25, paragraphs 3 through 5 of page 34, paragraph 3 of page 36, paragraph 2 of page 40, paragraph 3 of page 41, paragraph 1 of page 60, paragraph 1 of page 63, and paragraph 1 of page 66 disclose the impacts of the proposed herbicide use on the afore mentioned resources. These findings are based on the impacts disclosed in the risk assessment documents that were tiered to and/or incorporated by reference.
Ecological		
	(1) Consider retaining native biodiversity by NOT fragmenting the forest further with chainsaws.	Not specifically addressed.
Economics		
	(1) Another concern of ours is the economic viability of logging these forests. We would like to see a unit by unit economic analysis that includes the costs of all road building. Will income from each unit of the sale offset the costs of logging and removing the logs from that unit? If certain areas are money losers we feel they should be eliminated.	Not specifically addressed.

	(2)	We also feel that it is important to include in the contract of this and all other sales a clause that prohibits the export of the wood or non-value added wood products from the local area.	Not specifically addressed.
Exotic/Invasive Species			
	(1)	What are the risks of invasive plants achieving footholds in interior forest due to the unnatural strip of ecological disturbance?	Significant Issue 10 identified a concern for the establishment of invasive species as a result of the proposed actions. The discussions found in paragraph 2 of page 46, paragraphs 3 and 4 of page 48, paragraphs 3 and 4 of page 50, paragraphs 8 and 9 of page 51, paragraph 1 of page 52, and paragraph 1 of page 54 disclose the impacts of the alternatives on the establishment of invasive species. A brief summary of these impacts concludes that while timber harvesting does provide an opportunity for invasive species to establish themselves, potentially reducing native biodiversity in the area, our experience has been that the invasive species die out before the stand reaches maturity and adequate stocking of native species does not seem to be severely limited. Additionally, Alternatives 3 and 4 would eliminate a kudzu patch, which is an invasive species.
Forest Health			
	(1)	What specifically is the DFC of the Arnold Valley Opportunity Area? Will it be known as the Sahara Missed Opportunity Area in the future?	Not specifically addressed.
Hydrological			
	(1)	The purpose of building waterholes is questioned.	Paragraph 6 of page 2 states the purpose of constructing waterholes, which is to provide a wide distribution of habitat components across an analysis area.
Local Communities			
	(1)	In Alternative One, the EA states that not logging the area will have “negative economic benefit on the local community.” Can you elaborate on your logic? How can doing nothing negatively impact the current condition?	Paragraph 5 of page 99 states that the cost of planning the timber sale would be incurred while no revenues would be generated. Therefore, a negative economic benefit would result. The analysis states that no commodities would be produced. Because a segment of the local economy depends upon the production of timber commodities, the absence of producing such commodities would negatively impact a segment of the local economy.

Old Growth		
(1)	We are concerned about the old growth in 3006/22. Where is it located? Will buffer zones protecting it from ecological disturbance be maintained?	Not specifically addressed.
(2)	Thank you for selecting to focus on an alternative that does not include the cutting of old growth trees.	Not specifically addressed.
Public Involvement		
(1)	Considering that the Jefferson is currently undergoing a revision of its guiding Forest Plan, taking actions on this scale to alter conditions is unwarranted since the public has not yet had a chance to provide input for the future of this and other areas.	Not specifically addressed.
Recreation/Tourism		
(1)	Impact on the Locher Tract Recreation Area has not been addressed at all by the EA. What quality of recreational experience will it provide if it is surrounded by cuts and the heavy equipment that creates those cuts?	Potential impacts to the Locher Tract Recreation Area were not specifically identified as a significant issue for this analysis. Therefore, the analysis, which is guided by the significant issues, did not focus on impacts to the Locher Tract Recreation Area. However, an analysis of the impacts to dispersed recreation in general are presented in paragraph 3 of page 88, paragraph 1 of page 90, paragraph 2 of page 91, paragraph 2 of page 92, and paragraphs 2 and 3 of page 93. Furthermore, the distance and topographic position between the Locher Tract Recreation Area and proposed harvest units in compartment 3001 is such that no direct impact is expected. The units would not be easily seen from the area. Noise from harvesting activities would be heard but are not expected to be any louder than noise from automobiles, trains, tractors, etc. on adjacent private lands. Therefore, no impact to the recreation experience in the LTRA is expected.
(2)	Impact on the Balcony Falls Trail has not been addressed at all. This trail runs almost directly adjacent to the 3001/7 proposed clearcut. We noticed in our travels that it passes at least one large recent cut already. The difference between the surrounding forests and the old cut, full of briars, grass, and dense growth of small trees, is dramatic. Additionally, to preserve the experience of recreationists on their way to the James River Face Wilderness Area,	Please refer to the response above. This trail was not specifically identified as a concern during scoping, therefore analysis did not focus on impacts to this trail. Clearcutting of compartment/stand 3001/7 would not be directly adjacent to the trail. The planned harvest unit boundary would be located on a bluff above the trail. Approximately 150 feet (or more) of unharvested trees would be located between the trail and the harvest unit.

	have you considered canceling the cuts which about this heavily used trail?	Neither compartment/stand 3001/7 or 8 would be seen from the trail. Noise from harvesting activities would be readily heard. Regarding impacts to the wilderness experience for hikers of this trail, the impact would be very similar to that disclosed for Belfast and Gunter Ridge Trails (pages 88-93). Because harvesting activities would occur during the week when recreation use is low and because noise impacts would be short-term, impacts on the recreation experience on Balcony Falls Trail or the wilderness experience for hikers on this trail is expected to be minimal.
(3)	How will the noise created by chainsaws, bulldozers, skidders, trucks, and timber-harvesting humans impact the wilderness experience for recreationists (not to mention surrounding private land owners)? It is foolish to consider the noises of trains and airplanes to be comparable to that of chainsaws. The former noises are outside the NF; the timber harvest cacophony will be emerging from within the forests heart. Additionally, the sounds of timber being harvested will be certain to have a different (and negative) impact on the wilderness experience of recreationists as they hear the very trees they came to enjoy being killed or maimed.	Significant Issue 8 identified a concern for impacts of the proposed activities on the recreation experience. This issue was addressed in paragraphs 2 and 3 of page 88, paragraph 2 of page 89, paragraph 4 of page 90, paragraph 5 of page 91, and paragraph 5 of page 92. The authors comments regarding the difference between the noise originating from private land and noise generated from timber harvesting notwithstanding, the impact of noise on the wilderness experience would occur but is not expected to be severe for the reasons disclosed in the EA. The proximity of the proposed harvest units to private lands are hardly consistent with the statement of “cacophony...from within the forests heart” made by the commenter.
(4)	We do have one suggestion that would take very little effort and produce no “negative economic impact”; we request that you either remove or rewrite the Legend of the Devil's Marbleyard at the head of the Belfast Trail. As it exists now, this legend is extremely insensitive to Native and non-Christian perspectives. Thank you. Actually the first paragraph or so of it was fine, in fact very nice.	The purpose and need for this action does not involve information provided at trailheads. This issue is beyond the scope of this analysis.
(5)	Similar negative impacts on recreational experiences would result from proposed cut 3002/15 which is adjacent to the “moderately popular” Gunter Trail.	Issue 5 identified a concern for the impact of the proposed action on Gunter Ridge Trail. Paragraph 2 of page 88, paragraph 1 of page 89, paragraph 3 of page 90, paragraph 5 of page 91, paragraph 4 of page 92, and paragraph 3 of page 93 disclose the impacts of the various alternatives on Gunter Ridge Trail. The preferred alternative would result in group

		selection harvest within 300 feet of Gunter Ridge Trail; visual impact is expected to be negligible while noise impacts would occur during the week when use of this trail is relatively low. Overall impacts to the recreation experience on Gunter Ridge Trail are not expected to be severe (paragraph 3, page 90).
Riparian Areas		
(1)	We are concerned that the narrow riparian strips of unlogged forest that will be created along these streams under this proposal will be susceptible to high wind events and essentially provide little guarantee of protection to the drainages in this area. In addition, riparian forest is a valuable resource in its own right and deserves its <i>own</i> insulating buffer from disturbance.	Riparian buffers have been designated and described at the bottom of page 15. These buffers meet or exceed the Forest Plan Standards and Guides found pages IV-76 through IV-78 of the JNF LRMP. Similar buffers have been used extensively throughout the Arnold Valley Area. While individual trees may be blown down in limited areas, windthrow in these riparian buffers has not been an extensive problem in the past. Windthrow is not expected to cause such problems in the Arney Groups Timber projects.
(2)	The riparian strips that remain will be made susceptible to windthrow, with consequent impacts on water temperature due to lack of shading.	
Roadless Areas		
(1)	In general, our group considers the violation of roadless areas with logging and/or roadbuilding to be unacceptable. Although there are no inventoried roadless areas here, stands 3001/7, 3001/8, 3001/18, 3002/15, 3002/19, and 3002/30 appear to be in <i>de facto</i> roadless areas immediately adjacent to the James River Face Wilderness.	Not specifically addressed.
Roads		
(1)	Don't build new roads, "temporary" or not. Often temporary roads are re-opened, and their presence used to justify further logging in an otherwise undisturbed area. Use the existing road structures for logging. Don't reopen old roads, "temporary" or not. Reopening them demonstrates that in fact these roads are not "temporary" and will continue to be used for extractive industry, further fragmenting the forest. Use the existing open roads for logging.	Please note that road construction/reconstruction is only proposed under Alternative 3, not the preferred Alternative 4. Alternative 4 proposes to use a forwarder trail instead of a road. Significant Issues 9 and 10 reflect a concern for the impacts of roading on forest fragmentation. Discussions found in paragraph 5 of page 57, paragraph 1 of page 58, paragraphs 1 and 2 of page 59, paragraph 5 of page 60, paragraphs 5 and 6 of page 61, paragraphs 3 and 4 of page 64, paragraphs 1 and 2 of page 67, paragraphs 1 and 2 of page 69, and 2 through 4 of page 71 disclose the impact of the proposed activities on interior forest habitat and fragmentation of that habitat. A brief summary of these impacts concludes that these

		actions do not fragment forested habitat because we are not changing land use, fragmentation of mature forest habitat and creation of edge habitat would result , roading may interrupt travel corridors for some species of wildlife, but since mature forest is maintained in the area in relatively large blocks, timber harvest and road construction activities are not expected to result in a severe impact on species requiring interior forest habitat.
Silviculture		
	What are the tree species compositions in each unit?	Significant Issue 1 identifies, in part, a concern for the consideration of tree species composition. Paragraph 1 through 4 of page 44 and paragraph 1 of page 45 describe the species composition of the areas proposed for harvest.
TES/PETS/MIS		
(1)	We feel that the EA should provide more detailed, site-specific information. For example, what uncommon species inhabit the area? What effect will the logging have on them?	Significant Issues 10 (in part), 12, and 14 identify a concern for the impact of the proposed activities on uncommon and/or rare species in the area. Issues 10 and 14 deal with both interior forest dependent and early seral dependent species. The impact to these habitats and species within these habitats is provided throughout pages 56 through 72. Issue 12 is concerned with impacts to PETS species which addresses this specific issue more directly. Impacts to these species are disclosed on pages 73 and 74 and in the BE found in the project file. As part of the BE process, a field review of each area proposed for harvesting is performed. A tally of all species found within the area is made. Any unique or rare species and/or habitats are highlighted. This information is also found in the project file. We believe adequate information has been gathered to determine the impacts on uncommon species in the area and that site-specific impacts have been disclosed in the EA.
Timber Harvesting		
(1)	How many trees will be cut in each unit, and of what species and sizes?	The number of trees to be cut has been described in terms of the percent of the existing stand that would be removed within each harvested stand under each alternative in paragraph 6 of page 7, paragraph 1 and 2 of page 8, paragraphs 3 through 6 of page 9, paragraphs 2 and 3 of page 10, paragraph 10 through 13

		of page 12, paragraphs 1 and 2 of page 13, and paragraph 6 of page 14.
(2)	What heavy industrial equipment will enter the area?	The alternative descriptions found on pages 7 through 14 states what logging systems would be utilized in the various stands proposed for harvesting under each alternative. Paragraph 10 of page 12 states that all units would be harvested through ground based methods under Alternative 4. This alternative includes the use of a forwarder to implement harvests in compartment/stand 3005/2. A forwarder is very similar to a rubber tired articulated skidder, however, it is longer and configured to carry entire logs instead of dragging them on the ground. Ground based equipment may also include one or more skidders, tracked dozers, knuckle boom loader, and/or haul trucks of various sizes.
(3)	Most of the proposed cuts are close to the Forest boundary and to populated private lands. Have you considered acting as a better role model for these neighbors? Setting an example of forest stewardship would be better served by NOT driving trucks and bulldozers into their backyards.	Technically, the purpose and need of this project is not to set an example or provide good role models. The issue is beyond the scope of this analysis. However, the USFS does not agree with the commenter's interpretation of what good forest stewardship or a good role model is. We believe that we are indeed setting good examples by promoting sound forest stewardship through harvesting timber to provide wood and fiber for society, regenerating declining forest stands, providing a variety of habitat components to ensure diversity of species throughout the area, and doing so in a scientifically based, sustainable way that is sensitive to environmental concerns.
(4)	The logging proposed is not compatible with the benefits the area currently provides for the citizens of this region and nation, for plant and animal species, and for the maintenance of wild nature in America.	Not specifically addressed.
(5)	What specifically is an "overstory removal harvest?" How about a "sanitation harvest?" What will be left when you are done with several of these? A "young, vigorous, forest?" A "healthy forest?"	Not specifically addressed.
(6)	Logging of 3005/2 would be particularly incompatible with this proposal. At this early stage in the planning process, it seems inappropriate for your District to rule out potentially	Not specifically addressed.

	pragmatic proposals such as this by conducting activities antithetical to them.	
(7)	We call upon the USFS, and specifically the Glenwood District, to cease the emphasis on timber production and extraction exemplified by this project. We reject the notion that natural systems require the assistance of humans in order to remain healthy and viable. We demand that the USFS pursue a truly noble mission and work for sustainability of natural processes and all elements of native biodiversity at both the watershed and landscape scales. We ask for an end to logging in public lands buffering wilderness areas. We ask for an end to clearcutting and near-clearcutting (modified shelterwood, seed tree cuts, etc.) as a means of forest management except in isolated, fragmented, and outlying areas where such practices are demonstrated to be the only ecologically reasonable methods and where they are practiced sustainably.	Not specifically addressed.
Water Resources		
(1)	Please study further the impact of the clearcut proposed for 3001/7 on the “legendary” pure and sparkling spring created by the brilliant transparent gem...brought from beyond the “Father of Waters” i.e. the Locher Tract spring.	The spring found on the Locher Tract was not identified as a specific concern during scoping. Therefore, the analysis, as guided by the significant issues, did not focus on impacts to this spring. However, the potential impact of timber harvesting on aquatic ecosystems is addressed on pages 30 through 43. Discussion that would indirectly address this issue can be found in paragraph 4 of page 31 and paragraph 3 of page 39. Furthermore, the distance between the proposed harvest in compartment/stand 3001/7 and presence of both forested and open vegetated land in this area would act as a very adequate filter strip, would prevent any sedimentation impacts on this spring. Water yield would not be expected to increase either. Therefore, no impact on this spring is expected as a result of any action alternative.
Wilderness		
(1)	The principles of landscape ecology suggest that areas managed as wildernesses should be surrounded by buffer zones where management is minimal if they are to persist. Even more important is the maintenance of	The issue is beyond the scope of the analysis. Policy set forth in FSM 2320.3(5) specifically states “Do not maintain buff-strips of undeveloped wildland to provide an informal extension of wilderness.” The purpose

	wild undeveloped forest between the James River Face and Thunder Ridge Wildernesses (i.e., stands 3005/2 and 3005/6). The value of connectivity of the lands managed as remote areas should be considered.	of this action does not include alteration of this direction. Impacts to wilderness recreation and biodiversity have been previously discussed.
	Our group proposes that cutting on this scale not be employed adjacent to wilderness areas, since the areas affected could be reasonably proposed as extensions. We would also like an analysis of the impacts of closing FDR 35 east of the private land it accesses up to Petites Gap. This would allow the closer connection of the James River Face and Ridge Wildernesses, enhancing both of their characteristics.	
(2)	It is apparent that you are cutting all along Hellgate Creek, Belfast Creek, and directly against the Wilderness boundary. It is also apparent that you have chosen these sites because they: (a) contain the nicest trees, and (b) so that no further trees will be designated as wilderness and thus be protected from going “under the blade.” Have you considered fully how these cuts will impact the future diversity of plant species in the Arnold Valley as a whole, and in the wilderness areas? Areas managed as interior forest should be surrounded by buffer zones where management is minimal if they are to persist. Please consider not cutting along the James River Face Wilderness.	Not specifically addressed.
(3)	Please consider canceling cuts which are contiguous with the James River Face Wilderness Area to preserve the wilderness experience for recreationists and to allow these areas to be considered for Wilderness designation.	Not specifically addressed.
Wildlife		
(1)	We feel that the EA should provide more detailed, site-specific information. For example, how many birds, amphibians, reptiles, and mammals and of what species will be killed by this proposal? What impacts will there be to their local population viabilities?	While specific numbers of each species of bird, reptile, amphibian, or mammal impacted by the proposed actions have not been presented, the aquatic (pages 37 through 42), wildlife (pages 54 through 72), and threatened and endangered species (pages 72 through 74) sections collectively address the impacts to habitats and classes of animals within various ecosystems. The wildlife section includes an analysis of impacts MIS. The MIS system is intended to utilize certain species of animals as indicators for a

		suite of habitat/species combinations. Analysis of impacts to MIS (page 59, page 62, page 65, page 68, page 70, and page 72) is intended to disclose the impacts on various niches and species through addressing the impacts to an indicator species.
--	--	--

Table 6E

PAW/Heartwood/VFW/SEDG's Administrative Appeal of the AGP DN/FONSI

Category	Appeal Issue	ADO Response
Aesthetics	<p>(1) Logging would be visible 500 feet from the Belfast Trail (EA, pp. 91, 90, &88) and 300 feet from the Gunter Ridge Trail (EA, pp. 91 and 90). According to the EA, visual impacts are “negligible,” but the EA fails to substantiate the basis for this claim.</p>	<p>One of the significant issues identified in the EA expresses “[c]oncern that the proposed actions may adversely impact visual quality of areas viewed from Belfast Trail, Gunter Ridge Trail, Appalachian Trail, Petites Gap Road, Blue Ridge Parkway, Glenwood Furnace, and the James River Face and Thunder Ridge Wilderness Areas.” The issue is addressed (EA, pp. 81-87) by identifying acres visible from identified viewpoints and travel routes and whether proposed actions meet the VQO. The EA, pages 82-85, disclose that the VQO for the Belfast Trail and Gunter Ridge Trail will be met. Landform blocks the lower portion of the shelterwood cut in view on the Belfast Trail. The retention of partial canopy would mitigate the visual impact of viewing the approximately 5 acres seen in the upper portion of the unit. The view from Gunter Ridge Trail will be screened by 300 feet of a fully stocked forested stand between the trail and the shelterwood cut. I find that the visual impacts were adequately considered.</p>
Alternatives	<p>(1) Alternative 4 is not consistent with the proposed action or purpose and need for action (EA, pp.1-3). According to the EA, p.2, “The Arnold Valley Opportunity Area Analysis (AVOAA) identified the portions of the proposed stands as uneven-aged management areas, thus identifying a Desired Future Condition (DFC).” The proposed action and purpose and need for action refer to group selection and additional thinning throughout, but not to even-aged logging. On p.7, the EA refers to the proposed action and states that “this action has been slightly modified to incorporate thinning between the harvested groups” and that “[t]he differences between the proposed action” and Alternative 2, the only mentioned alternative, “are so minor that a detailed analysis of both</p>	<p>The EA states on page 2, “[o]verall, the purpose of the regeneration activities (group selection) is to provide wood and fiber for society while maintaining a healthy and vigorous forest. More specifically, this action is needed to provide a non-declining sustained yield of forest products while protecting and enhancing the visual and watershed resources. The AVOAA identified the portions of the proposed stands as uneven-aged management areas, thus identifying a DFC. The DFC also includes creation of a more healthy forest, which can be characterized as a mixture of young vigorous stands, mature forest, and old age stands, providing a variety of vegetation types and habitat components. Furthermore, the DFC is to locate these younger, vigorous stands in a scattered spatial</p>

	<p>alternatives would be unnecessary.” Again under the heading, “Alternatives” (EA, p. 7), there is only a reference to the “purpose” of the logging as “uneven-aged management.” Despite this, the selected alternative, Alternative 4, includes 40 acres of clearcutting and 158 acres of shelterwood logging. All even-aged logging.</p>	<p>pattern so as to create a heterogeneous pattern of stand condition. This is a fairly broad purpose and need statement that covers several DFC components. The inclusion of a need for providing “young vigorous stands” within the DFC allows the latitude to include even-aged management to meet this need. I find that the decision is consistent with the purpose and need.</p>
Cumulative Effects		
(1)	<p>The EA does not address cumulative impacts to the roadless areas that are most vulnerable across the Glenwood and the GWJNF. Through projects similar to this proposed action, impacts to roadless areas are taking place throughout the Forest and the Appalachians. These ecologically critical lands are rare and are increasingly vulnerable. A number of them are in the Glenwood RD. This is not a Forest Plan issue. Since these areas are being entered, the issue is now “ripe” (Wilderness Society v. Alcock, 1994). The EA does not disclose how these impacts, when considered cumulatively, do not add up to significance.</p>	<p>The Scoping letter of May 18, 1995, states that the proposed project area contains no roadless areas. Therefore, the cumulative impact to roadless areas is not necessary. I find that cumulative impacts to roadless areas is appropriately not discussed.</p>
Ecological		
(1)	<p>The EA emphasizes outdated concepts concerning biodiversity (see EA, vegetation section, oak decline section, and continuous references to “pathological overmature” and other jargon). The NFMA and NEPA regulations require that the USFS examine and provide for diversity in the national forests. Under NFMA, the USFS must “provide for diversity of plant and animal communities.” The strategy of maximizing age class diversity in the JNF Plan is simplistic and will not provide for biological diversity. In fact it systematically destroys natural community diversity and replaces it with an unnaturally simplified even-aged structure that has deleterious effects on the other levels of diversity. Species diversity, genetic diversity, and landscape diversity are systematically lost as the community diversity is altered and simplified. This is reflected in loss of species, loss of community structure, and disruption of landscape structure and dynamics.</p>	<p>The District disclosed the affects to various biological components that, when viewed in total, address diversity. The District addressed the effects to broad forest cover types and successional classes, to MIS representing the habitat needs of various plants and animal communities, rare elements such as sensitive species, and aquatic habitats. The project was designed in part to meet the DFCs of the areas as stated in the current Forest Plan. I find that the Forest used appropriate measures regarding diversity.</p>

(2)	<p>USFS fails to properly consider or maintain viability. The USFS is required to maintain viable populations (see 33 CFR 219.19 and FSM 2672.41). Viability cannot be merely assumed. Population distribution, status, and trend data and objectives (hard accurate scientific information) are absent from the administrative record. Quantitative or baseline population data for PETS and MIS have not been obtained or disclosed for the specific site or for the Forest as a whole. Reliance upon vague generalizations do not assure viability or provide the public, the decision-makers, or the court with reviewable disclosure (see FSM 220.2(3) and 40 CFR 1500.1(b)).</p>	<p>The District disclosed the effects of the project to a list of MIS, including NTMB. The District disclosed the effects to broad forest cover and successional classes (EA, pp. 42-54). The District included an analysis of PETS species (BE; EA, pp. 72-74) and an analysis of aquatic habitats (EA, pp. 30-42). I find that the District properly considered viability, using the appropriate processes in disclosing the effects to terrestrial and aquatic plant and animal species.</p>
(3)	<p>Explanations, discussion, and evidence for how and to what extent the proposed logging, waterhole construction, and associated activities will disrupt and fragment populations and habitat and thus impede interactions (especially for species low mobility or limited dispersal capability, such as salamanders) (36 CFR 219.19). Mitigation for all these foreseeable circumstances is absent.</p>	<p>Not specifically addressed.</p>
(4)	<p>The EA improperly attempts to equate late successional forest with forest interior habitat (p.35). Effects to forest interior species do not necessarily equate with late successional species.</p>	<p>Not specifically addressed.</p>
(5)	<p>This issue of viability is not equivalent to that of diversity. The agency attempts to use MIS to measure/assess diversity and to satisfy its NFMA mandated duty to provide for and consider it (Krichbaum v. Kelley, 1995; 36 CFR 219.26).</p>	<p>Not specifically addressed.</p>
(6)	<p>Viability is not merely an issue revolving around the agency's desire to manage habitat. It involves population dynamics, disturbance, and displacement. Mere presence of individuals of a species is not sufficient. It is reproductive success that matters.</p>	<p>Not specifically addressed.</p>
(7)	<p>The presence of a large special biological area just across the wilderness boundary from the project area was not identified as a significant issue. Whether or not the projects could potentially affect the unique ecological communities of this area is not disclosed. Whether some of the</p>	<p>Not specifically addressed.</p>

	same unique ecological communities found in the SBP could be found outside of the SBA boundary is not disclosed, either. Nor are wildlife corridors.	
Environmental Analyses/ Documentation		
(1)	NEPA is a full disclosure law. NEPA procedures are an effort to promote decisions made in consideration of the best interests of the environment – Robertson v. Methow Valley CC (1959). Adverse effects of proposals must be adequately identified and evaluated. A “hard look” at “detailed information” is necessary – Sabine River Authority v. DOI (1992). The analysis should be even broader when determining if an EIS is necessary – Fritiofson v. Alexander (1985). The agency must determine that a carefully considered hard look was taken – NAS v. Hoffman (1995). A reasonable explanation must be set forth; assertions are not adequate (Marble Mtn AS v. Rice (1990). “[P]erfunctory and cursory analysis” is not sufficient – Hanley v. Mitchell (1972). A “reviewable environmental record” with accurate scientific analysis must be developed – Trinity Episcopal School Gorp v. Romey (1975) and 40 CFR 1500.1(b). “NEPA expressly places the burden of compiling information on the agency so that the public and interested government departments can conveniently monitor and criticize tile agency’s action” (Grazing Fields V. Goldschmidt, 1980). Approving actions now and asking questions later is “precisely the type of environmentally blind decision-making NEPA was designed to avoid” (Conner v. Burford, 1988).	Not specifically addressed.
Mitigation		
(1)	The agency summarily concludes that significant impacts will not occur because “mitigation methods” will be used (see DN/EA/FONSI). However, an analysis of their effectiveness and how they will compensate for the proposed action are missing from the disclosure.	Not specifically addressed.

Remedies		
(1)	The March 21, 1997, decision be reversed.	Not specifically addressed.
(2)	An EIS be prepared for the portion of this sale area qualifying as a roadless area.	Not specifically addressed.
(3)	The USFS protect soil, water, and natural communities of the entire area.	Not specifically addressed.
Roadless Areas		
(1)	<p>The appellants contend that the portion of the sale areas bordering the two wildernesses are roadless areas. The area north and west of James River Face Wilderness includes a portion of a semi-primitive non-motorized area as a core. This area was identified as part of the plan revision and is shown on plan revision maps. In addition, it immediately borders a designated wilderness and a large special biological area identified by the Virginia Division of Natural Heritage. The cutting unit north of Thunder Ridge Wilderness immediately borders the wilderness. It is bordered on the west side, south side, and east side by stands identified as older than 100 years old in CISC data. The cutting unit is located in an area abutting the wilderness where the terrain begins to get steep; inclusion of this area would improve the "finger" like nature of Thunder Ridge Wilderness. Regional guidance or evaluating roadless areas for wilderness (February 4, 1997, currently under draft) contains language regarding the amount of the area logged in the last 10 years and the amount of management activity occurring in the area. The logging and road building in the project area would be visible for many years. The noise impacts could be discernible for one or more years depending on when the sale is scheduled. These factors could impact attempts to place two qualifying roadless areas on the inventory of roadless areas. These factors could, in turn, affect future wilderness evaluation.</p>	<p>The EA, page 5, identifies the significant issues and includes the concern that proposed actions may impact wilderness values in the James River Face and Thunder Ridge Wilderness areas. However, the identified issue addresses concerns about roadless areas. The District's May 18, 1995, scoping letter states that the proposed project area contains no roadless areas. The Southern Appalachian Assessment's Social/Cultural/Economic Technical Report prepared July 1995 lists the roadless area inventory for the GWJNF. The spot used as a source document for the Forest Plan revision lists 28 or 38 (not clear due to poor copying) identified areas on the GWNF and 25 areas on the JNF. Only areas identified in this Roadless Inventory are considered as roadless. You did not provide enough information to determine whether the proposed projects are within one of the inventoried USFS roadless areas. I find no evidence that the proposed actions are located within inventoried roadless areas. The EA has adequately considered impacts to roadless areas.</p>
(2)	The DN/EA/FONSI fails to identify impacts to <i>de facto</i> roadless areas as a significant issue (comments and response to scoping # 22; comments and response to EA, PAW, #4). As part of Forest Plan revision, the areas north and west of James River Face	Not specifically addressed.

	<p>Wilderness and north of Thunder Ridge Wilderness have been identified as de facto roadless areas by PAW and VFW/Heartwood. Appellants can challenge both the site-specific action and the plan-level decision(s) underlying the specific action at the second stage - Wilderness Society v. Alcock (1996). The current Jefferson Forest Plan is deficient because it does not accurately identify all roadless area in the JNF. The JNF recognizes this fact; it is currently reviewing roadless areas and proposing to identify <i>de facto</i> roadless areas as inventoried roadless area as part of the plan revision.</p>	
(3)	<p>In response to roadless area issues raised in PAW #4: the USFS responded by saying “There is an evident conflict in the concept of ‘small <i>de facto</i> roadless areas’ that ‘specifically meet the roadless criteria’ when size of an area is a critical and definable factor in determining whether an area meets roadless criteria.” This statement is false, is a misinterpretation of PAW’s comments, and is an attempt to evade a significant issue (NFMA, APA, court cases in (A), above). “Roadless areas qualify for placement on the inventory of potential wilderness if...[t]hey are contiguous to existing wilderness, primitive areas, Administration-endorsed wilderness, or roadless areas in other Federal ownership, regardless of their size” (FSH 1090.12 Ch. 7.11; Regional Forester’s letter to Forest Supervisors: October 25, 1994). The following factors should go into determining “significance”: “Unique characteristics of the geographic area such as proximity to historical or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas” and “the degree to which the action may establish a precedent for future actions with significant effects or represent a decision in principal about a future consideration” (Acting Regional Forester’s letter, June 3, 1994, NEPA Requirements in Roadless Areas).</p>	Not specifically addressed.
(4)	<p>The proposal has severely intense effects to the locale. Unique characteristics and ecologically critical areas (e.g. roadless areas and nearby</p>	Not specifically addressed.

	<p>special biological areas) are affected. Due to ongoing practices in the Arnold Valley, there are relatively few roadless areas left. Thorough analysis of the area's function as a possible black bear corridor is absent in the EA and is a pressing need, given the location of the area between the Thunder Ridge Wilderness and James River Face Wilderness. Projects that alter a roadless area's undeveloped character require an EIS - <i>NAS v. USFS</i> (1990). The roadless characteristics of the area need to be examined. At the very least, "substantial questions as to whether significant cumulative impacts" occur - <i>Thomas v. Peterson</i> (1982).</p>	
Roads		
(1)	<p>Note the USFS response to Issue Statement 21. Many of the issues referred to are valid and within the scope of the project. The JNF Plan requires the USFS to evaluate the issue of whether "all existing 'open' roads will remain open" in the project EA (p.IV-87). Nowhere in the EA is there an adequate analysis of road density necessary for the analysis of issues raised in Issue Statement 21. Such arbitrary, capricious, and biased decision-making is not only confusing, it circumvents meaningful public involvement in the management process vis a vis NFMA.</p>	<p>Access to the sale area is provided by existing permanent roads; no new permanent roads are planned. The EA evaluates five alternatives and only one, Alternative 3, has road work, which consists of 2000 feet of temporary road. Temporary roads are obliterated after use. The selected Alternative 4 has no road work. No new permanent roads are being constructed, so the open road density for the area will not change. This is explained in the EA Alternative Comparison Chart on page 17, and also on page 63. I find that the EA adequately discloses the impacts associated with road construction for the various alternatives; the selected alternative has no new roads. An analysis of road density is not a consideration.</p>
(2)	<p>The EA mentions the impacts of reconstruction of 500 feet of the forwarded road, but it does not mention the serious impacts of the construction of the remaining 2000 feet (16 USC 1604(g)(E)(i)). Evaluation of the fragmentation, cutting of trees, trampling of understory, soil effects, increase in road density, and increased access caused by the road are not disclosed. NFMA requires the USFS to use the "best science" when disclosing the impacts of a project.</p>	
Soils		
(1)	<p>One soil type in compartment/stand 3002/17 has an "extreme compaction hazard" (EA, p.28). The EA allows logging on the site. It discusses some very general mitigation methods such as avoiding skid road construction on the site. It does not, however, address the issues of past compaction in the vicinity</p>	<p>The EA states that "a small portion of compartment/stand 3002/17 occupies the Loam soil type, which has an extreme compaction hazard" (pp. 26-28). Mitigation measures specific to the Loam soil type are discussed under Alternatives 2, 3, and 4 (pp. 26-28), concluding that if these mitigation</p>

	of the site or whether logging is appropriate at all at this location. The Plan must “insure that timber will be harvested from National Forest System lands only where...soil, slope, or other watershed conditions will not be irreversibly damaged” (16 USC 1604 (g)(E)(i)).	measures are followed “severely damaging compaction can be avoided.” The DN/FONSI, finding that the unique characteristics such as wetlands will not be significantly affected because “all such areas have been flagged on the ground and will be avoided” (p. 6), references the mitigation measures listed on pages 13-16 of the EA. I find that soil compaction is adequately discussed in the EA for the Responsible Official to make a reasoned choice among the alternatives.
TES/PETS/MIS		
(1)	Agency planners did not thoroughly sample the site for PETS species populations. Not only is there no hard site-specific population data. Planners did not definitively determine such species’ existence here.	The District took into consideration 19 sensitive species and dropped all from detailed consideration, except for butternut, because there was no suitable habitat in the area; none were seen in the area during field surveys; or the species distribution did not include the project area. The potential species were identified by reviewing the list of PETS species and their habitat preferences, consulting element occurrence records of PETS maintained by the VA Natural Heritage Program, conducting field surveys, and consulting with appropriate experts. In the 1991 BE developed for this area, an occurrence of the coal skink was documented in compartment 3010. Mitigation measures were recommended for a stand then proposed for shelterwood treatment (100 foot buffer). In addition, mitigation measures were incorporated for the POS due to the close proximity to their species range. The current BE does not explain why these two species were not examined more closely for this project five years later. In addition, the BE makes no mention of the Indiana bat, an endangered species. This project is within the range of this species. The EA/BE make no mention of why this species was not included in the analysis of this project. I find that the District conducted appropriate levels of inventories. However, documentation needs to be further clarified as to why the POS, the coal skink, and the Indiana bat were not considered in detail for this area.

(2)	<p>The BE is inadequate. Various species that the project potentially affects are unaddressed [specifically Coopers hawk, the sharp-shinned hawk, the coal skink, bats, and ginseng]. Full and intensive surveys were not performed. Site-specific inventories of populations and habitat factors were not obtained. Viability is not assured by such perfunctory evaluation.</p>	<p>As discussed, additional clarification and consideration in the evaluation of the TES species needs to be provided. I find that the proposed activities should not proceed until further clarification and consideration is provided based on this issue.</p>
(3)	<p>The BE does not identify, describe, and analyze the effects on the occupied and unoccupied habitat needed to meet USFS objectives for sensitive species. It does not even mention any objectives for any sensitive species (see FSM 2672.42(2,3,4)).</p>	<p>The project tiered to the Forest Plan relative to the DFCs for this area (EA, p. 8). These DFCs are compared to the existing conditions. The District reviewed current population inventories for sensitive species and reviewed the project area in the field. The EA/BE discusses the habitat relationships and considerations for sensitive species, and the effects to these species habitats, as well as mitigation measures to protect riparian and aquatic resources. I find that the District appropriately tiered the direction in the Forest Plan and openly considered the habitat needs for sensitive species.</p>
(4)	<p>The documentation reveals no baseline or quantitative data for PETS species. The agency has failed to obtain or maintain any past or current population or inventory data for the sensitive species at issue in the Arnold Valley area or for the JNF as a whole. Distribution, status, and population trends have not been determined. Viability cannot be assured without first establishing population objectives. (FSM 2670.22(3) and 2672.1 and 32). These objectives have not been established (36 CFR 219.27(a)(5&6)).</p>	<p>Not specifically addressed.</p>
(5)	<p>The USFS fails to properly protect and consider impacts to PETS species. Populations of the species listed as “PETS” that occur on the JNF are already declining or at risk. The USFS itself has identified the obligation to determine the impact of logging on Sensitive species. It uses BEs, has a Sensitive Species List, and has regulations specifically focusing on the special emphasis required for PETS (e.g. see FSM 2672.1).</p>	<p>Not specifically addressed.</p>
(6)	<p>The MIS concept does not attempt to reasonably measure the population or viability of any given PETS species (except perhaps those explicitly chosen</p>	<p>Not specifically addressed.</p>

	and monitored as MIS species). The MIS, and how they are monitored, do not reliably estimate the effect of this action on the viability of PETS species here. The PETS species that are MIS species do not reliably estimate the effect of this action on the viability of the many different PETS species potentially existing here. And non-sensitive MIS with the same or similar habitat requirements are not declining in population.	
(7)	The agency's limited investigation of the impact of the proposed logging, associated activities, and waterhole construction on PETS species was too superficial and inadequate to support its conclusions of lack of significant impact. Sufficient facts and analyses that support such a conclusion are not contained, even briefly, in the administrative record. Neither the public nor the Court can review them. In the absence of specific population/inventory data and population trend analyses of sensitive species, summary conclusions of no significant impact on the diversity or viability of these species are not based on an informed judgment and are necessarily arbitrary and capricious. Compliance with the biological and procedural requirements of sensitive species are not ensured - see FSM 2670.46.	Not specifically addressed.
(8)	Agency's actions were enjoined when it failed to properly consider effects on PETS species - ONHC v. Marsh (1995). Actions were enjoined when effects on sensitive species were only summarily examined - Leavensworth Audubon v. Ferraro (1995). Failure to properly consider effects on sensitive species is an abuse of discretion - Sierra Club v. Martin (1996) and Morgan v. Walter (1989).	Not specifically addressed.
(9)	Collecting information on MIS species does not discharge duties as regards evaluation of PETS species and maintenance of their viability and diversity. In the instant case, the agency has not even collected site-specific population data or conducted population trend analyses on the common MIS admitted to be of concern here (see EA). Field visits do not include the collection of hard	Not specifically addressed.

	<p>population data. The agency merely estimates this information in a conclusory manner when asserting the project's effects on plants, wildlife, and their habitat.</p>	
(10)	<p>A boulder field that is considered a "unique" biological area is identified on EA, p. 73. The EA/BE provides no population data or population trends on PETS species that may exist in the boulder field. The EA/BE provides inadequate information on the natural communities of the boulder field. On p.16, the EA allows logging and winching of trees directly within this unique biological area. The agency provides no substantive data on effects of such activities on the boulder field or species inhabiting the area.</p>	Not specifically addressed.
(11)	<p>The entire project site was not even visited, let alone scrupulously surveyed. And the agency does not indicate that simply not observing a species on a field visit on a given day or during a given season could be easily due to some other reason than the possibility that the species does not exist on the site. "Simply concluding that a timber project will not have any effect on a species simply because that species was not present on a given field trip to only part of the project site, with nothing more being done, is not a sufficient examination of the effects of the proposed timber project on the sensitive species existing in these NF" (Sierra Club v. Martin, 1996).</p>	Not specifically addressed.
(12)	<p>One example of a MIS not adequately accounted for is "Wild Trout." The EA indicates that in three streams in the project area, Big Hellgate, Little Hellgate, and Sawmill Hollow, populations of aquatic macroinvertebrates is low, an indication that "the communities are responding to some stressors" (EA, p. 38). The EA admits that one cause could be sedimentation. On p.39, the EA states that the large woody debris component is only 50 pieces per mile, far below the recommended level for cold water streams. The EA fails to disclose the DFC for LWD on other streams. The EA fails to disclose the extent of riparian areas along streams; it instead relies on an arbitrary line that may or</p>	Not specifically addressed.

	<p>may not bear any relation to biological reality (EA, appendix). The EA also fails to provide information on how much sedimentation the project will be adding to the stream; it only discloses that “some” sedimentation will result (EA, p. 41). More significantly, the EA never tells about the status of trout populations in the various streams. The DN/EA fails to acknowledge that poorly laid out sales, poorly logged sales, and increased sedimentation as the result of severe storms can and do impact Arnold Valley. Such information would assist the decision-maker and the public in making informed decisions. The USFS is attempting to go forward with a large-scale project with only scant information about the impact on Wild Trout and other aquatic species.</p>	
Timber Harvesting		
(1)	<p>The decision to allow even-aged logging in an uneven-aged management area is unreasonable. The USFS states that it plans to log the area then convert it to an uneven-aged management area in the next rotation period (EA, p.46). It is unreasonable to assume that the JNF will be operating under the current plan by the time the affected stands mature 80 or 90 years from now. It is therefore questionable whether the affected stands will ever be managed as uneven-aged stands as set forth in the current Forest Plan.</p>	<p>The DN, pages 7 and 8, addresses Forest Plan consistency, Suitability for Timber Management, and Appropriateness of Even Aged Management/Optimality of Clearcutting. The 1992 AVOAA and list of Activities Report is referenced on page 7. In a letter to the mailing list for the EA on May 28, 1996, District Ranger Egen outlined the scoping results and addressed the “silvicultural guidelines” to be used. All methods were addressed in this letter. The EA alternatives include combinations of these methods. Two alternatives (2 and 5) implementing only uneven-aged management were considered. The EA, page 3, discusses the “Purpose of and Need for Action” and refers to the Forest Plan direction and the AVOAA. Forest Plan direction for MA 7 states that uneven-aged management should be used “on areas where other resource considerations justify a reduction in cost effectiveness. This will most likely be in visually sensitive areas along roads, stream protection areas, and for squirrel management.” The “Purpose and Need” statement does not support the requirement of the uneven-aged option for these reasons. Forest Plan direction concerning use of uneven-aged management (p. IV-169) states that “group selection harvests will be</p>
(2)	<p>In addition, the EA would allow even-aged logging of some of the above stands that are below the rotation age of 80 years old (pp. 46-7). This is a clear violation of the Forest Plan. No deviations on the basis of “the principle behind this direction” are allowed (Plan, p.IV-156).</p>	

		initiated in stands that are currently 30 to 80 years of age” (LRMP, p. IV-169) and “stands currently beyond 80 years of age will be harvested first by even-aged methods...” (LRMP, p. IV-170). This direction is followed in the decision (DN, p. 8). I find that the proposed actions in the DN are consistent with the direction contained in the Forest Plan.
(3)	Michael Dombeck, the Chief of the USFS, has been quoted as saying that he acknowledges “that the [USFS] suffers a credibility gap with the public in part because of past logging practices.” When the Glenwood RD says that “reasonably foreseeable actions will be taken from the” AVOAA, it too suffers from a credibility gap. In this decision alone, the USFS plans logging in excess of projects listed in the OAA and even-aged logging in an uneven-aged management area. In the nearby Terrapin Mt. area, logging is proposed in excess of its OAA. This EA considered logging in an area unsuitable for logging (a recreation area). In the GWJNF sites are frequently declared suitable that by all rights ought to be unsuitable due to terrain, poor site quality, below-cost sales, and conflicts with other resources. The appellants are concerned that the future actions listed in the EA are a serious understatement of the reasonably foreseeable actions contemplated by forest planners.	Not specifically addressed.
Wildlife		
(1)	The decision allows killing migratory birds. Migratory birds are known to nest in areas such as the project area and are likely nesting in the areas proposed for logging. However, the administrative record does not indicate how the USFS is going to avoid killing or taking migratory birds while the area is being logged. The USFS fails to respond to this issue (PAW comments and response #42). There are no mitigation measures or standards and guidelines to prohibit logging while migratory birds are nesting. If a tree with an active nest is cut, or an active ground nest is run over, the USFS will be in violation of the MBTA.	The MBTA does not provide the appellant with the right of action to challenge this decision. The enforcement of the MBTA is vested with the USFWS. This agency has the discretion to prosecute the USFS for MBTA violations. Because the MBTA can only be enforced against persons, associations, partnerships, and corporations, then by its own terms the MBTA does not apply to federal agency actions, including the USFS. Furthermore, the court in Mahler v. Thomas (1996) has recently held that timber harvesting activities conducted during migratory bird breeding season on the Hoosier National Forest would

(2)	<p>The USFS normally contends that the MBTA does not apply to timber sales based on <i>Seattle Audubon v. Robertson</i> (1991). The issue raised in <i>Seattle Audubon</i> is not the issue being raised here. The issue being raised in this appeal is the destruction of active nests: cutting down a tree with an active nest in it directly leads to deaths (see <i>U.S. v. Corbin Farm Services</i>, 1978; <i>U.S. v. FMC Corp.</i>, 1978).</p>	<p>not violate the MBTA. I find that the proposed action will not result in a violation of the MBTA.</p>
(3)	<p>The appellants need not prove that there are actual migratory birds present. The USFS must prove that they will not be killing migratory birds in the project area. The EA documents that there are birds present in the area. The USFS needs to determine if there are nesting migratory songbirds in the stands. NEPA and NFMA require the USFS, not the appellant, to document the effects of their actions. Accurate information must be made available to citizens (40 CFR 1500.1(b)). NFMA does not allow even-aged logging methods such as those proposed until the “potential...biological...impacts on each sale area have been assessed” (16 USC 1604(g)(3)(4)).</p>	<p>Not specifically addressed.</p>

APPENDIX F
THE TERRAPIN MOUNTAIN PROJECT

Table 1F

Public Comments on the TMP SN

Category	Commenter					
	AFMG	Steven Krichbaum	PAW	SEDG	Richard Clark	Margaret Diehl
Aesthetics	•	•	•	•	•	•
Alternatives		•	•			
Aquatic Communities			•	•		
Chemicals			•			
Cumulative Effects		•	•			
Ecological	•	•	•	•		
Economics	•		•	•		
Ecosystem Management		•	•			
Environmental Analyses/Documentation		•	•			
Exotic/Invasive Species		•	•	•		
Forest Health	•	•	•	•		
Hydrological			•	•		
Local Communities				•		
Old Growth		•	•			
Public Involvement		•	•	•		
Recreation/Tourism	•	•	•	•	•	
Regeneration	•	•	•			
Riparian Areas	•		•	•		
Roadless Areas		•	•	•		
Roads	•	•	•	•		
Silviculture	•	•	•			
Soils		•	•			
TES/PETS/MIS	•	•	•			
Timber Harvesting	•	•	•	•	•	•
Vegetation			•			
Water Resources			•	•		
Wetlands			•			
Wilderness			•			
Wildlife	•	•	•	•		
The Proposed Action	N/A	-	-	-		

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

Table 2F

Public Comments on the TMP SN

Category	Commenter						
	Bill Gorge	Charles Dideon	Nancy Anthony	Dave Dumonsau	NBATC	TWS	Christine Putnam
Access			•	•	•		
Aesthetics	•	•	•	•	•		
Alternatives				•	•		
Aquatic Communities	•						
Economics	•						
Environmental Analyses/Data Collection	•						
Hydrological		•					
Multiple Use	•				•		
Old Growth							•
Public Involvement	•						
Recreation/Tourism	•	•	•	•	•		•
Roads				•	•	•	
Timber Harvesting		•		•	•	•	
Vegetation			•	•			
Water Resources		•					
Wilderness							•
Wildlife	•						
The Proposed Action	-	-	-	N/A	-	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

Table 3F

Public Comments on the TMP SN from Adjacent Landowners

Category	Commenter			
	Jack Litchford	Richard Lower	Fred Sbarbaro	The Tomlinsons
Adjacent Landownership	•	•	•	•
Aesthetics		•		
Aquatic Communities		•	•	•
Economics			•	
Forest Health		•	•	
Hydrological			•	•
Public Involvement		•		•
Recreation/Tourism		•	•	
Regeneration		•		
Roads			•	
Timber Harvesting	•			
Water Resources			•	•
Wildlife	•			
The Proposed Action	+	N/A	N/A	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 4F

Public Comments on the TMP EA

Category	Commenter						
	R. Kirk Moore	Carolyn Smith	VFW	Sarah Falconer	Jeff Maurer	TWS	Steven Krichbaum
Aesthetics	•	•	•			•	•
Air Quality		•					•
Alternatives				•			•
Aquatic Communities		•			•		•
Ecological	•	•			•		•
Economics	•	•					•
Ecosystem Management		•				•	•
Environmental Analyses/Documentation							•
Exotic/Invasive Species	•	•		•	•		
Geology							•
Hydrological	•	•		•	•		•
Local Communities	•						
Mitigation							•
Multiple Use				•			
Old Growth		•		•	•	•	•
Public Involvement		•					
Recreation/Tourism	•	•	•				•
Regeneration							•
Riparian Areas		•					•
Roadless Areas		•				•	•
Roads				•	•	•	•
Silviculture							•
Soils							•
TES/PETS/MIS	•	•	•	•			•
Timber Harvesting	•	•	•	•		•	•
Water Resources	•	•		•	•		•
Wilderness		•				•	•
Wildlife	•	•		•		•	•
The Proposed Action	-	-	-	-	-	-	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 5F

Public Comments on the TMP EA

Category	Commenter						
	Fred/Susan Sbarbaro	Sandra Elder	PAW	SEDG	SEDG ^a	Daniel Deveson	Martin Albert, M.D.
Access							•
Adjacent Landownership	•						
Aesthetics			•	•	• (40)		
Air Quality					• (5)		
Alternatives	•	•		•			
Aquatic Communities	•		•				•
Ecological	•		•	•	• (18)	•	
Economics	•	•			• (1)		
Ecosystem Management				•	• (5)		
Environmental Analyses/Documentation			•	•			
Exotic/Invasive Species		•	•	•			•
Forest Health				•	• (1)		
Geology							
Hydrological	•					•	
Local Communities							
Mitigation			•				
Multiple Use				•	• (1)		
Old Growth				•			
Recreation/Tourism	•	•		•	• (5)		
Regeneration		•		•			•
Riparian Areas	•						
Roadless Areas			•	•			
Roads	•	•	•	•			
Silviculture				•			
Soils					• (4)		
TES/PETS/MIS				•			•
Timber Harvesting	•		•	•	• (15)	•	•
Vegetation				•			
Water Resources	•		•		• (1)	•	
Wilderness			•		• (5)		
Wildlife		•		•	• (6)		•
The Proposed Action	-	N/A	-	-	-	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

^a SEDG's comment included comments from 111 interested members of the public, which raised a total of 107 issues in 13 categories. These comments will be counted separately.

Table 6F

SEDG's Comments on the TMP SN

Category	Comment	USFS Response
Aesthetics		
(1)	One very steep proposed cut, designated "retention," is located almost on the parkway. How can a 70% overstory removal be considered "retention?"	Not specifically addressed.
Aquatic Communities		
(1)	Since Hunting Creek is classified as a natural and wild trout stream and is used extensively for this purpose by local residents, the proposed logging along an estimated four miles of this creek and its tributaries seems excessive.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Ecological		
(1)	The proposed cuts may be scattered spatially, but are not dispersed with respect to habitat and therefore will not increase stand heterogeneity greatly.	Not specifically addressed. Classified as significant issues to be addressed in the EA.
(2)	This logging proposal, while it may fit into your overall Forest or District Plans, does not represent a sustainable activity at the individual watershed level, nor does it fit into forward-thinking plans for regional protection of biodiversity	
Economics		
(1)	Will income from each unit of the sale offset the costs of analysis, site preparation, and removal of logs from that unit?	Many costs associated with timber sales (such as cost of writing an EA, general administration, site preparation, etc.) simply cannot be valued at the harvest unit level. Purchasers of timber sales do not bid on individual units, but rather bid on estimated volumes within species groups. Thus, it is extremely difficult to determine true costs and revenues on a unit by unit basis. Any analysis would not be meaningful in any event. Units are packaged and sold as timber sales; costs are assessed and revenues are received on that basis. An analysis of the benefits and costs at the timber sale level is adequate to determine economic impacts of the proposal.
(2)	We have particular concern about the expense of the helicopter needed to log the very steep portions of the sale.	Not specifically addressed. Classified as significant issues to be addressed in the EA.

Exotic/Invasive Species		
(1)	What are the risks of invasive plants achieving footholds in interior forest due to the unnatural linear strip of ecological disturbance. Is it meant to mimic a tornado swath?	Not specifically addressed. Classified as significant issues to be addressed in the EA.
Forest Health		
(1)	A visit to the site illustrated that mortality in these supposedly “pathologically mature” trees is in fact quite low, especially compared to many more exclusively oak dominated stands in less productive areas.	Not specifically addressed.
(2)	This year’s gypsy moth population crash will further reduce the projected mortality. We question whether these proposed cuts will move the area in the direction of the DFC, which calls for a “more healthy forest.” We do not agree that a more healthy forest can be completely described by “more young and vigorous trees.”	Not specifically addressed.
(3)	There appears to be a conflict in attempting to achieve both “younger, healthier stands” as well as a “balanced age class distribution.”	Not specifically addressed.
(4)	A healthy forest, meaning more old uncut trees, anchors the soil and prevents erosion, particularly in the sudden drastic downpours to which the region is frequently subjected.	Not specifically addressed.
(5)	If the gypsy moth and oak decline are really threats, older trees should not be eliminated since excess numbers of older trees will be required in order to ever achieve the DFC of an equal age class distribution.	Not specifically addressed.
Hydrological		
(1)	Construction of waterholes should be unnecessary if the numerous streams in the watershed are not damaged by your activities.	Not specifically addressed.
Local Communities		
(1)	The sheer size of this huge sale may result in many locally-owned companies being excluded from the bidding process due to the high costs involved, and the large costs of helicopter rental (or is that paid for by taxpayers?).	Not specifically addressed.
(2)	To what extent are the sales likely to benefit the local economy in a sustainable fashion?	Not specifically addressed.

(3)	If the sale is too large for the District Ranger to grant approval, the sale is too large. Let's keep the specifics of management decisions at a local scale.	Not specifically addressed.
(4)	We respect the rights of the local citizens to use this area for sustainable hunting and fishing, and feel that this proposal interferes with that right.	Not specifically addressed.
(5)	The excessive logging proposed in this watershed threatens the ability of the area to provide for the multiple uses the citizens of the region enjoy.	Not specifically addressed.
Public Involvement		
(1)	We apologize for these comments arriving to you several months beyond your deadline; however, we did not receive the notice until mid-September and a staff member at your office told us that there had been delays in the preparation of the EA. Hopefully these comments arrive in time for you to consider them.	Not specifically addressed.
(2)	Considering that the Jefferson is currently undergoing a revision of its guiding Forest Plan, taking actions on this scale to alter conditions is unwarranted since the public has not yet had a chance to provide input for the future of this and other areas.	Not specifically addressed.
Recreation/Tourism		
(1)	The proposed logging threatens the scenic enjoyment of the many tourists bringing large quantities of revenue into the region (far, far more than that brought by logging).	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	An overlook on the Blue Ridge Parkway entitled "Terrapin Mountain Overlook" will permit viewing of several of the logging units and will not portray the tourists' idea of a "healthy, vigorous forest." They may choose to spend their vacation elsewhere. Not that we will miss the tourists, but many locally owned businesses will suffer if this happens.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	The watershed is valuable to many local hunters who appreciate it for the relatively undisturbed habitat it provides for bears. We question the compatibility of large industrial logging with these historical usages. The very name of the saddle above the watershed is "Camping Gap," illustrating the importance of dispersed recreation in the area.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.

Riparian Areas		
(1)	The riparian strips that remain will be made susceptible to windthrow, with consequent negative impacts on water temperature due to lack of shading. These effects will contribute to the increased inhospitality of the aquatic environments for trout.	Not specifically addressed. Classified as a significant issue to be addressed in the EA (Issue Statement 21).
Roadless Areas		
(1)	This watershed serves as an insulating buffer protecting the large roadless area to the north and west, which is perhaps the largest and most effective biodiversity reserve in the Glenwood District.	Not specifically addressed.
Roads		
(1)	Please verify that a “linear wildlife strip” is not a funny name for a road.	Not specifically addressed.
(2)	Don’t reopen old roads, “temporary” or not. Reopening them demonstrates that in fact these roads are not “temporary” and will continue to be used for extractive industry, further fragmenting the forest. Use the existing open roads for logging.	Not specifically addressed.
(3)	Our group would propose that the Hunting Creek watershed be protected from further road-building and logging except as necessary to benefit wildlife (not likely, considering the availability of early successional private land in the area).	Not specifically addressed.
Timber Harvesting		
(1)	From the map provide, it appears that proposed cuts will occur in areas with up to 80% slope. Please verify that these sites are indeed “suitable for timber production.”	Determination and identification of lands suitable for timber production was verified by the White Oak Ridge Opportunity Area Analysis. This was clearly stated in the scoping letter of May 20. This issue is beyond the scope of this analysis. Rather than amass needless detail by listing this issue as significant, this issue has been made non-significant but will be addressed pursuant to Forest Plan direction.
Water Resources		
(1)	Nearly every significant tributary to Hunting Creek is graced with a proposed cut either across it or adjacent to it. Sedimentation and flow volumes will increase, possibly to unacceptable levels, and altering the stream environment to an unknown degree with unknown effects on habitat.	Not specifically addressed. Classified as a significant issue to be addressed in the EA (Issue Statement 21).

Wildlife		
(1)	The DFC for a wild turkey area such as this calls for 15-20% of the forest in old growth. By removing any of the older trees in the watershed, you greatly lower the chances of achieving this goal, even given 30 or more years.	The purpose and need of the proposed timber harvest as stated in the scoping letter of May 20 does not include creation and/or maintenance of turkey habitat. However, it is true that some of the similar or connected actions analyzed in this project would benefit turkey (e.g. digging of waterholes, maintenance of linear strips, and creation of grass/forbs habitat). It would be more appropriate to say that the proposed timber harvest would comply with Forest Plan Standards and Guides regarding the management of turkey habitat.
(2)	In the JNF Forest Plan, IV-21, it says that barred owl populations (we heard one individual the night we stayed there) will increase due to logging in riparian areas. How will reducing four miles of riparian areas to strips of windthrow-susceptible trees benefit the species?	Not specifically addressed.

Table 7F

SEDG's Comments on the TMP EA

Category	Comment	USFS Response
Aesthetics		
(1)	In this sale, timber management requirements and VQOs are incompatible; they cannot simultaneously be met by harvests in the visually sensitive units of this proposal.	Alternatives 4 and 5 meet VQOs for the area and Alternative 3 can be slightly modified to do so.
(2)	The EA's statement that the visibility of the Big Island paper mill and private residences in the lowlands is not consistent with feelings of remoteness and solitude is absurd. Does the experience of these feelings represent a denial of the fact that there is a modern, "civilized" world out there? Does seeing and being aware that there is in fact a world we need an escape from make that escape impossible, or unfulfilling?	Not specifically addressed.
(3)	The contrast between the industry and residences "in the lowlands" and the solitude found sitting on a rock on Terrapin Mountain, or walking the ridge trail, or sitting on a quiet rock in the middle of Hunting creek, or even walking up FDR 45 to Camping Gap under a full moon rising over Terrapin puts the issue of our need for such places into even greater perspective. The knowledge that one can be within sight of that which we flee, and yet through the miracle of mountains, be mercifully alone and at peace with the natural world immediately around us, is perhaps one of the most valuable experiences we might have in our public lands.	Not specifically addressed.
Alternatives		
(1)	There appears to have been an <i>a priori</i> selection of stands to be logged. These stands are compatible with the formulation of the preferred alternative, but do not make sense as a basis for the formulation of reasonable plans to address unresolved conflicts surrounding the proposal.	Formulation of the proposed action was based on the list of potential projects identified in the White Oak Ridge Opportunity Area, the acres of land suitable for timber production in the area, stand age, and distribution of previous harvests. All of these parameters limit what stands could be proposed. The scoping letter of May 1996 identified all of the stands that occupied suitable lands, were of the proper rotation age, were not directly adjacent to recent harvests, and would

		not violate the Forest Plan in terms of the acres of 0-10 year old stands in an analysis area or acres not yet reaching 20% of height of the surrounding forest. In short, there are very few options for managing other stands in the area at this time given the Forest Plan Standards and Guidelines.
(2)	Alternative stand selection could have created a reasonable alternative to avoid the proposed “wild land area” that would essentially be equivalent to the no-action alternative. The “attempt” to formulate an alternative allowing horse-logging could have done the same.	Refer to paragraph 3 of page 14 in the EA regarding the elimination of a horse logging alternative. Most of compartments 3046, 3047, and 3048 is simply too steep, rugged, and far from road access to utilize horse logging.
(3)	There is no explanation given as to why the stands chosen in the preferred alternative meet the purpose and need of the project while other stands that could result in other alternatives being viable do not! The project violates NEPA and NFMA because a broad range of alternatives was not identified.	The detailed analysis of five alternatives and consideration of approximately 10 alternatives or alternative components before eliminating them from detailed study constitutes an adequate range of alternatives that meet the purpose and need for this project.
(4)	The “attempt” to formulate an alternative respecting the roadless characteristics of Terrapin Mountain could have selected stands north of Hunting Creek that don’t require helicopter logging. Alternative stand selection could have created a reasonable alternative not essentially equivalent to the no-action alternative. The stands to be logged by helicopter north of Hunting Creek weren’t specified in the White Oak Ridge Opportunity Area Analysis anyways, so the USFS had the freedom to choose other stands had it so desired.	Not specifically addressed.
(5)	It is not stated in the EA why Alternative 4 is not the preferred alternative, despite that it responds to more of the significant issues than any other action alternative. At any rate, once again it seems that some flexibility in the stands to be treated (rather than just working off the stands selected for the preferred alternative) could have resulted in the crafting of a proposal that would have addressed whatever issues resulted in your not selecting Alternative 4.	Not specifically addressed.
(6)	It is meaningless to go back and attempt to formulate additional reasonable alternatives, operating only within the subset of stands selected for the purpose of the proposed alternative. You have	Not specifically addressed.

	<p>imposed impractical and unnecessary constraints on the formation of other alternatives, by requiring that they all attempt to do, as best as they are able, what the preferred alternative does. You have thus unfairly biased the process towards the preferred alternative.</p>	
Ecological		
(1)	<p>The proposal was found by the EA to have negative consequences on biodiversity, both of plant species and of canopy structure. The reduction of structural diversity will cause a consequent decline of animal biodiversity, particularly of bird species. What is perhaps even more important is the high vegetative diversity in the cove and riparian units. The EA states that two very invasive exotic species would impact native biodiversity in the area. The reduction of biodiversity is a violation of NFMA 36 CFR 219.27(g).</p>	<p>The citation provided by the commenter from the NFMA Regulations is incomplete; this paragraph states “Management prescription, where appropriate and to the extent practicable, shall preserve and enhance diversity...Reductions in diversity of plant and animal communities...may be prescribed only where needed to meet overall multiple use objectives.” The Terrapin Mountain activities are needed to meet multiple use objectives. The impacts to biodiversity have been disclosed in the EA. The overall viability of species is not adversely impacted. The project complies with 36 CFR 219.27(g).</p>
(2)	<p>Due to the inappropriate equating of interior forest to mature forest, and due to improper spatial scales of analysis, you have not performed a site-specific analysis for the effects of this proposal on NTMBs or any other interior-dwelling wildlife. Reliance on adjacent private lands to provide connectivity is questionable. High vegetative diversity in the coves provides more niches for such species than simpler forest stands on less productive sites. The large analysis area appropriate for bear is not appropriate for NTMBs as it completely masks the impacts. The proposal violates the Forest Plan (p. IV-64) by not maintaining or increasing viable populations of all native species.</p>	<p>The EA stated the rationale for equating mature forest and interior forest for the purpose of the analysis in paragraph 2 of page 43. Regarding reliance on private lands to provide connectivity, no such statement is made in the EA. We are not relying on private lands to provide connectivity. While these actions may have adverse impacts on some interior forest dwelling species, the viability of populations is not endangered; adequate amounts of mature forest in large blocks would remain in the area (EA, pages 65 through 74).</p>
(3)	<p>The EA states that “diversity of canopy structure would be reduced in all stands.” Canopy structure diversity is well known to exert a strong influence on the diversity of bird and other animal species.</p>	<p>Not specifically addressed.</p>
Ecosystem Management		
(1)	<p>The proposal and the analysis of the proposal violate Forest Plan direction and ecosystem management philosophy regarding the distribution of forest age-</p>	<p>The EA does incorporate ecosystem management principles. Comments regarding ecosystem management and the Forest Plan are beyond the scope of</p>

	classes over the various forests in the area. The neglect to follow the directive of ecosystem management constitutes a violation of the APA.	this analysis.
Environmental Analyses/Documentation		
(1)	In our opinion, an action of this scale in this location necessitates the preparation of an EIS pursuant to NEPA Regulations at 36 CFR 1508.27 due to: (1) proximity to historic or cultural resources, park lands, prime farmlands...ecologically critical areas; (2) effects are likely to be controversial; and (3) represents a decision in principle about future considerations	The commenter's citation from the NEPA regulations falls under the discussion of significant impacts. The reasons cited provide guidance on determination of significance of effects. The mere presence of one of these factors does not require an EIS, the action must have a significant impact on one or more of these factors. This determination of significance is made by the Deciding Official and is documented in a FONSI. Determination of significance is not made in the EA, but the EA provides information upon which the determination of significance/non-significance is based. The EA provides adequate information for finding that the Terrapin Mountain project would not have a significant impact on any of the factors cited by the commenter and more detailed information on this subject is provided in the FONSI. One final note: the "highly controversial" refers to controversy surrounding impacts (i.e. disagreement in the professional/scientific arena regarding the estimation of effects) and is not to be confused with controversy in the context of public debate or contention.
(2)	The implementation of the proposal would have significant impacts on the human environment, and its effects must therefore be documented in an EIS.	Not specifically addressed.
(3)	The USFS has not duly considered the relative values of the resources in the Terrapin Mountain area, and is prepared to embark on a course of action that would not best meet the needs of the people. The Glenwood District has many large areas on which timber production takes a high priority, and few of any size on which recreation is considered more important and the interfering effect of industrial operations is considered.	Not specifically addressed.

	(4) The RPA and NFMA state in 16 USC 1603 that the USFS “shall develop and maintain on a continuing basis a comprehensive and appropriately detailed inventory of all National Forest System land and renewable resources. This inventory shall be kept current so as to reflect changes in conditions and identify new and emerging resources and values.” The directive here to be responsive to changing values would be broken by this project that would perpetrate inappropriate activities in an area that has been reasonably proposed to be kept primitive and natural, at a time during which a reevaluation of land use on the JNF is occurring.	Not specifically addressed.
Exotic/Invasive Species		
	(1) The EA states that <i>Ailanthus altissima</i> (tree-of-heaven or paradise) and <i>Paulownia tomentosa</i> , two very invasive exotic species, are found in many past regeneration cuts in the area. “An opportunity for increased numbers of paradise and paulownia would occur on approximately 160 acres...the native biodiversity of the area is adversely impacted by the presence of these species.”	Not specifically addressed.
Forest Health		
	(1) If part of the desired future condition for this area includes regenerating “pathologically mature” oak forest, and this activity would meet the other DFCs for the area equally well (sustained yield of forest products, more balanced age-class distribution), why is the majority of harvesting in cove sites, which are very healthy and in no danger of decline?	Not specifically addressed.
Multiple Use		
	(1) In our opinion, this proposal is in violation of the MUSYA. 16 USC 529 states that “due consideration shall be given to the relative values of the various resources in particular areas.” 16 USC 531 states that “ ‘multiple use’ means management in the combination that best meets the needs of the American people, making the most judicious use of the land for some or all of these resources. Some land will be used for less than all of the resources.”	Not specifically addressed.

Old Growth		
(1)	The proposal would not result in the protection of old-growth components across all forest types in the project area.	Please refer to the response to issues 10, 69, and 70 above regarding old age stands.
(2)	There is an unresolved issue involving old age stands and the older stands that must be allowed to mature into old-age stands if this habitat component is to persist. The reference in the response to this issue to the balanced age-class distribution specified in the Forest Plan does not adequately address this issue. This proposal appears not to meet either Forest Plan direction or ecosystem management philosophy; nor is the Forest Plan old-growth policy consistent with ecosystem management philosophy.	Not specifically addressed.
Recreation/Tourism		
(1)	Implementation of the preferred alternative would have many negative impacts on recreation and aesthetics in the project area. The following impacts on recreation experiences and visual quality would result from the implementation of the project.	Significant issues identified these concerns, and the impacts are disclosed in the EA.
Regeneration		
(1)	The EA states that “approximately 30 to 40 acres of regenerated forest [in the cove forests] may not develop to maturity with desirable tree species...” due to the residual canopy that must be left to mitigate visual impacts. It goes on to state “this is also a concern on the upland sites, but...they have a better chance of developing to maturity.” These stands in which there is a strong likelihood of not regenerating a “desirable” stand encompass almost all the harvests in the proposed wildlands area and in the visually sensitive area. This would conflict with Forest Plan Standards on page IV-24, which state that timber management will promote favored tree species.	We do not agree that the statement cited from the EA under Alternative 5 constitutes a violation of the Forest Plan. The same paragraph of the EA states that the stands would be fully regenerated within 5 years. This meets the intent of both NFMA and the Forest Plan. Furthermore, the operative word in the quoted statement is “may.” We have had little experience with such heavy residuals stands in shelterwood with reserves treatments and little or no research has been performed on such harvest treatments. This statement is made based upon the shade intolerance of yellow poplar. However, several stands that had previously received salvage harvests from the era of the chestnut blight do contain yellow poplar poletimber under a fairly dense overstory. It is equally possible that the regenerated poplar would do just fine under this dense canopy. Finally, since no shelterwood with reserve harvest treatments that leave a heavy residual would result from the selection of Modified Alternative 3, this comment is no longer applicable.

Roadless Areas		
(1)	Implementation of the proposal at this time is inappropriate due to the potential inclusion of Terrapin Mountain in an inventoried roadless area, a matter under current investigation by the JNF Plan revision.	See the response to non-significant issue 28 in Appendix A. The Forest has recently completed an in depth analysis of inventories regarding roadless areas and the various proposals for the Terrapin Mountain/Camping Gap area were eliminated from consideration, as explained on page 95 of the EA. Therefore, no violation of RPA or NFMA would result. Many areas could be made into roadless areas by closing roads. Whether or not this area should be designated as Wilderness or other special designation will be decided in the Forest Plan revision process. The proposed action does not preclude such a designation.
(2)	The proposed project is incompatible with potential roadless designation of the Terrapin Mountain area - timber harvests and road construction <i>do</i> impact natural integrity and feelings of remoteness and solitude, and that is why they aren't allowed in wilderness. Whether or not such activities would strictly disqualify the area for consideration is not the point. If the area is appropriate for designation, these activities shouldn't take place at all. And that question is still not settled.	
(3)	There are two means by which Terrapin Mountain might be considered eligible for inventoried roadless area designation. One would be the consideration of only Terrapin Mountain (i.e. the area east of FDR 45). This would leave an unroaded area that is larger than at least one designated inventoried roadless area (Dismal Mountain) on the GWNF. Another is the closing and obliteration of FDR 45 from Camping Gap to the next gate in the direction of White Oak Ridge. This would improve conditions in the area for the "featured species," turkey, and restore connectivity between Terrapin Mountain and Camping Ridge, and then on to the Thunder Ridge area. Very viable roadless area would be created, and access to points further down FDR 45 would be preserved by way of the parkway.	
(4)	The RPA and NFMA would be violated in relation to developing and maintaining comprehensive inventories of all NFS lands.	
Roads		
(1)	One mile or less of open roads or motorized trails per 1280 acres should be allowed in designated turkey habitat (FP IV-68). The area has one mile per 731 acres now. According to the Forest Plan, existing open roads will be closed if a conflict with wildlife or management area direction established	The impact of the Terrapin Mountain activities on open road density are disclosed on pages 57 through 74. The analysis indicates that open road densities are excessive. The EA also states that very few open roads are under the jurisdiction of the USFS, and many roads that are under USFS

	for the area occurs (FP IV-94). Since the proposal of installing new traffic control structures on this road is already considered necessary and has been proposed in this project, it would not appear to be beyond the scope of this project to actually close the road permanently at a point which would allow meeting this open road density standard for wildlife and would enhance remoteness values in the area.	jurisdiction cannot be closed because they provide access to private land. There is simply little to no opportunity for the USFS to reduce this density. However, since no additional open roads would be created as a result of these activities, the existing situation would not be made worse as a result of these actions (paragraph 4 of page 61, similar paragraphs for other alternatives.
Silviculture		
(1)	The proposal would not result in balanced age-classes across all forest types in the project area.	Please refer to the response to non-significant issue 20 in Appendix A in response to Forest Plan definitions of balanced age classes. In response to the comment on age class distribution on suitable lands and/or by forest types, we disagree that this information is more important than overall age class distribution. A balanced age class distribution is primarily a wildlife related concern (Forest Plan, pg. IV-66), although it is also related to maintaining an even flow of products for society. Suitability for timber production is not solely based on site Productivity, but on accessibility, marketability, and other management area considerations. Thus, highly productive sites do exist that are not considered suitable (e.g. in the Apple Orchard Falls Special Management Area and in inaccessible areas across the District). Wildlife species do not know or care about the boundaries of lands suitable for timber production. Age class distribution on these lands alone is meaningless to wildlife species. The overall age class distribution is much more meaningful in terms of impacts to wildlife and this is what is presented in Table I1 on page 54 of the EA. As far as forest types are concerned, the computer runs from the CISC database upon which age-class distributions were based does display this information by Forest Type. This information is included in the project file. It is very difficult to balance age classes across forest type in such a small area simply because the forest types themselves are not equally represented in such an area. However, the commenter's primary concern that the rich coves are being skewed toward

		younger age classes is not substantiated by the data contained in the project file.
(2)	<p>The EA does not disclose what age classes the other reasonably foreseeable cuts are (70 acres overstory removal from a previous shelterwood cut, 50 acres shelterwood proposed here followed by removal, and a 10 acre clearcut), but the 107 acres of 91-100 year old forests being logged that are disclosed represent a major step towards the elimination of the 91-100 year age class on suitable lands (which are a good approximation for rich biologically diverse forest lands). The EA does not give the resulting age-class distributions for suitable land (although certainly this data is more important than the age-class distributions on total acres, both from the perspectives of timber supply and of rich and productive plant and wildlife habitat), but information from the White Oak Ridge Opportunity Area Analysis shows that simply discounting the loss in that age class that is disclosed here results in only 3% in that class. The discussion on p.54 of the EA appears to indicate that 100 acres of old-age stands will be harvested in the foreseeable future, but it is unclear whether that is within the analysis area over which the age-class distribution is computed or not. At any rate, even if you do not intend to harvest old-age stands in the project area, maintaining old-age stands will necessitate that you allow some forests to become old.</p>	Not specifically addressed.
TES/PETS/MIS		
(1)	<p>We are concerned that the extent of potential impacts of the proposal on PETS species was either not thoroughly investigated or was inadequately documented. We are concerned that the field survey was not extensive enough to determine conclusively the presence or absence of PETS species and suitable habitat. Why were no TES taken into account? Why were all but the sanicle dropped from detailed consideration?</p>	<p>Field surveys were performed in all stands during the active growing season when PETS or unique habitats would be readily evident. The Division of Natural Heritage and the Regional Forester's list of PETS species were consulted. The impacts to the Indiana bat were analyzed and documented in an amended BE and additional documentation was added to the EA after the 30 Day Notice and Comment period began. No other TES are known to exist in the area of the Terrapin Mountain project. All PETS but the sanicle and the Indiana bat were dropped because either their range and/or habitat is well known and does</p>

		not involve the Terrapin Mountain area or because field surveys did not find the species. The BE is adequate for determining the impact on PETS species and disclosure in the EA is appropriate.
(2)	The impacts of the preferred alternative on MIS are not presented in the context of population trends of these species and do not follow general Forest direction for desired impacts on these populations. Population trends of all MIS shall be monitored (Forest Plan, IV-65).	The impacts to MIS are presented on pages 70 through 74 of the EA. Several MIS impacts are disclosed in much greater detail in the preceding wildlife analysis. Trends of populations are disclosed in narrative form (i.e. “bear would not be severely impacted,” “This alternative would benefit this species,” “This action would not benefit this species,” etc.). The citation presented from the Forest Plan discusses monitoring of MIS, which is performed at the Forest level and is beyond the scope of this site specific analysis. Furthermore, the Forest Plan does not require population data to analyze the impacts on MIS. The qualitative information disclosed in the EA is sufficient to determine the relative merits of the various alternatives and their impacts on MIS.
(2)	The Plan states that pileated woodpecker populations should increase by 5% from 1985-1995, and that barred owl and bear will at least remain steady (FP IV-20). This proposal appears to be in conflict with those goals.	The statements in the Forest Plan regarding population trends of pileated woodpecker, barred owl, and bear are taken from the Effects of Management Direction on the Forest Resources section of the Forest Plan and disclose the forest-wide effects expected as a result of the Forest Plan management emphasis. They are not intended as Standards and Guidelines to be met on every acre. Indeed similar quotes from the same page reveal that deer and turkey populations are also expected to increase. Obviously all of these populations cannot increase on the same acre, or even the same stand, since they require different habitat conditions. The commenter has misunderstood the intent of the discussion on page IV-21 of the Forest Plan.
(3)	The EA states that populations of bear, pileated woodpecker, and barred owl would be negatively impacted by this proposal. But no population data on these or other MIS is presented. The utility of MIS is lost if they are not monitored, and their populations not considered in a framework of adaptive management. How can the negative	Not specifically addressed.

	impact predicted on these MIS be evaluated without this data?	
Timber Harvesting		
(1)	We are concerned that the cumulative timber harvest in the area will be excessive if the proposal is implemented and the reasonably foreseeable cuts are made. The regenerated area south of unit 3047/9B and possibly other proposed cuts have not reached 20% of the height of the tallest adjacent stand at the time of silvicultural examination, and therefore may still be considered an opening (FP, IV-171). More than one-third of a single square mile being in the 0-20 age class. This would violate Forest Plan Standards and Guides.	The height of trees adjacent to the regenerated unit identified by the commenter (compartment/stand 3047/7) is approximately 100 to 110 feet. Twenty percent of 110 feet is 22 feet. Existing regeneration in compartment/stand 3047/7 is taller than 22 feet. A similar situation exists in compartment/stand 3047/10 which would be adjacent to proposed harvest in 3047/12. One square mile equals 640 acres; 1/3 of this area would be 211 acres. The largest number of acres in the 0-20 age class within any square mile under Alternative 2 (the alternative that contributes the most to the 0-10 year old age class) would be 120 acres. Thus the original proposed action, and all action alternatives, comply with this standard. All of these constraints are considered when formulating a proposed action and alternatives to the proposed action.
(2)	The proposal is in violation of NFMA, which states in 16 USC 1604 that even-aged harvests should only be implemented where an assessment has been made of “the consistency of the sale with the multiple use of the general area” and where “such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources...”	Not specifically addressed.
(3)	Cutting adjacent to regeneration units that are still considered “openings” is a violation of the JNF Plan requirement for a 330 foot separation between openings.	Not specifically addressed.
Vegetation		
(1)	Although this is not documented anywhere in the EA or BE, many of the units are very rich in both herbaceous and woody plant species. A quick tour of a couple of these units revealed <i>Orchis spectabilis</i> , <i>Polygonatum canaliculatum</i> , and several other not commonly seen species.	Not specifically addressed.
Wildlife		
(1)	No protections are provided to guarantee that migratory birds will not be killed by logging during their nesting	Please refer to the response to non-significant issue 23 in Appendix A. Additionally, one of the court rulings

	<p>seasons. Despite the response to this issue given in the EA, two recent court rulings have found violations of the MBTA by USFS logging plans, according to the May/June 1996 issue of <i>Inner Voice</i>, the AFSEEE journal. A May 8, 1996, ruling in a federal district court in Georgia found the USFS in violation of the MBTA for allowing logging during the nesting season. A case in Illinois the year before made a similar finding regarding the mortality of migratory birds consequent to logging during the nesting season.</p>	<p>the commenter has cited was recently overturned in appeal. On April 29, 1997, Judge Hull's decision in Georgia was reversed. The 11th District Court ruled that the "MBTA does not apply to the federal government."</p>
(2)	<p>The proposed sale appears to be in violation of the MBTA, since no provisions are given in the EA to reduce damage to migratory birds during nesting. 16 USC 703 states that "unless and except as permitted by regulations...it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill...any migratory bird, any part, nest, or egg of any such bird."</p>	

Table 8F

SEDG's Administrative Appeal of the TMP DN/FONSI

Category	Appeal Issue	ADO Response
Aesthetics		
(1)	The proposed Terrapin timber sale shows an arbitrary and capricious lack of concern for protecting the area as a vital visual resource.	The EA discloses the effects upon the landscape and visual resources in the viewshed of the Blue Ridge Parkway. The visual resources are discussed in
(2)	The question of visual impacts has been central to the controversy over the timber sale: Public comments in the NEPA process, gathered on the Blue Ridge Parkway, and delivered at the public demonstration at the Glenwood office all made the beauty of the area a central focus. No one wants to see the breath-taking face of Terrapin Mountain scarred by reconstructed road and harvest units.	the issues, alternatives, and effects section of the EA. The DN/FONSI also discusses the visual quality of the area. Full consideration of the visual resource in each step of the process and in each document was found in the project file. Six alternatives were considered in the EA. With the exception of the one alternative that was “considered but eliminated from detailed analysis,” all alternatives examined and addressed the
(3)	Objections raised by the Park Service have not been fully and meaningfully resolved; changes to this specific project have been addressed, but disparities in definitions have not. A conflict remains between USFS and NPS definitions of visual quality for Terrapin Mountain (and other lands in the Parkway viewshed).	visual resource and related mitigation measures. The DN modified the preferred alternative (Alternative 3) to ameliorate impacts to the visual resource and to assure that the VQO of the Forest Plan was met. This modification was made largely to meet the Park Service’s expressed concerns and, as a result, they have agreed that the project will not adversely affect the view from the Parkway. This change and the reasons for it are documented in Appendix A - Addendum to the EA, on page 125.
(4)	The USFS’s unwillingness to completely drop unit 3047/12, despite requests from the public and the NPS, constitutes another violation of law and the public trust by emphasizing timber harvest over visual values and other multiple uses.	The EA, pages 88-94, addresses the environmental effects of the alternatives with regard to the visual resource. A detailed visual analysis was completed for each of the alternatives in terms of direct, indirect, and cumulative effects. I find that the project EA and DN adequately meet the requirements of the MUSYA, the VQOs of the Forest Plan, and the agreement between the USFS and the NPS on management of National Forest lands as seen from the Blue Ridge Parkway.
(5)	The proposed project is a gross violation of the long standing “Statement of Policy Governing Blue Ridge Parkway Recreational Development within National Forest or Purchase Unit Boundaries” November 1945, signed by the Forest and Park Services, which states that: the Forest Service in managing its land adjacent to the Parkway will consider the presence of the Parkway and will take whatever steps seem necessary and in the public interest to protect the scenic and inspirational values...[The Forest Service will] manage National Forest land, in proximity to the Blue Ridge Parkway and in full view there from, so as to maintain an interesting and attractive landscape.	

Alternatives		
(1)	All the alternatives suggested in the EA, excluding the No Action alternative, propose activities focused on timber harvest and wildlife management, yet these alternatives systematically exclude road closure as an action alternative which would follow the directive of the POS CA and the Forest Plan's DFC for wild turkey (the featured species in the area). Thus, the EA considers a limited range of alternatives in violation of the NEPA.	The purpose and need for the proposal is disclosed on page 2 of the EA as: "Overall, the purpose of the regeneration activities (shelterwood) is to provide wood and fiber for society while maintaining a healthy and vigorous forest..." Alternatives you suggest would not meet the purpose and need. The Alternatives Eliminated from Detailed Study section of the EA acknowledges consideration of other alternatives and why they were not studied in detail (EA, P. 14). I find that an adequate range of alternatives under the NEPA was considered in the EA.
(2)	An amendment to protect recreational and visual qualities of the Terrapin Mountain area in the Forest Plan should not be excluded from the possible range of alternatives.	
(3)	The alternatives for the Terrapin Mountain sale should include year-round closure of FDR 45 at the Hunting Creek Trailhead or at Camping Gap.	
(5)	The EA explains that "only about 9.5 miles of open road is under USFS jurisdiction, and only about 2.5 miles of that could be closed" (EA 58). In spite of this admission, no alternative includes closure of those 2.5 miles to come closer to the DFC for wild turkey, while other projects, such as creation of a linear wildlife strip and digging of waterholes are for the purpose of improving wild turkey DFC. Closing these 2.5 miles of road is a feasible, practical, reasonable alternative.	
(6)	Consideration of road closures to meet DFC and the POS CA could go beyond roads under USFS jurisdiction. The failure to do even the minimum in exploring alternatives for this project constitutes a gross violation of NEPA.	
Cumulative Effects		
(1)	Even if the POS does not exist directly within the project area, indirect impacts to the species must be considered in the EA as part of cumulative impacts since the Terrapin Mountain area proposed timber cutting units are adjacent to the Primary Conservation Area for the POS (CA maps). The EA does not adequately consider and fails to disclose direct and indirect impacts to the POS, and thus, cannot support a FONSI.	The EA discloses that the project would have "no impact" on the POS (EA, pp. 70-72). This is based on the location of the project in comparison to the limited distribution of this species for which the effects determination was made. Effects to the species were not considered in detail in the BE. I find that the direct, indirect, and cumulative impacts to this species were appropriately disclosed in the EA and the BE.

(2)	<p>The project proposal does not analyze direct, indirect, and cumulative impacts for the entire project area. Throughout the EA, the project area is defined to include varying quantities of land held in private ownership; however, the explanation of possible future activities on private lands in the EA is lacking. Federal law clearly states that analysis for cumulative impacts and indirect effects must occur, regardless of land ownership (NFMA at 40 CFR 1508.7; FSH 1909.15).</p>	<p>The EA contains extensive documentation of cumulative effects analysis (pp. 29-30, 38-39, 54-56, 72-74, 83, 87-88, 94, 102-103, 104, 107), and the discussion on Indiana bat includes extensive disclosure of cumulative effects on pages 74-81. I find that the effects were adequately considered and disclosed in the EA per the NEPA.</p>
(3)	<p>The EA as it stands now relies on aerial photos instead of research into surrounding land ownership, zoning laws, and development plans. The EA presents no record of discussion with residents and county planning officials to analyze the full scope of cumulative and indirect effects.</p>	<p>Not specifically addressed.</p>
(4)	<p>As stated in NFMA regulation 40 CFR 1508.8(b), "indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." Consideration of these elements is entirely lacking for this EA; thus, for example, the consideration of private land in the EA's section on cumulative impacts to Black Bear habitat is based on a false assumption that land use in these areas will remain static (EA 41).</p>	<p>Not specifically addressed.</p>
(5)	<p>The appellants are concerned that the 10 year time frame for considering cumulative effects to vegetation, recreation, and visual quality (EA 40, 89, and 95) is not nearly long enough. The EA mentions that old cutting units, ranging in age from 6 to 34 years are present in the project area. All of these areas are still visible from the Blue Ridge Parkway and from the recreational trails in the Terrapin Mountain area. The forest floor in even the oldest units has not regenerated levels of plant diversity found in the mature, cove forests (see video in Appendix II). A longer cumulative impacts period must be considered to fully comply with NFMA.</p>	<p>Not specifically addressed.</p>

Ecological		
(1)	The BE and EA's consideration of biodiversity for the project is completely inadequate for a sensitive, biologically-rich areas such as Terrapin Mountain. The appellants are concerned that several plant and animal species dropped from consideration in the BE may actually be present in the area.	The District disclosed the effects to biological diversity by addressing effects to: (1) broad forest vegetation and successional classes (EA, pp. 39-56); (2) old-growth forest communities (in the vegetation effects analysis); (3) fragmentation and interior habitats (in the vegetation effects analysis); (4) MIS and featured species (EA, pp. 56-74, effects to wildlife); (5) habitat for migratory birds, including interior habitats (in the wildlife section); (6) TES and USFS sensitive species (EA, pp. 74-83, BE); and (7) aquatic resources and riparian habitats (EA, pp. 30-39). I find that the effects to biological diversity were properly disclosed and that the biological elements that were analyzed were appropriate measures of diversity.
(2)	The reduction of biodiversity is a violation of NFMA regulations (36 CFR 219.27(g)). An admitted loss of biodiversity will occur as a result of this proposal, to the end not of a range of multiple-use objectives, but of the single overarching objective of timber production.	
(3)	The analysis of the proposal on interior-forest dwelling forest creatures is flawed by using mature forest and interior forest interchangeably. The EA's statement that blocks mature hardwoods would not be isolated from one another in the broader context of surrounding lands does not address cumulative impacts on interior forest resources.	The effects analysis regarding interior habitats was provided and discussed in the vegetation effects and wildlife effects sections. An effects analysis was conducted and addressed issues connected to these species and their habitats. The interior species addressed in the EA are not TES. NEPA significance relates to TES. I find that the analysis and effects disclosure in the EA supports the FONSI and that an EIS is not necessary or required.
(4)	The issue at stake in considering interior forest habitat is the impact of edge effect and fragmentation on populations of interior forest dwelling species. The maturity of trees in an area is often also an important habitat component for these species; however, the cumulative impacts on interior forests must consider a spatial analysis rather than an age class distribution. Edge effects and fragmentation are measured in three-dimensions – their cumulative impacts extend hundreds of feet into the surrounding forest – not as a straight line (i.e. 5.5 miles of edge habitat would be created in the preferred alternative – EA 48). Thus, again, the EA's cumulative and indirect impacts findings cannot substantiate a FONSI, and therefore are in violation of NEPA and NFMA. An EIS is therefore required for this project to continue.	

Economics		
(1)	No consideration was made in the DN/FONSI or EA to justify the value of timber harvest over the relative and economic value of scenic beauty and visual quality in this area.	Not specifically addressed.
Exotic/Invasive Species		
(1)	The EA admits that Paradise (<i>Ailanthus altissima</i>) and Paulownia (<i>Paulownia tomentosa</i>) are expected to occupy the proposed units after harvest. Further, the EA states, “while these trees are living in the stands, they do occupy resources that would otherwise be used for native species. Thus, the native biodiversity of the area is adversely impacted by the presence of these species” (EA 47). In spite of this, the EA purports that “the presence of these species is not expected to adversely impact regeneration of the stand to desirable species” (EA 27). The USFS here is improperly privileging desirable tree species over native plant biodiversity; since desirable tree species could regenerate in these stands, cumulative impacts are deemed insignificant despite the stated and obvious harm invasive exotic species would do to PETS habitat on Terrapin Mountain.	Not specifically addressed.
Multiple Use		
(1)	The propose project violates Forest Plan direction and the MUSYA by emphasizing timber harvest over visual quality, recreation, and other multiple uses.	Not specifically addressed.
Old Growth		
(1)	We are concerned that the USFS’s surveys for old growth in the Terrapin Mountain project area may not be consistent with the new “Guidance for Conserving and Restoring Old-Growth Forest Communities on National Forests in the Southern Region.” For example, the EA states that “no project alternative will impact any of the areas on the preliminary inventory of possible old growth” (EA 128). However, if we compare the post treatment age class distribution for the preferred alternative, the sale does increase the 91-100 age class from 395 to 315 acres (EA 54). This recovering forest ecosystem has	Table II, <u>Age Class Distribution for Total Acres as a Result of the Proposed Action and Alternatives at the End of the Next 10 Year Period</u> (EA, p. 54) projects the age class distribution at the end of 10 years from 1997, i.e., what it would be in year 2007 (Reference Appendix, pp. J-10 through J-17). You have misinterpreted the table as being the age class distribution in 1997, thus suggesting that the age of the stands harvested was in the 91-100 year age class. However, changing the acreages of this table back to year 1997, the 91-100 year age class becomes the 81-90 year age class, thus making the

	<p>already attained old growth characteristics in certain areas, if not in entire stands. Writing off the option of preserving these areas as future old growth because an entire stand does not meet the criteria or because the new JNF Plan has not yet designated areas as future old growth is arbitrary and capricious. It stands as yet another reason for the USFS to drop this sale until the revised FLRMP is completed.</p>	<p>analysis consistent with the EA, page 49. In discussing the effects to the selected alternative (Alternative 3), the EA states: “No old age stands would be harvested under this alternative. Neither would any acres currently in the 91-100 year old age class be impacted” (EA, p. 49). The Old Growth Guidance, pages 8-11, discusses the process for doing a preliminary inventory as part of the data collection for a Forest Plan revision. A purpose for the preliminary inventory is to ensure that management options related to possible old growth on National Forests are identified, so the areas can be fully considered during Forest Plan revision. Once these possible old growth areas are identified in the preliminary inventory and until the Revised Forest Plan is approved, the environmental analyses for project-level activities proposed within these areas will consider the effects of the proposed action on the area’s old growth forest characteristics (USFS, 1994a). In response to comment 10, “Concern that the proposed logging will mean logging of old forests,” in the Addendum to Appendix A (EA, pp. 127-129), the District outlined the procedures they followed in complying with the Old Growth Guidance. The District Ranger concludes that none of the regeneration cutting considered would forgo any future revised Forest Plan allocation decisions, impact existing old growth, or impact any preliminary inventoried areas. I find that the District followed the Old Growth Guidance, and was not arbitrary or capricious in choosing what stands of trees to make available (through USFS timber sale procedures) to local wood processing facilities for the benefit of society.</p>
Public Involvement		
(1)	<p>The appellants are concerned that the roadless inventory process does not allow public comment on draft versions. These issues deserve a forum to discuss the meaning and value of roadless specific to the Central Appalachians.</p>	<p>Not specifically addressed.</p>
Recreation/Tourism		
(1)	<p>The use of a cable logging tower near the Terrapin Mountain Trail and the</p>	<p>Not specifically addressed.</p>

	presence of logging trucks on the trail are in gross violation of Forest Plan direction as dictated by the WOROAA for the trail.	
(2)	There is no consideration given in the EA to explain how the value of timber harvest outweighs the value of excellent recreational activities – including hiking, fishing, hunting, and horse riding – in the Terrapin Mountain area.	Not specifically addressed.
(3)	The Terrapin Mountain timber sale violates the JNF Plan, which states that “outdoor forest recreation is one of the most important resources on the JNF and accordingly is given strong attention in the Plan’s management direction” (FP IV-3).	Not specifically addressed.
Remedies		
(1)	Drop the TM timber sale proposal, manage the White Oak Ridge-Terrapin Mountain area as a wildland in the new FLRMP, thus completely meeting requirements to protect the habitat of the endemic, sensitive POS, as well as rare, sensitive and threatened plant species, and to preserve crucial scenic and recreational opportunities in this irreplaceable area.	Not specifically addressed.
(2)	Prepare an EIS to substantiate the claims made in the FONSI.	Not specifically addressed.
(3)	Amend the Forest Plan to place all of TM in a Retention VQO.	Not specifically addressed.
(4)	Amend the roadless area inventory to include the White Oak Ridge-Terrapin Mountain proposed wildland.	Not specifically addressed.
(5)	Postpone and then rescope all proposed projects in or surrounding the possible range of the POS until a more complete distributional survey is completed for the area.	Not specifically addressed.
(6)	Postpone and then rescope projects in key areas for recreation, scenic values, and unique habitat, such as Terrapin Mountain, until the planning process for the JNF is completed.	Not specifically addressed.
(7)	Drop unit 3046/2 from the sale to preserve the quality of the Terrapin Mountain trail, or reduce its size so that no cutting occurs on extremely steep and erosive soils and a cable logging tower is no longer required. A smaller, less steep unit would still allow for the construction of trailhead parking in compliance with WOROAA.	Not specifically addressed.

	(8)	Drop unit 3047/12 in order to fully comply with Visual Quality guidelines in the Forest Plan and as recommended by the NPS – Blue Ridge Parkway and to preserve rich dove habitat for rare plant species.	Not specifically addressed.
	(9)	Drop unit 3047/9A or at least drop the section south of FDR 45 to prevent logging within and directly adjacent to the probable range and Primary Conservation Area of the POS.	Not specifically addressed.
	(10)	Close FDR 45 at the Hunting Creek trailhead to reduce open road densities and approach DFC for wild turkey.	Not specifically addressed.
	(11)	Drop the linear wildlife strip reconstruction to prevent forest fragmentation in possible POS habitat.	Not specifically addressed.
Riparian Areas			
	(1)	The appellants are concerned that impacts to riparian areas and riparian-habitat dependent species have not been adequately addressed in the EA. For example, all riparian areas within or directly adjacent to proposed project areas were not identified on project maps, in violation of Forest Plan directives (FP IV-77).	The effects to riparian areas and associated aquatic resources were disclosed in the EA, pages 30-39. The effects to species habitat requiring some late successional habitat (e.g. pileated woodpecker and barred owl) were disclosed in the wildlife section for all alternatives. Reductions of late successional habitat for these species included deciduous forest types, including cove types, which may be associated with riparian habitats. Alternatives are not required to improve habitat for every MIS species. The EA acknowledges a reduced suitable habitat for late successional species associates, but discloses that greater than 50% of the project area will be providing suitable habitat for these species. I find that the District disclosed and adequately considered the effects to late successional habitat associates and MIS species, and that late successional riparian habitats were considered as part of this association.
	(2)	The EA does not address impacts to the preferred riparian habitat of the Barred Owl MIS for the area, stating only that “there is mature forest in surrounding areas, so impacts are not expected to be severe” (EA 72).	
	(3)	The Forest Plan defines riparian areas as 100 feet, while most perennial streams in the project area are only protected by a 50 foot buffer zone.	Not specifically addressed.
Roadless Areas			
	(1)	The appellant submits that this area was improperly disqualified from the roadless inventory in large part because of the presence of FDR 45.3, which we have argued should be closed under this project proposal. Closure of this road would expand the area considered for	The EA on page 95 discloses that, “there are no inventoried roadless areas or potential wilderness area designations planned for the project area in the upcoming Forest Plan revision.” The EA also confirms that “the presence of improved Traffic

	roadless qualities to over 5000 acres. It would also allow for the creation of a semi-primitive core area.	Service Level C roads (FDR 45.3, FS 190, and State Route 763) bisected these areas, thus exceeding the criteria regarding the presence of improved roads. Thus, the areas failed to meet all necessary criteria required for inclusion as an Inventoried Roadless Area” (EA, pp. 95-96). The roadless inventory is based upon the existing situation. A Forest could choose to close roads to “create” areas that would meet the roadless area criteria; however, that would be a separate management option available for a decision maker to consider. Such a management option is beyond the purpose and need of this particular project as stated on pages 2 and 3 of the EA. The EA, page 94, recognizes that Issue 9 included a concern “for impacting the area to such a degree that future designation of the area as a roadless area, wilderness, special management area, or wildlands area would not be possible.” The EA, pages 95-103, discloses the effects the proposed action would have on the area’s “remote character” and uses proposed by the Wilderness Society to define the scope of their analysis. The District concludes (EA, p.102) that the cumulative actions on the area are “not expected to result in foregoing any future decisions regarding a special designation of this area.” I find that the option of closing roads to make Terrapin Mountain eligible for the roadless area inventory, and to change the management direction for this area is beyond the scope of this proposal. I find that the proposal would not foreclose any future management options for addressing these concerns.
(2)	The Terrapin Mountain area should be managed as a roadless area to preserve habitat for sensitive and PETS species, biodiversity, recreation, and visual quality.	
(3)	It is worth noting that if only Terrapin Mountain (i.e. the area east of FDR 45) was considered for roadless designation, the acreage is still larger than at least one designated inventoried roadless area (Dismal Mountain) on the GWNF. Therefore, size of the project area should not disqualify eastern forest land from designation.	
(4)	The appellants respectfully submit that in the Central Appalachians, where turn-of-the-century clearcutting and fires so devastated the landscape, any area which is recovered, unfragmented, and enchantingly lovely as Terrapin Mountain deserves roadless designation.	
(5)	What lies outside the proposed wildlands/roadless area should not disqualify an area from inventory. When the EA states that “proximity of tourist attractions to the north, private residence to the south, and major industry to the east combine to reduce the solitude and remoteness of the area” (97), the USFS is making a subjective judgment on how people conceive of solitude and remoteness – for many, seeing industry and agriculture in the distance makes the quiet wildlands under their feet all the more precious. Remoteness and solitude are readily available in the Terrapin Mountain area, as the appellants as individuals can attest.	
Roads		
(1)	The EA states that the “featured species” for the area is wild turkey, whose DFC includes a road density of 1 mi/1280 acres. The existing condition exceeds that density significantly: 1 mi/1975 acres.	Not specifically addressed.
TES/PETS/MIS		
(1)	The EA and BE present no baseline data on population viability for MIS in the project area. NFMA requires that these inventories be kept and	The Jefferson Forest Plan developed habitat objectives and standards for featured species (deer and turkey) and black bear (an MIS) for implementation

	<p>considered during the project planning stage. The EA presents only unsubstantiated conclusionary assertions that no MIS population, even Barred Owl, Black Bear, and Pileated Woodpecker whose habitat the EA admits will be <i>negatively</i> impacted, shall be <i>significantly</i> impacted by the project. The Barred Owl is dependent on holes made by Pileated Woodpeckers, and the EA clearly states that the preferred alternative “would not benefit this species” (EA 71).</p>	<p>at the project-level. The project compared the effects of the proposed actions to plan direction (EA, pp. 56-74). The effects to each MIS were disclosed for each alternative. In addition, sensitive species (those with viability concern) were analyzed with regard to effects to their viability. NFMA regulations do not require project by project baseline MIS population data. The project analysis demonstrates the plan direction for various habitat components are being met regarding featured species and MIS. I find that the analysis for effects to MIS habitat was appropriate and tiered to the Forest Plan.</p>
(2)	<p>The appellants have video footage of a Butternut (<i>Juglans cinerea</i>) within the project area on the face of Terrapin Mountain near units 3047/9B and 3047/12 (see Appendix II video). It is located not far off the trail and is clearly visibly to passers-by. The appellants’ video footage also includes False Solomons Seal (<i>Maianthemum stellatum</i>). Both Butternut and False Solomons Seal are listed in the BE as USFS sensitive species, but dismissed as not existing in the project area by the BE.</p>	<p>You claim to know of the occurrence of two USFS sensitive species within the project area, although the project record containing earlier public comments makes no reference to this information. You are encouraged to share the locations of these new occurrences with the District Ranger. The additional species you mention are not USFS sensitive species.</p>
(3)	<p>Much of the unsuitable timber land is unforested – for example, powerline openings are classified as unsuitable for timber production. To accurately show how Indiana bat habitat is provided by unsuitable lands for timber, the actual forested acreage must be computed by the USFS.</p>	<p>You are mistaken in your interpretation of what lands are included as unsuitable timberland; lands classed as unsuitable for timber production are forested lands. The example you give (e.g. powerline openings) would be included in “non-forest land” and would not be included in the acreage figure you cite. I find that the analysis of habitat for Indiana bat was appropriate.</p>
(4)	<p>The proposal violates the directives of the August 26, 1997, Conservation Agreement for the Peaks of Otter Salamander (POS). The POS is an endemic species found only in forested areas within the Glenwood District and listed as a USFS sensitive species, a VA species of special concern, and a VDNH G2/S2 ranking (“very rare”). The boundaries of the POS habitat are not currently known and the Terrapin sale units, temporary road construction, and linear wildlife strips are directly (3047/9A) or potentially within the probable habitat range of the POS. Yet,</p>	<p>The Habitat Conservation Assessment (August, 1997) identified the potential range of the POS (Figure 1, p. 28), and was based on the scientific work of Dr. Joseph Mitchell, Dr. Paul Sattler, and the VDCR. The conservation agreement was signed by the USFS, NPS, and the USFWS. The BE identified POS as occurring in proximity to the Terrapin Mountain Project. The species was dropped from detailed analysis, however, because the project was not within the boundaries of its potential range. The EA also disclosed that the project is not within</p>

	the species is categorically dismissed throughout the EA as not existing within the project area.	the potential range of the POS (EA, pp. 70-72) and determined that the project would not impact this species. I find that the disclosure in the EA that the project is not within the potential range of the POS and the determination that the project would not impact the species is consistent with and does not violate the conservation agreement for this species.
(5)	The forests on Terrapin, particularly unit 3047/9A, fully meet the habitat requirements as designated in the Conservation Agreement and in <i>Virginia's Endangered Species</i> (VES, 1991). All of these habitat components are plentifully present in the moist cove forests on the face of Terrapin Mountain, as well as in the unit 3047/9A vicinity, which includes two intermittent streams, down woody debris, and leaf cover. Therefore, there is no truth to the statement that there is no suitable habitat for the species in this area (also see video footage, Appendix II, of the area).	
(6)	It is possible that field surveys would locate no POS. However, the CA points out that salamander surface activity is seasonal, "occurring primarily April through October" (CA 4), "is correlated with high leaf litter moisture" (CA 4), and happens mostly at night. The BE must document that field surveys occurred during this season, in the late evening after a recent rainstorm, in order to fully prove that field surveys found no indication of the species.	
(7)	The distribution of the POS is NOT well known and its presence or absence must be carefully documented in the EA and BE due to possible habitat conditions in proposed cutting units.	Not specifically addressed.
(8)	Dismissing completely, without adequate field surveys or consideration, the possibility of POS habitat in an area that is within or directly borders the known range of the species and possesses characteristics known to be favored in POS habitat is overwhelmingly arbitrary and capricious. Failure to admit a lack of certainty regarding POS habitat range constitutes a violation of NEPA.	Not specifically addressed.
(9)	The exclusion of detailed discussion and evaluation of impacts to the POS from the EA violates USFS regulations under the ESA that "there must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a	Not specifically addressed.

	whole” (FSM 2672.1).	
(10)	The BE dismisses the fact that TMP supports habitat for Nodding Pogonia (<i>Triphora trianthophora</i>) and Coal Skink (<i>Eumeces anthracinus</i>).	Not specifically addressed.
(11)	The BE and EA fail to consider the effects on the Cerulean warbler and the Coopers hawk; Terrapin Mountain is within the range and provides suitable habitat for both species.	Not specifically addressed.
(12)	For all of these plant and animals species, similar arguments used by the appellants against the BE’s three reasons for not considering any PETS species can be made – to summarize, suitable habitat <i>does</i> exist in the area, known distributions of these species <i>do not</i> preclude them from consideration, and field surveys carried out by the USFS appear to be inadequate for all species, particularly the <i>Juglans cinerea</i> . Failure to inventory and discuss so many PETS species that have a high likelihood of occurrence here is arbitrary and capricious according to the APA.	Not specifically addressed.
(13)	In addition to the possibility of POS habitat, there is potential habitat for numerous other PETS species. There are a number of PETS species that appear in the BE list, and although they are characteristic of moist, cove forest habitats such as this, are not discussed further.	Not specifically addressed.
(14)	In addition to Butternut and False Solomons Seal, species such as Showy Orchis (<i>Orchis spectabilis</i>), Lady Slipper (<i>Cypripedium reginad</i>), and Great Solomons Seal (<i>Polygonatum canaliculatum</i>) found in the area demonstrate that these coves support uncommon, rich forest species.	Not specifically addressed.
(15)	The EA and BE both fail to even mention several sensitive plant species that are documented by the VDNH as occurring within the Hunting Creek watershed.	Not specifically addressed.
Timber Harvesting		
(1)	There appears to have been an <i>a priori</i> selection of stands to be logged. These stands are compatible with the formulation of the preferred alternative, but do not make sense as a basis for the formulation of reasonable plans to address unresolved conflicts	Not specifically addressed.

	surrounding the proposal.	
(2)	The proposal is in violation of NFMA, which states in 16 USC 1604 that even-aged harvests should only be implemented where an assessment has been made of “the consistency of the sale with the multiple use of the general area” and where “such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources...”	Not specifically addressed.
Wildlife		
(1)	Due to the inappropriate equating of interior forest to mature forest, and due to improper spatial scales of analysis, you have not performed a site-specific analysis for the effects of this proposal on NTMBs or any other interior-dwelling wildlife.	Not specifically addressed.
(2)	The analysis of the impact of the proposal on interior-dwelling forest creatures is flawed by the equating of interior forest to mature forest. This is incorrect; interior forest is not the same as mature forest when mobile animals species concerned. For example, an important measure of potential impact on interior-dwelling neotropical migrants would be the proportion of forest that is mature and is not within a certain distance of an early-successional edge. This issue is not addressed by the EA’s statement that blocks of mature hardwoods would not be isolated from one another in the broader context of surrounding lands. Swiss cheese still retains connectivity; that is not the issue.	Not specifically addressed.
(3)	It is certainly dubious to assume that all forested land over a certain age in the analysis area is equally valuable to wildlife - the high vegetative diversity in the cove stands proposed for logging certainly provide more niches for interior species than the much simpler stunted scarlet oak, chestnut oak, and laurel stands on the ridges, upper slopes, and spur slopes that comprise the majority of “mature” forest in the analysis area, a situation that is exacerbated by this proposal.	Not specifically addressed.
(4)	Apart from the impossibility of determining impacts on interior-dwelling species without considering spatial information, you also cannot	Not specifically addressed.

	<p>reasonably claim, as the EA does, that a large analysis area appropriate for bear “will more than adequately address concerns raised over other interior forest wildlife, such as migratory birds.” Utilization of such a large analysis area for determining impacts on species impacted by small-scale patterns will completely mask any effects of implementation of this particular proposal (which itself takes place on only a small part of the analysis area you have chosen).</p>	
(5)	<p>The JNF Plan states that you must “manage wildlife habitat to maintain or increase viable populations of all native vertebrate and plant species” (FP IV-64). This proposal would negatively impact populations of interior-dwelling species and no analysis has been conducted, which demonstrates the magnitude of this effect.</p>	Not specifically addressed.
(6)	<p>No protections are provided to guarantee that migratory birds will not be killed by logging during their nesting seasons. Despite the response to this issue given in the EA, two recent court rulings have found violations of the MBTA by USFS logging plans, according to the May/June 1996 issue of <i>Inner Voice</i>, the AFSEEE journal. A May 8, 1996, ruling in a federal district court in Georgia found the USFS in violation of the MBTA for allowing logging during the nesting season. A case in Illinois the year before made a similar finding regarding the mortality of migratory birds consequent to logging during the nesting season.</p>	Not specifically addressed.
(7)	<p>The proposed sale appears to be in violation of the MBTA, since no provisions are given in the EA to reduce damage to migratory birds during nesting. 16 USC 703 states that “unless and except as permitted by regulations...it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill...any migratory bird, any part, nest, or egg of any such bird.”</p>	Not specifically addressed.

APPENDIX G
THE WILSON MOUNTAIN PROJECT

Table 1G

Public Comments on the WMP SN

Category	Commenter				
	AFMG	Steven Krichbaum	PAW	TWS	SEDG
Aesthetics		•	•		•
Alternatives		•	•		•
Aquatic Communities			•		•
Chemicals					•
Cumulative Effects		•	•		•
Ecological	•	•	•		•
Economics	•		•		•
Ecosystem Management		•	•		
Environmental Analyses/Documentation		•	•		•
Exotic/Invasive Species		•	•		•
Forest Health	•	•	•		•
Hydrological			•		•
Local Communities					•
Multiple Use			•		
Old Growth		•	•		•
Private Land			•		
Public Involvement		•			
Recreation/Tourism	•	•	•		
Regeneration	•	•	•		
Riparian Areas			•		•
Roadless Areas		•	•	•	•
Roads		•	•	•	•
Silviculture	•	•	•		•
Soils		•	•		•
TES/PETS/MIS	•	•	•		•
Timber Harvesting	•	•	•	•	•
Vegetation			•		
Water Resources			•		•
Wetlands			•		•
Wilderness			•	•	
Wildlife	•	•	•		•
The Proposed Action	N/A	-	-	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

Table 2G

Public Comments on the WMP EA

Category	Commenter					
	PAW/Heartwood/TWS	Steven Krichbaum	SAFC *	NRGSC	SELC	TWS
Aesthetics	•	•				•
Alternatives	•	•				
Aquatic Communities	•					
Chemicals	•					
Cumulative Effects	•	•				
Ecological	•	•				•
Economics	•					
Ecosystem Management		•				
Environmental Analyses/Data Collection	•	•			•	
Exotic/Invasive Species		•				
Forest Health	•	•				
Hydrological	•	•				
Mitigation		•				
Old Growth	•	•				•
Private Land		•			•	•
Public Involvement						
Recreation/Tourism	•	•		•		•
Regeneration	•	•				
Riparian Areas	•	•				
Roadless Areas	•	•	•	•	•	•
Roads	•	•		•		•
Silviculture		•				
Soils	•	•				
TES/PETS/MIS	•	•				•
Timber Harvesting	•	•		•		•
Vegetation	•	•				
Water Resources	•	•				
Wetlands	•					
Wilderness	•	•	•	•	•	•
Wildlife	•	•				
The Proposed Action	-	-	-	-	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

* This comment was submitted on behalf of the SAFC and its member groups, which included a total of 15 special-interest groups and one environmental law firm.

Table 3G

SEDG's Comments on the WMP SN

Category	Comment	USFS Response
Aesthetics		
(1)	What will the proposed cuts look like from the Arnold Valley overlook and other viewpoints?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Alternatives		
(1)	Formulate an alternative using no herbicides.	This issue was originally identified as significant. However, no alternatives being considered in the analysis include herbicide use. Therefore, the issue is not significant.
(2)	Produce and include an alternative that would allow horse-loggers and other less-destructive logging practices to be competitive with large industrial operations.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	Include an alternative using no herbicides, no road construction, and no silvicultural practices that promote fragmentation of interior forests.	Not specifically addressed.
Aquatic Communities		
(1)	What is the condition (biotic and abiotic) of Sprouts Run and Back Run? Are they trout streams?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Chemicals		
(1)	Do not use herbicides on public lands. If regeneration is impossible without using poisons, the management activity is grossly inappropriate and unnatural.	This issue was originally identified as significant. However, no alternatives being considered in the analysis include herbicide use. Therefore, the issue is not significant.
Cumulative Effects		
(1)	Indicate on a map the locations of the various age classes indicated. This is essential for an evaluation of cumulative impacts.	Not specifically addressed.
Ecological		
(1)	Intact environmental gradients such as this are of the utmost importance for species migration and gene exchange. Allowing this connectivity is the best insurance for the long-term maintenance of native biodiversity in our forests.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	Consider retaining undisturbed habitat connectivity between the uplands and the James River.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	Present some analysis of the current degree of fragmentation in the area and contrast that with that resulting from implementation of this proposal.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.

	(4)	What effect will this project have on native biodiversity? Not on a stand scale where you might include edge-loving species that are all too common already, but at a regional scale, at which large unfragmented areas are rare.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Economics			
	(1)	Show a unit by unit economic analysis that includes the costs of sale preparation, harvest administration, timber inventory, reforestation, road maintenance, road construction, and any other costs.	Many costs associated with timber sales (such as cost of writing an EA, general administration, site preparation, etc.) simply cannot be valued at the harvest unit level. Purchasers of timber sales do not bid on individual units, but rather bid on estimated volumes within species groups. Thus, it is extremely difficult to determine true costs and revenues on a unit by unit basis. Any analysis would not be meaningful in any event. Units are packaged and sold as timber sales; costs are assessed and revenues are received on that basis. An analysis of the benefits and costs at the timber sale level is adequate to determine economic impacts of the proposal.
	(2)	Will income from each unit of the sale offset its costs? Eliminate any units that are money losers.	
Environmental Analyses/ Documentation			
	(1)	Why in the FY-97 Proposed Projects does it state that Wilson Mountain Cable is to be sold in '97 when you haven't even finished the environmental documentation?	Not specifically addressed.
Exotic/Invasive Species			
	(1)	Effects on such processes as the invasion of exotic species to forest interiors and the elimination of forest interior conditions for sensitive species should be considered.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
	(2)	Address the impact fragmentation will have on the spread of exotic species into interior forest habitat.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Forest Health			
	(1)	If the gypsy moth and oak decline are really threats, older trees should not be eliminated since excess numbers of older trees will be required in order to achieve the DFC of an equal age class distribution.	The Forest Plan directs us to achieve evenly distributed age classes in a minimum amount of time (Forest Plan, IV-25, IV-64, IV-167). While one reason for this DFC relates to sustained yield of timber products and they MUSYA, another major reason is to provide an even distribution of various wildlife habitats. Thus, an ecosystem management philosophy does not play a part in this guidance, even though the

		term “ecosystem management” was not popularized at the time. Furthermore, Forest Plan does provide for maintaining an old growth component (Forest Plan, IV-15 and IV-166). In fact, the Forest Plan projects “a dramatic increase in old growth as shown in the Figure IV-3 projections...” Finally, while the current Forest Plan guidance may not reflect the “current ecosystem management philosophy” in all areas, the ongoing Forest Plan revision should incorporate such principals. Thus, focusing our energies on the ongoing revision is more appropriate than amending the current Forest Plan. In the mean time, current Forest Plan direction is being followed.
(2)	Address the increased susceptibility of the small unlogged areas between each logging unit to blowdown.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	We do not agree that a more healthy forest can be completely described by “more young and vigorous trees.” Please justify this statement from any point of view other than exploitation, extraction, and manipulation.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Hydrological		
(1)	Construction of waterholes should be unnecessary if the numerous streams in the watershed are not damaged by your activities.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Local Communities		
(1)	Include in the contract of this and all other sales a clause that prohibits the export of the raw wood or non-value added wood products from the local area, and allows only locally-owned companies to bid on, log, or receive the wood from this sale.	This type of restriction on timber sale purchasers, operators, and processors would require a change in current laws. It is beyond the scope of this analysis.
(2)	What companies that are locally-owned or are subsidiaries of companies that are locally-owned have bid on timber sales in the region in the past? What are your expectations for this sale?	Not specifically addressed.
Old Growth		
(1)	Perform an ecological evaluation for the presence of old growth, rather than using the CISC data which is notoriously poor at predicting old growth characteristics.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	If old growth is present, will buffer zones protecting it from ecological disturbance be maintained? It is not	Not specifically addressed. Classified as a significant issue to be addressed in the EA.

	enough to simply not log it, since logging stands adjacent to it will negatively impact its characteristics as well.	
(3)	Illustrate any ecological old growth on compartment/stand maps of the project area.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Riparian Areas		
(1)	What standards for protection of riparian areas adjacent or in logging units will be specified? Do you have the capability to enforce these standards? It seems like a lot of Districts don't.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Roadless Areas		
(1)	In general, our group considers the violation of roadless areas, official and <i>de facto</i> , with logging and/or road building to be unacceptable.	The Wilson Mountain area has been reviewed for possible classification as an inventoried roadless area and it does not meet the criteria for this classification. Impacts to roadless characteristics will be addressed in the analysis.
(2)	Since roadless areas are a critical resource that is dwindling, you are obligated to protect them, at least until the public has a chance to decide how they should be treated. Refrain from hacking the Wilson Mountain area to bits before the JNF Plan has been completed. Supervisor Damon, in the Executive Summary of the <i>Roadless Inventory Process Paper</i> , said, "exclusion of areas from this inventory in no way limits the opportunities for incorporating additional areas into Revision alternatives as proposals for Wilderness..."	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	Cancel the sale until the Plan is complete. This area was suggested by many groups as being included in the Roadless Inventory. Even if you feel that noise from a train, somewhere in the world, is reason to keep the area out of the inventory, the public obviously is interested in protecting this area.	Not specifically addressed.
Roads		
(1)	Don't build new roads, "temporary" or not. Often temporary roads are reopened, and their presence used to justify further logging in an otherwise undisturbed area. Use the existing road structure for logging.	Not specifically addressed.

Silviculture		
(1)	What are the tree species compositions in each unit?	Not specifically addressed.
Soils		
(1)	How will you address the loss of carbon from the soils in the area due to extraction of so much large woody material?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	What changes can be expected in the soils due to continued disposition of inorganic compounds and continued removal of carbon? How might these changes affect future tree growth?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
TES/PETS/MIS		
(1)	What uncommon species inhabit the area? What effect will the logging have on them?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	The DFC for a wild turkey area such as this calls for 15-20% of the forest in old growth. By removing many of the older trees in the watershed, you greatly lower the chances of achieving this goal, even given 30 or more years. Would you log the area anyways if the DFC could be approached just by processes of natural disturbance?	The purpose and need of the proposed timber harvest as stated in the scoping letter of May 20 does not include creation and/or maintenance of turkey habitat. However, it is true that some of the similar or connected actions analyzed in this project would benefit turkey (e.g. digging of waterholes, maintenance of linear strips, and creation of grass/forbs habitat). It would be more appropriate to say that the proposed timber harvest would comply with Forest Plan Standards and Guides regarding the management of turkey habitat.
Timber Harvesting		
(1)	What are the slopes in all the stands? Are all these sites truly "suitable for timber production?" 3012/30 and 3003/3&10 appear to be very steep.	Determination and identification of lands suitable for timber harvest was verified by the OAA. This was clearly stated in the scoping letter of May 20. This issue is beyond the scope of this analysis. Rather than amass needless detail by listing this issue as significant; the issue has been made non-significant but will be addressed pursuant to Forest Plan direction.
(2)	What heavy industrial equipment will enter the area? What damage will it do to the soil, hydrological flows, plants, animals, and soil organisms?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	How many trees will be killed in each unit, and of what species and size?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(4)	Consider allowing this area to be unmolested by industrial logging operations so that this resource is preserved and enhanced for future generations of humans and wildlife.	Not specifically addressed.

	(5)	What are the sizes of the units in the scoping notice? Are they within NFMA limits?	Not specifically addressed.
	(5)	Stand 3012/33 (or is it 58, hard to tell from your map – anyways, the huge one) is so large, it took us an hour or so to walk around it. Are you really planning to kill most of the trees in this whole area? In addition to the whole rest of the project as well?	Not specifically addressed.
	(6)	Send us a compartment and stand map of the project area, and include with it a list of the past treatments to which each stand has been subjected. We know you have this data, so send it to us. We need this information to appreciate the actual extent to which logging has occurred in this area. It looks like a tree factory in places. Send the Arnold Valley Opportunity Area Analysis since it apparently contains most of the site-specific analysis.	Not specifically addressed.
Water Resources			
	(1)	A steady-state sedimentation analysis will not suffice to gauge the impacts of this proposal on these streams. Primarily, negative effects occur as a result of sudden intense downpours in this region.	Not specifically addressed.
	(2)	Present a worst-case analysis (under such a precipitation event) for the peak quantity of sediment entering these streams before and after the cuts and its effects on stream biota.	Not specifically addressed.
Wetlands			
	(1)	There are wet seepy areas in 3012/33 and probably other stands. How will you protect and enforce protection of these important habitats?	Not specifically addressed.
Wildlife			
	(1)	How many birds will be killed by this proposal?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
	(2)	How many amphibians and of what species will be killed by this proposal?	Not specifically addressed. Classified as a significant issue to be addressed in the EA.

Table 4G

*TWS/Sierra Club/Heartwood/PAW/SEDG's Administrative Appeal of the WMP
DN/FONSI*

Category	Appeal Issue	ADO Response
Aesthetics	<p>(1) The Wilson Mountain area is visible from a number of vantage points including the Blue Ridge Parkway, Appalachian Trail, the James River, and various locations in and around the area. The USFS asserts that visual resources are only affected for a 10 year period and that VQOs will protect all important viewsheds. This is a general statement only. There are no seen-area analyses in the Project File to justify this conclusion. There is no information about when seen-area analyses were conducted or what effect cutting next to mature stands or cutting in certain prominent locations might have. The OAA states that “all visible proposed timber sales and roads will be coordinated through the ATC representative during document preparation” (p.A-1). Several units are visible from the AT. There is, however, no record of any consultation with the ATC (EA p.115, appendix).</p>	<p>The DN on page 3 and the EA on page 4 discloses that significant issue number 1 deals with your concern. The issue states that there is a concern that the proposed timber harvest and road building may adversely impact visual quality, especially in areas with a Retention VQO, as seen from the Blue Ridge Parkway; Wilson Mountain, Pine Ridge, Sprouts Run, and Skillern Mountain Trails; the James River; and other critical viewpoints for the area. The EA on page 11 discloses the mitigation measures that will be implemented with the proposed action, and states that harvest unit boundaries will be shaped and the edges of cable corridors will be feathered to reduce visual impact of these boundaries and corridors; that slash resulting from logging would be lopped and scattered to lie within 2 feet of the ground for a distance of 50 feet from the Wilson Mountain road, Skillern Mountain road, and Pine Mountain Trail; that all harvest trees would also be directionally felled away from these travel routes. The EA (pages 11-12) also states, “Leave approximately 100 to 300 feet of untreated forest between the Sprouts Run National Recreation Trail and treated stands to reduce the visual impact of harvesting on hikers of this trail and leave a slightly heavier residual stand (approximately 40 to 50 square feet of basal area per acre) in the upper portions of stands 3003/3&10 and 3012/41B which are adjacent to Wilson Mountain Road to reduce visual impacts of harvesting as seen from this road. The EA on pages 97-101 discloses the effects to the visual quality. Acres of proposed harvest visible from the identified viewpoints and travel routes, as well as the number of acres complying or not complying with established VQOs, are used as indicators. The area that can be seen from critical viewpoints and travel</p>

		<p>routes is the small watersheds where streams flow directly into the James River between Jennings Creek and Elk Creek, including the Black Run watershed. The EA on page 98 discloses that seen area mapping was used to determine what parts of stands were visible. The EA on page 99 discloses what will be visible and if the view meets the VQO. The EA on page 116 discloses that the Natural Bridge Appalachian Trail Club was scoped during the project analysis. I find that the EA adequately discloses the effects of the alternatives to the Visual Quality of the Wilson Mountain area and that the visual quality resources of the area were fully considered.</p>
(2)	<p>The forwarder road and cutting unit is likely to affect an unusually scenic and diverse part of the Wilson Mountain area.</p>	<p>Not specifically addressed.</p>
(3)	<p>What will the proposed cuts look like from the Arnold Valley overlook and other viewpoints?</p>	<p>Not specifically addressed.</p>
<p>Alternatives</p>		
(1)	<p>A full range of alternatives was not provided. The USFS failed to thoroughly explore action alternatives that include horse logging, uneven-aged logging, and logging outside of proposed wildlands areas, roadless areas, and other sensitive areas. Steep slopes could have been avoided to better facilitate uneven-aged logging or horse logging. The purpose and need was defined so narrowly as to exclude a reasonable range of alternatives (EA, p.15).</p>	<p>The purpose and need for this proposed action, stated on pages 2-3 of the EA, is, as you assert in your appeal, narrowly defined. The agency can set the purpose and need as narrowly or broadly as is appropriate for the problem or problems it needs to address. However, the purpose and need for this project is not so narrow as to exclude alternative ways of meeting the purpose and need. The range of alternatives addresses significant issues; the discussion under each alternative indicates to which issues the alternative was designed to respond. Five alternatives were considered in detail, including no action. Other alternatives that were considered but eliminated from detailed study included the use of horse logging and uneven-aged management that you mention in your appeal (EA, p. 15). The reason for eliminating them is also disclosed. This issue is also addressed by the District in the response to comments received during the 30-day notice and comment period (Appendix A Addendum, Comment #15, p. Q-67). I find that an adequate range of alternatives under the NEPA was considered in the EA.</p>

	(2)	Formulate an alternative using no herbicides.	Not specifically addressed.
	(3)	Include an alternative using no herbicides, no road construction, and no silvicultural practices that promote fragmentation of interior forests.	Not specifically addressed.
Cumulative Effects			
	(1)	The USFS failed to adequately analyze cumulative impacts of logging and roadbuilding as it affects black bears and black bear corridors. Initial comments asked the USFS to examine whether “old growth habitat, unroaded habitat...and other important habitat had been seriously...altered especially in unprotected areas.” Comments asked the USFS to examine the threats to these remaining areas. The EA’s black bear analysis failed to examine the spatial arrangement of bear habitat and potential threats. It relied on CISC data over a large area that included some bear habitat and some non-bear habitat. This spatial analysis did not identify roads, potential access for poachers, black bear corridors, large tracts of unroaded land, or potential threats to these areas.	The EA discloses the effects to black bear habitat for different alternatives on pages 61 and 66-72. Included within this effects analysis and disclosure for black bear are effects to various habitat components, including vegetation (early successional habitat, old age stands, hardmast) and road density (measure of remoteness). The EA, page 67, identified open road density as the most limiting factor for black bear (primarily outside the jurisdiction of NFS). I find that the analysis and disclosure of effects to black bear habitat was adequate and conducted at the appropriate scale.
Ecological			
	(1)	The USFS failed to evaluate forest interior habitat or impacts to this habitat. The USFS failed to differentiate between interior forest habitat and mature forest habitat or disclose the effects of the project on interior forest habitat. When asked about this in a comment, the USFS merely referred the reader to a page in the SAA that did not discuss forest interior habitat. According to the Cove Creek EA, Clinch Ranger District, logging older stands has the potential to “create isolated fragments over time as the surrounding stands are harvested through [various logging] methods. Proposed harvest methods would reduce the structural complexity of these stands making them more dissimilar to the 100+ year old stands and creating islands of mature habitat within a sea of younger habitat.” “Typically, unfragmented forest is distinguished by the forest size and the distance between canopy interruptions” (APCo Powerline DEIS) (see also the landscape ecology methodologies used	The effects analysis regarding interior habitats and fragmentation was provided and discussed in the vegetation effects section (EA, p. 57) and the wildlife effects section. The effects analysis addressed issues connected to interior forest habitat and fragmentation. I find that effects disclosure regarding interior habitats and fragmentation was adequate and appropriately disclosed in the EA.

	in the Monongahela NF). The analysis of forest interior habitat does not consider forest fragmentation in general or fragmentation as it effects forest canopy and structural complexity across uneven-aged and even-aged stands of varying ages.	
(2)	The USFS fails to evaluate all aspects of diversity including species diversity, genetic diversity, community diversity, and landscape diversity. The discussion is focused mostly on tree species and does not really analyze native diversity at all (NFMA, 36 CFR 219.26).	The District disclosed the effects to biological diversity by addressing effects to: (1) broad forest vegetation and successional classes (EA, pp. 40-58); and (2) old-growth forest communities (as part of vegetation effects analysis). A discussion of fragmentation effects and interior habitats are included in the vegetation and wildlife effects disclosure and in the effects disclosure to MIS and featured species (EA, pp. 59-83; effects to wildlife). The effects to habitat for migratory birds, including interior habitats, were disclosed in the wildlife section and the effects to federally threatened and endangered species and USFS sensitive species in the EA, pages 83-91, and BE; and the effects to aquatic resources and riparian habitats in the EA, pages 32-40. I find that the analysis of biological diversity was appropriately disclosed and that the biological elements for which effects were disclosed were appropriate measures of diversity.
(3)	The Kentucky warbler is an inappropriate indicator species for early successional- habitat. The EA states that the Kentucky warbler requires ESH to thrive (p.60). However, the Kentucky warbler is an area-sensitive mid- to late-successional deciduous forest species (see Hamel’s Land Manager’s Guide to Birds of the South, 1992). In any event, it is unclear where the 10% ESH DFC came from. This DFC is not listed in the Forest Plan. The abundance of ESH habitat on private land, the mobility of these species, and the similarity of habitat needs to that of deer makes this analysis irrelevant. The special treatment that ESH NTMBs receive in the EA is unjustified (see also Steve Krichbaum’s comments).	The District identified “obtaining a wide distribution of all habitat components across an analysis area is a DFC” (EA, p. 3) as a purpose and need of the project. The availability of grass/forb components was identified as a limiting factor for many species of wildlife (EA, p. 3). Significant issue 2 (EA, p. 5) states that, “[t]he proposed harvest unit shapes, methods of cut, and resulting age class distribution may not adequately provide for species of neotropical migratory birds requiring early successional habitats.” The indicator measures used to address this issue were: (1) acres of early successional habitat created; (2) acres and percent of early successional habitat in the analysis area; and (3) qualitative discussion of impacts to species dependent upon early successional habitat (EA, p. 5). The project identified 9 MIS. The northern

		<p>(common) flicker is identified as the species to address effects to early successional habitats and standing snags (EA, p. 63). The effects to the northern flicker are discussed on pages 76-79 of the EA. The Kentucky warbler is not identified in the EA as a MIS as you contend. The Kentucky warbler is discussed in the effects analysis (EA, pp. 60, 65, 66, 80) as an example of species preferring larger blocks (40 acres and greater in size) of early successional habitat. You are correct in that the literature characterizes this species habitat as primarily mid- and late-successional deciduous interior forest containing a shrub/midstory structure. The species nests and forages primarily in midstory canopy (10-20 feet in height). The literature also documents that the species sometimes use younger sapling stands (7-10 years old) that contain similar structure, without the forest overstory. However, it is probably not appropriate to categorize the Kentucky warbler as an area sensitive early successional species based on the current knowledge of its habitat requirements. While this species may not have been the best example, there are priority migratory and resident birds associated with early successional habitat, with some of those having patch size requirements. Including considerations for these early successional habitat associates and discussing effects to these habitats is appropriate. The DN makes no reference to the Kentucky warbler or categorizes it as an area sensitive early successional species. I find that the EA is appropriately tiered to the Forest Plan regarding development of early successional habitat DFC. I also find that including considerations and effects analysis for early successional habitats and effective patch sizes is appropriate for this project. However, the use of Kentucky warbler as an example of an area sensitive, early successional habitat associate is questionable.</p>
(4)	The EA underestimates early successional habitat since CISC does not count habitat created by natural	Not specifically addressed.

	<p>disturbance. The EA, p.88, estimates a gap phase regeneration rate of 0.4 to 2.0% across the GWJNF. Studies in the southern Appalachians show that small intensity disturbance creates about 0.5% a year in an unmanaged forest (Lorimer, Age Structure and Disturbance History of a Southern Appalachian Virgin Forest). Over a decade, this would result in the creation of about 5% ESH, which would put the area squarely in the middle of the DFC at about 8%. Again, the figures are probably underestimated, since USFS baseline data on ESH is underestimated. The southern pine beetle and hemlock adelgid account for even higher levels of ESH in the Wilson Mountain area, as observed in and around several of the stands.</p>	
Economics		
(1)	<p>Some of the lands determined to be suitable in the OAA may actually be unsuitable under the economic suitability rules of NFMA sec.6(k). The majority of timber sales on the JNF lose money, especially when all costs are factored in. The high cost of logging on steep slopes and remote areas like the Wilson Mountain area are a major reason for this deficit.</p>	Not specifically addressed.
Environmental Analyses/ Documentation		
(1)	<p>The EA and DN/FONSI do not adequately address the impact of the project on the undeveloped character of the area. The EA inadequately addresses the combined impact of the numerous cutting units on solitude, primitive recreation experience, visually sensitive areas, biodiversity, disturbance-sensitive species, and other qualities of undisturbed areas. It fails to address the ecosystems dynamics of the area, impacts to watersheds, and potential recovery of ecosystem functions. The cumulative effects analysis does not adequately evaluate these factors either (40 CFR 1508.7). Undeveloped character is a complex quality that could adequately be performed only in an EIS.</p>	<p>You state that you believe that the Wilson Mountain area is a roadless area and therefore contend that since the area's undeveloped character would be altered, an EIS is required. Since the roadless inventory for the area shows that the area does not qualify as "roadless," the undeveloped character of a "roadless area" will not be substantially altered. The EA does disclose the impacts to roadless characteristics on pages 105-108. You also state that since logging in roadless areas is "highly controversial," an EIS needs to be prepared. The significance criteria under 40 CFR 1508.27(b)(4) does not refer to opposition to a particular use, but to substantial dispute about an environmental effect. You state that an EIS is needed because of the "unique characteristics" of the area and its "proximity" to ecologically</p>
(2)	<p>A FONSI was not warranted for this project: (a) logging in roadless areas is highly controversial; (b) logging in this</p>	

	and other unprotected wild areas in the GWJNF are cumulatively significant when examined together; (c) unique characteristics of the area could be affected.	critical areas. While these are important characteristics to consider in determining significant effects, the mere existence of these characteristics does not require an EIS. You state that the decision represents a “decision in principal about a future consideration,” specifically Forest Plan revision decisions. However, as stated in the response to comments on the EA, the area is being managed in accordance with the current Forest Plan and that Forest Plan revision alternatives have yet to be developed. It appears that future consideration of the area for wilderness has been addressed in the roadless inventory. I find that an EIS is not necessary and the EA supports the FONSI on the points raised in your NOA.
(3)	The DN/FONSI represents a decision in principal about a future consideration.	
(4)	The decision violates NFMA statutes and regulations by failing to protect slopes, soils, and watersheds.	Not specifically addressed.
(5)	The Forest Service failed to fully evaluate the impacts of the travelway and cutting unit on the biological, aesthetic, recreational, geological, watershed, and roadless values of this important area.	Not specifically addressed.
Exotic/Invasive Species		
(1)	Address the impact fragmentation will have on the spread of exotic species into interior forest habitat.	Not specifically addressed.
Forest Health		
(1)	The USFS failed to fully analyze forest health issues. Commenters asked the USFS to incorporate ecological principles, not just silvicultural principles into its analysis of forest health. Despite this, there was no discussion of hemlock adelgid, air pollution, dogwood anthracnose, stream quality, paucity of old growth, or any serious forest health matter except the gypsy moth and oak decline. The above issues all have the potential to impact the forest health of the area and are valid forest health concerns.	Under the NEPA, the USFS is required to provide full and fair discussion of significant environmental impacts as they are affected by proposed actions. You have not presented any new information which links the presence/activity of hemlock wooly adelgid, dogwood anthracnose, or air pollution to a significant effect of the proposed action. The EA adequately discloses the effects of the alternatives on old growth, pages 40-59, and on stream quality, pages 35-40. I find that the EA adequately discusses significant forest health issues and discloses the effects to the forest health, as appropriate.
(2)	If the gypsy moth and oak decline are really threats, older trees should not be eliminated since excess numbers of older trees will be required in order to	Not specifically addressed.

	achieve the DFC of an equal age class distribution.	
(3)	Address the increased susceptibility of the small unlogged areas between each logging unit to blowdown.	Not specifically addressed.
(4)	We do not agree that a more healthy forest can be completely described by “more young and vigorous trees.” Please justify this statement from any point of view other than exploitation, extraction, and manipulation.	Not specifically addressed.
Local Communities		
(1)	Include in the contract of this and all other sales a clause that prohibits the export of the raw wood or non-value added wood products from the local area, and allows only locally-owned companies to bid on, log, or receive the wood from this sale.	Not specifically addressed.
(2)	What companies that are locally-owned or are subsidiaries of companies that are locally-owned have bid on timber sales in the region in the past? What are your expectations for this sale?	Not specifically addressed.
Mitigation		
(1)	The appellants contend that the DN/EA does not ensure that the project will not cause erosion, compaction, or damage to various soil attributes listed in commenters’ letters and the EA. The EA does not thoroughly examine the site-specific impact of management practices in specific areas. It discusses general measures to prevent damage to these attributes but fails to demonstrate how these measures will prevent irreversible damage, especially on slopes with severe erosion hazards and other sensitive soils.	Effects to the soil and water resource are disclosed on pages 23-40 of the EA. The alternatives considered in detail (EA, pp. 8-15) include mitigation measures for protection of the soil and water resources. Monitoring of the implemented actions is provided for in the EA on pages 17-18. I find that the EA adequately disclosed the effects of the alternatives to the soil and water resources in the project area.
(2)	Mitigation methods on p.11 #2 do not protect riparian areas or areas with unstable soil.	Not specifically addressed.
Old Growth		
(1)	Perform an ecological evaluation for the presence of old growth, rather than using the CISC data which is notoriously poor at predicting old growth characteristics.	Not specifically addressed.
Recreation/Tourism		
(1)	The DN/EA does not adequately consider impacts to recreational resources according to MUSY, NFMA, and NEPA.	The EA states, on page 102, that most of the area is classified as roaded natural; and on pages 98-100 that a shelterwood cut with reserves will provide for rehabilitation of the visual quality from the lower end of the Pine
(2)	While we do not wish to argue about policy in this timber sale appeal, we do	

	think that changing priorities and the needs of recreationists, including those seeking a truly primitive experience, should have been fully explored in this DN/EA.	<p>Mountain Trail. Other mitigation measures such as buffer zones and the retention of a partial canopy, will improve the visual quality over time meeting the VQO partial retention and modification guidelines. Page 103 of the EA discloses that timber harvest operations will affect the recreation experience of hikers during the timber operations. The EA states, on page 103, that dispersed recreation use in the general forest is not very common and most of the use is hunting. The EA further states that the Wilson Mountain Trail receives a moderate amount of use especially during hunting season and the other two trails, Pine Mountain and Sprouts Run, receive very little use. Recreation activities are highest on weekends and generally low during the week when timber activities are occurring. I find that the planned timber harvest will have no cumulative, long-term impact to the visual resource or recreation opportunities in the area. In fact, it appears that the timber harvest as planned will improve the recreation experience by increasing the watchable wildlife and creating parklike stands that are more aesthetically pleasing.</p>
(3)	The Wilson Mountain timber sale will have significant impacts on dispersed recreation. The project involves three logging units above the Sprouts Run National Recreation Trail, reopening part of the Wilson Mountain Trail to serve as a logging road, and logging in stands surrounding the Pine Mountain Trail, Wilson Mountain Trail, and an undesignated trail that runs from Back Run to the top of Skillern Mountain.	
(4)	The EA's cold, detached, and incomplete description of the trail and off-trail assets of the WM area is limited mostly to discussion on the amount of use, type of use, and land management classifications of the area (pp. 102-4). The USFS has failed to take the hard look necessary to achieve "coordinated management of the various resources." Analysis of such should include, at the very least, the unique physical attributes of the area, who the present and potential users are, what present and potential users expect from the area, the surrounding environment, sensitive areas that should not be disturbed, general history of the area, recreational/outdoors history of the area, special qualities such as opportunity for solitude, spiritual rejuvenation, challenge or relaxation, importance of hunting, fishing, day hiking, backpacking, wildlife watching, plant identification, connectivity of trail system in the area, and other factors. The recreational assets of the Wilson Mountain area are deserving of special consideration.	
(5)	The low priority the USFS places on recreation is evident simply by examining the placement of the cutting units. As mentioned above, many of the cutting units are located in prominent, highly visible locations. Cutting units are located at the trailheads of the Pine Mountain Trail and the undesignated Skillern Mountain Trail at critical scenic points where these trails rise from valleys of the James River and Back Run,	

	<p>respectively. The cutting units above the Sprouts Run National Recreation Trail are located in a steep, highly constricted valley and are separated from the trail by only a small buffer. The cutting unit next to Wilson Mountain Trail is located on a ridge and a saddle with magnificent groves of older trees. If the USFS wanted to pick an alternative that impacted more trails, it could hardly have done any better. Full consideration of the recreational resource is warranted in the EA (FSH 2309.18,1.2).</p>	
(6)	<p>The DN/EA calls for far more cutting units in the area than the OAA originally proposed, and these will affect the viewsheds of existing and planned trails. The EA does not consider future NRT designation for connector trails, a possibility that is suggested in FSH 2353.31,1 & FSH 2353.51. The cutting unit could impact buffer zones for this connector trail. Clearly the Forest Service did not do the proper planning when it laid out this sale and it did not do the proper NEPA analysis, or these potential conflicts would have been resolved in a better manner.</p>	
(7)	<p>The mitigation measures do not state how the semi-primitive recreation experience will be maintained along the trail corridor or specifically what steps will be taken to protect the 100-200 ft. zone above the trail. There is no information about what steps will be taken to meet the standards during site preparation (EA, pp.11-12).</p>	
(8)	<p>The EA says that due to the “abundance of trails in the area,” off-trail hiking is undesirable and unnecessary (p.102). This is not the case. Many of the trails in the Wilson Mountain area are very primitive and many trails are unconnected. There is no justification for refusing to analyze this issue.</p>	
Remedies		
(1)	<p>The appellants ask that the decision to allow logging and associated activities in Compartments 3003, 3011, and 3012 be withdrawn.</p>	Not specifically addressed.
(2)	<p>Appellants ask that no logging, roadbuilding, or associated activities commence in the Wilson Mountain area until its roadless attributes are</p>	Not specifically addressed.

	thoroughly studied and it receives special consideration in JNF Plan.	
Riparian Areas		
(1)	The BE/EA fail to identify or protect riparian areas. According to the BE, no bogs or wetlands were found in the project area (Project File, p.G-2). According to EA, p. 90, a spring seep, considered a unique habitat was found in one unit. The BE and EA contradict themselves. The BE may not have identified all springs and seeps and therefore may have missed some potential PETS species habitat.	The EA states that “spring seeps would be flagged and avoided during harvesting operations. No trees would be harvested from the spring seeps. No impacts to these unique habitats are expected” (EA, p. 91). The BE lists species having unique habitat requirements that were considered (page G-2) and includes “bogs/wetlands” as an example of the habitat considered. No contradiction exists. I find that the riparian areas were identified in the BE/EA, and that the protection of bogs, wetlands, and a spring area were adequately considered.
(2)	Riparian areas need to be defined by the latest scientific information. There are numerous riparian areas/seeps throughout the middle of unit 3012/33&58. Nine seeps/wetlands were observed in this corridor. Ferns and other plants along this corridor are evidence of the richness of this area. The current Forest Plan’s system of buffer zones is arbitrary and does not guarantee that the entire area, its underlying water resources, and downstream areas will be protected. Likewise, other riparian areas, seeps, and associated watersheds in the Wilson Mountain area may not be protected.	Not specifically addressed.
Roadless Areas		
(1)	The EA contains a brief discussion of roadless characteristics on pp. 105-108. By reference, the EA incorporates the Roadless Process Paper, a document that is part of the unfinished Plan Revision (pp. 105, 131). The appellants assert that neither the EA or the Roadless Process Paper adequately analyze the roadless characteristics of the Wilson Mountain area.	The proposed timber harvest activities impact to the roadless characteristics and potential wilderness designation of the Wilson Mountain area is a significant issue identified in the EA on page 6, and the issue is specifically addressed in the EA on pages 105-108. The DN on page 5, reiterates the roadless issue and the decision-maker states that the selected “alternative will result in insignificant impacts to recreation and roadless characteristics” (DN, p. 2). The EA states on page 105 under the <u>Existing Condition</u> section that, “[c]urrently, there are no inventoried roadless areas in the project area. No wilderness area or other special management area designations have been identified in the project area at this time for the upcoming Forest Plan Revision.” However, the EA
(2)	According to the EA, p. 131, “the Roadless Inventory for the Forest Plan Revision has been completed and the Wilson Mountain area does not meet the criteria to be included as an inventoried roadless area.” However, the analysis in the Roadless Process Paper referred to is flawed.	
(3)	Nancy Ross, forest planner for the supervisor’s office has stated the	

	<p>following on two occasions, “We know the Wilson Mountain area is so close to 5,000 acres that for all intents and purposes it might as well be treated as if it were 5,000 acres,” (conversation with Peter Kirby and separate conversation with Sherman Bamford, November 1997). Following the latter conversation, Sherman Bamford of Preserve Appalachian Wilderness examined the USFS’s Wilson Mountain area and found that using the USFS’s own CISC data, <u>by counting only those stands entirely within the area</u>, the size of the area is approximately 4,638 acres. <u>When the approximate acreage of the remainder of the USFS area is added (additional partial stands within the USFS area), the size of the area is increased to approximately 5,000 acres.</u> Significant questions remain. Clearly the USFS area is 5,000 acres or larger or so close to it that it meets the 5,000 acre requirement in ch.7.11. The USFS needs to make an accurate determination of whether the area it has studied is indeed 5,000 acres or larger.</p>	<p>documents the concern of several individuals and groups who have asked that this area (which they identified as approximately 5,100 acres) be considered as a Special Management Area, “wildlands” area, or wilderness study area. The EA then goes on to describe the existing condition and effects of the alternatives upon the roadless characteristics of the area (5,100 acres) identified by the Wilderness Society. The impact of the alternatives to any future special designation of the area are also disclosed (EA, pp. 107-108). The EA, on page 105, discloses that, “[t]he USFS looked at a similar area in the review of the roadless area inventory for the Southern Appalachian Assessment...That area included approximately 4,841 acres.” The EA states that, “[a] Draft Process Paper determined that this area is not consistent with the Regional criteria for roadless area designation” (EA, p. 105). Excerpts from the process record are included in the appeal record. I find that the EA adequately analyzed and disclosed the roadless characteristics of the Wilson Mountain area and adequately disclosed the impacts to the roadless characteristics of the area including any impacts of the alternatives to future special designation of the area per the NEPA. I also find that the EA adequately references and considers the Roadless Process Paper that was prepared as part of the Southern Appalachian Assessment.</p>
(4)	<p>It is important to realize that the studied area may have been unduly restricted in size. Slightly larger areas were proposed in the draft of Virginia’s Mountain Treasures and by the Raonoke River group of the Sierra Club, and other possibilities exist for enlarging the area. The Mountain Treasures area included additional acreage to Hoop Pale Gap, to Colon Hollow road, and on the southwestern side of Skillern Mountain. This proposal encompassed only public lands. In the latest draft of Virginia’s Mountain Treasures, it is estimated at over 5,100 acres. According to the EA, p. 105, “this area covers approximately 5,100 acres.” The Roanoke River Group/Sierra Club asked the USFS to “slightly adjust the SW boundary in two places to include more acreage in Hoop Pole Gap around the upper portions of Sprouts Run between FS 3027 and FS 907 and to include more acreage below the eastern end of FS 3020 on Skillern Mountain. These two adjustments should increase the Wilson Mountain roadless area to well over 5,000 acres” (December 31, 1994, letter to</p>	

	Supervisor Joy Berg). The EA and Roadless Process Paper did not analyze whether some land area in the vicinity of Wilson Mountain does indeed meet the 5,000 acre criteria for roadless areas.	
(5)	Even if the appropriate area were less than 5,000 acres in the Roadless Process Paper, the criteria for roadless areas under 5,000 acres are misapplied and otherwise used in a subjective manner to eliminate the Wilson Mountain from the roadless inventory when it in fact meets all the technical criteria for roadless areas in the east. Claims made in the paper are either unsubstantiated or irrelevant to the decision. This is a particularly important factor in considering areas that have been dropped from roadless inventories. “We must be prudent and even-handed especially when modifying or dropping an area from further consideration as a roadless area” (statement included in a packet distributed by Regional Forester Robert Joslin, Oct. 25, 1994).	
(6)	The Roadless Process Paper suggests that the Wilson Mountain area does not meet the criteria for the following reasons: (1) the land is not regaining a natural, untrammelled appearance; (2) the location of the area is not conducive to the perpetuation of wilderness values; (3) it is not a self-contained ecosystem such as an island; (4) it is not contiguous to existing wilderness, primitive areas, or roadless areas” (p. 15). However, the Wilson Mountain area meets reason #1 from the Roadless Process Paper. This is evident from p.106 of the EA which states that only 3% of the Wilson Mountain area is in the USFS’s 0-10 age class, well below the 20% naturalness test in ch.7.11(b)7. Aerial photography from shows the vast majority of the area regaining a natural, untrammelled appearance over this period of time. The presence of black bears, cerulean warblers, and other area- sensitive birds is further indirect evidence that the area is regaining a natural, untrammelled appearance since these species require remote habitats and freedom from disturbance (EA, pp.61 and 64, Glenwood bird surveys).	

(7)	<p>The EA mentions older logging units in the Wilson Mountain area (p.106). Direction from Regional Forester Robert Joslin allows such old logging units to be included in roadless areas if the overall area meets the naturalness test in ch.7.11(b)7 (Letter to Forest Supervisors, March 14, 1995).</p>	
(8)	<p>The presence (EA, p.109; Roadless Process Paper, p.15) of some unimproved roads in roadless areas is allowed provided that these areas meet the improved road density test in ch.7.11(b)5, as the area does.</p>	
(9)	<p>Wilson Mountain area meets reason #2 as well. The area <u>is</u> conducive to the perpetuation of wilderness values. The USFS has emphasized unsubstantiated claims instead of taking the requisite “hard look” at this issue.</p>	
(10)	<p>Reasons #3 and #4 do not apply, since the area meets ch.7.11(2)(a) in this case (see discussion reason #2 above) and since the USFS has not investigated whether the area meets this provision of the handbook. The handbook says that an area is a roadless area “if one or more of the following criteria” are met (ch.7.11 “Inventory Criteria”). It is irrelevant if an area meets 7.11(2)(b) or (c) if the area meets 7.11(2)(a). This fact is obvious as many roadless areas and existing wildernesses are not islands or adjacent to wildernesses, roadless areas, primitive areas, or the like.</p>	
(11)	<p>The EA states that “there are no inventoried roadless areas in the project area” and does not adequately analyze whether there is in fact a roadless area in the project area (p.105). This issue is of significant concern to the appellants because if they wait until after the DN for the Plan Revision is signed, the Wilson Mountain area may already be damaged by the timber sale.</p>	
(12)	<p>In addition to the USFS’s failure to properly inventory the Wilson Mountain area as roadless, the agency has also failed to meaningfully assess impacts to the unroaded character of the area. Putting aside for a moment the argument that the area was improperly left off the inventory, the agency has improperly relied upon the administrative status of the area in</p>	

	weighing the significance of likely impacts. What is important for the purposes of NEPA is the on-the-ground character of the area.	
(13)	The appellants assert that the USFS's analysis of the area is impermissibly skewed by reliance on the fact that the area was not inventoried. As discussed above, the accuracy of these inventory determinations is also under dispute. Regardless, the USFS has plainly failed to provide a fair assessment of impacts to the roadless character of the area. The determination of significance for purposes of NEPA is premised upon the fact that the area is not an inventoried roadless area. Appellants, therefore, contend that the agency's analysis is in violation of NEPA and relevant case law.	
(14)	Commenters asked the USFS to evaluate the impacts of the project on roadless status, wilderness eligibility, and a number of issues related to these topics. The two issues are not synonymous. The EA and Roadless Process Paper confuse the two issues and do not analyze either issue thoroughly. Wilderness evaluation "comes later in the planning process." It is important to differentiate between the 'inventory' of roadless areas (or potential wilderness areas) and the evaluation of those areas for possible wilderness recommendations" (Regional Forester Joslin, Letter to Forest Supervisors, October 25, 1994).	
(15)	The appellants believe that the Wilson Mountain area is a roadless area and has not been appropriately inventoried as such. Projects in roadless areas that would alter the area's undeveloped character require an EIS (National Audubon Society vs. USFS, 1990) (see also FSH 1909, 8,12 ch 20).	
Roads		
(1)	The DN/EA do not clearly disclose what activities will be associated with the forwarder trail (or forwarder road) or its impacts on the human environment. The DN does not mention the forwarder road or trail at all (pp.1-2), yet EA, p.11, describes the activity as a "reconstruction" and states that soil will have to be "end-hauled out of the area." The EA mentions the	The DN identifies Alternative 3 as the decision to be implemented (DN, p. 1). The EA, page 11, includes a description of the proposal under Alternative 3, including a description of the forwarding harvesting system to be used to access stand 3011/15. The EA states that the forwarding system would be used on 0.5 miles of an existing old timber harvesting road so that the road

	<p>“severe erosion potential” (p.11) and “evidence of unstable soil” (p.25) and a 300 ft. riparian zone where the travelway is to be located (see 5 USC 706(2), 16 USC 1604(g)(3)(F)(v), 36 CFR 219.1(5&14) and 40 CFR 1506.6). Presumably the public was not informed of this aspect of the activity in the legal notice (40 CFR 1500.2(d)). The implication that the activity associated with this travelway is merely the use of an existing woods road is misleading and false. Field examination by one of the appellants revealed that the travelway to the forwarder unit is not ready for use and will involve substantial reconstruction, (see Exhibit C and Forest Plan pp. IV-46-7). There are now small birch trees and other trees in the travelway and much of the bank has fallen onto the unimproved road limiting the travelway to two or three feet in some locations. At the Gilmore Hollow Creek crossing, access is nonexistent, so new road construction will be required. This road work would take place in a riparian area and across a steep bank to the far side of the creek. Any road construction or reconstruction should be analyzed in light of p.IV-46, paragraph 1 of the Forest Plan (see also NEPA). If the travelway is indeed a constructed or reconstructed road, then its impacts on FSH 1090.12.ch.7(b)(5) and Sherman Bamford’s comment #3 should have been analyzed before a decision was approved (also see #V., paragraph one, above).</p>	<p>would not need to be reconstructed. The EA discusses how the forwarder trail would be constructed, and that construction would be done between June 1 and December 15 to avoid wet weather operations and potential for sedimentation. The EA also stipulates restrictions on side-casting soil during construction. The forwarding trail location is shown on the alternative maps. I find that the activities associated with the forwarder trail and its impacts have been disclosed and adequately considered in the EA.</p>
(2)	<p>The USFS classifies the travelway as a trail but is unclear on many points. FSH 2353 says that a trail “is a commonly used term denoting a pathway for the purposes of travel by foot, stock, or trail vehicles.” The EA, p.69, states that the trail will be closed after use, but the EA does not state what the trail’s purpose is except to serve as a logging road. FSH 2309.18, 1.2 requires the USFS to “analyze...maintenance schedules, funding, management of trail use, and priorities for construction and reconstruction.” The OAA says that one DFC is to bring Sprouts Run and other specified trails up to standard</p>	

	(p.4). Another DFC is to complete a connecting trail between Wilson Mountain and Sprouts Run Trails (p.54). Much of this work is undone and there is no DFC for building additional trails such as the Gilmore Hollow forwarder trail. The decision to complete a forwarder trail seems to either be a misplaced priority, a product of poor planning, or a logging road in disguise.	
Soils		
(1)	The EA does not disclose how activities (construction and use of skid roads, forwarder roads, cables, log landings, and logging itself) in these areas will affect the various soil and watershed attributes listed in commenters' letters. Many organisms are likely to be impacted by movement of stones, roots, bedrock, etc, in the course of these activities.	Not specifically addressed.
(2)	The EA does not document why soil compaction and long-term soil impacts would not occur (see NEPA and APA). Log landing activities would certainly involve a high number of "passes" and would have impacts similar to roadbuilding and heavy road use.	Not specifically addressed.
(3)	The EA does not disclose the location of yarding/cable facilities or the impacts these areas will have on soil and watershed pursuant to NFMA, NEPA, and APA.	Not specifically addressed.
(4)	The EA fails to evaluate the site-specific impacts of cable logging on soils and watersheds (EA, p.27). The USFS must provide enough information for the public to respond to issues intelligently (16 CFR 1604,6(d)). This finding calls into question the USFS's assumption that cable logging does very little harm to soil.	Not specifically addressed.
(5)	The USFS's discussion of nutrient cycling, impacts to soil organisms, soil structure, soil productivity and a variety of other issues submitted by commenters is incomplete. The attempt to equate naturally-functioning forests with artificially-regulated even-aged forests is a disservice to the public. The claim that leaves and branches of trees contain almost as many nutrients as boles of trees says nothing about the ecological function of large trees lying on the forest floor or large snags. This	Not specifically addressed.

	decaying matter provides nutrients over decades and serves various ecological niches during that time. In even-aged stands, this kind of diversity is lacking. The discussion of this and other attributes of soils, soil build-up, nutrient cycling and healthy forest ecosystems is inadequate	
TES/PETS/MIS		
(1)	The USFS has not adequately monitored or inventoried the populations or population trends of wildlife or native plant species, including PETS species, MIS, and featured species (see 36 CFR 219.12(d), 36 CFR 219.19, and 36 CFR 219.26).	You make a general claim about the lack of population monitoring. The results of the forest-wide monitoring program (includes both habitat and population information) for terrestrial and aquatic resources are provided periodically in forest monitoring/evaluation reports. Monitoring population/population trends on a project by project basis is not required. I find that the District is implementing an adequate Forest Plan monitoring program related to plant and animal resources.
(2)	The EA has no indicator species for salamanders or various other key forest species. The EA has no indicator species for salamanders, raptors such as barred owls, Coopers hawks and goshawks, herbaceous understory plants, and other forest species (p.64). These species have different ecological roles, feeding and shelter needs, and habitats from those of black bears and NTMBs. Non-riparian habitat for barred owls is not analyzed (EA, p.64). Herbaceous understory plants and salamanders, and impacts to these species were not even directly discussed in the EA (pp.40-51, 141, and 143). The USFS tried to tie discussion of other types of species to discussion of these species, but this was merely an afterthought (p.141 and 26). No real analysis took place. Salamanders are the most numerous and most important vertebrate predators in the southern Appalachian mountains (Hairston, 1987; Petranka et al., 1993). Logging impacts to certain salamanders could be long-term in nature (Petranka et al., 1993; Petranka, 1994; Petranka et al., 1994). Clearcuts, shelterwood, group selection, and leave-tree logging may result in a significant decline in salamander abundance (Harpole and Haas, "Silvicultural treatments on	The planning regulations you reference (36 CFR 219.12(d), 219.19, and 219.26) do not contain requirements regarding the selection of MIS based on taxa as you described. The MIS selected for the project follow the criteria for MIS selection and appropriate use of MIS in analyzing effects of different alternatives. In addition to the use of MIS, the District considered effects to federally listed species, USFS sensitive species, old-growth forest communities, water quality, and broad forest classes. I find that the District made appropriate use of MIS and provided an adequate disclosure of effects to the full range of terrestrial and aquatic habitats in the project area.

	<p>terrestrial salamanders in a southern Appalachian hardwood forest” (unpublished, abstract available). Likewise, the USFS’s discussion of herbaceous understory plants is nonexistent (see comments by and response to Sherman Bamford and Steve Krichbaum on herbaceous understory plants; see also comments on deer browsing).</p>	
(3)	<p>The BE reaches an arbitrary conclusion regarding impacts to PETS species. “When adequate population inventory information is unavailable, it must be collected when the site has a high potential for occupancy by a threatened, endangered, proposed, or sensitive species” (Vegetative Management EIS) (see 16 USC 1603(g)(3)(B) and 36 CFR 219.12. The field surveys for the BE took place in late July, during the “green lull” when the foliage and flowers of many spring and fall species would not be easily identified. Some birds and other wildlife might not be present at this time or may be relatively inactive.</p>	<p>The District considered information from the VDNH database and conducted field surveys for list of TES species considered for the project area. In addition, considerations for habitat relationships of TES species was provided in determining presence/absence (i.e. high proportion of species associated with rare communities). Based on these surveys and considerations of habitats in the project area, the effects to Indiana bat and butternut were considered in detail. The inventory standard related to the timing of the inventory, as you described, is not a requirement for conducting adequate inventory and analysis of TES species. I find that the inventory conducted for TES species is adequate.</p>
(4)	<p>The project does not properly manage for the desired future conditions for turkey, the featured species for this area.</p>	<p>The EA discloses that “wild turkey is the featured species for the areas proposed for harvesting...[and that] featured species designation guides the actual management of the appropriate areas and determines consistency with Forest Plan direction” (EA, p. 60). The EA states on page 3 that it tiers to the Forest Plan. Standards and Guidelines in the Forest Plan direct that “within areas where wild turkey are featured, strive for optimum habitat components: 10% in 0-10 age class, 15% conifers, and at least 50% in 40+ year age class hardwoods” (Forest Plan, p. IV-65) and “manage roads so that 1 mile or less of open roads occur per 1280 acres” (Forest Plan, p. IV-153). The EA compares current conditions to the DFC for turkey, as well as for deer and black bear, for 6 habitat components. An analysis of these components are disclosed for all alternatives and compared with plan direction (EA, pp. 62-76). The habitat conditions for the proposed alternative is within the</p>
(5)	<p>Grass/forb habitat exceeds DFCs for turkey in this area. Efforts to increase grass/forb for turkey may be laudable, but it is certainly not necessary to log 196 acres of mature forest to do so. According to data used in the 1993 Marble Valley timber sale EA, turkey habitat coefficients for wildlife openings are hundreds of times higher than coefficients for removal cuts (Geotz and Mollwane, Wildlife Population Data-Working Paper). It is not necessary to log large areas for turkey in this area; providing a few small wildlife openings is a more efficient method. Some additional patches of relatively secure grass/forb habitat may be available on private land too.</p>	
(6)	<p>Of the DFCs, lack of old growth and high road densities seem to be most serious limitations for turkey (EA,</p>	

	p.62). None of the action alternatives address the issue of meeting the highest levels of DFCs practicable for turkeys (40 CFR 1505.1(e) and FSH 2634.2). Turkeys should guide the purpose and need for the project. Under such an alternative, existing forests would be protected and 3.8 miles of USFS roads would be closed (EA, p.62). If needed, a small amount of grass/forb habitat would be created in previously cut-over stands.	habitat guidelines of the Forest Plan, with the exception of open road density. The reason for this deviation is explained (EA, p. 69). The amount of open road density does not increase due to the proposed actions. I find that the EA adequately considers the DFCs for turkey and that the proposed project sustains the desired habitat conditions for this species as outlined in the Forest Plan.
(7)	The chosen alternative is inadequate for turkeys. It allows the destruction in some of the few older stands in the area when current old growth is below DFCs. A portion of one stand (3012/41b) is documented to be old growth and individual trees throughout the older units range from 82 to 140 years old (Old Growth Talley Sheets, 9/97). The USFS DN does not explain why Alternative 1 or an action alternative, as described above, is not appropriate in light of these DFCs.	
(8)	The USFS has no indicator species for aquatic species in Sprouts Run.	Not specifically addressed.
(9)	What uncommon species inhabit the area? What effect will the logging have on them?	Not specifically addressed.
Timber Harvesting		
(1)	The DN allows logging in portions of units 3012/33&58 and 3003/15 that were determined to be unsuitable for logging in the OAA.	The DN, page 8, discloses that all forest land receiving the various harvesting activities is suitable forest land. The process records, in discussing the Continuous Inventory of Stand Conditions (CISC) stand data, for this proposed action disclose that all the stands being harvested, including the 3 stands in question, 3003/15 and 3012/33 and 3012/58, were examined on the ground and mapped according to the procedures given in USFS Silvicultural Examination and Prescription Handbook, FSH 2409.26(d), Southern Region. The mapping and field examination procedures use the forest land suitability criteria established in the Forest Plan for each Management Area. For stands that have been mapped out, it is quite common for stands of suitable forest land to be next to stands of unsuitable forest land. Small scale maps mask the precise stand boundary locations, which has occurred with

		these three stands. The freehand drawing of stands on small scale maps are only capable of showing the approximate ground location. This has been the case for these 3 stands on the OAA and project maps. I find that stands 3003/15, 3012/33, and 3012/58 are all suitable forest land that have been mapped out according to Forest Service procedures given in FSH 2409.26(d) and Forest Plan Management Area criteria.
(2)	A difference between the DN, page 1, which “calls for removal of up to 80% of stands” is not consistent with the EA, page 49, which “analyzes only a 66-75% removal.”	The DN, page 1, states “[a]pproximately 196 acres will be harvested using shelterwood with reserves harvest method, which will remove up to 80% of the existing overstory trees in the treated stands.” This statement refers to the approximate number of overstory trees that would be removed in those stands receiving the shelterwood regeneration method. It does not say anything about removing (cutting) 80% of the stands. The EA, page 49, states “[a]pproximately 196 acres would be regenerated under this alternative using a shelterwood with reserves treatment. With this harvest method approximately one-quarter to one-third of the original stand is left.” This statement estimates the percentage of overstory trees that would be left. The EA, page 50, contains information about the effect of possible wind damage and blow-down. This acknowledges that if the shelterwood with reserves method removes 2/3 to 3/4 of the overstory, additional wind damaged trees and blow-downs could increase the overstory removal to 80%. I find that the DN and the EA are consistent in disclosing the estimated percentage of overstory that will be removed, in those stands that are to be harvested, using the shelterwood with reserves regeneration method.
(3)	The USFS has used a modeling system based on a limited number of monitoring studies to calculate the impact of the ground-based logging. For cable logging, it uses only an estimate (EA, p.27). This modeling system is inadequate to determine the site-specific impacts of the approved projects, given the numerous factors involved and the limitations inherent in	Not specifically addressed.

	such a modeling system (especially those regarding validity of assumptions at different locations). And it tells little about the impacts of the projects on downstream resources, especially if the system does not take into account the size or flow of the receiving stream or the effect of other discharges into the receiving stream.	
(4)	The irrationality of applying this modeling system to this site is illustrated on EA, pp. 27 and 29. On p.27 the EA states that in cable units, “1% of the harvested unit would be impacted by cable corridors,” an equivalent of 0.86 acres. On p.29, it states that “approximately 0.9 acres of highly erosive soil would be disturbed as a result of cable corridors.” The latter figure does not even include less highly erosive soil or impacts to downstream resources. The EA has understated soil impacts and relies on ridiculously low damage estimates in the absence of any ground truthing.	Not specifically addressed.
(5)	The USFS promotes forwarder logging as a relatively benign yarding method (EA, p.10), but it can still do much damage. Unit 3006/32 of the Icy Hopper timber sale was logged using a forwarder, and it created bare spots and gullies throughout the unit (see exhibit D).	Not specifically addressed.
Vegetation		
(1)	The USFS did not analyze the full effects of logging on vegetation and related attributes.	Not specifically addressed.
Water Resources		
(1)	The EA (pp.23-40) provides no baseline data on sedimentation, pollutants, or other key factors relevant to the receiving streams.	Not specifically addressed.
Wetlands		
(1)	There are wet seepy areas in 3012/33 and probably other stands. How will you protect and enforce protection of these important habitats?	Not specifically addressed.
Wilderness		
(1)	Several individuals or groups have asked that this area be considered as a Special Management Area, “wildlands” area, or Wilderness Study Area. A special management area was proposed in the past in the Sprouts Run area (Sprouts Run NRT Establishment	The EA, page 105, discloses that no special management areas are located in the project area and none have been identified for the upcoming Forest Plan Revision. The EA discloses on page 106 that the project area “contains a few special features,” including Sprouts Run

	Report, 1989). The EA fails to analyze the impacts of the project on past special management area proposals. The EA does not disclose where the original proposal was located or the project's impacts on this area.	and several sensitive plant species. The EA also discloses that no special features will be impacted (EA, pp. 107-108). I find that the EA adequately evaluated and disclosed the impacts to existing special features, which included Sprouts Run.
Wildlife		
(1)	How many birds will be killed by this proposal?	Not specifically addressed.
(2)	How many amphibians and of what species will be killed by this proposal?	Not specifically addressed.

APPENDIX H
THE CHESTNUT RIDGE #2 TIMBER SALE

Table 1H

Public Comments on the CRTS SN

Category	Commenter				
	Robert Mueller	Martin P. Albert, M.D.	Steve Parks	AFMG	Steven Krichbaum
Aesthetics		•			•
Alternatives					•
Chemicals			•		
Cumulative Effects					•
Ecological	•	•	•		•
Economics	•	•	•	•	
Environmental Analyses/Documentation					•
Hydrological					
Old Growth		•			•
Recreation/Tourism					•
Regeneration				•	•
Riparian Areas				•	
Roads			•		•
Silviculture			•		
Soils		•			
TES/PETS/MIS				•	•
Timber Harvesting	•	•	•	•	•
Vegetation		•			
Water Resources	•	•			
Wildlife	•	•		•	•
The Proposed Action	-	-	-	+	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 2H

Public Comments on the CRTS EA

Category	Commenter			
	SEDG	Steven Krichbaum	Wade Neely	Mr./Mrs. L.F. Payne
Access		•		
Adjacent Landownership			•	•
Aesthetics		•		
Alternatives	•	•		
Aquatic Communities	•	•		
Archaeological/Natural Heritage Resources	•	•		
Cumulative Effects	•	•		
Ecological	•	•		
Economics	•	•		•
Ecosystem Management		•		
Environmental Analyses/Documentation	•	•		
Forest Health	•			
Exotic/Invasive Species	•			
Hydrological		•		
Mitigation	•			
Old Growth	•			
Public Involvement			•	•
Recreation/Tourism		•		
Regeneration	•			
Riparian Areas	•	•		
Roads	•	•	•	•
Silviculture	•			
Soils	•	•	•	
TES/PETS/MIS	•	•		
Timber Harvesting	•	•	•	•
Water Resources	•	•	•	•
Wildlife	•	•		
The Proposed Action	-	-	-	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 3H

Public Administrative Appeals of the CRTS DN/FONSI

Category	Appellant			
	James Williams	VFW/Steven Krichbaum	Wade Neely	SEDG/Heartwood
Adjacent Landownership	•		•	
Alternatives		•		•
Cumulative Effects		•		•
Ecological		•	•	•
Economics	•			
Ecosystem Management		•		
Environmental Analyses/Documentation		•		•
Exotic/Invasive Species			•	•
Forest Health			•	
Hydrological	•			
Old Growth		•		
Public Involvement	•	•	•	•
Recreation/Tourism	•		•	•
Regeneration				•
Riparian Areas				
Roads	•	•	•	•
Soils	•		•	•
TES/PETS/MIS		•		•
Timber Harvesting	•	•	•	
Water Resources	•		•	•
Wildlife		•		•

Table 4H

Public Comments on the CRTS Revised EA

Category	Commenter								
	AFMG	RHL	Mr./Mrs. L.F. Payne	Howard Wilson	John Carter, Jr.	Dell Curry	Wade Neely	Forest Guardians et al. *	Earl Cash
Access						•			
Adjacent Landownership		•	•		•	•	•		•
Aesthetics					•	•	•	•	
Alternatives	•		•	•				•	•
Aquatic Communities							•		
Ecological				•	•			•	
Economics			•	•	•	•	•	•	
Environmental Analyses/ Documentation							•	•	•
Forest Health								•	
Hydrological			•	•			•		•
Local Communities					•				
Public Involvement		•	•	•					
Recreation/Tourism			•			•		•	
Regeneration	•								
Roads			•	•	•		•		•
Soils			•		•		•		
TES/PETS/MIS				•					
Timber Harvesting	•	•	•		•		•	•	•
Water Resources			•	•	•	•	•	•	
Wildlife				•		•		•	
The Proposed Action	+	-	-	N/A	-	-	-	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

* This comment was submitted by Forest Guardians on behalf of six special-interest groups and three individuals.

Table 5H

Public Administrative Appeals of the CRTS Revised DN/FONSI

Category	Appellant					
	SEDG/Heartwood/ JMP/PAW	Earl Cash	Wade Neely	Mr./Mr. L.F. Payne	John Carter, Jr.	James Williams/RHL
Access				•		•
Adjacent Landownership		•	•	•	•	•
Aesthetics				•	•	•
Alternatives	•		•	•		
Aquatic Communities				•		
Cumulative Effects	•		•			
Ecological	•			•		
Economics			•	•	•	
Ecosystem Management			•			
Environmental Analyses/Documentation	•		•			
Exotic/Invasive Species	•					
Forest Health			•	•		
Hydrological		•	•	•	•	•
Old Growth		•				
Public Involvement	•		•	•	•	
Recreation/Tourism	•		•	•		•
Regeneration	•					
Roads	•		•	•	•	
Soils	•		•	•	•	
TES/PETS/MIS	•					
Timber Harvesting	•	•	•	•	•	•
Water Resources	•	•	•	•	•	•
Wildlife				•		

Table 6H

SEDG's Comments on the CRTS EA

Category	Comment	USFS Response
Alternatives		
(1)	Nowhere in the EA does it state why Alternative 2 is preferred to the other action alternatives. The public needs to know why you feel that the maximum logging, maximum road building alternative is the best, especially when other less ecologically and financially costly alternatives seem to meet the management objectives equally as well.	It is not the purpose of an EA to explain why an alternative is preferred. The DN will identify the final preferred alternative and provide the reason for the decision. The purpose of an EA is to provide evidence and analysis for determining whether to prepare an EIS or a FONSI (40 C.F.R. 1508.9(a)(1)).
(2)	Produce and include an alternative that would allow horse-loggers and other less-destructive logging practices to be competitive with large industrial operations.	The commenter has not identified an impact to a particular resource on this particular area that would lead to consideration of an alternative such as horse-logging. The Forest Plan identifies the standards to protect certain resources, such as aesthetics, soil, and water. Should there be a significant issue identified which favors alternative harvesting methods to reduce resource impacts, than an alternative may be developed in response to that issue. Such a significant issue has not been identified for this proposed action.
(3)	Include an alternative using no chemical herbicides (not just the no-action alternative).	The Record of Decision for the Vegetation Management of the Appalachian Mts., which was incorporated into the Forest Plan (page 4-3) requires during site-specific analysis the consideration of an alternative that does not use herbicide, in addition to the no action alternative.
(4)	Include an alternative using no road construction, permanent or "temporary" (not just the no-action alternative).	The commenter has not identified any impact to a resource on this particular area that would lead to consideration of such an alternative. There is no requirement to include such an alternative.
(5)	Include an alternative using no silvicultural practices that promote fragmentation of interior forest regions (i.e. no even-aged logging) (not just the no-action alternative).	There is no requirement to include such an alternative. The range of alternatives considered does provide for various amounts and types of silvicultural practices, which are consistent with the MA direction. When a significant issue has been identified in relation to forest fragmentation, the effects of the alternatives on forest fragmentation are disclosed in the EA.

(6)	Since Alternative 3 is much more above-cost and also achieves the DFC as well or better than Alternative 2 in all other ways, why is it not preferred? The fact that selection of the no-action alternative would result in a loss of \$4000 cannot be used as a reason to not select it. You didn't have to spend the money producing this flawed document.	The DN will provide a discussion of which alternative is selected and the reason for its selection.
(7)	The EA does not acknowledge that Alternative 4 would also benefit the local economy by providing jobs and raw materials.	Not specially addressed.
(8)	The preferred alternative in fact is not the action that was previously described in the scoping notice as you claim. The preferred alternative includes 25 more acres of logging and an additional 0.5 miles of road building that what was scoped.	Not specially addressed.
Aquatic Communities		
(1)	Simply because no brook trout exist in the project area doesn't mean the project would not affect them. Do any brook trout populations exist downstream? Water and sediment flow downhill.	The brook trout is a MIS, per the Forest Plan. The EA, page 21, provides an estimate of the environmental effects associated with brook trout within or downstream of the project area, which may result from the alternatives.
Archaeological/Natural Heritage Resources		
(1)	What is the heritage resource that exists within one of the harvest units? Which harvest unit is it in? Why is the site considered "non-significant?" Why isn't the public informed what it is? How can the public comment on this resource without being informed as to its nature?	The effects on heritage resources are disclosed in the EA. The agency normally avoids identifying the type and location of heritage resources discovered during inventories specifically designed to find these resources. Anonymity of sites is necessary for their preservation. As used in this EA, as site is considered "non-significant" when the site is evaluated and found to not meet the eligibility criteria for inclusion in the National Register of Historic Places (NRHP). If a site is not eligible for the NRHP, then obviously, the sensitivity to protect this site no longer exists and identifying its type and location may be made to the public. For the project area, one historic field clearing site was determined to be non-significant, so the project will have no adverse effects on heritage values. This is consistent with the Secretary of the Interior's standards for identification (48 C.F.R. 44720-44723); Section 106

		of the National Historic Preservation Act of 1966.
Cumulative Effects		
(1)	On page 28 of the EA, you admit that you are required to analyze the direct, indirect, and cumulative impacts of proposed actions. Yet this analysis is entirely lacking from the document. Please present this analysis.	The disclosure of direct, indirect, and cumulative effects of the proposed action and other alternatives is required per NEPA and has been provided in the EA. The direct and indirect effects may or may not be specifically identified as such in the EA.
(2)	Since the Plan states that for MA 15 harvesting entries will be limited to every 7-10 years, the claim that the 6-8 year old logging in the area is contributing an insignificant impact is insufficient. State why you feel there is no need to consider the cumulative impacts of these activities on forest fragmentation, Indiana Bat habitat, and other critical concerns.	Not specially addressed.
Ecological		
(1)	Issues involving fragmentation require that a spatial analysis be conducted. This was apparently not performed. Present some analysis of the current degree of fragmentation in the area and contrast that with that resulting from implementation of this proposal.	Spatial analysis was conducted as a part of the Forest Planning process. The issue of fragmentation was discussed on a Forest-wide basis during the revision to the Forest's LRMP. Through management area allocations, all alternative maps indicate spatially whether the Forest will be relatively fragmented or unfragmented as a result of project implementation. The effects of fragmentation were discussed in the EA. This site specific analysis shows that the effects on fragmentation are not significant given that other Forest Plan management areas were specifically allocated to provide unfragmented areas so there would be no significant decrease in fragmented habitat and subsequently minimum viable populations of MIS would be provided across the planning area (GWNF) as required by 36 C.F.R. 219.
(2)	The EA is misleading on page 19 where it states that most habitat in the area is mid and late-successional. The ecological state of forest succession is dependent on ecological processes of forest development, not on the economics of forest stands by which you define "mature," "overmature," etc. It is safe to say that, if there is any truly late-successional habitat in the area, it is very rare.	This is an opinion of the commenter. The use of the terms mid and late-successional in the EA on page 19 is comparable with how the terms are commonly used among many wildlife and timber management professionals. The USFS recognizes what is mature or overmature to one person may not be to another.

	(3) What effect will this project have on native biodiversity? Not on a stand scale where you might include edge-loving species that are all too common already, but at a regional scale, at which large unfragmented areas are rare.	See the Response to non-significant issue No. 7 in the EA, page 18, regarding the scoping comment on “Need to conserve or protect native biological diversity.”
Economics		
	(1) On page 10 of the EA, it claims that the no-action alternative would lose \$4,000,000. There appears to be an error in that these amounts are expressed in \$ rather than M\$ as claimed in the EA.	The following typographical and editorial errors were made and the following pen and ink changes have made to the EA: EA, page 10, Issue 4 - timber sale economics, eliminate (M\$).
	(2) Show a unit by unit economic analysis that includes the costs of sale preparation, harvest administration, timber inventory, reforestation, road maintenance, road construction, and other costs.	The EA, page 15, provides economic information. The commenter has not given any reason why this information is needed by the decision maker. Providing information to this desired level of detail is not needed by the decision maker in order to make a reasoned choice among the alternatives. The agency does not track costs by unit bases.
	(3) Alternative 2, the “preferred alternative” appears to be dangerously close to a below-cost sale. If a slightly lower bid than the USFS anticipates, or a slightly higher cost occurs for road construction than estimated, the taxpayers will lose money on this sale of public resources to private companies. What is the likelihood of either of these happening?	The estimated economic effects (EA-15) are based on the best available information at the time the EA is prepared. It would be speculative to provide “likelihood” predictions on whether there would be low bids and higher road construction costs.
	(4) Include in the contract of this and all other sales a clause that prohibits the export of the raw wood or non-value added wood products from the local area, and allows only locally-owned companies to bid on, log, or receive the wood from this sale.	Including contract provisions such as those being suggested by the commenter is not required by NEPA and is outside the scope of the analysis. The sale, harvesting, and transport of forest products from the NF is done in a manner consistent with applicable FS manuals, contracts, laws, and regulations.
	(5) What companies are not locally-owned or are subsidiaries of companies that are not locally-owned have logged timber sales in the region in the past? What are your expectations for this sale?	This information is not needed by the decision maker in order to make a reasoned choice among the alternatives. This information is irrelevant to the decision.
	(6) Why are we spending taxpayer money trying to provide man-made conditions that will support wildlife when natural processes support wildlife already, at no cost to society?	Not specially addressed.

	(7)	Will income from each unit of the sale offset its costs? Eliminate any units that are money losers.	Not specially addressed.
Environmental Analyses/ Documentation			
	(1)	On page 19, the EA claims that “water sources include portions of Jerry’s Hollow, Hiner Hollow, and Wilson Hollow.” These are located over 15 miles away from the project area. The statement was apparently cut and pasted from the analysis of the Hiner Hollow Timber Sale which you did a while back. It is a farce for you to say that you are performing a site-specific analysis when you are simply copying statements from other “site-specific analyses.	The following typographical and editorial errors were made and the following pen and ink changes have made to the EA: EA, page 19, “Jerry’s Hollow, Hiner Hollow, and Wilson Hollow” change to “existing waterholes and unnamed intermittent streams.”
	(2)	On page 10 of the EA, Alternative 3 is shown as involving 0.8 miles of specified and 0.8 miles of temporary road construction. Elsewhere, however, it says that this alternative builds no new roads. Which is correct?	The following typographical and editorial errors were made and the following pen and ink changes have made to the EA: EA, page 10, Issue 1 – Roads, Alternative 3, change miles of specified road construction from 0.8 miles to 0.0 miles.
	(3)	A BE was not mailed for this project. Was one produced or is the minuscule analysis in the EA all that was performed for assessing impacts on threatened, endangered, and sensitive species?	A BE exists in the Analysis File. The answer to the second question is yes.
Exotic/Invasive Species			
	(1)	What are the risks of invasive plants achieving footholds in interior forest due to the “temporary” road building?	The level of risk of invasive plants establishing a foothold in interior forests as a result of this proposed project would be very minimal. It is possible that seeds may be transported to the area via equipment and vehicles. However, this risk also exists through normal traffic throughout the Forest and state. There was no significant issue identified in relation to this question.
	(2)	Address the effect of even-aged harvest on forest fragmentation, the spread of exotic species into interior forest habitat, and the elimination of forest interior conditions for sensitive species. Address the effect of near-clearcutting on forest fragmentation and the spread of exotic species into interior forest habitat.	It is unclear what “exotic species” are of concern to the commenter. The disclosure of environmental effects is required per NEPA and has been provided in the EA. The CEQ regulations for implementing NEPA guide the environmental documentation to focus on the environmental effects related to the significant issues, which the EA does.

		If a significant issue is identified related to effects of even-aged harvest on these concerns, then the effects are provided.
Forest Health		
(1)	Address the increased susceptibility of the small unlogged areas between each logging unit to blowdown, such as seen in the Cambridge Sales area of the Ruffed Grouse Management Area. Address the increased susceptibility of narrow strips of forest to catastrophic disturbances.	The blowdown on Camp Ridge was the direct result of Hurricane Fran. The area surrounding this blowdown, although eventually logged, was not logged at the time of the Hurricane. In other words, standing timber surrounded the blowdown area at the time of the Hurricane. The harvesting of the units did not contribute to this blowdown, since the units were not harvested at the time of the Hurricane. This Forest has never had a blowdown problem associated with the harvesting of adjacent stands.
Mitigation		
(1)	In the EA on page 31 you state “these soils are not highly erosive if BMPs are implemented, which they will be.” However, you provide no reason to think you can control this. We have visited several sites in your district where not only were BMPs not followed, but logging was not even restricted to the areas claimed in the project documentation. What reasons is there for the citizens to trust the companies you invite to log our public lands at their benefit, without apparent oversight?	The effectiveness of BMPs is outside the scope of the environmental analysis. If problems exist in other areas, we would appreciate being notified of those specific areas where you have concerns so that we can determine the need for possible corrective action. We would be happy to visit the areas with you where you have concern over whether BMPs were followed. Please contact the District to arrange a time that is convenient for all parties.
(2)	Ensure that standards for width of filter strips on intermittent streams are followed. On page 9 of the EA it is stated that the slopes of some units are greater than 20%. A wider filter strip than stated on page 5 would then be required. How wide will the filter strips be on each intermittent stream in the project area?	The filter for intermittent streams will be in accordance with the Standard 231 of the Forest Plan (page 3-148), which supports the need for a larger than 33’ filter zone on slopes 21-45% and greater than 45%. In the project area, no intermittent streams exist within the proposed cutting units.
Old Growth		
(1)	I recognize that the Forest Plan does not oblige you to consider whether or not old growth characteristics are actually present in any stands proposed for logging that your bogus CISC inventory data does not recognize as old growth. But I ask out of respect for this precious rare resource that you consider the ecological old growth characteristics listed in appendix H of the FEIS in the project area, and refrain	Once a Regional policy for old growth is formulated, the agency will follow it. But the agency also reminds the reader that there is no requirement in law to protect all old growth. The agency will follow the Plan, which currently prohibits timber harvesting on about 152,000 acres, while deferring a decision on about 28,000 acres of dry mesic oak to the project level analysis. Additionally, under the

	from logging in or adjacent to any stands that possess those characteristics.	Revised Plan (page 2-3), all old growth forest type groups will increase to about 737,000 acres in about 50 years, about 69% of the 1.1 million acre GWNF.
(2)	Where is stand 748/14 that the EA states is old age? Please provide a map showing its location with respect to the cutting units.	See attached map.
(3)	Will buffer zones protecting the old growth from ecological disturbance be maintained? It is not enough to simply not log it, since logging adjacent stands to it will negatively impact its characteristics as well.	Old growth was a component of the biodiversity issue in revising the Forest Plan (page 2-3). There is no Forest Plan standard that requires buffer zones around old age stands.
Regeneration		
(1)	The EA apparently assumes that young stands result only from logging. Nowhere is the extent of regenerating stands caused by natural disturbance evaluated. This is a main reason the Forest's timber sale program has historically been below-cost; the USFS refuses to recognize that the habitat needs for forest wildlife (what MA 15 is supposed to be for) are met by natural processes. No logging is required to meet these objectives, and the assumption that natural processes do not occur results in violations of the Forest Plan when timber sales are added on to the acreage in regeneration provided naturally.	We acknowledge that trees get established naturally because of blowdowns, insect and disease, ... etc. Silvicultural research and historical experience in timber management on the Forest supports the very high probability of regenerating a stand following regeneration harvest methods. Concerns on whether or not regeneration occurs by natural disturbances and the historical timber sale program are beyond the scope of analysis for this project. The purpose and need (EA, pages 1-2) is consistent with the approved Forest Plan. On-the-ground field surveys were used to determine young forests (0-10 years in age). Young forests arising from natural forces were recognized during the field survey and summarized in the CISC data.
(2)	Regulations for MA 15 state that a minimum of 10% of the land base in any given compartment or group of compartments be in regeneration. You have neglected to consider the fraction of each compartment within the project area that would be in regeneration. Present this data to illustrate that the regeneration is indeed well-dispersed across the mgt. area as required by the Plan.	The Proposed Action was designed to be in compliance with this standard. We believe the information has been sufficiently acknowledged in order for the decision maker to make a reason decision.
(3)	What is the "suitable mixture" proposed for seeding of "temporary" roads and landings? Will it consist of native species?	All mixtures use only species native to the United States. The seed mixture would be in compliance with the Revised Forest Plan Standard No. 294 (page 3-157).

(4)	On page 2 of the EA you say that the compartments total 2752 acres. The Forest Plan requirement for a maximum recent harvest level of 10% of any MA 15 area results in a maximum of 275 acres being regeneration at any time. However, the age class distribution on page 10 shows 287 acres being in the 0-10 age class under Alternative 2. Alternative 2 is in violation of the maximum 10% in regeneration requirements for MA 15.	Not specially addressed.
(5)	What does grapevine release involve? Does either grapevine or mast crop tree release result in more young stands, moving the area even further past the DFC of 10% regeneration?	Grapevine and crop tree release consists of removal or control of competing vegetation or other non-target trees in order to improve grapevine or mast crop tree development and growth within young stands 20-40 years old. The cutting does not result in more young stands, but rather gaps in the canopy.
Riparian Areas		
(1)	In response to a public scoping comment regarding the location of riparian ecosystems in the project area, the EA claims on page 27 that the maps provided “show the relationship between the alternative and the location of streams.” But the Forest Plan says that “the extent of riparian ecosystems is determined on-the-ground using features of soil, landform, and vegetation. No feature is used alone to delineate these ecosystems.” Therefore, the location of streams on a USGS topo map in no way suffices to delineate this ecosystem and the extent to which the project impacts it.	The agency would be happy to show the public riparian areas on-the-ground or the project area. On-the-ground it is readily easy to delineate the boundary of the riparian ecosystem. But it becomes increasingly difficult to represent that ecosystem on a map as the scale changes to provide that information to the public. We agree that the USGS map in no way suffices to delineate this ecosystem. It does however, give the readers a representation of where to look for riparian areas on-the-ground. We would welcome any ideas the public would have on how we could provide this information to them in a more meaningful way.
Roads		
(1)	On page 12 of the EA, it says that 1.9 miles of system road in the area are open year-round. However, in the Forest Plan for MA 15 it states that “public motorized travel may be seasonally allowed (Sep. through March).” Why are these roads being left open year-round against Forest Regulations?	There is latitude in interpretation of Standard 15-7 on Plan page 3-81 to the point where the commenter is making erroneous conclusions about open roads. The Plan says “may” it doesn’t say “has to be.” It should not be implied that roads could not be open year round in the MA. Closing existing roads is outside the scope of this analysis.
(2)	Regulations for MA 15 state that the “development of quality habitat and control of motorized access receive the highest considerations.” Further road	There would be no new open roads as a result of this project. Illegal motorized intrusion is an administrative issue and considered

	building in MA 15 interferes with these qualities by encouraging illegal ATV usage, even if roads are designated as closed. The road building runs counter to the Forest Plan. The claim on page 13 of the EA that the road construction proposed would result in the “same degree of isolation from motorized intrusion” is untrue. ATVs can and will use these roads. Greatly increased access for illegal ATV use due to the “temporary” road construction will inevitably cause the area to become more heavily impacted by noise, fumes, trampling, and garbage.	outside the scope of this project analysis.
	(3) How steep are the slopes on which road construction is planned?	See EA and associated maps.
	(4) Don’t build new roads, “temporary” or not. Use the existing road structures for logging.	Not specially addressed.
Silviculture		
	(1) Regulations for MA 15 require a rotation age of 120-180 years. Yet none of the forests to be logged in this proposal are over 100 years old. The entire project is outside the rotation age stated in the Plan and will break regulations if implemented.	Cutting timber before or after the rotation age does not violate the Plan.
Soils		
	(1) How will you address the loss of carbon from the soils in the area due to extraction of so much large woody material? What changes can be expected in the soils due to continued disposition of inorganic nitrogen compounds, and continued removal of carbon? How might these changes affect future tree growth?	These questions were not brought up during scoping. The following, however, provides reasoning on why these questions would not result in a significant issue ...
	(2) How much soil damage will result from road construction on slopes this steep?	See EA, pages 5, 12, and 13.
TES/PETS/MIS		
	(1) The quantification of acreage in the 0-10 year old age class is a useless means of measuring the project’s effect on the endangered and declining Indiana Bat.	The indicator for effects on the bat has been in Acres of Indiana Bat habitat within harvest units “and not” 0-10 age class. This indicator is then evaluated qualitatively and discussed in the effect section. There will be no effect on riparian forest as no harvesting in riparian forests are proposed under any alternative. There will be no significant effect on trees with hollow trunks, as these trees are typically left as wildlife den trees per Common

		Standard 296 (Forest Plan, page 3-157). There will be no effect on shagbark hickory as these trees will be protected during marking in accordance with mitigation measures listed in the EA and recommendations listed in the BE.
(2)	The “preferred alternative” is the worst in terms of protecting the Indiana Bat. Yet no justification is provided for why this alternative is preferred.	The commenter has not provided any rationale to support the comment. A BE was done and the effects related to the Indiana Bat are disclosed in the EA. There is no NEPA requirement to include in the EA the rationale for the preferred alternative. That information will be provided in the DN.
(3)	What uncommon species inhabit the area? What effect will logging have on them?	A BE was done, which considered the potential for the presence of TES species. TES species could be called uncommon. The EA discloses the possible effects to TES species.
(4)	The EA’s claim that, although ovenbird populations would decrease, they would remain above minimum viable populations, is entirely unsubstantiated. Demonstrate this.	The environmental effects may be disclosed in a quantitative or qualitative manner, or both. The ovenbird is a MIS. It is not a listed TES species. Based on the habitat requirement for the bird and the kinds of impacts which would occur for each alternative, the estimated environmental effects are presented in a qualitative manner. The effects are based on professional knowledge and consideration of existing research, in light of context and intensity of the actions being considered in each alternative. The intent of NEPA has been met.
(5)	The EA does nothing to examine the effect of the project on the availability of Indiana Bat habitat.	Not specially addressed.
Timber Harvesting		
(1)	The project is not compatible with the benefits the area currently provides for the citizens of this region and nation, for plant and animal species, and for the maintenance of wild nature in America.	The process used to arrive at the revised Forest Plan considered citizen concerns, plants, animal habitats, numerous natural ecosystems, and much more. The approved Forest Plan identified the MA direction. The proposed project was designed to be consistent with the MA direction in the approved Forest Plan.
(2)	The public scoping comment raised regarding whether this timber sale is the best use of federal forest in VA is insufficiently and misleadingly answered in the EA.	Alternative 8A was determined in the Record of Decision to be the alternative that represented the best use of these lands. The FEIS prepared for the Forest Plan considered a range of alternatives that provide a mix of uses

		for the GWNF. The proposed project was designed to be consistent with Plan direction for MA 15, which provides for vegetative manipulation through the use of commercial timber sales on suitable land.
(3)	The justification for the inappropriateness of uneven-aged logging on page 9 of the EA is incorrect and no sufficient. The Forest Plan makes no mention of the size of individual “stands” as designated by the FS when it states that the area considered must be greater than 100 acres. All that is required is that a contiguous area of greater than 100 acres be appropriate for uneven-aged mgt. Your use of the fact that none of your designated stands are greater than 100 acres has nothing to do with this requirement.	When developing the alternatives for this EA, several factors were utilized to determine whether an “uneven-aged” alternative would be a reasonable approach for accomplishing the stated objectives while addressing specific issues. An alternative for uneven-aged timber management was considered but eliminated from detailed study because none of the project area was allocated to uneven-aged timber management in the Revised Forest Plan. In addition, no land in this proposed project area has physical features that warrant an uneven-aged alternative.
(4)	How steep are the cuts?	See EA and associated maps.
(5)	What heavy industrial equipment will enter the area? What damage will it do to the soil, hydrological flows, plants, animals, and soil organisms?	The purpose of an EA is to determine whether there is a need to produce an EIS. The effects are discussed throughout the EA. A timber sale is typically designed for a John Deere 640 rubber-tired skidder; a small dozer such as a John Deere 450 or 550; a Prentice Knuckleboom loader, a triaxle logging truck, and felling with a chainsaw. The effects are based on use of this type of equipment.
(6)	How many trees will be cut in each unit, and of what species and size? What impacts will there be to the population viability of these species in this area? What sizes and species of trees will be left after logging of these stands?	The specific species, size, and numbers of trees to be cut or left aren’t known at this time. This will be determined when the sale is actually marked.
(7)	What products will be produced as a result of this operation? Justify that the area can supply wood that can result in such products.	The EA in the Vegetation Section discusses the Site Index of the stands proposed for harvesting. The higher the Site Index, the higher the quality of wood products that will come from the stand. As Site Index increases, it is expected that a higher percentage of the offered volume will be hardwood and pine sawtimber of veneer and select grade.
(8)	The locations of recent logging are not disclosed or considered in the EA for evaluation. Present this information and evaluate its consistency with the Forest Plan.	Not specially addressed.

Water Resources		
(1)	Present a worst-case analysis (under such a precipitation event) for the peak quantity of sediment entering these streams before and after the cuts and its effects on the stream biota. Since most negative effects caused by runoff and sediment occur as the result of severe rainfall episodes, an analysis of the worst-case scenario on the biotic and abiotic components of any stream below the logging area is necessary.	There is no NEPA requirement to conduct a worst-case analysis. The CEQ Regulations (40 C.F.R. 1500) for implementing NEPA rescinded the regulation related to worst case analysis on April 25, 1986 (Fed. Reg. 1562).
(2)	How much sedimentation will result from road construction on slopes this steep?	See EA, pages 5, 12, and 13.
Wildlife		
(1)	How many birds and of what species will be killed by this proposal? What impacts will there be to the population viability of these species in this area? How many mammals and of what species will be killed by this proposal? What impacts will there be to the population viability of these species in this area?	This information is not needed by the decision maker in order to have a clear choice among the alternatives. The environmental effects on wildlife including birds and mammals are disclosed in the EA.
(2)	How many amphibians and of what species will be killed by this proposal? What impacts will there be to the population viability of these species in this area? How many reptiles and of what species will be killed by this proposal? What impacts will there be to the population viability of these species in this area?	See description of MIS and TES in the EA. See discussion elsewhere on viability of MIS population. It is unclear what amphibian species or reptiles the commenter is concerned with.
(3)	MA 15 requires freedom from disturbance during nesting and brood rearing seasons. Between what dates will all roads in the project area be closed to inhibit disturbance during nesting and brood rearing seasons.	The commenter has incorrectly interpreted the road direction and Plan requirements for access to the MA. All roads within the project area are not required to be closed to meet this direction. All new roads associated with this project will be closed to the public year-round. No specific dates for closing administrative access, logging access, or logging activity were identified as being needed. Some roads may also be seasonally closed to vehicle access from April through August (Plan, page 3-80).
(4)	Issues raised in the scoping process involving the impacts to birds that require mature forest habitat and old growth, and the negative impacts to wildlife corridors through fragmentation is nowhere addressed in the EA.	Significant issue No. 7 documents these concerns. The EA, pages 18-21, provides environmental effects related to wildlife, including MIS. Some MIS effects information relates directly to these concerns. The EA, pages 16-18, also provides information related to

		any TES species which may relate to these concerns.
--	--	---

Table 7H

SEDG’s Administrative Appeal of the CRTS DN/FONSI

Category	Appeal Issue	ADO Response
Alternatives		
(1)	<p>The DN claims that Alternative 2 “makes the most positive contribution to meeting the DFC,” elements of which include “maintaining or enhancing quality habitat for species that favor a mature forest environment,” “creating small herbaceous clearings,” “managing oak regeneration...while sustaining a minimum of 60% in mast bearing age,” and providing “large high value timber products, areas of dense vegetation cover, and freedom from continued disturbance.” However, Alternative 3 provides all these elements, and it is unclear why its contribution is less “positive.” The only statement shedding light on this assertion is that “more diverse vegetative conditions” are provided in Alternative 2. Without any data on past or anticipated disturbance due to USFS or natural causes, the statement is nothing more than an unsubstantiated assertion.</p>	Not specifically addressed.
(2)	<p>Hard evidence points to the superiority of Alternative 3 with respect to the need of wildlife for “freedom from continued disturbance.”</p>	Not specifically addressed.
(3)	<p>Alternative 3 is superior to Alternative 2 in that it remains more solidly within the regulations for MA 15 and more effectively meet the DFC for the area.</p>	Not specifically addressed.
(4)	<p>Although the EA does not discuss the matter, Alternative 3 responds to the concerns of adjacent landowners about increased sedimentation resulting from cuts above their property. Eliminating the cuts on the property boundary on the north side of Chestnut Ridge will lessen, but not eliminate, the impacts felt below. The fact that previous cutting has apparently had detrimental effects on these neighbors should cause the District to at least consider the relative impacts of the alternatives in this regard.</p>	Not specifically addressed.

Cumulative Effects		
(1)	<p>The DN states that “[b]ased on the discussions in the EA, there are no known significant cumulative effects between this project and other projects implemented or planned..., particularly with respect to old growth, sedimentation, fragmentation, soil productivity, and water quality.” However, no discussion of cumulative impacts to any resources occurs in the EA. The only related statement occurs on page 11, where “past management action in the area are [sic] 6-8 years old and are contributing little or not direct or indirect impacts...Based on this situation the cumulative effects of the alternatives...equates to the direct and indirect effects...” There is no rational reason to think that merely because the last management occurred several years previous that there would be no impact on old growth, mature forest fragmentation (undisclosed despite public request for locations of previous activities), or soil productivity, as these processes occur on a longer time-scale than the entry cycle for this area. Nor is there reason to think that the ponds located on private land below the sale area, which have apparently already been negatively impacted by siltation from previous activities, would not be further degraded by this action.</p>	Not specifically addressed.
(2)	<p>As an example of the lack of information regarding cumulative effects, a public comment submitted in response to the EA stated that “MA 15 regulations state that even-aged logging adjacent to existing regeneration areas will be avoided. Yet the locations of recent logging are not disclosed or considered in the EA for evaluation. Present this information and evaluate its consistency with the Forest Plan.” One year later, this information has not been presented anywhere, despite requests, to either SEDG or to adjacent landowners such as Wade Neely, who says he’s had to repair his ponds due to abnormal silt buildup following even-aged logging on the east end of the project area. The</p>	Not specifically addressed.

	evidence that there is a lack of cumulative impacts is nonexistent, as far as the concerned and affected public can tell.	
(3)	Clearly, cumulative impacts are an issue, and they can't be dismissed by simply failing to provide the background that would allow us to appreciate the extent of logging in the area.	Not specifically addressed.
(4)	There are substantial questions as to the validity of the agency's findings. This project may result in direct, indirect, and cumulative effects which meet the threshold of significance. An EIS must be prepared (42 USC 4332(2), 40 CFR 1508.27).	Not specifically addressed.
(5)	The continued lack of site-specific analysis and reliance on outdated and faulty studies, the use of canned language regarding impacts to Indiana Bats, lack of consideration of impacts to recreation, as well as a new USDA report which questions the integrity of the Deerfield Ranger District still leave lingering "substantial questions as to whether significant cumulative effects" may occur (see Thomas v. Peterson, 1982).	Not specifically addressed.
Ecological		
(1)	Explanations, discussion, and evidence for how and to what extent the proposed intensive site disturbance from even-aged industrial logging will disrupt and fragment populations and mature habitat and thus impede interactions of individuals (especially for species of low mobility or limited dispersal ability) in the planning area are not divulged in the EA, in violation of NFMA (36 CFR 219.19).	Not specifically addressed.
(2)	There is no disclosure or specific analysis of amounts and distribution of interior forest that will be destroyed, or lost due to edge effects. The EA fails to clearly explain how the decrease of many hundreds of acres of mature interior habitat and resulting fragmentation is not significant, or how the destruction of an undisclosed number of nests, eggs, or nestlings is not significant. Mitigation for these foreseeable circumstances is absent. Cerulean warblers and other TES species are	Not specifically addressed.

	negatively impacted by edge.	
(3)	No real discussion exists in the EA of the potential effects on native biodiversity. Nor is any mention or analysis of the degree of interior forest fragmentation and its potential consequences included. These issues deserve consideration; the viability of populations of native species cannot be merely assumed. Meaningless responses were received to concerns regarding these issues (Appendix D).	Not specifically addressed.
(4)	Viability cannot simply be assumed. Population distribution, status, and trend data and objectives are absent from the administrative record. Quantitative or baseline population data for TES species and MIS have not been obtained or disclosed for the specific site or for the Forest as a whole. Reliance on vague generalizations about “professional judgment” do not assure viability or provide the public, decision makers, or the Court with reviewable accurate scientific disclosure (see FSM 220.2(3) and 40 CFR 1500.1(b)). Viability in the project area and on the Forest are undetermined.	Not specifically addressed.
Environmental Analyses/Documentation		
(1)	Confusing errors and misinformation have occurred all along the NEPA process for this sale. The EA and Appendix D are plagued by senseless block-copies from other, unrelated project documents. SEDG’s comments to the EA in the project file detail many of these errors.	Not specifically addressed.
(2)	Appendix D of the DN/FONSI is a comedy of cursory treatments, comments, and responses mistakenly copied from unrelated timber sale documents that have no bearing on Chestnut Ridge #2, confusing mis-statements, and bald-faced lies. Just for example, consider the responses given to concerns regarding sedimentation and aquatic resources. It is claimed, in response to a concern about the planned filter widths along intermittent streams, that “no intermittent stream [sic] exist within the proposed cutting units” (EA, D-21). Yet, the quad map clearly indicates intermittent streams in	Not specifically addressed.

	741/7, 741/4, and 741/39, at least one of which flows onto Wade Neely's land, providing unwanted sedimentation in the past.	
(3)	The single statement in the EA related to aquatic conditions is "[w]ater sources include portions of Jerry's Hollow, Hiner Hollow, and Wilson Hollow." Unfortunately, this statement is incorrect, having been lifted without modification from the EA for the Hiner Hollow timber sale elsewhere in the District. The EA also "incorporates" the Hiner Hollow EA and claims that that document contains the analysis of the effects of the present sale on the soils and water, TES species, heritage resources, and other qualities of Chestnut Ridge. How this is meant to address the sediment in Wade Neely's pond, or the inflated sedge or eastern small-footed bat in the Stuart Run watershed, or the wildlife suffering from excessive vehicular incursion on Chestnut Ridge, is unclear. Site-specific consideration and analysis is lacking completely.	Not specifically addressed.
Exotic/Invasive Species		
(1)	The EA and BE completely fail to address the impact of invasive exotic, non-native species on native biodiversity. It has been acknowledged widely that management activities involving soil disturbance are likely to facilitate the spread of exotics. Weedy exotic species, according to the Glenwood District of the GWJNF, "occupy resource that would otherwise be used for native species...the native biodiversity of the area is adversely impacted by the presence of these species" (Terrapin Mountain EA, p.47).	Not specifically addressed.
Public Involvement		
(1)	Concerned and affected landowners were not notified about the Chestnut Ridge #2 Timber Sale. Mr. Wade Neely's letter of May 8, 1997, in the project file, tells how he had to stop a District employee and inquire before he was informed, some eleven months after the scoping notice had been mailed to the NEPA list. All this adds up to not only a failure to	The record includes evidence that an initial scoping letter requesting comments on the Chestnut Ridge #2 Timber Sale was mailed to 57 individuals, organizations, and groups on May 30, 1996. There is no indication in the appeal record which of these were to adjoining landowners. Appendix A of the EA documents how the comments

	<p>respond to the public, but also a failure to provide the public enough information to participate intelligently in the planning process. The EA and DN/FONSI for this project do not manifest full and fair consideration of and collaboration with the public. Instead, they exhibit the public's exclusion from proper involvement.</p>	<p>received were used to develop the significant issues and provides reasons why other comments did not result in significant issues. A notice was published in the Staunton, VA, Daily News Leader on January 24, 1997, announcing a 30-day comment period on the predecisional EA, as required by 36 CFR 215.6. Appendix D contains 26 pages of responses to the comments received from the public review of the predecisional EA, as required by 36 CFR 215.6(d). Although Mr. Neely, an adjacent landowner, did not receive the initial scoping letter, he did receive the predecisional EA and was able to submit comments for consideration prior to the decision.</p>
(2)	<p>The shoddiness of the work of the Deerfield District virtually excludes meaningful public participation regarding the proposal. A request for a copy of the project file to assist in writing this appeal (since virtually no meaningful information is contained in the public NEPA documents) was met with indifference by a timber assistant at the District office. Nothing was received.</p>	<p>Not specifically addressed.</p>
(3)	<p>Maps showing locations of recent timber harvest were never provided to us or Mr. Neely, despite our requests for this information, and the background given in Mr. Neely's comment letter, which implicates USFS logging for sedimentation problems all along Rt. 629 below Chestnut Ridge.</p>	<p>Not specifically addressed.</p>
Recreation/Tourism		
(1)	<p>The EA shows an arbitrary and capricious lack of concern for recreation by failing to consider impacts to these resources. Despite issues and questions raised throughout the project planning process and in a past appeal by SEDG and other organizations and individuals, the EA provides no information regarding the negative impacts this proposal would have on those recreation experiences. It is difficult to argue the point further, as there is a lack of any mention of these important elements of multiple use. However, the Appellants will certainly notice a</p>	<p>Not specifically addressed.</p>

	<p>substantial decline in the quality of outdoor recreation, nature study, spiritual rejuvenation, and the enjoyment of solitude in the area. The lack of attention paid to these issues in the DN, FONSI, and EA shows an illegal emphasis on timber harvest over all other uses. There is no explanation given in the EA as to why the value of timber harvest is so high as to eclipse any consideration of the value of recreational activities whatsoever.</p>	
Regeneration		
(1)	<p>The chosen alternative would take the fraction of the project area that is in regeneration to nearly 10%, the maximum allowed in the Forest Plan. In fact, it was only after public input at both the scoping and EA stage that the District finally corrected their original intent to exceed this amount. As it stands, if additional acres of regenerating forests result from natural disturbance or accidental excessive logging, the project area could exceed the allowable fraction in regeneration. Despite this, the extent of regenerating stands due to natural disturbance is nowhere evaluated.</p>	Not specifically addressed.
(2)	<p>MA 15 regulations state that a maximum of 10% of the land base in any single compartment can be in regeneration. But no data has been presented on the fraction of each compartment in regeneration; rather, the response to this concern stated obfuscatingly that the planners “believe the information has been sufficiently acknowledged.” When public input is apparently required in order to force the District to obey the regulation regarding maximum regeneration fraction of the project area, it is ridiculous to think that the lack of data pertaining to maximum regeneration in a single compartment constitutes “sufficient acknowledgement.” In fact, since the group of compartments is exactly at its maximum, it is exceedingly unlikely that the District has divided the cut into the three compartments in such a way as to avoid violation of the Forest Plan.</p>	Not specifically addressed.

Remedies		
(1)	Remand the Chestnut Ridge #2 timber sale decision and drop the proposal.	Not specifically addressed.
(2)	Should the project be re-evaluated, comply with all laws, regulations, and concerns discussed in this appeal and in the Inspector General's report, and prepare an EIS.	Not specifically addressed.
(3)	Close or remove system roads in and/or nearby the project area so as to comply with the DFC of 1.0 mi/1000 acres in MA 15.	Not specifically addressed.
(4)	Amend the Forest Plan by designating additional aquatic MIS so that biotic conditions of all streams in the Forest can be evaluated using MIS	Not specifically addressed.
Roads		
(1)	The EA incorrectly reports open road density in the area on page 12, and corrections were not made despite comments at both the scoping and EA stages.	Not specifically addressed.
(2)	Open road densities are to be calculated over the entire block of MA 15 rather than just the project area.	Not specifically addressed.
(3)	According to the <i>Monitoring and Evaluation Report FY 93</i> (p.33-34), this block has an open road density of 1.328 mi/1000 acres. This is far in excess of the DFC for the area (1.0 mi/1000 acres). But rather than using this opportunity to close system roads and approach the DFC, yet more road construction is proposed.	Not specifically addressed.
(4)	Use of the "open road density" for estimating disturbance potential to wildlife is misleading because of illegal use of "closed" and "temporary" roads. In reality, disturbance potential in the project area is already in excess of that envisioned in MA 15, and additional road construction, open or "closed," will only further the problem.	Not specifically addressed.
(5)	Regulations for MA 15 state that the "development of quality habitat and control of motorized access receive the highest considerations." Further roadbuilding in MA 15 interferes with these qualities by encouraging illegal ATV usage, even if the roads are designated as closed.	Not specifically addressed.

(6)	The claim on page 13 of the EA that the road construction proposed would result in the “same degree of isolation from motorized intrusion” is untrue. An adjacent landowner reported illegal ATV usage on the existing road on Chestnut Ridge to the District Ranger in November 1997, and members of SEDG and Heartwood observed tire tracks (possibly from a jeep) on one of the old “temporary” roads left behind from the last logging in the project area, northeast of unit 741/4.	Not specifically addressed.
(7)	Until the USFS finds a way to keep vehicles off “closed” and “temporary” roads, mitigation of the damage they do to wildlife habitat is impossible. The only solution is to stop building the roads and to rip the existing ones.	Not specifically addressed.
(8)	No reasoning or analysis regarding the necessity or advisability of constructing additional system road in this area exists. Although it appears that the decision to build this road has been made through some internal FS exercise, this decision in fact requires that the public be fully consulted and involved via the NEPA process. Obfuscation and misinformation relating to the current quantity of open system roads in the area and obscuration of the fact that they are in excess of Forest Plan standards have significantly thwarted meaningful public input on this proposal.	Not specifically addressed.
(9)	NFMA requires at 16 U.S.C. 1608(b) that “[u]nless the necessity for a permanent road is set forth in the forest development road system plan, any road constructed on and of the National Forest System in connection with a timber contract...shall be designed with the goal of reestablishing vegetative cover on the roadway...within ten years...” No such road system plan exists for the GWJNF. Both this site-specific proposal for system road construction, and the Forest Plan itself are illegal because of the non-existence of a Forest Development Road System Plan. The Forest Plan and this proposal are also inconsistent with the <i>Management Direction for the Southern Region</i> which states on p.17	Not specifically addressed.

	that a key objective for transportation systems is to reduce the mileage of open roads and restore unused roads to forest.	
(10)	Construction of permanent system road in this area clearly indicates the intent of the USFS to plan and implement future manipulative projects in this area directly above the adjacent landowners' property. The road construction is inconsistent with the claim of no cumulative impacts on and off the Forest from future foreseeable actions.	Not specifically addressed.
Soils		
(1)	The EA notes that the soils in the area have moderate to high probability of excessive soil erosion following ground disturbance. However, due to the use of the "white paper," no site-specific analysis of where these soils are located and how erosion will be prevented during and after timber harvest.	Appendix A of the EA (page 26, #4) states that a Forest White Paper (documented study/monitoring analysis), which analyzed 43 previous timber sales, was used as effects analysis for this proposed harvest. It is noted in all activities on this proposal fall within those that were analyzed in the study paper. Again, the record does not adequately show how the water quality effects analysis in this white paper addresses the site-specific concerns raised by the public after initial scoping.
(2)	For this project, soils and sedimentation are among the most crucial issues raised in scoping and apparent in the project area, yet the USFS continues to refuse to address the site-specific and cumulative impacts.	Specific mitigations to protect soil prevent erosion from occurring are listed on page 5 of the EA. There will be protective exclusion zones around seeps and wet areas, these being identified by a Biologist prior to harvest.
TES/PETS/MIS		
(1)	There is clearly a possibility of usage of the project area by the Indiana Bat. This species has been documented in the Stuart Run watershed, where the project area is located, by the VDNH, as well as in the Middle Cowpasture River watershed just to the west.	Not specifically addressed.
(2)	Suitable habitat is present and two known hibernacula are nearby (only seven and nine miles distant from the project area).	Not specifically addressed.
(3)	The Indiana Bat is known to use forests such as are found in and around the proposed logging areas for roosting, foraging, and maternity sites. The proposed action would harm this habitat significantly.	Not specifically addressed.

(4)	Because a protected species may be present, the letter and intent of the ESA must be followed (see <i>Thomas v. Peterson</i> , 1985; 16 U.S.C. 1536©(1)).	Not specifically addressed.
(5)	Researchers at first thought the bat’s decline was due to disturbance to hibernacula. But, in spite of hibernacula protection, the Indiana Bat population has continued to collapse. Researchers now believe declines may result from loss of summer (roosting, foraging, and maternity) habitat, such as that proposed for cutting here (see Draft IB Recovery Plan at 17). The latest research from Missouri reveals that the areas used by the bat contain significantly higher numbers of large trees than other areas. Planners err in failing to properly consider this scientific information.	Not specifically addressed.
(6)	The District claims that the project will follow the Draft Indiana Bat Conservation Plan for the GWJNF (BE, p.4). The explicit objectives of this plan are the identification, protection, and promotion of foraging areas, roost sites, maternity sites, and swarming areas. Establishment of whether these units and project area are actual roost sites or foraging and maternity areas is necessary so as to be consistent with the Indiana Bat Recovery Strategy, NEPA, NFMA, APA, and ESA. The requisite full, intensive, and competent surveys, inventories, and data gathering (the proper site-specific “hard look”) have not been performed. The decision does not accomplish the goals of the IBRS, ESA, or NFMA with regard to viability, let alone the reversal of negative trends and recovery of populations.	Not specifically addressed.
(7)	The potential for adversely affecting a threatened or endangered species is present. By failing to properly consider, provide for, or protect the Indiana Bat, this decision violates 36 CFR 219.19(a)(7) of NFMA.	Not specifically addressed.
(8)	Reliance on the programmatic Biological Opinion of the USFWS without the proper further site-specific investigation here is arbitrary and capricious and does not meet the requirements of the ESA, the viability	Not specifically addressed.

	requirements of NFMA, or the disclosure and reasonability requirements of NEPA. The District is in violation of the ESA by not consulting with the USFWS on this specific project. The necessary biological opinion was not obtained, and the required Biological Assessment was not performed (16 U.S.C. 1536(a)(2)).	
(9)	Use of the GWJNF Recovery Strategy without an amendment to the Forest Plan violates NFMA. The Plan as it stands is improper and illegal, as it does not protect the Indiana Bat or its habitat. The Recovery Strategy is illegal as it does not provide for adequate protection or recovery of the bat. The conflicts between the objectives of the IBCRP and this proposed action have not been properly disclosed (40 CFR 1502.16(c)).	Not specifically addressed.
(10)	The proposed logging will adversely affect roosting (sheltering), maternity (breeding), and foraging (feeding) habitat of the Indiana Bat. Implementation of the timber sale would “take” the Indiana Bat in that it will result in significant habitat modification or degradation. Under the current Recovery Strategy, there is no way of determining if the “takings” limit has been reached.	Not specifically addressed.
(11)	Of particular concern are cumulative impacts to the bat. The proposed action, in concert with other past, present, and future actions, will result in cumulative impacts to the bat’s viability. Past actions have already damaged habitat in the analysis area. The agency’s neglect to consider cumulative impacts in the area or statewide is neither explained nor substantiated.	Not specifically addressed.
(12)	The bat’s viability is particularly at risk here due to its small population in VA and the fact that the state is at the edge of its range. The FS is at present damaging Indiana Bat habitat (or contemplating such) throughout its range. The agency is well aware of this issue. Yet the significant cumulative impacts resulting from all this (and other agency and non-agency actions) are unanalyzed and	Not specifically addressed.

	undisclosed in the EA. They are not even acknowledged.	
(13)	The efficacy of the proposed mitigation measures for the bat are unexplained, nor do they completely compensate for the potential adverse effects. For example, the increased susceptibility of remnant leave trees to windthrow is not assessed. The efficiency of retaining only shagbark hickories is unsubstantiated (the bats are known to use other tree species that are present here that the cuts will remove). Nor is the effectiveness of retaining only a minimum of 6 snags per acre substantiated. If the bats were receiving the required “top priority” then all snags and large potential roosting trees would be retained (see Bensman v. USFS, 1997), and an alternative placing a priority on the conservation of the Indiana Bat would have been at least considered. Such an alternative might have been based on the use of individual tree selection, or the retention of a greater number of trees in the cuts. However, no such alternative was constructed, in violation of NEPA and the FSM.	Not specifically addressed.
(14)	It is vital that the locations of TES species be identified in the project area. To maintain their present distribution and viability, such sites must be precisely identified and fully protected. Otherwise, the population may be significantly harmed, both directly and indirectly, by the intense disturbance resulting from logging operations.	Not specifically addressed.
(15)	Although the BE claims that Buddie Chandler, District Biologist, “field inspected the project area,” it is not evident in the record that field searches for any TES species were performed. No information is given as to the date(s) that Mr. Chandler spent in the area, what sale unit(s) he visited, or what his search procedures were. In fact, the BE looks virtually identical to all other Deerfield District Bes, in which never are there any TES species found during the “field survey.” At best, it appears that Mr. Chandler merely took a role call of species present one day, in a limited	Not specifically addressed.

	<p>area. It is not clear what species were actively looked for and how. As no TES species were observed, they did not receive the benefit of further review. The agency does not indicate that simply not observing a species on field visit on a given day does not necessarily mean that the species does not exist on the site.</p>	
(16)	<p>It is claimed that no habitat exists for most TES species in the project area, but there is no information given as to how or even if a survey for habitat was performed. Furthermore, the statement that “[t]he absence of habitat associated with most TES species in this project area greatly reduces any potential effects to TES species” is absurd and presents small consolation to those species not known to be loyal to particular TES habitats.</p>	Not specifically addressed.
(17)	<p>Agency planners did not thoroughly sample the site for TES species populations. Not only is there no hard site-specific population data, they did not even determine whether such species exist here. They deny that suitable habitat exists for such listed species as the coal skink, cerulean warbler, Coopers hawk, ginseng, swordleaf phlox, and butternut. Yet standard biological reference works reveal the presence of suitable habitat here for various TES species, including those mentioned above (e.g., see General Technical Report SE-96 from the USFS Southern Research Station, <u>Breeding Bird Surveys</u>, <u>Virginia’s Endangered Species</u>, and <u>Virginia Breeding Bird Atlas</u>, Virginia Division of Natural Heritage watershed reports). If the area cannot presently support these species, then the finding of “no significant cumulative effects” is incorrect.</p>	Not specifically addressed.
(18)	<p>Apparently, full and intensive surveys were not performed, and site-specific inventories of populations and habitat were not obtained. Even when species are admittedly present or potentially present, unsubstantiated conclusions regarding the project’s impacts are asserted (e.g., the statements regarding eastern small-</p>	Not specifically addressed.

	footed bat, Indiana bat, and roughhead shiner).	
(19)	The BE implicitly concludes that regardless of this proposed action, TES species have at least a minimum number of reproducing individuals to ensure viability in the project area and Forest. No facts or analysis to support this determination are present. Nor do the literature or consultations cited in support of the BE contain quantitative population data, or site-specific information. The BE does not identify or analyze the effects on the habitat needed to meet USFS objectives for sensitive species, nor does it accurately discuss cumulative effects on TES or other wildlife. Mere conclusory assertions are rendered (see FSM 2672.42(2,3,4)).	Not specifically addressed.
(20)	The documentation reveals no baseline or quantitative population data for TES species. The agency has failed to obtain or maintain any past or current hard population or inventory/monitoring data for the sensitive species at issue in the sale area or for the GWJNF as a whole. Distribution, status, and population trends have not been determined (FSM 2670.45). Viability cannot be assured without first establishing population objectives (FSM 2670.22(3), FSM 2672.1 and 32). These objectives have not been established (36 CFR 219.12(d), 36 CFR 219.27(a)(5&6), and see also the GWNF Monitoring Report)).	Not specifically addressed.
(21)	The Forest Plan substantiates that “MIS will be used to monitor the implementation of the Revised Plan, and effects on diversity and population viability of...plants and animals” (LRMP 2-9). But, despite the existence of minimum viable population guidelines for MIS in the FEIS to the LRMP, the EA and BE present no baseline data on MIS populations in the project area. NFMA requires that these inventories be kept and considered during the project planning stage, but no population data on these or other MIS is presented.	Not specifically addressed.

(22)	The utility of MIS is lost if they are not monitored, and their populations not considered in a framework of adaptive management. The lack of data by which the proposal's effects might be assessed appears to constitute a conflict with the Forest Plan direction regarding MIS.	Not specifically addressed.
(23)	Concurrent with the failure to monitor MIS is a failure to ensure minimum viable populations of MIS. The USFS is required to maintain viable populations of native species (36 CFR 219.19 and FSM 2672.41).	Not specifically addressed.
(24)	With regard to a public concern regarding maintenance of minimum viable populations of ovenbird and the lack of substantiation for the claim that cumulative effects would not result in a loss of viability, the USFS's response makes little sense and appears to imply that there is no obligation to consider the effects of management activities in the project area on ovenbird populations. It seems to relegate the ovenbird to other areas of set-aside unfragmented habitat.	Not specifically addressed.
(25)	Other foreseeable negative impacts to MIS are not admitted in the EA. For example, agency planners failed to use the latest scientific information when assessing impacts to black bears and their habitat. A report published in 1991 by Steven Reagan, "Habitat use by female black bears in a southern Appalachian bear sanctuary," analyzes how logging adversely affects black bears. The agency is already in receipt of this information; it was delivered to the Forest Supervisor's office several years ago by the SABP. We incorporate it by reference into the administrative record. One significant finding of this research was that black bears were not taking advantage of food and habitat in even-aged logging sites as was anticipated, and as this EA claims. These foreseeable direct, indirect, and cumulative impacts have not been adequately considered by the District. Nor has the best and most accurate scientific information been used, resulting in further violations of NEPA (36 CFR 219.19).	Not specifically addressed.

(26)	Bears need security and large denning trees. But large trees are not being protected from logging, and there is no analysis of the loss of interior and remote habitat that will occur and has already occurred here.	Not specifically addressed.
(27)	The road density is far in excess of that found to be suitable for bears, and the agency proposes even more. Simply keeping roads “closed” does little to protect this habitat, as off-highway vehicle use has recently been observed on “closed” roads in the project area. Bear population numbers here are undisclosed. The finding of no significant impact to bears from direct, indirect, and cumulative impacts is not substantiated by the record.	Not specifically addressed.
(28)	The requirements of turkey are used to partially guide the vegetation management practices here. Yet their present population numbers, trends, and distribution have not been obtained. A need for the high amounts of logging propose here has not been established. The area is not meeting the DFC for old growth for turkeys, yet the potential for meeting the DFC is being reduced by the cutting of older stands that might mature into old growth eventually.	Not specifically addressed.
(29)	The finding of no significant impact to turkeys and their habitat is not substantiated by the record, and the decision is not consistent with the Forest Plan or NFMA.	Not specifically addressed.
(30)	The EA admits that loss of pileated woodpecker habitat would occur under all the action alternatives, but it contains no assurance that viability would be maintained. The finding of no significant impact to pileated woodpeckers from direct, indirect, and cumulative impacts is not substantiated by the record.	Not specifically addressed.
(31)	As there is apparently no trout habitat in the watershed (the EA states that trout do not exist in the project area but the District has not disclosed whether they are present downstream, despite questioning), no aquatic MIS have been considered. Effects from past and contemplated actions are not being evaluated and disclosed. There is significant uncertainty associated	Not specifically addressed.

	with the impact of this proposal on biological populations in Stuart Run, a perennial stream with various forms of life, even if fish MIS are not present. The EA is entirely deficient regarding direct, indirect, and cumulative impacts to these populations and their viability.	
Water Resources		
(1)	The past and current state of biological populations and water quality of Stuart Run and of the intermittent streams in the project area are undisclosed. Amounts of sediment estimated to enter these streams and ponds on private lands below the project area from the proposed cutting are unanalyzed.	Specific mitigations to protect soil and water and prevent erosion and siltation from occurring are listed on page 5 of the EA. There will be protective exclusion zones around seeps and wet areas, these being identified by a Biologist prior to harvest. However, the record shows inadequate response to the public's concerns about mitigation effectiveness to these water quality comments.
(2)	Monitoring information as to effects on populations and water quality in these streams and ponds from previous cutting are absent, despite comments submitted by Wade Neely during the NEPA process claiming that water quality below the project area had suffered from past cutting, causing financial losses to adjacent landowners.	The record shows that in May of 1997 Mr. Neely raised his concern about the effects on water quality, especially the ponds on his property. Numerous comments on the EA raised questions about water quality, the effects of temporary roads, and the effectiveness of mitigation measures; yet, the responses to the comments indicate that these concerns did not need additional analysis and consideration. The record does not contain the adequate evidence to either show how the site-specific water quality concerns were considered or show how the concerns were not relevant. Also, during the informal disposition meeting, the District Ranger made the comment that he would look into this issue of the effects to ponds.
Wildlife		
(1)	The statement in the DN that "[t]he actions are consistent with the management direction for MA 15" is false with regard to the disturbance to wildlife it encourages. There is no evidence that "[t]hese practices were chosen primarily because they will give the best combination of economics, output of timber, enhancement of wildlife habitat, and response to public issues and concerns." In fact, output of timber appears to be only indicator maximized by the alternative.	Not specifically addressed.

Table 8H

Heartwood/JMP/PAW/SEDG's Administrative Appeal of the CRTS Revised DN/FONSI

Category	Appeal Issue	ADO Response
<p>Alternatives</p>	<p>(1) The range of alternatives was inadequate. The alternatives were formulated to address issues raised during scoping that the Deerfield District was required to address in greater detail in the Revised EA: that there are too many roads already in the area and in the Forest, that wildlife should be protected by selling only timber that can be accessed without construction of addition system roads, and that the sale could cause significant water quality problems which would impact adjacent landowners. Despite the admitted importance of these concerns, these issues are not even mentioned in as reasons to implement Alternative 2. Indeed, the DN does not even bother to explain in detail why the other four issues were not chosen; the only reason given is that the other four alternatives do not produce timber in as much volume as Alternative 2 (DN-2).</p>	<p>The FSH 1909.15, Section 12.3c directs that districts “[c]onsider a full range of reasonable alternatives to the proposed action that address the significant issues and meet the purpose and need for the proposed action.” The EA (pp. 4-14) considered in detail the no-action alternative, the proposed action, and three other action alternatives. The action alternatives address the issues of: too many roads; the preference of achieving DFCs with less road building and less timber harvesting; below-cost sales; undesirable effects on certain wildlife species; potential adverse effects on soil, water, and a pond on adjoining private land. The EA (pp. 14-36) discloses the effects of the alternatives and the EA (pp. 12-13) uses tables to summarize how the alternatives respond to the significant issues. The EA considered, but did not fully develop, an alternative that would have substituted clearcutting for other harvest methods and an alternative that would exclusively use uneven-aged harvesting methods (EA, p. 11). The DN (pp. 2-3) discloses the District Ranger's rationale for selecting Alternative 2. The Ranger determined that Alternative 2 made the most positive contribution to meeting the DFC. Alternative 2 introduces a variety of diversity scale into the landscape, providing more diverse vegetative conditions (DN, p. 2). A table comparing alternatives on page 12 of the EA shows that Alternative 2 produces more acres of wildlife habitat improvement than any other alternative. The same table shows little difference in undesirable effects among the action alternatives. I find that a reasonable range of alternatives was considered in the EA, and the selection of Alternative 2 in the DN was a reasoned decision based on the analysis summarized in the EA.</p>

(2)	The alternative selected by Mr. Rhodes, Alternative 2, is the maximum logging and roadbuilding alternative considered. It would destroy the most potential roosting, maternity, and foraging habitat for the Indiana Bat, potentially cause serious erosion and sedimentation, and is barely above costs, significantly less so than other less environmentally damaging alternatives.	Not specifically addressed.
(3)	Other alternatives are superior to Alternative 2 in that they remain more solidly within the regulations for MA 15 and more effectively meet the DFC for the area.	Not specifically addressed.
(4)	The other alternatives respond to the concerns of adjacent landowners about increased sedimentation resulting from cuts above their property. Eliminating the cuts on the property boundary on the north side of Chestnut Ridge will lessen, but not eliminate, the impacts felt below. The fact that previous cutting has apparently had detrimental effects on these neighbors should cause the District to choose an alternative which would not impact these landowners.	Not specifically addressed.
(5)	The statement in the DN that “[t]he actions are consistent with the management direction for MA 15” is false with regard to the disturbance to wildlife it encourages. There is no evidence that “[t]hese practices were chosen primarily because they will give the best combination of economics, output of timber, enhancement of wildlife habitat, and response to public issues and concerns.” In fact, output of timber appears to be the only one of these indicators that is maximized by the alternative.	Not specifically addressed.
Cumulative Effects		
(1)	The falsehoods continue in the DN with the statement “[b]ased on the discussions in the EA, there are no known significant cumulative effects between this project and other projects implemented or planned..., particularly with respect to old growth, sedimentation, fragmentation, soil productivity, and water quality.” Although the Deerfield officials did make an attempt in the Revised EA to	Not specifically addressed.

	look at cumulative impacts (which were entirely absent from the original EA), their analysis is conclusory and does not always provide supporting data.	
(2)	The continued lack of site-specific analysis and reliance on outdated and faulty studies, the use of canned language regarding impacts to Indiana Bats, lack of consideration of impacts to recreation, as well as a new USDA report which questions the integrity of the Deerfield Ranger District still leave lingering “substantial questions as to whether significant cumulative effects” may occur (see Thomas v. Peterson, 1982).	Not specifically addressed.
(3)	There are substantial questions as to the validity of the agency’s findings. This project may result in direct, indirect, and cumulative effects which meet the threshold of significance. An EIS must be prepared (42 USC 4332(2), 40 CFR 1508.27).	The EA (pp.12-36) discloses the environmental effects of the proposed action and its alternatives. Based on the analysis documented in the EA, the District Ranger made a FONSI and concluded that an EIS was not needed. I find that the District Ranger correctly concluded that an EIS was not needed.
Ecological		
(1)	No real discussion exists in the EA of the potential effects on native biodiversity. Nor is any mention or analysis of the degree of interior forest fragmentation and its potential consequences included. Forest fragmentation represents one of the greatest known threats to native biodiversity. These issues deserve consideration; the viability of populations of native species cannot be merely assumed. Meaningless responses were received to concerns regarding these issues (Appendix D).	The District disclosed the effects to biological diversity by addressing effects to: (1) broad forest vegetation and successional classes; (2) old-growth forest communities (DN); (3) discussion of fragmentation effects and interior habitats are included in wildlife effects analysis; and (4) effects to management indicator species and TES species (wildlife effects analysis). I find that the District properly considered the different resource elements related to biological diversity and considered these elements in making the project decision.
(2)	Explanations, discussion, and evidence for how and to what extent the proposed intensive site disturbance from even-aged industrial logging will disrupt and fragment populations and mature habitat and thus impede interactions of individuals (especially for species of low mobility or limited dispersal ability) in the planning area are not divulged in the EA, in violation of NFMA (36 CFR 219.19).	Not specifically addressed.

	(3) There is no disclosure or specific analysis of amounts and distribution of interior forest that will be destroyed, or lost due to edge effects. The EA fails to clearly explain how the decrease of many hundreds of acres of mature interior habitat and resulting fragmentation is not significant, or how the destruction of an undisclosed number of nests, eggs, or nestlings is not significant. Mitigation for these foreseeable circumstances is absent. Cerulean warblers and other TES species are negatively impacted by edge.	Not specifically addressed.
Exotic/Invasive Species		
	(1) The EA and BE completely fail to address the impact of invasive exotic, non-native species on native biodiversity. It has been acknowledged widely that management activities involving soil disturbance are likely to facilitate the spread of exotics. Weedy exotic species, according to the Glenwood District of the GWJNF, “occupy resource that would otherwise be used for native species...the native biodiversity of the area is adversely impacted by the presence of these species” (Terrapin Mountain EA, p.47).	Not specifically addressed.
Public Involvement		
	(1) Although it appears that the decision to build this road has been made through some internal USFS exercise, this decision in fact requires that the public be fully consulted and involved via the NEPA process. Obfuscation and misinformation relating to the current quantity of open system roads in the area and obscuration of the fact that they are in excess of Forest Plan standards have significantly thwarted meaningful public input on this proposal.	Not specifically addressed.
Recreation/Tourism		
	(1) The EA shows an arbitrary and capricious lack of concern for recreation by failing to consider impacts to these resources. Despite issues and questions raised throughout the project planning process and in a past appeal by SEDG and other organizations and individuals, the EA provides no information regarding the	The District’s EA does not discuss the impacts to recreation. The EA discusses only those issues identified during scoping, and recreation impact was not raised as an issue during scoping. I find that the District did not consider the recreation resource in its effects analysis because your specific issue of recreation impacts

	<p>negative impacts this proposal would have on those recreation experiences. It is difficult to argue the point further, as there is a lack of any mention of these important elements of multiple-use. However, the Appellants will certainly notice a substantial decline in the quality of outdoor recreation, nature study, spiritual rejuvenation, and the enjoyment of solitude in the area. The lack of attention paid to these issues in the DN, FONSI, and EA shows an illegal emphasis on timber harvest over all other uses. There is no explanation given in the EA as to why the value of timber harvest is so high as to eclipse any consideration of the value of recreational activities whatsoever.</p>	<p>was not raised during scoping.</p>
Regeneration		
(1)	<p>Alternative 2 would take the fraction of the project area that is in regeneration to nearly 10%, the maximum allowed in the Forest Plan. In fact, it was only after public input at both the scoping and EA stage that the District finally corrected their original intent to exceed this amount. As it stands, if additional acres of regenerating forests result from natural disturbance or accidental excessive logging, the project area could exceed the allowable fraction in regeneration.</p>	<p>Not specifically addressed.</p>
(2)	<p>MA 15 regulations state that a maximum of 10% of the land base in any single compartment can be in regeneration. But no data has been presented on the fraction of each compartment in regeneration; rather, the response to this concern stated obfuscatingly that the planners “believe the information has been sufficiently acknowledged.”</p>	<p>Not specifically addressed.</p>
Remedies		
(1)	<p>Remand the Chestnut Ridge #2 timber sale decision and drop the proposal. Discipline the Deerfield District for continuing to follow practices deemed illegal or incomplete by the USDA Inspector General.</p>	<p>Not specifically addressed.</p>
(2)	<p>Should the project be re-evaluated, comply with all laws, regulations, and concerns discussed in this appeal and in the Inspector General’s report, and</p>	<p>Not specifically addressed.</p>

	prepare an EIS.	
(3)	Close or remove system roads in and/or nearby the project area so as to comply with the DFC of 1.0 mi/1000 acres in MA 15.	Not specifically addressed.
(4)	Amend the Forest Plan by designating additional aquatic MIS so that biotic conditions of all streams in the Forest can be evaluated using MIS	Not specifically addressed.
(5)	Follow recommendations listed by the USDA Inspector General and formally direct the Forest Service in Virginia to cease using the “White Paper” referred to by the Deerfield District as a valid basis for environmental assessments.	Not specifically addressed.
Roads		
(1)	The DFC for MA 15 states that a great degree of isolation from motorized intrusion during wildlife reproductive seasons will be provided. Further road building in MA 15 interferes with these qualities by encouraging illegal vehicle usage, even if roads are designated as closed. Use of the “open road density” for estimating disturbance potential to wildlife is misleading because of illegal use of “closed” and “temporary” roads. In reality, disturbance potential in the project area is already in excess of that envisioned in MA 15, and additional road construction, open or “closed,” will only further the problem. The proposal runs counter to the Forest Plan guidance.	The overall emphasis of MA 15 is to “maintain or enhance habitat for wildlife favoring a mature forest environment with both temporary and permanent clearings, and freedom from disturbance during nesting, brood-rearing seasons” (LRMP, p. 3-79). The selected alternative (#2) will “construct approximately 1.5 miles of system road and 1.0 miles of temporary roads to access stands.” However, “all roads would be closed to public use after the timber sale” (EA, p.5). The EA (p.5) goes on to state that, “all roads and landings would be limed, fertilized, and seeded with a suitable mixture of native grasses to provide a desirable habitat for brood rearing.” On page 15 of the EA, it is identified that “currently a total of 4.5 miles of system road occur within the area, with 1.9 miles open year-round. The remaining 2.6 miles of system roads are closed year-round. No other system road construction is foreseeable in the future in this area.” The statement that the closed roads will also be seeded further shows the intent to meet the overall DFC for MA 15, and this will also hopefully discourage illegal vehicle usage. I find that the project in compliance with the Forest Plan direction for MA 15.
(2)	The EA finally admits that this block has an open road density of 1.328 mi/1000 acres. This is far in excess of the DFC for the area (1.0 mi/1000 acres). But rather than using this	The direction for roads in MA 15 is “to limit open interior road densities to no more than one mile of open road per 1,000 acres” (LRMP, p. 3-81). The LRMP defines open roads as

	<p>opportunity to close system roads and approach the DFC, yet more road construction is proposed.</p>	<p>“any system road that is open for the general public to use anytime during the year” (p. 3-158). When the LRMP was developed, it was determined that by meeting these standards, the DFC for MA 15 could be achieved. With the project area being 2,752 acres (EA, p.1), the existing open road density is 0.7 miles/1000 acres (see also EA, p.14). Since all road constructed as part of this proposed action will be closed, the open road density will remain at 0.7 and the project will remain in compliance with LRMP direction for MA 15.</p>
(3)	<p>Stating that closed system roads do not add to the road density of the area is misleading; the forest fragmentation, disturbance to wildlife, and erosive potentials exists whether a road is open or not. No reasoning or analysis regarding the necessity or advisability of constructing additional system road in this area exists.</p>	<p>The EA (p. 15) discusses open road density, and does not dispute that there are some environmental effects from closed roads. The standard in the LRMP is for open roads. The proposal does not exceed the standard on open road density. The effects of the proposed roading are disclosed in the effects section of the EA (pp. 14-36). The proposed action discloses that the connected action of road construction is needed to harvest timber. The EA considers the alternatives of using system or temporary roads. Nothing in the NFMA prohibits adding new road miles to a Forest's road system. I find that the EA adequately discloses effects of road construction.</p>
(4)	<p>NFMA requires at 16 U.S.C. 1608(b) that “[u]nless the necessity for a permanent road is set forth in the forest development road system plan, any road constructed on and of the National Forest System in connection with a timber contract...shall be designed with the goal of reestablishing vegetative cover on the roadway...within ten years...” No such road system plan exists for the GWJNF. Both this site-specific proposal for system road construction, and the Forest Plan itself are illegal because of the non-existence of a Forest Development Road System Plan. The Forest Plan and this proposal are also inconsistent with the <i>Management Direction for the Southern Region</i> which states on p.17 that a key objective for transportation</p>	<p>Not specifically addressed.</p>

	systems is to reduce the mileage of open roads and restore unused roads to forest.	
(5)	Construction of permanent system road in this area clearly indicates the intent of the USFS to plan and implement future manipulative projects in this area directly above the adjacent landowners' property. The road construction is inconsistent with the claim of no cumulative impacts on and off the Forest from future foreseeable actions.	Not specifically addressed.
(6)	Testimonials from personal conversations with adjacent landowners, as well as visits to the project area, support the fact that existing roads are already severely eroding.	Not specifically addressed.
Soils		
(1)	The EA notes that the soils in the area have moderate to high probability of excessive soil erosion following ground disturbance. However, due to the use of the "white paper," no site-specific analysis of where these soils are located and how erosion will be prevented during and after timber harvest. In addition, the Revised EA on pages 32-33 sidesteps (for a second time) the need for site-specific analysis on soil from timber harvests.	The EA (pp. 31 -34) discloses the effects on soil and water for all the activities in each proposal, and the soil types and associated tolerable soil loss predictions. A comparison of the proposed activities was made with that of 43 previously analyzed timber sales as a screen to estimate whether the degree of expected effects warrants further analysis. The EA (p. 33) discloses that the site-specific conditions of soil types and slope classes are comparable with two of the previously evaluated sales. The table on page 33 shows that the independent variables for the proposal and alternates fall well below the criteria levels that would indicate any need for additional analysis. These criteria levels were established from the study of previous sales. I find that the EA adequately disclosed the effects on soil.
TES/PETS/MIS		
(1)	Agency planners did not thoroughly sample the site for TES species populations. Not only is there no hard site-specific population data, they did not even determine whether such species exist here. They deny that suitable habitat exists for such listed species as the coal skink, cerulean warbler, Coopers hawk, ginseng, swordleaf phlox, and butternut. Yet standard biological reference works reveal the presence of suitable habitat	The District documented that past inventories/surveys from the VDNH and VDGIF were consulted regarding occurrences of TES species. The District biologist conducted a field survey of the areas proposed for management activities, with additional consultation from the forest fisheries biologist, forest ecologist, and VDGIF non-game biologist (BE). The District documented the rationale for considering species in detail for

	<p>here for various TES species, including those mentioned above (e.g., see General Technical Report SE-96 from the USFS Southern Research Station, Breeding Bird Surveys, <u>Virginia's Endangered Species</u>, and <u>Virginia Breeding Bird Atlas</u>, Virginia Division of Natural Heritage watershed reports). If the area cannot presently support these species, then the finding of "no significant cumulative effects" is incorrect. The agency has also failed to obtain or maintain any past or current hard population or inventorying/monitoring data for the sensitive species at issue in the sale area or for the GWJNF as a whole.</p>	<p>this project (BE). The determination of effects findings to these species were based on documented inventories/surveys, site-specific field surveys, and knowledge of habitat requirements. The standard described in your NOA regarding the need to have site-specific (project by project) population and population trend data for TES is not required by NFMA, NEPA, or USFS directives. I find that the findings regarding viability for sensitive species and effects to the Indiana bat are supported by the information/data documented in the BE and EA.</p>
(2)	<p>The ESA indicates beyond doubt that Congress intended endangered species to be afforded the highest of priorities. The FSM requires the agency to place top priority on conservation and recovery of endangered, threatened, and proposed species and their habitats. The decision does not accomplish the goals of the IBRS, ESA, or NFMA with regard to viability, let alone the reversal of negative trends and recovery of populations.</p>	<p>The District incorporated mitigation measures from the GWJNF Indiana Bat Recovery Strategy (IBRS) and the terms and conditions of the USFWS Biological Opinion (BE, EA, p. 18). The Biological Opinion (BO) states the forest management and other activities authorized, funded, or carried out on the GWJNF are not likely to jeopardize the continued existence of the Indiana bat. The terms and conditions of the BO must be followed to ensure non-jeopardy. In addition to the terms and conditions, the BO contains an incidental take statement providing for taking of individual bats. The effects of the project, with designated mitigation measures, were disclosed for the Indiana bat (BE). The District made the determination that the action, including mitigation measures, "may affect - not likely to adversely affect" the Indiana bat. The terms and conditions of the BO were incorporated. I find that the District properly incorporated the forest-wide IBRS and has properly incorporated the terms of the associated USFWS BO.</p>
(3)	<p>Reliance on the programmatic Biological Opinion of the USFWS without the proper further site-specific investigation here is arbitrary and capricious and does not meet the requirements of the ESA, the viability requirements of NFMA, or the disclosure and reasonability</p>	<p>The USFWS was formally consulted regarding the forest-wide IBRS. The USFWS issued a BO, stating the forest management activities on the GWJNF are not likely to jeopardize the continued existence of the Indiana bat. The District incorporated the programmatic strategy into the design</p>

	requirements of NEPA. The District is in violation of the ESA by not consulting with the USFWS on this specific project. The necessary biological opinion was not obtained, and the required Biological Assessment was not performed (16 U.S.C. 1536(a)(2)). Implementation of Chestnut Ridge #2 timber sale would “take” the Indiana bat in that it would result in significant habitat modification or degradation.	of this project and made a “not likely to adversely affect” finding. Further formal consultation with the USFWS is not required. I find that the analysis of habitat for Indiana bat was appropriate, ESA procedures were properly applied, and the actions do not violate the ESA.
(4)	There is clearly a possibility of usage of the project area by the Indiana Bat. This species has been documented in the Stuart Run watershed, where the project area is located, by the VDNH, as well as in the Middle Cowpasture River watershed just to the west.	Not specifically addressed.
(5)	Suitable habitat is present and two known hibernacula are nearby (only seven and nine miles distant from the project area.	Not specifically addressed.
(6)	The Indiana Bat is known to use forests such as are found in and around the proposed logging areas for roosting, foraging, and maternity sites. The proposed action would harm this habitat significantly.	Not specifically addressed.
(7)	Because a protected species may be present, the letter and intent of the ESA must be followed (see Thomas v. Peterson, 1985; 16 U.S.C. 1536(c)(1)).	Not specifically addressed.
(8)	Although the Revised EA does discuss the Indiana Bat and its potential use of the area, there is again a total lack of site-specific analysis of this issue.	Not specifically addressed.
(9)	Researchers at first thought the bat’s decline was due to disturbance to hibernacula. But, in spite of hibernacula protection, the Indiana Bat population has continued to collapse. Researchers now believe declines may result from loss of summer (roosting, foraging, and maternity) habitat, such as that proposed for cutting here (see Draft IB Recovery Plan at 17). The latest research from Missouri reveals that the areas used by the bat contain significantly higher numbers of large trees than other areas. Planners err in failing to properly consider this scientific information.	Not specifically addressed.

(10)	The District claims that the project will follow the Draft Indiana Bat Conservation Plan for the GWJNF (BE, p.4). The explicit objectives of this plan are the identification, protection, and promotion of foraging areas, roost sites, maternity sites, and swarming areas. Establishment of whether these units and project area are actual roost sites or foraging and maternity areas is necessary so as to be consistent with the Indiana Bat Recovery Strategy, NEPA, NFMA, APA, and ESA. The requisite full, intensive, and competent surveys, inventories, and data gathering (the proper site-specific “hard look”) have not been performed.	Not specifically addressed.
(11)	The potential for adversely affecting a threatened or endangered species is present. By failing to properly consider, provide for, or protect the Indiana Bat, this decision violates 36 CFR 219.19(a)(7) of NFMA.	Not specifically addressed.
(12)	Use of the GWJNF Recovery Strategy without an amendment to the Forest Plan violates NFMA. The Plan as it stands is improper and illegal, as it does not protect the Indiana Bat or its habitat. The Recovery Strategy is illegal as it does not provide for adequate protection or recovery of the bat. The conflicts between the objectives of the IBRS and this proposed action have not been properly disclosed (40 CFR 1502.16(c)).	Not specifically addressed.
(13)	The proposed logging will adversely affect roosting (sheltering), maternity (breeding), and foraging (feeding) habitat of the Indiana Bat. Implementation of the timber sale would “take” the Indiana Bat in that it will result in significant habitat modification or degradation. Under the current Recovery Strategy, there is no way of determining if the “takings” limit has been reached.	Not specifically addressed.
(14)	Of particular concern are cumulative impacts to the bat. The proposed action, in concert with other past, present, and future actions, will result in cumulative impacts to the bat’s viability. Past actions have already damaged habitat in the analysis area. The agency’s neglect to consider	Not specifically addressed.

	cumulative impacts in the area or statewide is neither explained nor substantiated.	
(15)	The bat's viability is particularly at risk here due to its small population in VA and the fact that the state is at the edge of its range. The USFS is at present damaging Indiana Bat habitat (or contemplating such) throughout its range. The agency is well aware of this issue. Yet the significant cumulative impacts resulting from all this (and other agency and non-agency actions) are unanalyzed and undisclosed in the EA. They are not even acknowledged.	Not specifically addressed.
(16)	The efficacy of the proposed mitigation measures for the bat are unexplained, nor do they completely compensate for the potential adverse effects. For example, the increased susceptibility of remnant leave trees to windthrow is not assessed. The efficacy of retaining only shagbark hickories is unsubstantiated (the bats are known to use other tree species that are present here that the cuts will remove). Nor is the effectiveness of retaining only a minimum of 6 snags per acre substantiated. If the bats were receiving the required "top priority" then all snags and large potential roosting trees would be retained (see Bensman v. USFS, 1997), and an alternative placing a priority on the conservation of the Indiana Bat would have been at least considered. Such an alternative might have been based on the use of individual tree selection, or the retention of a greater number of trees in the cuts. However, no such alternative was constructed, in violation of NEPA and the FSM.	Not specifically addressed.
(17)	It is vital that the locations of TES species be identified in the project area. To maintain their present distribution and viability, such sites must be precisely identified and fully protected. Otherwise, the population may be significantly harmed, both directly and indirectly, by the intense disturbance resulting from logging operations.	Not specifically addressed.

(18)	<p>Although the BE claims that Buddie Chandler, District Biologist, “field inspected the project area,” it is not evident in the record that field searches for any TES species were performed. No information is given as to the date(s) that Mr. Chandler spent in the area, what sale unit(s) he visited, or what his search procedures were. In fact, the BE looks virtually identical to all other Deerfield District BEs, in which never are there any TES species found during the “field survey.” At best, it appears that Mr. Chandler merely took a role call of species present one day, in a limited area. It is not clear what species were actively looked for and how. As no TES species were observed, they did not receive the benefit of further review. The agency does not indicate that simply not observing a species on field visit on a given day does not necessarily mean that the species does not exist on the site.</p>	<p>Not specifically addressed.</p>
(19)	<p>It is claimed that no habitat exists for most TES species in the project area, but there is no information given as to how or even if a survey for habitat was performed. Furthermore, the statement that “[t]he absence of habitat associated with most TES species in this project area greatly reduces any potential effects to TES species” is absurd and presents small consolation to those species not known to be loyal to particular TES habitats.</p>	<p>Not specifically addressed.</p>
(20)	<p>The Forest Plan substantiates that “MIS will be used to monitor the implementation of the Revised Plan, and effects on diversity and population viability of... plants and animals” (LRMP 2-9). But, despite the existence of minimum viable population guidelines for MIS in the FEIS to the LRMP, the EA and BE present no baseline data on MIS populations in the project area. NFMA requires that these inventories be kept and considered during the project planning stage, but no population data on these or other MIS is presented. Viability cannot simply be assumed. Population distribution, status, and trend data and objectives</p>	<p>The LRMP developed plan direction, including standards for MIS species for implementation at the project-level. The project compares the effects of the proposed actions to plan direction. The effects to each MIS are disclosed for each alternative (EA, p. 26). In addition, federally listed species and sensitive species (those with viability concern) were analyzed with regard to effects to their viability (BE). NFMA regulations do not require project-level baseline MIS population or population trends data. The project analysis demonstrates that the plan direction for various habitat components are being met regarding MIS species. The site-specific MIS</p>

	<p>are absent from the administrative record. Quantitative or baseline population data for TES species and MIS have not been obtained or disclosed for the specific site or for the Forest as a whole. Reliance on vague generalizations about “professional judgment” do not assure viability or provide the public, decision makers, or the Court with reviewable accurate scientific disclosure (see FSM 220.2(3) and 40 CFR 1500.1(b)). Viability in the project area and on the Forest are undetermined.</p>	<p>population and population trend data standard referenced in your NOA is not required by legal mandate or regulation, nor is this project-level of information necessary to assess the effects to MIS habitats. I find that the analysis for effects to MIS habitat is appropriate and tiered to the LRMP and that the viability determinations are supported by the analysis.</p>
(21)	<p>The requirements of turkey are used to partially guide the vegetation management practices here. Yet their present population numbers, trends, and distribution have not been obtained. A need for the high amounts of logging propose here has not been established. The area is not meeting the DFC for old growth for turkeys, yet the potential for meeting the DFC is being reduced by the cutting of older stands that might mature into old growth eventually. The finding of no significant impact to turkeys and their habitat is not substantiated by the record, and the decision is not consistent with the Forest Plan or NFMA.</p>	<p>The effects to turkey habitat are disclosed for each alternative on page 28 of the EA. All action alternatives would increase suitable turkey habitat.</p>
(22)	<p>The EA admits that loss of pileated woodpecker habitat would occur under all the action alternatives, but it contains no assurance that viability would be maintained. The finding of no significant impact to pileated woodpeckers from direct, indirect, and cumulative impacts is not substantiated by the record.</p>	<p>The effects to pileated woodpecker are disclosed on page 29 of the EA. All action alternatives would result in some loss of habitat. Overall conditions are within plan parameters for this management area.</p>
(23)	<p>Other foreseeable negative impacts to MIS are not admitted in the EA. For example, agency planners failed to use the latest scientific information when assessing impacts to black bears and their habitat. Bears need security and large denning trees. But large trees are not being protected from logging, and there is no analysis of the loss of interior and remote habitat that will occur and has already occurred here. The finding of no significant impact to bears from direct, indirect, and cumulative</p>	<p>The habitat parameters used by black bear are described on page 27 of the EA. The effects of each alternative to black bear habitat are provided, including remote conditions. The EA discloses positive benefits for soft mast production and enhancement of remote conditions due to road gating.</p>

	<p>impacts is not substantiated by the record. A report published in 1991 by Steven Reagan, "Habitat use by female black bears in a southern Appalachian bear sanctuary," analyzes how logging adversely affects black bears. The agency is already in receipt of this information; it was delivered to the Forest Supervisor's office several years ago by the SABP. We incorporate it by reference into the administrative record. One significant finding of this research was that black bears were not taking advantage of food and habitat in even-aged logging sites as was anticipated, and as this EA claims. These foreseeable direct, indirect, and cumulative impacts have not been adequately considered by the District. Nor has the best and most accurate scientific information been used, resulting in further violations of NEPA (36 CFR 219.19).</p>	
(24)	<p>The road density is far in excess of that found to be suitable for bears, and the agency proposes even more. Simply keeping roads "closed" does little to protect this habitat, as off-highway vehicle use has recently been observed on "closed" roads in the project area. Bear population numbers here are undisclosed.</p>	Not specifically addressed.
(25)	<p>The utility of MIS is lost if they are not monitored, and their populations not considered in a framework of adaptive management. The lack of data by which the proposal's effects might be assessed appears to constitute a conflict with the Forest Plan direction regarding MIS.</p>	Not specifically addressed.
(26)	<p>With regard to a public concern regarding maintenance of MVPs of ovenbird and the lack of substantiation for the claim that cumulative effects would not result in a loss of viability, the USFS's response makes little sense and appears to imply that there is no obligation to consider the effects of management activities in the project area on ovenbird populations. It seems to relegate the ovenbird to other areas of set-aside unfragmented habitat.</p>	Not specifically addressed.

Timber Harvesting		
(1)	<p>The USDA Inspector General’s report shows a disturbing tendency of the Deerfield Ranger District to allow logging in excessive amounts described in the EA. In the Dowell Draft Ruffed Grouse Habitat Improvement Project, 200 acres were scoped for clearcutting; however, timber sale contracts were awarded that allowed clearcutting of 211 acres. “District personnel stated that this occurred because no reconciliation had been performed between the timber sale contracts and the decision notice” (pg. 38). The shoddiness of the work performed on the Deerfield District makes it questionable whether these officials are capable of complying with the Forest Plan or federal law.</p>	<p>Not specifically addressed.</p>
Water Resources		
(1)	<p>The Revised EA on pages 32-33 sidesteps (for a second time) the need for site-specific analysis on water impacts from timber harvests.</p>	<p>The estimated effects of water yield, peak flow, flooding, and sediment yield in the watershed above the private lands in the vicinity of Mr. Neely’s ponds are discussed. The EA discloses that “[t]he anticipated minor sediment increases would be short-term and would have no significant effect on the Neely ponds or on other aquatic resources.” The discussion on water yield and storm flow discloses that the harvesting will cause a slight increase in base flow, which should be a benefit to downslope wells. The EA discloses that harvesting does not significantly increase peak flow from larger storms. Because peak storm flows are not increased significantly from timber harvesting, it follows that storm damage is not increased. The EA discloses consideration of other harvesting in the vicinity and the beneficial uses of nearby streams. The table on page 33 shows that the independent variables for the proposal and alternates fall well below the criteria levels that would indicate any need for additional analysis. These criteria levels were established from the study of previous sales. I find that the EA adequately disclosed the effects on water.</p>

APPENDIX I
THE GYPSY MOTH PHEROMONE RESEARCH STUDY

Table 11

Public Comments on the GMPRS SN

Category	Commenter		
	Bruce Saunders	County of Bath	SABP
Alternatives	•		
Economics	•		
Flight Periods	•		
Gypsy Moth History	•		
Health Effects		•	•
Male Gypsy Moth Attraction	•		
Monitoring	•		
Non-target Species			•
Research/Studies	•		•
Residential Areas		•	
Sampling Bias	•		
Silviculture	•		
Water Quality		•	
The Proposed Action	N/A	N/A	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 2I

SABP's Comments on the GMPRS SN

Category	Comment	USFS Response
Health Effects		
(1)	In tests, some animals did experience local skin reactions including dryness, flaking, hemorrhaging, and fissures.	The amount of pheromone applied in the study plots is many orders of magnitude less than the amounts used in toxicity tests to determine acute dermal reactions. At the rate applied, each flake contains 0.2 milligrams of the racemic disparlure. There will be approximately 4-5 flakes or less per square foot. The amount of pheromone being applied with capsules amounts to less than a two tablespoons per acre. The capsules and flakes act as controlled-release dispensers, which release the pheromone into the air. The possibility of pheromone causing skin reactions on any animals at these low concentrations is extremely remote. There is no known effect to mammals, birds, or fish (FEIS, Vol. IV, p. 5-5). The treatment effect on terrestrial ecosystems is discussed under the Environmental Effects of the Alternatives p. 11, discussion of Significant Issue 1. The effects are also discussed in the FEIS-1995 and the Record of Decision concluded no effects.
(2)	Contact with human skin revealed that Disparlure can persist for a long period of time. Although this poses no adverse health effects, it can cause male gypsy moth attraction for up to several years. This can be a long-term nuisance for those who use and enjoy the outdoors.	Not specifically addressed.
Non-target Species		
(1)	SABP believes that this spraying may have unintended consequences for non-target species. Disparlure has been found to effect multiple moth and butterfly species, including gypsy moth (<i>Lymantria dispar</i>) and nun moth (<i>Lymantria monacha</i>).	Lymantria monacha or nun moth is an exotic Lepidoptera, closely related to the gypsy moth and it is not found in this country. Some information suggests that the nun moth may have some cross-attraction to the gypsy moth pheromone; however, no studies have been done to show that the gypsy moth pheromone might be used to control nun moth populations. There are other

		Lymantriid moths that occur in the eastern U.S. as evidenced by the occasional catch in a pheromone trap; however, there is no evidence to suggest that the pheromone actually disrupts mating. The treatment effect on non-target species is discussed in the EA under Environmental Effects of the Alternatives p. 15, discussion of Significant Issue 1, and in the BE.
(2)	The USFS must ensure that non-target species are not harmed by this project before it occurs.	EPA recognizes arthropod pheromones as environmentally acceptable biological pesticides because of their non-toxic pesticidal mode of action, low use rate, and target species specificity. The treatment effects on non-target species is discussed in the EA under Environmental Effects of the Alternatives p. 15, discussion of Significant Issue 1, and in the BE.
Research/Studies		
(1)	We believe that this proposal is far too large (1,234 acres) given the unknown possible outcomes from this pheromone. We urge a much smaller project to test this substance on VA's National Forests.	The size of the project has been reduced to 12 treatment plots totaling 740.4 acres and 4 untreated control plots (246.8 acres). The size of the individual plots and the number of replicates of each treatment has been designed to cover the minimum area necessary to conduct a statistically valid project.
(2)	Long-term studies are yet to be conducted.	Not specifically addressed.

Table 3I

SABP's Comments on the GMPRS EA

Category	Comment	USFS Response
Alternatives		
(1)	<p>The EA contains only one alternative besides the “no action” alternative, which involves the spraying of pheromone flakes over 740 acres. Thus, the USFS has predetermined that spraying pheromones is the only possibility for controlling gypsy moths. The OIG report of January 1999 demanded that a <i>range of alternatives</i> be considered on page 27. Without a range of alternatives, and without a viable no action alternative, the USFS is basically rationalizing a decision already made, instead of analyzing the impacts of different alternatives.</p>	<p>This is not a gypsy moth control project where there are varying alternative control methods that might be analyzed. This is a research project to evaluate the effectiveness of differing methods of applying gypsy moth pheromone and using different concentrations of the pheromone (EA, page 4). Since the commenter did not provide another alternative for the agency to consider, it would be speculative on the part of the agency to try and determine what other alternatives the commenter wants the agency to consider.</p>
(2)	<p>The NEPA (40 USC 4332(E)) requires that the USFS “study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” The NEPA regulations promulgated by CEQ further provide that the agency must “rigorously explore and objectively evaluate all reasonable alternatives,” stating this exploration is the “heart” of the NEPA process (40 CFR 1502.14). Federal courts have consistently held that this means that only one alternative is insufficient.</p>	<p>The revised proposal is a result of input from various resources (EA, page 1). The purpose of this project is to compare the effectiveness of two pheromone products and determine if lower doses of the pheromone is effective in disrupting mating. The scope of the project is very focused, and there is a need to narrow the scientific approach in order to evaluate the results and apply the information in operational projects. Besides the two alternatives considered in detail, an alternative to use ground application methods to apply the pheromone product was discussed and eliminated from detailed study (EA, page 9). The CEQ, Forty Most Asked Questions concerning the CEQ’s NEPA Regulations (40 CFR 1500-1508), Fed. Reg. Vol. 46, No. 55, 18026-18038, March 23, 1981 – Question number ‘1b’ notes that what constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case. NEPA case law has not been interpreted to require an infinite or unreasonable number of alternatives to be analyzed. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense (CEQ 40 Most Asked Questions, #1a, 1b, and 2a).</p>
Cumulative Effects		
(1)	<p>Cumulative effects are not adequately analyzed. The EA gives no indication of any other USFS projects occurring in the</p>	<p>The commenter does not make any reference as to what resource should be analyzed cumulatively with regards to the</p>

	study areas; however, ongoing and proposed timber sales may produce cumulative or synergistic effects. For example, the Grindstone Timber Sale is proposed for the Walker Mountain area.	Grindstone timber sale. Additionally, in order for the impacts to be cumulative, the impacts from other listed sales must overlap, both in terms of space and time. The proposed Grindstone timber sale was originally scoped on 11/3/94 and again on 2/11/97. Its proposed cutting units lay on the northwest side of Walker Mountain, while the research plots associated with this project lay on the southeast side. Thus, there is no cumulative effect on, for instance water quality, since the proposed Grindstone sale does not lie within the Little Mill Creek or Clayton Mill Creek watersheds. The proposed Grindstone sale does not overlap in space with the research study plots.
Forest Health		
(1)	The positive effects of no action are understated. Gypsy moths are a naturally occurring part of the forest ecosystem, and many species (including MIS) benefit from the effects of forest succession caused by gypsy moths. Rather than studying only one effect gypsy moth populations have, the USFS needs to study the system-wide effects of gypsy moths. Further, the USFS insists on raising the specter of wildfires. These, too, are naturally occurring events, and improve the health of forest ecosystems. Over emphasis on human management of forests, including wildfire and gypsy moth suppression, will only make matters worse. SABP submits that natural selection will be a much more effective method of forest protection.	The purpose of this proposal is to evaluate the effectiveness of the gypsy moth pheromone in small study plots (EA, page 1). The information generated from this work will be used in operational projects in advance of the leading edge of gypsy moth populations to slow its spread into uninfested areas. The suggestion to study the system-wide effects of gypsy moths is considered to be outside the scope of this analysis. The agency respects the opinion of the commenter; however, the pheromone treatments in the study plots is not a gypsy moth suppression project to reduce the risk of wildfires and is therefore considered outside the scope of this analysis. The agency respects the opinion of the commenter in regards to natural selection as a much more effective method of forest protection; however, this is considered to be outside the scope of this analysis.
(2)	Timber sales in the area may actually increase gypsy moth outbreaks. Further, the EA completely ignores private lands management. The EA must address these issues.	Outside the scope of this analysis.
TES/PETS/MIS		
(1)	Shale barren rockcress (<i>Arabis serotina</i>) is listed as endangered by the USFWS. Because this is an aerial spraying, mere avoidance of the shale barrens will not ensure that flakes will be absent from rockcress habitat. Especially disturbing is the proximity of Warm Springs Plots 3, 4, 5, 6, and 7, which essentially surround two areas of shale barren. Whatever the wind direction, some flakes will certainly find	The primary concern expressed by the VDNHR in regards to the endangered plant species, <i>Arabis serotina</i> , was the impacts of sampling if the study plots were located in the shale barren areas where the shale barren rockcress is found. To avoid any disturbance, the study blocks were specifically designed and located to avoid the shale barren areas where the rockcress is found. Pheromone flakes will

	<p>their way to these areas. Therefore, this project has a high likelihood of affecting rockcress, and consultation under ESA Section 7(a)(2) is required.</p>	<p>not adversely effect any plant or animal species including the shale barren rockcress because pheromone flakes are gypsy moth-specific, and pheromone does not affect non-target organisms (Gypsy Moth FEIS, Appendix A, page A-9). Drifting of the flakes out of the treatment area is very remote since they tend to be heavy and fall quickly to the forest canopy. For the skipper, pheromone flakes are not toxic to mammals, birds, or fish (Gypsy Moth FEIS, page 4-67 and table 5-5, Appendix G, page 5-69). The BE documents that informal consultation with the USFWS did occur.</p>
Water Resources		
(1)	<p>The EA claims that water quality will not be affected because no flakes will be deposited in water bodies. SABP finds this hard to believe. Deerfield Plots 3, 5, and 8 are adjacent to Little Mill Creek, and worse, plots 1, 2, 4, 6, and 7 lie directly across this creek. It is impossible to insure that flakes will not enter the creek, given the aerial application. These Deerfield Plots must be abandoned to preserve water quality.</p>	<p>Deerfield plots 1 through 3 are within the Clayton Mill Creek watershed, not the Little Mill Creek watershed as implied by the commenter. Deerfield plots 4 through 8 are within the Little Mill Creek watershed. Two of the plots will be control plots with no treatments, so only six of the identified plots will be treated. Flakes impregnated with pheromone could be carried into nearby streams. Yet, the ecological significance of this is negligible (Gypsy Moth FEIS, Appendix G, page 7-20). If the pheromone should enter an aquatic ecosystem as a result of translocation such as a storm event, the amount of pheromone present would be so low that would have no effect on water quality (EA, page 16).</p>

Table 4I

SABP's Administrative Appeal of the GMPRS DN/FONSI

Category	Appeal Issue	ADO Response
Alternatives		
(1)	The EA contains only one alternative besides the “no action” alternative, which involves the spraying of pheromone flakes over 740 acres. Thus, the USFS has predetermined that spraying pheromones is the only possibility for controlling gypsy moths. The OIG report of January 1999 demanded that a <i>range of alternatives</i> be considered on page 27. Without a range of alternatives, and without a viable no action alternative, the USFS is basically rationalizing a decision already made, instead of analyzing the impacts of different alternatives.	The USFS addressed this issue in their response to your comments on the EA; I concur with their response and paraphrase it here. I find that the EA considered an adequate range of alternatives
(2)	The USFS has granted appeals for projects that do not analyze a range of alternatives.	Not specifically addressed.
Cumulative Effects		
(1)	Cumulative effects are not adequately analyzed. The EA gives no indication of any other USFS projects occurring in the study areas; however, ongoing and proposed timber sales may produce cumulative or synergistic effects. For example, the Grindstone Timber Sale is proposed for the Walker Mountain area.	The response to comments (EA, Appendix A, pp. 4-6) explains that there will be no overlap in either space or time between the effects of the pheromone application and the Grindstone timber sale. The drainages are in separate watersheds. Furthermore, the Grindstone timber sale is not planned for implementation until year 2002, well beyond any effects of the pheromone application. The EA (pp. 11-19) discloses the effects on water and other resources to be so slight that there is essentially no effect to add to the effect of any other project, were there one, that could together cause any cumulative effect. I find that the EA adequately discloses cumulative effects.
(2)	SABP has attached pages from the CEQ document “Considering Cumulative Effects.” These pages indicated that cumulative effects analysis must expand on the geographical and temporal frames of the proposed project, and are not limited to overlapping. Therefore, the USFS must address actions in the vicinity that occur in the past, present, or reasonably foreseeable future, whether or not any actual overlap occurs.	Not specifically addressed.

Forest Health		
(1)	The EA fails to note or analyze that timber sales in the area may actually increase gypsy moth outbreaks. Further, the EA completely ignores private lands management. The EA must address these issues.	Appendix A (p.6) discloses that there are no private lands within the project area.

APPENDIX J
THE BUFFALO BRANCH FUELWOOD SALE

Table 1J

Public Comments on the BBFS SN and 30-day Review Notice

Category	Commenter	
	Forest Guardians/FCC (SN)	Forest Guardians et al. * (30-day Review Notice)
Alternatives		•
Aquatic Communities		
Cumulative Effects		•
Ecological	•	•
Economics	•	•
Environmental Analyses/Documentation		•
Hydrological		•
Old Growth		
Recreation/Tourism		
Riparian Areas		
Roadless Areas		
Roads		
Soils		
TES/PETS/MIS		
Timber Harvesting	•	•
Water Resources		•
Wilderness		
Wildlife		
The Proposed Action	N/A	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

* This comment was filed by Forest Guardians on behalf of itself, nine other special-interest groups, and six individuals.

Table 2J

Public Comments on the BBFS EA

Category	Commenter	
	Heartwood (EA)	SABP (EA)
Alternatives	•	•
Aquatic Communities	•	
Cumulative Effects	•	
Ecological	•	•
Economics	•	
Environmental Analyses/Documentation	•	
Hydrological	•	
Old Growth	•	
Recreation/Tourism	•	
Riparian Areas	•	
Roadless Areas	•	
Roads	•	
Soils	•	
TES/PETS/MIS	•	•
Timber Harvesting	•	
Water Resources	•	•
Wilderness		•
Wildlife	•	
The Proposed Action	-	-

Table 3J

SABP's Comments of the BBFS EA

Category	Comment	USFS Response
Alternatives		
(1)	After review of the EA for this sale, SABP supports the first alternative, that of no action, pursuant to the poor condition of the forest at this time.	Not specifically addressed.
(2)	While Alternative 1 clearly has no negative effects, being a “leave no trace” action, all other alternatives try to skirt around the point of severe impact.	Not specifically addressed.
Ecological		
(1)	It is clear that in the current status of MA 17 there are no attempts to manage for biodiversity, habitat establishment, or any species that would have a chance at life.	The process used to arrive at the GWNF RLRMP considered citizen concerns, plants, animal habitats, numerous natural ecosystems, and much more.
(2)	Stands will never meet the so-called “desired criteria” if they are continually disturbed through logging, road construction, and all other impacts created by poor management decisions	Not specifically addressed.
TES/PETS/MIS		
(1)	The mitigation for effects on wildlife and PETS species is clearly based on decisions made as if a blind man were walking through MA 17. Clearly, motorized equipment and large mast trees impact a previously disturbed area. This is quite the change in terms of habitat.	This is the opinion of the author. The effects on PETS is disclosed in the BE and EA, pages 10, 11, and 15.
(2)	The EA simply aborts any detailed analysis of effects to PETS, and I salute this decision as a firm reminder of how there are rarely EAs that do not fail the necessary criteria in every way. Such is the case by reviewing the said gains and losses of the BBFS at the level of forest planning, since the actual gains of this project are few, if any.	This is the opinion of the author. The effects on PETS is disclosed in the BE and EA, pages 10, 11, and 15.
Water Resources		
(1)	It is ad hoc science that assumes that airborne debris will have no adverse effects on water quality when a riparian area exists at 200 feet. The presence of sedimentation illustrates adverse effects. This is quite clear in the definition of sedimentation and its threat to public water resources.	The agency disagrees. The effect on water quality and riparian areas from sedimentation is disclosed in the EA, pages 5-8.
Wilderness		
(1)	The BBFS does not validate the goals of public lands management, as stated in ESA, CWA, and all other acts that fall short of full wilderness protection. The	The issue of the project area being a wilderness area is outside the scope of this project. The RLRMP established this project as MA 17, with specific goals and

	<p>lack of balanced age class distribution, a strategy not in alignment with wilderness designation, has repeatedly failed due to historical over harvesting in MA 17.</p>	<p>objectives. The DFC of the project area is outlined on EA, page 1. The process used to arrive at the RLRMP considered citizen concerns, plants, animal habitats, numerous natural ecosystems, and much more. The approved Forest Plan identified the MA direction. The proposed project was designed to be consistent with the MA direction in the approved Forest Plan.</p>
--	--	---

Table 4J

SABP's Administrative Appeal of the BBFS DN/FONSI

Category	Appeal Issue	ADO Response
<p>Alternatives</p>	<p>(1) Agency planners have not developed or analyzed a proper range of alternatives for managing the area. In this way the agency has prematurely foreclosed options that might better protect or restore the environment and/or resolve conflicts. The developed action alternative is unduly narrow in scope.</p>	<p>The FSH 1909.15, Section 12.3c directs that forests “[c]onsider a full range of reasonable alternatives to the proposed action that address the significant issues and meet the purpose and need for the proposed action.” The three significant issues “used to develop alternatives...and guide the analysis of the environmental impacts” are disclosed on page 2 of the EA. The first issue was addressed through analysis of effects on soil and water. Because there were no significant adverse effects on soil or water, there was no need to develop another alternative disturbing fewer acres or including more mitigation measures. The second issue, as written not clearly an issue, is addressed in the environmental effects disclosure for the proposed action. The expected economic benefits are disclosed; there is no need to develop an alternative yielding a different level of returns. The third issue, consideration of a restoration alternative, is outside the scope of the proposal. The issue does not specify what needs to be restored. The proposed action is to improve the stocking and density of stems in the timber stand – not to restore some (unspecified) condition. But even if issue #3 were significant, the no-action alternative addresses it because the no-action alternative does not complete a commercial sale and serves to protect the option for some future “restoration” proposal. I find that the EA disclosed consideration of an adequate range of alternatives.</p>
	<p>(2) It is apparent by its DN of Alternative 2, the maximum harvest, that the USFS has yet again avoided any thought or concern for anything other than the harvest of sawtimber.</p>	<p>Not specifically addressed.</p>
	<p>(3) Why are there no explanations given for not choosing the other alternatives? Point made.</p>	<p>Not specifically addressed.</p>

	(4)	The BBFS EA only considers one action alternative other than no action. Failure of the USFS to consider a full range of alternatives is a blatant violation of NEPA. The implementing regulations for NEPA, at 40 CFR 1504.14, clearly state the obligation of the USFS to fully consider all reasonable alternatives to the proposed alternative in the EA.	Not specifically addressed.
	(5)	Only one alternative was developed in detail. This is flagrantly insufficient, since there was more than one alternative to be researched. Development of other alternatives involving less or no overstory thinning/removal need to occur, since there is obviously some question as to the purpose and usefulness of the project.	Not specifically addressed.
	(6)	The no action alternative could actually be the best alternative of the two considered for this area. In fact, no action is probably better than Alternative 2, and yet the USFS dismisses this alternative summarily while providing ZERO analysis of environmental impacts in an illegal EA.	Not specifically addressed.
Cumulative Effects			
	(1)	The cumulative effects analysis utilized recommends merely looking at percentages of various age classes across the entirety of the NFS in VA. It is easy for serious site-specific impacts to be diluted in such a vast analysis area.	Cumulative effects analysis of soils and water is on pages 4, 7, and 8 (EA).
Ecological			
		In many other places the EA assumes that no natural disturbance will occur that would provide canopy openings, allow shade-intolerant species to grow, and provide opportunities for early successional habitat. This is obviously an invalid assumption. Natural disturbances and death will continue to occur in the forest and provide natural habitat for these species.	Not specifically addressed.
Environmental Analyses/Documentation			
	(1)	The repeated basis of environmental analysis from the GWNF RLRMP is illegal, and is a egregious violation of NEPA law and USFS regulations.	The EA, page 1, states that the FEIS for the Revised Forest Plan addressed the environmental impacts of implementing the programmatic goals

	<p>This attempt to subvert the law, and avoid ANY thorough environmental analysis reflects a serious problem with the Deerfield District’s understanding of its legal authority. This illegality also renders the EA void, as well as the decision based upon this flaky EA. The substantial lack of a comprehensive EA, when referenced with the potential negative effects to critical habitat and sensitive species, requires that the Buffalo Branch decision be overturned.</p>	<p>and objectives for managing the Forest, and that the “EA will disclose the direct, indirect and cumulative effects of the no-action and action alternatives,” focusing on significant issues. The EA “displays the site-specific consequences of implementing alternative proposals” (EA, p. 2). Forest Plan citations in the EA refer to appropriate management requirements or standards and guides that apply to the alternatives. The EA indicates that “all alternatives are consistent with the Forest Plan” (EA, p. 2), and a consistency finding, as required by the NFMA, is disclosed in the DN, page 5. I find that the District appropriately referenced the Forest Plan.</p>
(2)	<p>The EA, FONSI, and DN for the BBFS are not in accordance with the law. The USFS’s decision to forgo the completion of an EIS for this timber sale is arbitrary and capricious for the following reasons.</p>	<p>Not specifically addressed.</p>
(3)	<p>The USDA Office of the Inspector General issued an Evaluation Report in January 1999 titled “Forest Service Timber Sale Environmental Analysis Requirements.” The report specifically focused on twelve ranger districts across the NFS, including the Deerfield Ranger District of the GWNF, which is proposing the Buffalo Branch Fuelwood Sale. The inadequacies that the Inspector General’s report found are perpetuated in this sale; these inadequacies not only undermine the USFS’s integrity with the public, they also demonstrate non-compliance with the environmental laws which govern USFS activities. Approval of this project by the Region Eight office would demonstrate a blatant disregard for the critical legal oversight of the USFS’s own agency.</p>	<p>Not specifically addressed.</p>
(4)	<p>The project decision makes an arbitrary analysis, using as support the FEIS for the GWNF. Furthermore, the impact discussion is waived in the EA due to its length and supposed level of difficulty to comprehend. Such explanations are blatant examples of the need for further research and mitigation into the</p>	<p>Not specifically addressed.</p>

	effects of the sale.	
(5)	The EA is a biased document that attempts to pass off an environmentally destructive timber sale as beneficial to the environment, due to thinning that is controversial in its benefit to the forest. Tying this improvement to the action alternative gives an improper bias to the action alternative. This is misleading to the public, unethical, and illegal. This comparison exemplifies the uselessness of the current EA and the need for an unbiased EIS for the proposal.	Not specifically addressed.
(6)	Crucial information regarding current habitat conditions in the BBFS area has not been collected, and thus renders the EA inadequate.	Not specifically addressed.
(7)	The Deerfield District has tried to save time and money by referencing the RLRMP as a basis for not requiring environmental analysis or an EIS. The result is a document which does nothing to validate the reasons and clarity for its decision of FONSI.	Not specifically addressed.
(8)	The sale decision is based on narrow minded management strategy, without taking into consideration possible negative effects on habitat. It is noted that such information is capricious, based on the EAs own admittance of issues such as takings, and does not thoroughly represent objective decision making.	Not specifically addressed.
(9)	The decision tries to base its validity on the lack of roadbuilding or mechanized activity, clearly overlooking the impacts of disturbance to the sale area.	Not specifically addressed.
Remedies		
(1)	The Regional Forester should reverse the decision to adopt Alternative 2 and order that the District conduct a new EA with a full range of alternatives and site-specific data and analysis in order to determine if the cumulative impacts of this proposal and other past and proposed timber sales are significant enough to require the preparation of an EIS on timber harvesting in the Deerfield District.	Not specifically addressed.
(2)	The Regional Forester should instruct the Ranger to prepare adequate sensitive species population	Not specifically addressed.

	objectives, to conduct adequate sensitive species surveys, and to provide site-specific mitigation measures and scientific evidence of their efficacy.	
(3)	MIS, water quality, and sedimentation effects should be thoroughly examined, on a project basis, before determining the future of the proposed action.	Not specifically addressed.
Soils		
(1)	The EA overlooks the need for site-specific analysis on soil from the timber harvest. There is no site-specific analysis of where soils are located and how erosion will be prevented during and after timber harvest.	Site-specific analysis of effects on soils is on pages 6-7 of the EA. Mitigation measures are on pages 3 and 4 of the EA. Soil series that are site-specific to the sale area are given on page 6 of the EA, along with the erosion hazard. The EA states that “[t]o protect soil productivity, Revised Plan, Common Standards Numbers 206-209 and 211, page 3-145 will apply” (EA, p. 3). I find that site-specific analyses of soil effects are adequate.
(2)	The EA notes that the soils in the area have moderate to high probability of excessive soil erosion following ground disturbance. The EA also tries to propose positive effects of percolation as released by the removal of unwanted trees. However, due to the use of the white paper, no site-specific analysis of where these soils are located and how erosion will be prevented during and after timber harvest.	Not specifically addressed.
(3)	For this project, soils and sedimentation are among the most crucial issues raised in scoping and apparent in the project area, yet the USFS continues to refuse to address the site-specific and cumulative impacts.	Not specifically addressed.
TES/PETS/MIS		
(1)	The Forest Plan substantiates that MIS will be used to monitor the implementation of the GWNF RLRMP, and effects on diversity and population viability of plants and animals (LRMP 2-9). However, contrary to the existence of minimum viable population guidelines for MIS in the FEIS to the RLRMP, the EA makes no effort to present baseline data on MIS populations in the project	The EA for Buffalo Branch Fuelwood Sale references the Forest’s <i>Monitoring and Evaluation Report</i> as context for its project-level analysis of MIS (EA, p. 14). This analysis discloses that there would be little effect on MIS because of the limited nature of changes to habitat as a result of this action (EA, p. 10). I find that the analysis for this project includes adequate site-specific information on

	area. This is a blatant injustice to the goals of the Revised Plan, as it utilizes MIS for the specific purpose of localized management decisions.	MIS, and that requirements for monitoring population trends have been met.
(2)	It is documented that the BBFS has the potential to adversely effect critical habitat and PETS species in and around the project area.	The potential effects of the project on wildlife habitat and PETS species are disclosed in the EA on pages 9-11.
(3)	It is claimed that no habitat exists for most TES species in the project area, but there is no information given as to how or even if a survey for habitat was performed. Furthermore, the statement that “[t]he absence of habitat associated with most TES species in this project area greatly reduces any potential effects to TES species” is absurd and presents small consolation to those species not known to be loyal to particular TES habitats. Agency planners did not thoroughly sample the site for TES species populations. Not only is there no hard site-specific population data, they did not even determine whether such species exist here. They deny that suitable habitat exists for such listed species as the coal skink, cerulean warbler, Coopers hawk, ginseng, swordleaf phlox, and butternut. Yet standard biological reference works reveal the presence of suitable habitat here for various TES species, including those mentioned above (e.g., see General Technical Report SE-96 from the USFS Southern Research Station, <u>Breeding Bird Surveys</u> , <u>Virginia’s Endangered Species</u> , and <u>Virginia Breeding Bird Atlas</u> , Virginia Division of Natural Heritage watershed reports). If the area cannot presently support these species, then the finding of “no significant cumulative effects” is incorrect.	The BE uses information on site-specific occurrences of PETS species from the VDNH database, and from site surveys conducted in support of this project (BE, p. 1). Apparently neither of these site-specific sources indicated the presence of PETS species within or immediately adjacent to treated areas. I find that the analysis for this project includes adequate site-specific information on PETS species, and that requirements for monitoring population trends have been met.
(4)	Although the EA does discuss the Indiana Bat and its potential use of the area, there is again a total lack of site-specific analysis of this issue. These actions are necessary to insure protection of the Indiana Bat.	The BE indicates that Indiana bats are not documented from the affected lands, but that habitat is suitable due to the presence of tree species of the size and shape known to be used by this species (BE, p. 3). Affected lands are not within primary or secondary protection areas around known hibernacula (BE, p. 3). Although this situation is common on the Forest, its description is site-specific information

		about these affected lands. Any similarity of discussion of expected effects and required mitigation between this analysis and other analyses is due to the similarity of circumstances being analyzed. In find that effects to Indiana bat have been adequately considered.
(5)	The District is in violation of the ESA by not consulting with the USFWS on this specific project. The necessary biological opinion was not obtained, and the required Biological Assessment was not performed (16 U.S.C. 1536(a)(2)).	The BO resulted from formal consultation between the USFS and the USFWS over effects of USFS actions on the Indiana Bat. The USFWS has agreed that projects in compliance with Amendment 6 and the Terms and Conditions of the BO, do not require additional consultation. I find that effects to Indiana bat have been adequately considered and that requirements under the ESA have been met.
(6)	Use of the GWJNF Recovery Strategy without an amendment to the Forest Plan violates NFMA. The Plan as it stands is improper and illegal, as it does not protect the Indiana Bat or its habitat. The Recovery Strategy is illegal as it does not provide for adequate protection or recovery of the bat. The conflicts between the objectives of the IBRS and this proposed action have not been properly disclosed (40 CFR 1502.16©). In addition, the DN for this project presents Forest-wide cumulative effects to habitat for this species (DN, p. 4).	One of the Terms and Conditions established in the BO is a limit on the amount of potential Indiana Bat habitat that may be disturbed on the GWJNF in a year's time. This limit was included to address cumulative effects to this species. Evaluation of compliance with this limit is reported in the Forests' annual Monitoring and Evaluation Report. In addition,
(7)	The bat's viability is particularly at risk here due to its small population in VA and the fact that the state is at the edge of its range. The USFS is at present damaging Indiana Bat habitat (or contemplating such) throughout its range. The agency is well aware of this issue. Yet the significant cumulative impacts resulting from all this (and other agency and non-agency actions) are unanalyzed and undisclosed in the EA. They are not even acknowledged.	The DN for this project presents Forest-wide cumulative effects to habitat for this species (DN, p. 4).
(8)	Apparently, full and intensive surveys were not performed, and site-specific inventories of populations and habitat were not obtained. Even when species are admittedly present or potentially present, unsubstantiated conclusions regarding the project's	With regard to additional site-specific surveys or inventories, the USFWS has identified monitoring and inventory requirements as part of the <i>Terms and Conditions</i> of the BO (pp. 31 -32). Results of implementing these requirements are reported in the

	impacts are asserted (e.g., the statements regarding eastern small-footed bat, Indiana bat, and roughhead shiner).	<i>Detailed Monitoring and Evaluation Report, Fiscal Years 1997 and 1998</i> , for the GWJNF. Tree-by-tree surveys for roosting Indiana bats during project planning are deemed by the USFWS as not practical; they have not recommended this approach (BO, p. 28).
(9)	There is clearly a possibility of usage of the project area by the Indiana Bat. This species has been noticed to exist and use the Buffalo Branch area, as recognized by the USFWS in reference to “takings” in response to comments on pages 15-16 in the EA. Suitable habitat is present and two known hibernacula are nearby (only seven and nine miles distant from the project area. The Indiana Bat is known to use forests such as are found in and around the proposed logging areas for roosting, foraging, and maternity sites. The proposed action would harm this habitat significantly. Because a protected species may be present, the letter and intent of the ESA must be followed (see <i>Thomas v. Peterson</i> , 1985; 16 U.S.C. 1536©(1)).	Not specifically addressed.
(10)	Researchers at first thought the bat’s decline was due to disturbance to hibernacula. But, in spite of hibernacula protection, the Indiana Bat population has continued to collapse. Researchers now believe declines may result from loss of summer (roosting, foraging, and maternity) habitat, such as that proposed for cutting here (see Draft IB Recovery Plan at 17). The latest research from Missouri reveals that the areas used by the bat contain significantly higher numbers of large trees than other areas. Planners err in failing to properly consider this scientific information.	Not specifically addressed.
(11)	The proposed logging will adversely affect roosting (sheltering), maternity (breeding), and foraging (feeding) habitat of the Indiana Bat. Implementation of the Buffalo Branch Fuelwood Sale would “take” the Indiana Bat in that it will result in significant habitat modification or degradation. Under the current Recovery Strategy, there is no way of	Not specifically addressed.

	determining if the “takings” limit has been reached.	
(12)	The efficacy of the proposed mitigation measures for the bat are unexplained, nor do they completely compensate for the potential adverse effects. For example, the increased susceptibility of remnant leave trees to windthrow is not assessed. The efficiency of retaining only shagbark hickories is unsubstantiated (the bats are known to use other tree species that are present here that the cuts will remove). Nor is the effectiveness of retaining only a minimum of 6 snags per acre substantiated. If the bats were receiving the required “top priority” then all snags and large potential roosting trees would be retained (see Bensman v. USFS, 1997), and an alternative placing a priority on the conservation of the Indiana Bat would have been at least considered. Such an alternative might have been based on the use of individual tree selection, or the retention of a greater number of trees in the cuts. However, no such alternative was constructed, in violation of NEPA and the FSM.	Not specifically addressed.
(13)	Reliance on the programmatic Biological Opinion of the USFWS without the proper further site-specific investigation here is arbitrary and capricious and does not meet the requirements of the ESA, the viability requirements of NFMA, or the disclosure and reasonability requirements of NEPA.	Not specifically addressed.
Timber Harvesting		
(1)	The “Purpose and Need” for the Thunderstruck timber sale has been manufactured by the USFS to justify logging in violation of NFMA, NEPA, ESA, and the Forest Plan. The Forest maintains that the purpose of the BBFS is to create a more desirable even-aged class canopy by thinning. However, there has been no concrete evidence presented that said action is truly necessary, other than for sawtimber.	The purpose and need for the proposed action is disclosed on page 1 of the EA: “to meet the direction set in the RLRMP” for MA 17. The proposed action is designed to move existing conditions towards the DFCs for MA 17, which emphasizes timber production consistent with multiple-use management. The objective of this specific project is “to commercially thin the overstocked, immature upland hardwood stands by removing stunted and stagnated trees...” (EA, p. 3). No other justification is necessary. I find that the purpose and need is adequate for

		the proposed action, as disclosed in the EA.
(2)	The EA states that the timber sale will have no significant impact, based on present conditions of the BBFS area. Yet, the USFS admits that the sale area is near and adjoining critical habitat, and recreational public lands.	Not specifically addressed.
(3)	What benefit does thinning have for the creation of critical habitat? There is none apparent, other than the no action alternative, which the USFS has chosen to ignore.	Not specifically addressed.
Water Resources		
(1)	The EA overlooks the need for site-specific analysis of the effects on water from timber harvesting.	Site-specific analysis of effects on water is on pages 5-8 of the EA. Examples of site-specific water analyses are “[n]o temporary roads, skid roads or landings will be constructed. Sediment associated with this alternative will not have a significant impact on the beneficial uses of Buffalo Branch and Falls Hollow Branch” (EA, p. 7); and, “[t]he proposed harvest area lies from 330 feet to 1650 feet distant from Buffalo Branch” (EA, p. 5). I find that site-specific analyses of water effect are adequate.

APPENDIX K
THE TAYLOR BRANCH SALVAGE SALES

Table 1K

Pubic Comments on the TBSS SN

Category	Commenter				
	Laura Redish	Jadene Fourman	ADP	Richard Churray	Sherman Bamford
Aesthetics					•
Alternatives		•		•	•
Aquatic Communities					•
Archaeological/Natural Heritage Resources					•
Cumulative Effects			•		•
Ecological			•		•
Economics			•		
Environmental Analyses/Documentation			•		•
Exotic/Invasive Species			•		•
Forest Health			•		•
Geology					•
Hydrological	•	•		•	•
Mitigation			•		•
Multiple Use			•		•
Old Growth					•
Prescribed Burning			•		
Public Involvement					•
Recreation/Tourism	•	•	•	•	•
Regeneration			•		•
Riparian Areas					•
Roadless Areas	•				
Roads			•		•
Silviculture			•		•
Soils			•		•
TES/PETS/MIS			•		•
Timber Harvesting	•	•		•	•
Vegetation					•
Water Resources					•
Wetlands					•
Wild & Scenic Rivers					•
Wilderness	•				
Wildlife	•	•	•	•	•
The Proposed Action	-	-	N/A	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

Table 2K

Public Comments on the TBSS 30-day Review Notice

Category	Commenter				
	AFMG	Heartwood	George O’Nale	PAW/ Heartwood/SEDG	SABP
Aesthetics			•		•
Alternatives		•	•		•
Aquatic Communities		•			
Archaeological/Natural Heritage Resources				•	•
Categorical Exclusions				•	
Cumulative Effects		•			•
Ecological		•			•
Economics	•	•		•	•
Ecosystem Management					•
Environmental Analyses/Documentation		•	•	•	•
Exotic/Invasive Species					•
Forest Health	•	•			•
Hydrological		•	•		
Local Communities		•	•		
Mitigation	•				•
Old Growth		•			•
Prescribed Burning	•	•			•
Public Involvement			•		
Recreation/Tourism		•			•
Regeneration	•				•
Riparian Areas					•
Roadless Areas					•
Roads		•			•
Silviculture	•				
Soils			•		•
TES/PETS/MIS		•	•	•	•
Timber Harvesting		•	•	•	•
Timber Theft		•			
Water Resources	•	•	•		•
Wetlands				•	
Wild & Scenic Rivers					•
Wilderness					•
Wildlife		•			•
The Proposed Action	N/A	-	N/A	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

Table 3K

Public Administrative Appeals of the TBSS Revised DM

Category	Appellant	
	PAW/Heartwood/SEDG	SABP
Aesthetics	•	
Alternatives	•	•
Aquatic Communities	•	
Archaeological/Natural Heritage Resources	•	
Categorical Exclusions	•	•
Chemicals	•	
Cumulative Effects	•	•
Ecological	•	
Economics	•	
Environmental Analyses/Documentation	•	
Forest Health	•	
Hydrological	•	
Mitigation	•	•
Old Growth	•	
Prescribed Burning	•	
Public Involvement	•	
Recreation/Tourism	•	
Regeneration	•	
Riparian Areas	•	
Roads	•	•
Soils	•	
TES/PETS/MIS	•	•
Timber Harvesting	•	
Water Resources	•	•
Wildlife	•	

Table 4K

Public Comments on the TBSS EA

Category	Commenter					
	Heartwood	Rima Sulzen	FCC/NFPA	Sherman Bamford	SEDG/Heartwood	SABP
Access				•		
Aesthetics		•		•		
Alternatives	•	•	•	•		•
Aquatic Communities	•			•		
Categorical Exclusions				•		
Chemicals				•		
Cumulative Effects	•		•	•		•
Ecological	•		•	•		•
Economics	•	•	•	•		•
Environmental Analyses/Documentation	•		•	•	•	•
Forest Health	•		•	•		•
Hydrological	•		•	•		
Local Communities	•					
Mitigation	•			•		
Old Growth	•		•	•		•
Prescribed Burning	•			•		
Public Involvement				•	•	
Recreation/Tourism	•	•		•		
Regeneration						•
Riparian Areas				•		
Roadless Areas				•		
Roads	•		•	•		•
Silviculture				•		
Soils				•		
TES/PETS/MIS	•	•	•	•		•
Timber Harvesting	•		•	•		•
Water Resources	•	•	•	•		
Wilderness				•		
Wildlife	•			•		
The Proposed Action	-	-	-	-	-	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 5K

SABP's Comments on the TBSS 30-day Review Notice

Category	Comment
Aesthetics	
(1)	Visual setbacks should be 200 feet minimum above all bluffs.
Alternatives	
(1)	An alternative that would facilitate rehabilitation and restoration of the environment and proposes no further road building or logging should fully analyze proper comparison with other action alternatives. Given the USFS's purported mission to do ecosystem management, such an alternative is fully consistent with any valid "purpose and need." The alternative should include road closures and obliteration, watershed rehabilitation, and means to eliminate man-made sediment sources. These actions should depend upon receipts from timber sales.
Archeological/ Natural Heritage Resources	
(1)	Does the USFS have inventories for archaeological resources in the planning area?
(2)	Southern Appalachian NF are incredibly rich in archaeological resources, many of which are sensitive to ground disturbing activities. These include underground caves which could be destroyed by road building. Priority protection should be provided for all archaeological resources on the Forest. Please analyze how alternatives could affect archaeological and other historical and cultural sites.
Cumulative Effects	
(1)	We request that cumulative effects be a major focus of your analysis. These sales occur throughout the Ranger District, and will impact a broad area. We believe that if you take a good hard look at the significance of impacts of all past, presently ongoing, and reasonably foreseeable future activities, including those on nearby land of all ownership within and near the project area, additional impacts from the proposed project may be adverse to some resource values.
(2)	We request that your cumulative effects analysis include in detail both the suppression of wildfire and the use of controlled burns today. For example, analyze how past fire suppression in the area has affected biological diversity and forest succession. Please disclose in the NEPA document what the historic natural, pre-management fire regime was in the analysis area.
(3)	Please disclose the cumulative effects analysis area to be utilized to analyze each resource or issue considered in this environmental analysis. This is usually different than the analysis area boundary shown on the maps included with the scoping notice.
(4)	Take your cumulative effects analysis to the regional level. That is, take a good look at the fragmentation of wildlife habitat that continues to accumulate in North Carolina due to changing land use patterns and conversion of the natural, native forest to tree farms.
(5)	Please disclose the cumulative effects of motorized on and off-road travel on wildlife, soils, water quality, and biodiversity that will occur when these thinnings take place. These impacts are significant as the constant barrages of thinning projects place

	unhealthy disturbances to the forest wildlife, continuously building up toxins in the soil and pollute the waters – this follows the evolution of unsustainability.
Ecological	
(1)	The ecosystems of the ranger districts of all National Forests in North Carolina have been severely fragmented and in many ways degraded because of past industrial logging. The point is many practices now administered by the USFS often disregard the interests of ecosystems and non-consumptive forest activities.
(2)	Now is the time to reverse the trend toward destruction and make protection of biological diversity the highest priority. If any type of action isn't sustainable into perpetuity for the ecosystems, it isn't sound management. We now know too much to allow industrial logging practices to be continued. Forest practices based upon narrow thinking and greed have no place in the public's forests.
(3)	A recent study by Defenders of Wildlife found that of the ten states with the most endangered ecosystems, eight were in the Southeast. It is critical that rare communities on our public lands be conserved.
(4)	There is a need to protect rare and sensitive ecosystems and community types. Please identify any rare ecological communities in the planning area and protect these areas. Through their conservation many individual rare species will be protected. Examples include forest wetlands, caves, spray zones of waterfalls, and old growth of all forest types.
(5)	Please complete on-the-ground surveys for snag and downed woody material in the project area and in the cumulative effects area, and disclose these results in the NEPA document. We are convinced that the proposed logging obstructs the forests natural recovery pattern, thus disturbing wildlife habitat and forest health.
(6)	Include the impacts to native species (such as salamanders) from the fire ants that accompany almost every thinning and clearcut/seedtree/shelterwood that we have examined on North Carolina NF.
(7)	Components of biodiversity should be examined at all levels, including genetic, species, ecosystem, landscape, and regional.
(8)	We are requesting the USFS to analyze the effects of the logging proposed in compartments 5117, 5032, and 5065 on biological corridors. That means that corridors within the analysis area, and linkages with areas adjacent to the analysis area must be examined, plus the value of the entire analysis area as part of a larger corridor within or between ecosystems.
(9)	The continued fragmentation of the Forest needs to be a major analysis issue for the proposed logging. This is, the size of blocks of interior forest that existed historically before management actions (including fire suppression) were initiated needs to be a point of comparison with both the present condition and in terms of the proposed logging. This should be a landscape ecology-type analysis which looks at the larger picture of the fragmentation of habitat in surrounding concentric circles.
(10)	How will the proposed thinning further fragment the habitat for plants and other wildlife, given the already fragmented landscape from past harvesting and road building activities? Disclose how past management actions of this sort extirpated or significantly

	reduced any plant or animal species from the analysis area.
(11)	Disclose how past management actions have affected or reduced the diversity of habitat types in the analysis area, the Pisgah NF, and the region.
(12)	The “Spotted Owl” crisis in the Pacific Northwest should lead the USFS to make maintenance of viable populations of all species of concern a driving issue for all such projects.
(13)	SABP specifically requests that the analysis address the related issues of “population viability” and “distribution throughout its geographic range” in regards to all species of concern, in order to comply with USDA Regulation 9500-4 and 36 CFR 219.9.
(14)	To adequately analyze population viability, you must explicitly consider population dynamics, which refers to the persistence of a population over time, which is key to making predictions about population viability.
(15)	The USFS should fully analyze the following factors in examining population dynamics: population growth rate, population size, linkages to other populations, and aquatic communities.
(16)	The analysis should establish that the species in the analysis area are still part of a viable population in the surrounding landscape following the impacts from past development on lands of all ownerships.
(17)	Identification of a viable population must be done at some geographic scale. This means if the analysis cannot identify a viable population of MIS and TES species of which the individuals in the analysis area are members, the analysis fails to assure the maintenance of a viable population, violates NFMA, and falls far short of meeting the requirements of a scientifically sound “ecosystem” analysis.
(18)	A few of the species and taxa that deserve particular attention in the planning process include: herbaceous wildflowers, forest salamanders, forest interior birds, forest bats, and black bears. Please assure protection of these species and communities and disclose how all alternatives would affect them.
(19)	The USFS should fully consider the negative effects on wildlife habitat and biodiversity of closed roads in addition to the open roads. Nobody would argue that an area with all closed roads is as secure for wildlife as if it had no roads at all, so the USFS should consider this in the analysis.
Economics	
(1)	We request that you document how your decisions and the selected alternatives maximize net public benefit. In other words, you should give consideration to, and adequately document, who benefits by these projects and who “pays” for them.
(2)	Please disclose an itemized list of monetary costs and benefits for each alternative, including the no action alternative.
(3)	Naturally, any mitigation costs (e.g. K-V funds) should be disclosed in the economics analysis.
Ecosystem Management	
(1)	Managing for sustainable ecosystems is the only scientifically acceptable definition of “ecosystem management.”
Environmental Analyses/Documentation	
(1)	Please analyze the proposal within the regional context.

Exotic/Invasive Species	
(1)	Please include in your analysis the possible effects of noxious weed introduction on Sensitive plant populations and other components of biodiversity.
(2)	Please include in the analysis the results of monitoring of noxious weed infestation from past management actions in the District. Many weeds invade the area.
Forest Health	
(1)	If the current plan is to thin out the pines for forest health, please provide studies that show manipulated forest systems with thinnings contribute to better long-run forest health.
(2)	Is the USFS claiming to be better at maintaining forest health instead of the forests inherent ability to take care of itself?
(3)	Evaluate the likelihood of consequential blow-down of remaining trees in the cutting units or trees bordering the cutting units, based upon past harvesting in similar areas.
(4)	Based upon monitoring results of previous timber harvest in the area, discuss how the action will affect insect infestations and other disease outbreaks and how likely is it that the effect will be to stress to other trees near the cutting units, causing them to be more susceptible to attack by insects or disease.
(5)	Please assess the hazard of human-cause wildfire, given that slash left after cutting and slash burning are in actuality much more of a wildfire risk to adjacent forested areas.
Mitigation	
(1)	Discuss the actual effectiveness of proposed BMPs in preventing sediment from reaching water courses in or near the analysis area. What BMP failures have been noted for past project with similar land types? We would like to see a thorough discussion of the BMPs and mitigation measure you would propose. This discussion must go beyond a mere listing, and include the following: their relative effectiveness in achieving their intended goal(s), based upon experience in the District; how dependent they are on outside sources of funding (e.g. K-V funds); the likely consequences should those funding sources not be realized.
Old Growth	
(1)	Does the USFS have inventories for old growth in the planning area?
(2)	SABP is concerned about how the project may affect old growth communities. Please identify any known areas which contain old growth or forests developing old growth characteristics within the planning area. Characteristics include old trees, tree fall gaps, pit and mound topography, and uneven-aged structure. Some areas in our region which were selectively logged in the past maintain old growth characteristics and values.
(3)	We urge the USFS to protect any and all areas with old growth characteristics or high potential for old growth restoration. Such areas are simply too rare to sacrifice for timber. Please disclose what methods were used to determine the presence or absence of old growth in the planning area.
(4)	Jack Ward Thomas stated that "...the best probability of success is to preserve all remaining old growth and, if possible, produce more." Please address this statement made by a group of scientists that include the former USFS Chief as it pertains to old growth management in this analysis area.

(5)	Proper management of old growth resources would include making sure designated old growth of all types is in proper proportion, size, and spatial relationship to maintain viable populations of old growth dependent species.
(6)	In the identification process of old growth habitat, we would like to see the analysis team perform on-the-ground verification of areas chosen from photo-interpretation and database examination. This is especially important in identifying areas appropriate for old-growth designation to make up for any deficits to meet Forest Plan standards and to meet future old growth habitat needs as the dynamic systems of the forest cause some old growth areas to cease to be old growth.
(7)	Disclose the precise criteria used to designate old growth. Who made the decisions regarding old growth designations and what are that person's qualifications?
(8)	Measure and disclose the sizes of old growth stands in the areas. Tell how much habitat each block provides for interior old growth dependent species, considering the edge effect from natural and man-made openings including roads.
Prescribed Burning	
(1)	Please analyze whether or not fire management may be appropriate in the planning area. Historically, some areas in the Southern Appalachians had fire regimes resulting from natural and human causes. Some forest communities adapted to these regimes and benefit from fire.
(2)	Please analyze whether or not fire may be a preferable substitute to logging for wildlife, which benefit from disturbance. It should be noted that fire management may be more cost effective than timbering and avoid damage caused by road building. Logging does not simulate the effects of fire.
Recreation/Tourism	
(1)	We are concerned about how the project may impact recreational resources and values. Please disclose what recreational resources are present in the planning area.
(2)	Various studies have found the NF to be anywhere between 10-100 times more valuable for recreation than commercial timber. This may be even more true in the popular Southern Appalachian forests. Please disclose how all alternatives will affect recreational values.
(3)	We ask that you thoroughly evaluate the impacts of the proposed timber sales on hunter opportunity, including age and sex ratios of hunted species.
(4)	Thinning and other forms of timber harvesting proposed in compartments 5065, 5032, and 5117 will effect one hunting sport differently than another. Please include feedback from different hunters from different styles how such management practices will impact their ability to hunt.
(5)	The USFS has a documented history of including designated trail systems in North Carolina as a multiple use area where loggers, skidders, fellerbunchers, trucks, and chainsaws can carry out industrial forestry practices, which damage physical integrity, quality, beauty, sanctity, aesthetic attributes, and solitude. Analysis of setbacks ¼ mile on either side of every designated trail in North Carolina should be included in scoping and final plans for timber management. Failure to do this is proof to the public that

		the USFS is, in fact, a Federal Timber Company that puts more emphasis on timber business than public recreational values. This is a violation of the MUSYA.
Regeneration		
	(1)	Please do studies that consider land types, habitat types, slopes, aspect, etc. for this project, so that there would be assurance of successful regeneration.
	(2)	Please disclose the regeneration success level from past even-aged harvesting in the immediate and surrounding compartments, explaining dates of harvest, the problems encountered, and duration needed before certification of restocking.
Riparian Areas		
	(1)	We request that you refrain from logging in riparian areas and that no stream crossings be constructed in any of the drainages.
Roadless Areas		
	(1)	Considering the rarity of roadless areas in the eastern United States and their importance for wildlife and primitive recreation, we urge the USFS to protect any roadless areas in the planning area.
	(2)	Developments which impact the roadless character of an area must be analyzed in an EIS.
Roads		
	(1)	SABP is opposed to the construction of new roads on the NF. We believe they are the most costly and detrimental aspect of the commercial timber sale program.
	(2)	What are the open road densities in the planning area? Are they in compliance with the Forest Plan? If not, please analyze alternatives which would bring the area into compliance with Forest Plan standards.
	(3)	What is and what would be the Open Road Density in the general area, including the analysis area?
	(4)	A summary of all roads – temporary, system, nonsystem, other public and private, etc. – and their locations is requested for inclusion in the environmental analysis.
	(5)	As per FSM 7703.1 and 7711.2, has the USFS documented each road in the project area?
	(6)	When will unnecessary roads be obliterated and revegetated, as required by NFMA?
	(7)	Locations of road closures should be revealed, the method of closure, and what, if any, traffic would be allowed on the “closed” roads. In addition, the USFS must examine the de facto effectiveness of its road closures.
	(8)	The Pisgah NF has a history of building roads and ineffectively blocking/gating/tank trapping the road thereafter. The result is a continued and constant use of supposed closed permanent roads and revegetated temporary roads. We recommend that an analysis of this situation be included in cumulative impacts to all impacted species residing within every NF in NC.
	(9)	Are there any roads which are being utilized illegally in the area? Please develop specific actions to effectively close these areas to illegal use.
	(10)	SABP may be able to provide financial resources and labor in order to revegetate closed roads in order to reestablish native communities. Please consider this when developing alternatives.

(11)	Are there any roads in the planning area which should be closed, even if not out of compliance with density standards, due to adverse impacts to other resources?
Soils	
(1)	Disclose the areas of unstable and highly erosive soils which would result in mass movement and erosion. Include maps that show all land and soil types in the NEPA document.
(2)	Analyze how much soil compaction and surface erosion has occurred in the proposal area because of past actions and what the likely increases will be for the alternatives proposed.
(3)	If the USFS identifies any erosion problems within the watershed on national forest lands, SABP may be able to contribute financial resources and labor to correct the problem. For example, if an existing road or trail is creating erosion problems, we may be able to provide the people and supplies necessary to correct the problem. Please consider this offer in your NEPA analysis if there are watershed restoration needs identified.
TES/PETS/MIS	
(1)	SABP is concerned about how the sales in Compartments 5117, 5032, and 5065 may effect TES species.
(2)	We urge that TES species conservation be given the highest priority in the planning process. Please identify all TES species and their habitats which may occur in the planning area.
(3)	Please disclose the population trends of the TES species which have populations in the planning area. It is critical to determine these trends in order to evaluate the cumulative impacts of the project with other past, pending, and future projects on public and private lands.
(4)	While the impacts of the proposed project may seem insignificant to the viability of TES species, it may have a significant cumulative effect. Please disclose the methodology for determining population trends.
(5)	We insist that it is an absolute necessity that thorough surveys for TES species and MIS be conducted before NEPA documents are finalized so that effects can be expressed in terms of populations and habitat acres, and the public can have the opportunity to comment on the adequacy of proposed mitigation.
(6)	Does the USFS have inventories for TES species and their habitats in the planning area?
(7)	If the project may affect any federally listed species, the USFS is required to conduct Consultation with the USFWS.
(8)	We specifically request that you “express habitat objectives, outputs, and effects in quantitative terms using...Habitat Capability...(and) Acres” [FSM 2623(1&2)] for all MIS. That is, each alterative should have separate quantified data based upon Forest Plan monitoring and site-specific surveys.
(9)	We request that you “Consider for selection (as MIS) all Sensitive species in the...project area” (FSM 2621.1(2)). This means not just taking for granted that those listed in the Forest Plan are the only appropriate MIS.
(10)	Please document your selection of MIS, showing due consideration for all TES species.
(11)	The biologist(s) should assure that the indicator species identified in the Forest Plan are in fact appropriate indicators of environmental changes in these areas for this type of project. The

	convenient use of “wildlife habitat improvement” is nothing more than an excuse to cut, and the many other MIS and TES species suffer because such forest health practices neglect their real needs.
(12)	Please disclose in the analysis the results of monitoring of habitat conditions, distribution, and populations of Sensitive and other MIS species in the Forest in response to Forest Plan requirements and as this relates to the proposed action.
Timber Harvesting	
(1)	We are opposed to even-aged management due to the resultant damage to wildlife habitat and watersheds.
(2)	Please disclose the sizes and conditions of man-made openings already existing in the area, and exactly where the proposed cutting units are in relation to the old harvest areas.
(3)	If the needs for this thinning arose because of the problems of past cuttings, why are you following such detrimental practices with more logging.
(4)	Please provide maps and other documentation on past thinning activities; including such information as year and regeneration success level for each past activity in the analysis area and in the cumulative effects area.
(5)	We oppose all logging on public lands.
Water Resources	
(1)	Please disclose whether or not surveys have been conducted in streams which could be impacted by the project (both within the planning area and downstream).
(2)	Please disclose how each alternative will affect sediment levels in streams and how these sediment levels will affect populations of TES fish, mussels, and other aquatic species.
(3)	We urge the USFS to avoid any actions which could harm water quality and associated communities and values.
(4)	We request careful analysis of the impacts to aquatic habitats and water quality, including considerations of sedimentation, increases in peak flow, channel stability, and increases in water temperature.
(5)	Please disclose the locations of seeps, springs, bogs, and other sensitive wet areas, and the effects on these areas of the project activities.
(6)	The EIS should show that the proposed alternatives would comply with the CWA and all NC Water Quality laws and regulations. Please note that designating BMPs is not sufficient for compliance with CWA and NFMA.
(7)	The watershed above and around waterfalls should be designated special management areas. Any decrease in water flow could very well wipe out the viability of very sensitive and rare species that live only in these spray zones.
Wild and Scenic Rivers	
(1)	No thinning, logging, or road building should be permitted in ephemeral or other headwaters, watersheds, etc. that feed into any Wild and Scenic River in our NFS in NC.
Wilderness	
(1)	A setback line from the any designated Wilderness boundary should be allowed a visual quality zone of 500 feet.
Wildlife	
(1)	SABP is particularly concerned about wildlife which depend on large tracts of unfragmented native forests. Such habitats are becoming increasingly rare and isolated as private lands are

	developed and other forests are subjected to intensive logging.
(2)	What wildlife surveys have been conducted? What season were they conducted in?
(3)	Please disclose whether or not wildlife, which may benefit from human disturbance, may find such habitats in abundance on nearby private lands. The USFS should focus on providing habitats which are not found on private lands, namely larger tracts of interior forest conditions.
(4)	Please fully disclose, via analysis of the “no action” alternative, the benefits to wildlife if the timber stands in the area were allowed to continue as they are. Discuss how this would be related to forest succession and current ecological relationships within the forest.

Note. USFS’s response to these comments stated:

Commenter submitted nine pages of comments. No comments were submitted that indicated that the response was relevant to the information submitted to the public in the scoping letter for this project. No comments were specific to the site. No information was provided that would necessitate additional analysis or that identified extraordinary circumstances that would be impacted by the proposed project. All comments were general and appeared to be directed to projects in the forests of North Carolina.

Commenter refers to the EIS for this project and submitted these identical comments for two other proposed district projects. All three are small projects that are consistent with the NEPA requirements for a Categorical Exclusion/Memo (FSH 1909.15). The comments submitted are beyond the scope of this project. See response (1) above.

Table 6K

SABP's Administrative Appeal of the TBSS Revised DM

Category	Appeal Issue	ADO Response
<p>Alternatives</p> <p>(1)</p>	<p>An inadequate range of alternatives was analyzed. There is no alternative that concentrates on ecosystem restoration and excludes commercial timber cutting. This violates NEPA's requirement that the USFS analyze a reasonable range of alternatives.</p>	<p>FSH 1909.15, Section 32.3, <u>Format and Content of a Decision Memo</u>, contains no content requirements for alternatives. Because this decision is categorically excluded from documentation in an EA or EIS, there are no documentation requirements for alternatives in a DM. I find that alternatives are inapplicable when using a DM.</p>
<p>Categorical Exclusions</p>		
<p>(1)</p>	<p>Extraordinary circumstances forbid the use of categorical exclusions for these timber sales. For these sales, as for the sales in <i>Rhodes v. Johnson</i> (1998), the presence of threatened and endangered species (including the Indiana Bat and James spinymussel) are an extraordinary circumstance, warranting an EA rather than a CE. This argument is bolstered by the USFS's refusal to do required surveys for TES species.</p>	<p>FSH 1909.15, Section 30.3(1)(b) states that a proposed action may be categorically excluded from documentation in an EIS or EA if it "[i]s within a category listed in sec. 31.1b or 31.2; and there are no extraordinary circumstances <i>related</i> to the proposed action" (emphasis added). FSH 1909.15, Section 30.5 defines extraordinary circumstances as "[c]onditions associated with a normally excluded action that are identified during scoping as potentially having effects which may significantly affect the environment." The mere presence of extraordinary circumstances does not invalidate the use of a CE; the extraordinary circumstance must both be present and have a bearing (or negative impact) on the proposed project. This is supported by the <i>Krichbaum v. USFS</i> (Civ. No. 97-0027-H) decision in U.S. District Court for the Western District of Virginia, which found that "the Forest Service's decision to allow a CE even though the Alba Sale area included a municipal watershed [a listed extraordinary circumstance] must be affirmed." Other court decisions have, likewise, supported this interpretation that "a USFS finding of no extraordinary circumstance that would significantly affect the environment allowed it to evade preparation of an EA for a project, notwithstanding the presence of one of the listed examples of an extraordinary circumstance"</p>

		(Krichbaum v. USFS). I find that extraordinary circumstances were properly considered, and that the use of a CE was appropriate.
(2)	The CE is not valid for lack of enforceable regulations. The USFS is required to have legally enforceable NEPA procedures, and they must promulgate categories of actions that can be Categorical Exclusions (40 CFR 1507.3 & 1508.4). Since the CE used for this project is the product of an internal policy statement, it is not a category of actions. Therefore, the USFS cannot Categorical Exclusion this project because it does not have the required procedures, and they have never been reviewed by the CEQ. The CEQ regulations require the NEPA procedures, including the CEs, to be adopted after review by the Council for conformity with the Act and these regulations (40 CFR 1507.3). Even if the USFS NEPA Handbook is the required procedures, they have never been reviewed by the CEQ. Therefore, these categories are not valid and cannot be used. In fact, since the CEQ has never reviewed and approved the USFS NEPA Handbook, the USFS cannot legally take any action anywhere. If procedural requirements are not followed, the agency action must be set aside (Citizens to Preserve Overton Park, Inc. v. Volpe, 1971).	The regulations at title 7, Code of Federal Regulations, Part 1 b direct the Department of Agriculture agencies to develop and implement procedures for compliance with NEPA. The agency response: "Therefore, after notice and consideration of comments received and for the reasons noted in the preamble, the USFS is adopting final policy and procedures for implementing the NEPA" (Fed. Reg., Vol. 57, No. 182, September 18, 1992). The resulting handbook, FSH 1909.15, "provides procedural guidance for implementing the NEPA, the CEQ regulations...USDA NEPA Policies and Procedures...and USFS Manual Chapter 1950" (FHS 1909.15, Zero Code). The Handbook directs that "[p]rocedures in this Handbook apply to the fullest extent practicable to analyses and documents" and that "[I]ine officers are responsible for ensuring that the procedures...are followed by all involved in NEPA compliance" (FSH 1909.15, Sections 03-04). I find that the District properly followed agency guidance for NEPA compliance, and that reconsideration of this direction is outside the scope of the decision.
(3)	The Appellant would first point out that this is a case-by-case CE (i.e. determining that an individual action does not have any significant effects as opposed to determining if the project is in a preestablished category and assuring that there are no extraordinary circumstances). The main reason why the USFS developed these regulations was because the Oregon Natural Resource Council & Wilderness Society had submitted a Petition for Rulemaking, challenging the USFS's use of a case-by-case CE.	Not specifically addressed.
(4)	On May 28, 1987, the Office of General Counsel sent the Chief a memo which stated: "We are not optimistic about the chances of defending such a lawsuit. We have advised for some time that the USFS case-by-case determination of categorical exclusions violated the CEQ	Not specifically addressed.

	<p>Regulations, NEPA case law, and introduced significant legal risk to the USFS NEPA compliance... It is our opinion that case-by-case categorical exclusions violate NEPA case law and the CEQ NEPA Regulations... We know of no other federal agency which has successfully litigated the case-by-case approach.” Thus, the USFS was aware that the case-by-case approach was illegal and knowingly chose to undertake adopting their NEPA procedures in a manner that introduced significant legal risk to the USFS NEPA compliance.</p>	
Cumulative Effects		
(1)	<p>Cumulative effects of these timber sales are ignored, in violation of 40 CFR 1508.27(b)(7). As one can see from the enclosed map, the New Castle RD has three timber sales in the same drainage (Cuba, Enterprise, and Taylor Branch), yet the NEPA documentation for each fails to mention any of the other sales. The USFS has done exactly what the NEPA CFR’s forbid; breaking up these timber sales into small component parts. This violation of NEPA cannot be allowed.</p>	<p>FSH 1909.15, Section 32.3, <u>Format and Content of a Decision Memo</u>, contains no requirements for effects disclosure, other than “findings” required by other laws and a “finding that no extraordinary circumstances exist”. However, the DM does find that “[p]ast projects similar to this project have had no significant effects on the quality of the (human) environment, individually or cumulatively” (DM, p. 4). I find that the cumulative effects were adequately considered.</p>
(2)	<p>The USDA Inspector General addressed this issue specifically in his January 15 report. In Chapter 5, “Environmental Documents Were Not Reliable,” the OIG found that in 10 of 12 cases, the cumulative impacts analysis was missing or incomplete. Specifically, the analyses failed to address past, present, and foreseeable future actions that would have cumulative impacts with the proposed action. Thus, the DMs are wrong in relying on FSH provisions allowing the foregoing of an EA for sales less than 1 MMBF.</p>	<p>Not specifically addressed.</p>
(3)	<p>The USFS must withdraw these sales until a complete cumulative impacts analysis is completed, addressing these sales as well as past, present, and foreseeable future actions in the area on both public and private lands.</p>	<p>Not specifically addressed.</p>
Mitigation		
(1)	<p>While the USFS has been allowed for many years to reference a list of “BMPs” and then presume to extensively log watersheds, this practice can no longer continue. Instead, the USFS must disclose the consistent</p>	<p>Attachment A to the DM contains a listing of the required mitigation measures for this project, and states, “[a]ll projects will meet or exceed Forestry BMPs (VA); the Water Quality Standards of the Commonwealth of</p>

	<p>failure of “BMPs” to prevent significant water quality problems in the past (Sierra Club v. Morton; National Wildlife Federation v. USFS, 1984). There is no good evidence that the application of BMPs can reduce the impacts of logging and road construction at the watershed scale to a level safe for James spiny mussel, especially in light of existing conditions of aquatic invertebrates and habitats (Rhodes et al., 1994; ISG, 1996; Espinosa et al., 1997). Instead, “[a]vailable data and analysis consistently suggest that the vast majority of watersheds managed for ‘multiple uses’ exhibit degraded conditions in their fish habitats” (Espinosa et al., 1997). The authors recommended that projects scheduled for degraded watersheds should not proceed until the USFS can demonstrate that conditions have recovered to optimum levels.</p>	<p>Virginia; and the goals of the Water Quality Act of 1987...” (DM, p. A-1). The BE discloses that, after a field trip to the area, “[t]he USFWS and the VDGIF personnel felt that the streamcourse and riparian area protection measures developed for timber sales within the Potts Mountain Opportunity Area Analysis would adequately protect the James spiny mussel and other aquatic species” (BE, p. 3). A “No affect” determination was made for James spiny mussel, provided the mitigation requirements were followed. I find that the mitigation measures required for this project meet or exceed state BMPs, and are sufficient to protect water quality and the James spiny mussel.</p>
(2)	<p>The USFS continues to claim that BMPs will protect water quality. This claim does not relieve the USFS of their duty to protect water quality and fisheries. The standard, blind, and complete reliance by the USFS on BMPs to comply with state water quality standards was officially rejected by the Ninth Circuit over ten years ago (Northwest Indian Cemetery v. Peterson, 1986).</p>	<p>Not specifically addressed.</p>
(3)	<p>At the very least, the USFS cannot be allowed to continue in its quest to log degraded watersheds containing imperiled aquatic species without fully disclosing to the USFWS why its BMPs have consistently failed in the past, and how the BMPs have been beneficially modified to provide sufficient protection for this proposed project.</p>	<p>Not specifically addressed.</p>
<p>Roads</p>		
(1)	<p>No mention of road densities or the impact of these sales on road densities. JNF Standards and Guidelines require that the USFS maintain a 1 mi/sqmi road density when managing for deer (JNF LRMP p.IV-67). No indication has been given whether this standard is being met.</p>	<p>The first paragraph of the DM indicates that one mile of temporary road will be constructed to serve activities in stands 2 and 8. The fifth paragraph indicates that the road will be closed and stabilized after its use. Temporary roads do not become a part of the Forest Development Transportation System and, therefore, have no affect on road densities. I find that the DM adequately addresses access needs and their affect</p>

TES/PETS/MIS		on road densities.
(1)	<p>SABP, PAW, and SEDG specifically requested in its comments that surveys for PETS species be performed. No surveys were done for the majority of PETS species listed in the DM. Surveys are required by the Vegetation Management EIS Standards and Guidelines, incorporated into the JNF Plan as an amendment. If the USFS cannot provide adequate population information in the EA, it must gather this information in order to comply with the Forest Plan (Sierra Club v. Martin). Despite assembling a long list of TES species in the DM, the USFS has not performed adequate surveys for any of these species. Therefore, proceeding with these sales is illegal and cannot occur.</p>	<p>The District reviewed data records from the VDNR, the VDGIF, and conducted field surveys of the proposed project area to search for occurrences and habitats likely to support TES species (BE). The District identified 16 TES/locally rare species as occurring or likely to occur on the New Castle Ranger District. Four species (2 federal and 2 sensitive species) were analyzed in detail. It appears the other species were determined to occupy habitat not included in the proposed project (BE). Based on that information, the effects to TES/locally rare species were determined. I find that the District acquired the appropriate level of habitat and population occurrence information from past and current surveys for this site-specific area to make an informed decision for this project.</p>
(2)	<p>No consultation under Section 7 of the ESA on endangered James Spiny mussel. 1992 determination of No Affect is inadequate in the face of new information concerning aquatic impacts of logging. See section on BMPs.</p>	<p>The District identified the James Spiny mussel as occurring in John's Creek. The BE provided a discussion of past consultation with the USFWS regarding streamcourse and riparian area protection measures in the Potts Mountain Opportunity Area. The results of that consultation determined that those measures would adequately protect the James Spiny mussel. Those same protection measures are applied for this project. These mitigation measures are provided in Appendix A. For that reason, a "No Affect" finding was made for this species and the other 2 aquatic sensitive species identified. I find that the determination of effects findings for the federally listed James Spiny mussel and other aquatic sensitive species was adequately disclosed and rationale provided.</p>
(3)	<p>No mention of Cerulean warblers, which occurs in VA forests.</p>	<p>The District determined that the project could be categorically excluded from documentation in an EA because of the scope the project, the project would have no significant effect on the environment, and there were not extraordinary circumstances existing (DM, p. 3). Disclosure of effects to wildlife habitat, including the cerulean warbler, is not required for this project. The issue you raised in your NOA regarding the Cerulean warbler is</p>

		outside the scope of this decision.
(4)	No mention of MIS species, as required by the NFMA and its implementing regulations at 36 CFR 219.19. No mention of whether surveys for MIS species indicate continued viability.	The project was categorically excluded and for this reason detailed environmental effects analysis for MIS habitat is not required. NFMA regulations address forest-level requirements for MIS. The site-specific MIS surveys referenced in your NOA are not required. I find that the issue raised in your NOA is a forest-wide issue and is not appropriate to this project.
Water Resources		
(1)	Timber harvest in close proximity to Rolands Branch and Johns Creek and their immediate tributaries is likely to raise stream temperatures in the subwatershed for several reasons. In the first place, studies cited above indicate that logging-related sediment deposition can increase width-depth ratios in stream channels, causing water temperatures to increase even if there is no shade loss (Schumm, 1969; Richards, 1982; Theurer et al., 1984; Rhodes et al., 1994). Furthermore, increased sedimentation reduces pool volumes, and may additionally impact deep pools, which can serve as temperature refugia for fish. The DMs for these sales fail to analyze this issue even though the importance of temperature refugia for salmonids is well documented.	Attachment A to the DM contains a listing of the required mitigation measures for this project, and states, “[a]ll projects will meet or exceed Forestry BMPs (VA); the Water Quality Standards of the Commonwealth of Virginia; and the goals of the Water Quality Act of 1987...” (DM, p. A-1). The BE discloses that, after a field trip to the area, “[t]he USFWS and the VDGIF personnel felt that the streamcourse and riparian area protection measures developed for timber sales within the Potts Mountain Opportunity Area Analysis would adequately protect the James spiny mussel and other aquatic species” (BE, p. 3). A “No affect” determination was made for James spiny mussel, provided the mitigation requirements were followed. I find that the mitigation measures required for this project meet or exceed state BMPs, and are sufficient to protect aquatic species.

Table 7K

SABP's Comments on the TBSS EA

Category	Comment	USFS Response
Alternatives		
(1)	Several alternatives raised by the public were systematically ignored. This includes an alternative without road construction. Further, the USFS ignored an alternative that involves restoration without commercial timber harvest. The USFS cannot claim that such an alternative doesn't comply with the LRMP, because other NF have analyzed such alternatives in their commercial timber sales (see Sturgis Fork timber sale, Star Ranger District, Rogue River National Forest).	Temporary road construction is needed to access Stand 8. This is a 104 acre scarlet oak stand 72 years of age with significant decline and mortality. If this stand cannot be treated, the project would not meet the purpose and need for the project and Forest Plan direction to enhance the health of the forest. The most effective and appropriate harvest technique for these stands, given their forest type and health, would be to clearcut them. This would provide the best opportunity for regeneration of desired species (oaks) in a healthy new stand. This option is not viable, however, because of public concerns for this harvest method. The proposed timber sale complies with Plan management objectives for this compartment. A non-commercial, restoration only alternative could not accomplish these objectives.
(2)	The range of alternatives analyzed is completely inadequate. There is only one action alternative, and the no-action alternative is rejected out of hand repeatedly throughout the EA. The USFS also did not give any suitable rationales as to why other reasonable alternatives were not considered or chosen.	Not specifically addressed.
(3)	The OIG report of January 1999 demanded that a range of alternatives be considered on page 27. Without a range of alternatives, and without a viable no-action alternative, the USFS is basically rationalizing a decision already made, instead of analyzing the impacts of different alternatives.	Not specifically addressed.
Categorical Exclusions		
(1)	The result of Heartwood's lawsuit was to make the previous NEPA decision "null and void" (Judges Order, page 33). Thus, the USFS is required to re-initiate the NEPA process by starting scoping from the beginning.	Not specifically addressed.

	(2) The USFS claims that during the scoping “individuals provided no new information that indicated that extraordinary circumstances were present or additional analysis was required.” But numerous concerns were raised regarding the impacts to endangered species such as the James spinymussel, riparian areas, and other items on the extraordinary circumstances list in this specific project area. These same factors are to be used in deciding whether the project has significant impacts (40 CFR 1508.27(b)). The USFS has chosen to ignore these concerns or on-the-ground analysis of them in order to push this project through.	Not specifically addressed.
Cumulative Effects		
	(1) The Cumulative Effects Analysis is grossly incomplete. It ignores adjacent timber sales, including Cuba and Enterprise, as well as Peters Mt.	There are no timber sales adjacent to Taylor Branch. All three projects mentioned are miles away across several mountains from Taylor Branch. Refer to Final EA: <u>CUMULATIVE EFFECTS</u> .
	(2) The USDA Inspector General addressed this issue specifically in his January 15 report. In Chapter 5, “Environmental Documents Were Not Reliable,” the OIG found that in 10 of 12 cases, the cumulative impacts analysis was missing or incomplete. Specifically, the analyses failed to address past, present, and foreseeable future actions that would have cumulative impacts with the proposed action.	Not specifically addressed.
	(3) Failure to analyze cumulative impacts has led to USFS decisions being overturned. The cumulative effects analysis for this timber sale is identical: there is no site-specific or quantifiable data, so any finding of no significant impact is incorrect or incomplete.	Not specifically addressed.
	(4) Cumulative impacts of this proposed timber harvesting would be fairly high, especially since most of the mature forest are remaining from the land swap would be timbered.	Not specifically addressed.
Ecological		
	(1) The EA provides for “featured species” for each stand. The use of this concept is archaic, as it was applied by the USFS after the	The analysis is consistent with the Jefferson National Forest Plan direction.

	MUSYA was passed, but before NFMA. Thus, the use of this concept violates the requirements of NFMA, which states that the USFS must provide for viable populations of all species, especially PETS and MIS species (16 USC 1604(g)(3)(B)). The basic tenants of biodiversity also demand that land-disturbing decisions favor multiple species, rather than one species. This has been upheld in Federal court (Seattle Audubon v. Mosley, 1992).	
(2)	The “featured species” chosen by the USFS are consistently game species: turkey, grouse, and deer. What about the plethora of other species with little direct human association, but which are essential to ecosystem conservation. The USFS must abandon this concept, and apply the viability requirements of NFMA to all species, not just those used by humans.	Not specifically addressed.
(3)	The EA stresses the need for age diversity in habitat distribution, but fails to consider what the historical landscape look like. Prior to European disturbance, there was little “early successional habitat.” Age diversity was at the tree-level, not the patch or stand level as the USFS manages. This has led to significant declines in many species, which are affected by soil loss, water quality degradation, and impacts to related species.	This is incorrect. There was more early successional habitat then than now in forested areas because of the prevalence of fire – both natural and man-caused.
Economics		
(1)	The “Economic Consequences” Section is full of misinformation. It completely ignores the costs of environmental degradation. This violates NEPA’s requirement concerning cost-benefit analysis (40 CFR 1502.23).	Page 21: “This is not an economic analysis; it does not include non-market costs and benefits.” Refer to the economic analysis in the Forest Plan.
(2)	While the USFS may forgo economic analysis, once it begins such to consider economics, it cannot stop halfway and only consider benefits. Costs to the environment must also be considered, or the USFS is violating its duties under NEPA and NFMA.	Not specifically addressed.

Environmental Analyses/Documentation		
(1)	<p>The EA presumes that the timber will be sold (indeed, the USFS will tell you it already has), since a contract has already been awarded. This violates NEPA's requirement for a reasoned consideration of alternatives. An agency's actions have been held "notable if the proof discloses that the agency proceeded to perform its environmental tasks with less than good faith objectivity" (Environmental Defense Fund, Inc. v. Corps of Engineers, 1974). The USFS clearly knows that the previously-approved decision was illegal or questionable, or it would not have formally withdrawn the decision. So the USFS must not let the fact that it improperly sold a timber sale to influence a future management decision. Because this sale is already sold, and the USFS professes such intense interest in the "buyer," the USFS has failed its obligation of "good faith objectivity," and therefore, the EA violates NEPA.</p>	<p>"Alternative were developed by identifying activities that will contribute to the attainment of the DFC of the area and that respond to the identified issues" (p.4). If new information were raised in this analysis that would warrant cancellation of the contract, it would be cancelled. A new NEPA document was produced because of a nationwide injunction applicable to USFS regulations; not because of new information concerning the resources in this project area or impacts resulting from implementation.</p>
(2)	<p>The fact that the outcome of this sale is predetermined is obvious from the EA. On page 18, the EA states "the buyer of the sale is a one-man private operator." Thus, the sale is already a done deal in the minds of the USFS.</p>	<p>Not specifically addressed.</p>
(3)	<p>The EA contains no new information since the CE was written and subsequently canceled. Therefore, SABP incorporates by reference previous and current comments on this timber sale submitted by SABP, SEDG, PAW, and Heartwood.</p>	<p>Not specifically addressed.</p>
(4)	<p>No new scoping occurred for this project. Following the cancellation of this project, the USFS is obligated to undertake a new round of scoping to determine if any new issues have arisen.</p>	<p>Not specifically addressed.</p>
(5)	<p>The USFS is on record complaining to local officials about environmentalist's information requests wasting paper. Hypocritically, the USFS insists on printing the EA on only one side of the paper, and using white, chlorine bleached paper. This obvious bias shows that the USFS cares little for</p>	<p>Not specifically addressed.</p>

	environmental protection or its advocates, but is more interested in raising controversy. This controversy brings the Taylor Branch Salvage Sales into the realm of Significant Impacts, and thus an EIS is necessary (40 CFR 1508.27(b)(4).	
(6)	There were unneeded additional postage costs and paper costs to the American taxpayer as a result of your actions. Printing on one side is illegal.	Not specifically addressed.
(7)	It seems that the USFS has failed to actually look at the areas in question, relying on notoriously inaccurate “inventories” to state that 393 acres are “vulnerable” to damage without any data to prove this statement. The USFS cannot make such statements without data to back them up (ISC v. Thomas, 1998). There is also no proof that any imagined “oak decline” will reduce mast production, as claimed on the bottom of page 10.	Not specifically addressed.
Forest Health		
(1)	Page 10 of the EA addresses gypsy moth, but there is nothing in the Purpose and Need about this project controlling gypsy moth. Therefore, this discussion is superfluous and cannot be used to rationalize the timber sale.	Page 1, paragraph 2. Removal of dead and dying oaks will remove desirable host for the moth.
(2)	Infestations which “could” affect the forest provide no justification for the planned operations.	Not specifically addressed.
Roads		
(1)	The action alternative calls for “temporary” road construction. In December 1997, the USFS revised their estimate of the NF road network from 380,000 to 440,000 miles. The extra 60,000 miles comes from unauthorized and unengineered roads – including the ubiquitous, stealthy, temporary road. The USFS has no method for tracking temporary roads, nor does it include public highways, state, or county roads in its inventory. However, temporary roads cause lasting impacts to the NF.	Temporary roads on the Forest are closed and seeded with wildlife grasses after projects are completed. They provide much-needed grass/forb habitat, particularly for turkey polts as bugging areas (p.6). Many of these old logging roads also serve as trails (example: the Allegheny Trail on Peters Mountain.
(2)	The USFS must make a full accounting of the impacts of “temporary” roads, including counting them towards road densities when considering wildlife needs.	Not specifically addressed.

	(3) The USFS offers no proof that closing the so-called “temporary” road will be effective. In fact, there is ample proof that road closures are not effective.	Not specifically addressed.
TES/PETS/MIS		
	(1) Mitigation for the Indiana bat is completely inadequate. The BE for the Bat in VA only allows 10 takes per year. However, if even one snag containing bats is cut, this limit could easily be exceeded. The tree containing Indiana bats in North Carolina, discovered last summer, was occupied by 28 bats. If a tree like this is cut in Taylor Branch, the incidental take limit will be exceeded by 180%. This is completely unacceptable and indicates the need for formal consultation with the USFWS.	The project area is more than 2 miles from Shires Cave and is located in the general forest area. See response 2, p. 1 above.
	(2) The BE still contains some erroneous information regarding the distance of the project area from the Indiana bat hibernaculum. This project is in fact within 2 mi. of Shires Cave, a hibernaculum. Therefore, this project absolutely requires consultation under the ESA.	The project area is more than 2 miles from Shires Cave and is located in the general forest area. See response 2, p. 1 above.
	(3) The USFS cannot rely on a report from 1992 to serve as consultation required under the ESA for the James spinymussel. The USDA Inspector General’s Report of 1/15/99 specifically forbade the USFS from relying on archaic “white paper” analysis. Further, NEPA requires that detailed site-specific analysis occur for timber sales. SABP filed a 60-day notice of intent to sue for this ESA violation, and we intend to enforce the ESA by all means necessary.	Not specifically addressed.
	(4) The EA mentions squirrel feature areas but contains no information on the effects of the project on squirrels or squirrel featured areas. This violates NFMA’s viability requirement, and the required standards of the Vegetation Management EIS. The USFS must consider impacts to MIS species, not just recite mitigation measures.	Page 12; p. 13 paragraph 2; p. 14 paragraph 2.
	(5) The EA fails to provide documentation proving why individual tree openings caused by natural mortality are inadequate for common flicker feeding. This violates ISC v. Thomas (1998).	The EA uses the general requirements for species as guides for estimating effects. As flickers are indicators of clearcut areas, openings caused by individual tree mortality will generally not be adequate (p.14).

(6)	The USFS fails to consider whether turkeys are more likely to be sensitive to one component (browse) or all but two. Thus, the EA fails to take a hard look at the environmental consequences and is inadequate under NEPA.	Page 15, <u>Wild Turkey</u> , “The major limiting factor is grass/forb brood habitat.”
(7)	The EA admits that the project will decrease hard mast to inadequate levels in the turkey featured areas and decrease conifer habitat (which are already low). The preferred alternative ought to be rejected. It is in violation of the JNF Plan and NFMA’s viability requirement. Without sufficient hard mast, turkeys will not be viable and well-distributed across the planning area. The FOREST SERVICE cannot take an action which eliminates viability for any vertebrate.	Not specifically addressed.
(8)	The EA admits that both the no-action and action alternatives fail to meet standards and objectives for turkeys, page 13. For the no-action alternative, conifer and old-growth are problematic, while for the action alternative, only browse habitat will be adequate. This hardly means the sale “meets plan objectives for turkey.”	Not specifically addressed.
(9)	The EA claims that the road construction will benefit turkeys. There is no proof of this assertion. This also violates the requirement that the USFS base its findings on actual data, not specious “expert opinion” (ISC v. Thomas, 1998).	Not specifically addressed.
(10)	Without any discussion of individuals or populations, the EA says there will be no effect on bears. There is also no discussion of habitat or occupancy. Viability for bears is also questionable.	Not specifically addressed.
(11)	The EA doesn’t state how cutting older trees, with more insects for forage, will benefit pileated woodpeckers, which prefer older trees and love eating insects.	Not specifically addressed.
(12)	Pileated woodpeckers are an old-growth obligate, yet the area currently contains only 22 acres of old growth (p.14). “Mid-successional” forests do not provide the required habitat characteristics for nesting pileated woodpeckers: there are insufficient	Not specifically addressed.

	snags, and the canopy is not developed enough to allow adolescents to learn to fly. Reducing the amount of older forests will put the pileated woodpecker further in peril. The USFS cannot claim that the lack of old-growth for the pileated woodpecker does no harm.	
(13)	SABP specifically request that surveys for MIS be performed.	Not specifically addressed.
Timber Harvesting		
(1)	The EA claims that by cutting dead and dying trees, snags will increase. This is absurd: how can cutting and removing snags increase them? This hypocritical, get-the-cut-out argument does the USFS no good. The public can see right through it.	P. 14, "Existing snags will be retained for nest sites...Appendix A."
Wildlife		
(1)	Cutting older trees will not increase mast-production, since mast-production occurs primarily in trees older than 40 years (EA page 15). Thus, this timber sale, in cutting 60-70 year old trees, will decrease the amount of mast available for turkeys, bears, and other wildlife.	The management objective is to improve the health of the compartment by removing the declining and dying oaks that do not produce good mast crops and regenerating new, young healthy oak stands for long-term enhanced mast production.

Table 8K

SABP's Administrative Appeal of the TBSS DN/FONSI

Category	Appeal Issue	ADO Response
Air Quality	<p>(1) The Taylor Branch EA lacks any data or analyses concerning air quality (see EA p. 17). Rather, the EA merely supplies an unsupported statement that there will be no effect on air quality. The USFS simply has not performed site-specific or even region- specific air quality analysis in order to even guess as to what the impacts of this project will be on air quality.</p>	<p>The EA discloses that existing air quality is “good” (EA, p.20). No Class I air sheds are located near the project area. Air quality was not raised as an issue during scoping, nor was it included in any of the comments received during the 30-day comment period (EA, Appendix E). Individual burn plans prepared for each project address existing air quality problems or smoke sensitive areas, and include appropriate mitigation measures. Burn authorizations or permits are issued by the State when favorable smoke dispersal indices (dispersion index, mixing heights, transport wind speeds) are forecast. The State received the scoping notice, but did not raise any air quality related issues. The DN, page 2, discloses that the activities are consistent with the Forest Plan. I find that the District adequately considered the impacts to air quality and that the determination is based on site-specific and local analysis.</p>
Alternatives	<p>(1) NEPA is violated because the EA failed to consider an adequate range of alternatives, and the existence of a single viable but unexamined alternative renders an environmental analysis legally inadequate. The USFS improperly slants its consideration of the “no action” alternative by implying that “no action” would result in the entire forest dying from oak decline and other diseases, and that the forest would be irreversibly damaged without this proposed logging operation. Actually, the exact opposite is true. This is not a proper consideration of the alternatives under NEPA. The consideration of an alternative which does not include the use of any even-aged management would be reasonable. There is a lack of a reasonable range of alternatives</p>	<p>The EA’s no-action alternative discusses the likely change to poplar and red maple as oaks are replaced. It does not say that all oaks will die, but explains the likely succession, including the loss of early serial habitat if there are no natural disturbances to create openings. The EA (p. 7) discloses why uneven-aged management is not feasible for stand 8, the only stand to be treated under even-aged management. Of the stands density, some 40 square feet of basal area is comprised of dead, dying, or suppressed scarlet oak. The stocking is insufficient for regeneration with uneven-aged methods. The EA considered, but did not develop, an alternative with no road construction (would not meet the purpose and need) and an alternative that used clearcutting for</p>

	because it provides only one action alternative and the no action alternative.	regeneration. Because there were no real, site-specific issues, there was no need to develop additional alternatives. I find that the range of alternatives was adequate.
(2)	The “No Action” alternative is ineffectively considered, and the EA only provides one other alternative, the action alternative. There is cursory acknowledgment of the no action alternative, and MINIMAL analysis of the action alternative.	Not specifically addressed.
(3)	As stated in Idaho Conservation League v. Mumma (1992), the existence of a single viable but unexamined alternative renders an environmental impact analysis inadequate. In this case, a reasonable range of alternatives is not considered because the EA merely considers one action alternative and the no action alternative. While it does mention briefly two alternatives considered, but rejected, that does not remedy this legal violation. Those two alternatives were not “considered” in the EA. They were merely rejected when the USFS reached a predawn conclusion to log this project area before it even began drafting the EA. This is not a consideration of a reasonable range of alternatives.	Not specifically addressed.
(4)	NEPA is violated because the EA failed to adequately consider the no-action alternative. While the no action alternative is consistent with the LRMP, the EA presumes from the outset that an action MUST occur. There is a lack of a reasonable range of alternative because the Taylor Branch EA provides only one action alternative and the no action alternative. The “no action” alternative is the perennial straw man for the USFS’s <i>pro forma</i> compliance with NEPA. The Forest Service appears to use the “no action” alternative as a threat.	Not specifically addressed.
(5)	A “no action” alternative needs to be given fair treatment. If the “no action” alternative was chosen, it would not mean that forest rangers could not enter the New Castle Ranger District for ten years. “No action” simply means not implementing this proposal at this	Not specifically addressed.

	<p>time. This alternative is not given a fair shake when it is treated as a total hands-off alternative. Forest management would still be proper under a “no action” alternative. Forest monitoring, Southern Pine Beetle suppression, and other management activities could still be accomplished if “no action” was chosen on this proposal. Yet the EA makes several misleading and incorrect assumptions regarding the “no action” alternative.</p>	
(6)	<p>The consideration of an alternative which does not include the use of any even-aged management techniques would be reasonable. Yet, there is no such alternative in the Taylor Branch EA.</p>	<p>Not specifically addressed.</p>
Cumulative Effects		
(1)	<p>The EA fails to adequately consider nearby USFS timber sales, road construction, salvage sales, and the activities on private lands nearby which, when viewed together, will result in significant environmental impacts.</p>	<p>The EA (p.22) discloses that there has been no timber harvesting in the Taylor Branch area during the past decade, and that there are no activities scheduled during the next 10-year period. The EA (p.23) notes that the surrounding private land is in small ownerships in agricultural use and it is not anticipated that the uses will change in the next decade. The District responds to comments by the SABP that the cumulative effects analysis is grossly incomplete and ignores adjacent timber sales as follows: “There are not timber sales adjacent to Taylor Branch. All three projects mentioned are miles away across several mountains from Taylor Branch” (EA, Appendix E). The EA discloses the effects on each resource given the project location, design, and mitigations. The BE documents coordination with the USFWS and Virginia Game and Fish Commission in a joint review of streams in the project vicinity and the finding that the proposal and its mitigations for stream protection are adequate to protect downstream PETS. Where no cumulative effects were expected, none were disclosed (EA, pp. 8-23). I find that the EA adequately disclosed effects, including cumulative effects.</p>
(2)	<p>The Forest Service Handbook requires every EA to identify and consider cumulative effects.</p>	<p>Not specifically addressed.</p>

	(3)	A FONSI cannot be issued without an analysis of cumulative effects.	Not specifically addressed.
	(4)	Cumulative effects analysis requires more than ticking off a list of other things in the area; it requires identification and analysis of the impacts from those actions and the proposed action together.	Not specifically addressed.
Ecological			
	(1)	There is no discussion of fragmentation. The Taylor Branch Draft EA fails to quantify or meaningfully analyze in any manner the effects of habitat fragmentation resulting as a cumulative impacts of the numerous commercial timber sales this Ranger District is simultaneously proposing. Habitat fragmentation will result from logging, road construction, and re-road construction activities planned in the Taylor Branch Salvage Sales, and is an underlying cause of many of the predicted adverse effects on native species. The Forest Service also has failed to apply any models or any technique what so ever for evaluating fragmentation and resulting edge effects.	Not specifically addressed.
	(2)	NEPA, NFMA, and the JNF LRMP are violated because the proposed timber sale is not needed to move the forest toward the DFC as defined in the JNF LRMP.	Not specifically addressed.
Economics			
	(1)	The Taylor Branch EA avoids any discussion of the economic impacts to recreation. This is a blatant failure to comply with NEPA duties. Simply stating that there are no developed recreation facilities in these compartments and dispersed recreation, except for hunting, is not a management focus, is not an analysis of the economic impacts of this project on recreation. In fact, tourism is a major industry in the area. Recreation may occur within the project area despite the absence of “developed recreation facilities.” The JNF receives millions of tourist per year, who spend over \$100 million annually to recreate, providing income for thousands of jobs. Increases in the number of recreationalist and money spent by them are expected annually. The	The EA states that the main recreation use in this project area is dispersed recreation, and its intensity of use is considered minimal. The area is used as a popular road for driving pleasure and hunting access to Potts Mountain (EA, p.21). Because it is foreseen that there will be minimal recreation disruption from this timber salvage sale, the District estimates that its recreation objectives will be achieved for this project area. The Acting District Ranger has stated that the primary recreation in this area is for scenic driving and hunter access to Potts Mountain. VQOs and ROSs objectives will be met. Therefore, it is not anticipated that this sale will have a material effect upon the recreation resource. In absence of recreation being affected by this project on the GWNF, there is no

	<p>USFS must state explicitly what the economic impact on recreation, tourism and aesthetics will be from this sale. Rather than fulfill this legal duty, you ignore potential recreational opportunities which could be lost due to timber extractions such as this one. The EA fails to consider the economics of recreation. There is no discussion at all of the economics of fishing, hunting, hiking, wildflower viewing, bird watching, canoeing, horseback riding, or other recreational uses of these areas -- despite its proximity to well developed recreational areas.</p>	<p>need to perform an economic impact analysis of the recreation resource. I find that the District's analysis of this project is adequate because the remoteness would have no material affect upon the recreation resource.</p>
(2)	<p>USFS figures show that recreation in the NF created over 33 times as many jobs as USFS logging did in 1994. The figures also show that recreation contributed 38 times more to the economy than logging did (National Summary Timber Sale Program Annual Report Fiscal Year 1994 and Explanatory Notes for the 1997 Forest Service Budget). There is no analysis of any types of recreation in the Taylor Branch project area or its potential. If the USFS is able to determine that recreational uses in the NF created over 33 times as many jobs as Forest Service logging did in 1994 and that recreation contributed 38 times more to the economy than logging did, then the JNF can certainly determine what parts of that use and economic impact involve the New Castle Ranger District and even what parts impact the Taylor Branch project area specifically.</p>	<p>Not specifically addressed.</p>
(3)	<p>There are countless legal requirements to consider the economic impacts of logging.</p>	<p>Not specifically addressed.</p>
(4)	<p>The ID Team must contain the expertise necessary to evaluate the economic impacts of the project. Even if the economic impacts were truly "intangible" and difficult to address, the EA still cannot refuse to address the issue.</p>	<p>Not specifically addressed.</p>
<p>Environmental Analyses/Documentation</p>		
(1)	<p>NEPA is violated because the EA environmental effects analysis is not supported by site-specific data or analysis.</p>	<p>Not specifically addressed.</p>

(2)	NFMA is violated because the New Castle Ranger District failed to conduct adequate site-specific inventorying and monitoring in order to insure that the agency is capable of evaluating the effects of management practices on forest resources.	Not specifically addressed.
(3)	The Final Decision and FONSI for the Taylor Branch Salvage Sales must be remanded to the agency because the New Castle Ranger District failed to collect site-specific data, and thus, the environmental effects analysis in the EA is <i>arbitrary and capricious</i> .	Not specifically addressed.
(4)	The agency failed to analyze, for each alternative, how the proposed action would impact forest resources within this specific project area. Numerous environmental laws and regulations require the USFS to base the environmental effects analysis upon high quality, site-specific information, and yet, the New Castle Ranger District relied solely upon generalized, boiler-plate (and often out-dated) references and data to support conclusory unsupported findings of no significant environmental impacts. The violations render the DN/FONSI void. The legal violations committed during the NEPA process are fatal and require that the ADO remand the decision to the agency until or unless these deficiencies are cured.	Not specifically addressed.
(5)	The decision to cut the Taylor Branch Salvage Sales is a 'critical decision' which does require the collection of site-specific data and the performance of site-specific analysis in order to make a legally enforceable decision under NEPA.	Not specifically addressed.
(6)	The Taylor Branch EA was produced during the second level of planning, and thus, the EA must provide the decision-maker and the public with site-specific analysis to meet NEPA requirements for decision making.	Not specifically addressed.
(7)	The Taylor Branch Salvage Sales Final DN/FONSI violates the above referenced NEPA and NFMA mandates because the considerations of environmental effects in the EA are not supported by site-specific data or analysis. Nor does the EA analyze whether the proposed state and federal	Not specifically addressed.

	mitigation measures will effectively reduce the level of impacts of the proposed action on the forest resources.	
Forest Health		
(1)	The expressed need and purpose does not support the proposed action. Salvage does not cure oak decline, there is no point in doing it.	The EA (p.1) states that the primary management objective for the proposal is to salvage the dead and dying scarlet and black oaks, thereby improving the health of the forest. The primary purpose and need was not to “cure” the stands from oak decline, but to improve, health, vigor, and capability of the stands to produce quality timber by removing the affected trees, which are not vigorous and will not provide high quality timber in the future. The secondary purposes were to improve wildlife habitat and supply some timber. The proposed harvest would meet those needs. I find that the proposed action is supported by the purpose and need.
(2)	The EA assumes that the entire project area will die off and become a waste land as a result of oak decline, and yet, the EA fails to demonstrate that the proposed action itself will actually address the oak decline concerns.	Not specifically addressed.
Mitigation		
(1)	NEPA is violated because the EA failed to discuss how mitigation measures will actually be implemented and because the EA failed to consider whether the proposed mitigation measures will be effective.	Most of the mitigation measures listed in the EA (Appendix A) are Forest Plan standards, which specify under which conditions they will be applied. An example from Appendix A illustrates specificity: “For the intermittent stream channel (Taylor Branch) and other unnamed intermittent stream channels located greater than 1,000 feet from Johns Creek, a perennial non-trout stream: Leave 50% of the canopy cover within a 50-foot area on either side of the channel...” The EA (p. 18) states, “[t]he Virginia Department of Forestry conducted extensive water quality monitoring in association with timber harvests from 1989 to 1996 (VA. Dept. of Forestry, 1998). This monitoring showed that when forestry BMPs are properly implemented, timber harvests can be accomplished without a large or persistent increase in sediment discharge to adjacent stream waters from overland flow, an

		increase in stream water temperatures, or a shift in macroinvertebrate species composition.” The EA (p.17) discloses that the Forest has initiated a monitoring program to evaluate the effectiveness of standards. The result of this program will be a feedback process to continually adjust the standards as needed to improve implementation and effectiveness. I find that the mitigation measures are adequate.
(2)	Courts have found that merely listing mitigation measures without site-specific discussion of how they will be really used is not legally sufficient.	
(3)	NEPA requires that the potential mitigation measures must be supported by data and site-specific information. This site-specific data and analysis should be sufficient to demonstrate that the proposed mitigation measures will be effective during the proposed action and that the proposed mitigation measures will actually minimize impacts below a level of significance. Otherwise, the USFS is merely providing the public with a meaningless laundry list of good intentions – in violation of NEPA.	
(4)	In this case, the New Castle Ranger District relies upon past experience, the management plan, and state BMPs to find that there will be no significant impact as a result of the proposed timbering project. Thus, according to Graber v. USFS (1999), the New Castle Ranger District must revise the EA to provide for specific mitigation measures, to include in the record and provide the public with substantial evidence of the efficacy of all the proposed mitigation measures, to provide for monitoring of the effectiveness of the mitigation measures, and to provide alternative measures in the event the original measures fail.	
Recreation/Tourism		
(1)	The Taylor Branch EA analysis pretends that cutting down the forest has no adverse effects on recreation. The USFS has an obligation to disclose these effects. It is not legal to pretend they do not exist or to	

	ignore them merely because considering them would be “difficult.”	
Remedies		
(1)	Appellant objects to the Final Decision adopting proposed “Action Alternative 2” from the Environmental Assessment prepared for the Decision Notice and FONSI for the “Taylor Branch Salvage Sales.” The New Castle Ranger District violated NEPA, NFMA and numerous regulations as detailed above. Therefore, Appellant SABP respectfully requests that this decision notice and FONSI be remanded to the agency unless or until the agency complies with all applicable laws and regulations.	
Soils		
(1)	Based solely upon generalized soil maps, the Taylor Branch EA attempts to analyze the potential effects the proposed alternative may have on soil productivity in the project area. It is clearly information taken directly from reference materials pertaining to the general geographic region. There is nothing in the EA to suggest that a USFS official visited the project area to perform site-specific soil inventories. Nor is there evidence that the proposed cut has been planned to avoid steep slopes within this project area or that the USFS took any measures to determine whether or not the proposed mitigation measures will actually “negate the effect” of any of the alternatives on soil productivity. Moreover, there is no cumulative effects analysis regarding soil resources.	Site-specific soil analysis is on pages 19-20 of the EA. Appendix C (EA) lists the soil series that are site-specific to the compartment analyzed in this EA. An example of a site-specific soil analysis is the table on page 20 of the EA, which lists the acreage of soil impacts under Alternative 2 for thinning, group selection, seed tree, landings, and roads. Mitigation measures relating to soils are on page A-1 of the EA. For protection of soil productivity, the EA (p. A-1) incorporates standards and guidelines from the <i>JNF LRMP</i> . This document contains references from which effectiveness of mitigation measures have been determined. Concerning cumulative effects analysis, the EA states “[t]he impacts from primary skid trails and unbladed landings are considered short-term effects. Long-term effects would...reduce the soil’s ability to produce wood or fiber...6% of the area will be impacted under Alternative 2, but the effect would only be short-term” (EA, page 19). I find that the EA adequately disclosed site-specific soil inventories and analysis.
(2)	The EA merely is a cut and paste “White Paper” which fails to adequately analyze the impacts of the proposed timber sale on soil resources. Obviously, the USFS has	

	not learned from the OIG's report!	
(3)	Without site-specific soil monitoring and inventories, the USFS could not perform the level of analysis NEPA requires for this second level of decision making. Moreover, because the New Castle Ranger District has failed to monitor and inventory soil productivity within the Taylor Branch project area, the USFS cannot fulfill its NFMA duty to evaluate the effects of management activities to soil productivity.	
TES/PETS/MIS		
(1)	This project will have an adverse effect on the James spineymussel by increasing sediment in John's Creek. Therefore, the USFS has violated and continues to violate the prohibition on "take" of listed fish and wildlife species, 16 USC 1538(a)(1)(B), by undertaking the Cuba, Enterprise, Taylor Branch, and Peters Mountain timber sales and the associated road building. The USFS has violated the requirement that they consult with the USFWS before undertaking these actions, as required by 16 USC 1526(a)(2).	Both the BE and EA for this project disclose that the James spineymussel is known to occur downstream in John's Creek (BE, p. 2; EA, p. 18). The BE indicates that sedimentation from road construction and tree skidding could potentially have a negative impact on populations of this species (BE, p. 2). For this reason, mitigation measures are included that would strictly limit disturbance of intermittent stream channels and opportunity for sediment entry to these channels (EA, Appendix A, p. 2; BE, p. 3 and addendum). Monitoring has shown mitigation measures such as these to be effective at protecting water quality (EA, p. 18). The USFWS has concurred that these measures are sufficient to protect mussel populations (BE, pp. 2-3; EA, p. 15). Based on this concurrence, the Biologist writing the BE determined the project would have "no effect" on the James spineymussel (BE, p. 3). "No effect" findings do not imply "take" and do not require consultation with the USFWS. I find that effects to James spineymussel have been considered adequately and that consultation with the USFWS is not required due to the BE's finding of "no effect."
(2)	The EA fails to indicate whether surveys were performed for PETS or MIS species. Nowhere in the EA does the USFS indicate whether population surveys were performed for the MIS or PETS species found in the Taylor Branch project area. In the case of the Taylor Branch Salvage Sales, surveyors of sensitive wildlife	Populations are best assessed at a scale similar to their distribution. Populations of species that are widely distributed over a national forest are best monitored and evaluated at the Forest level. The latest Forest-wide results of MIS and PETS population and habitat monitoring on the Jefferson National Forest are reported

	<p>species failed to meet their obligation of evaluating diversity “in terms of its prior and present condition” and their duty to collect population data when a site has high potential to harbor a T&E or FSC species. They also fell far short of evaluating the various alternatives “in terms of both the amount and quality of habitat and animal population trends of the [MIS].” Thus, the USFS has again failed to fulfill mandates of NFMA and the LRMP which require the USFS to conduct site-specific analyses of MIS and PETS species.</p>	<p>in <i>Detailed Monitoring and Evaluation Report, Fiscal Years 1997 and 1998</i>, for the GWJNF. The EA for Taylor Branch Salvage Sale references the Forest’s <i>Monitoring and Evaluation Report</i> as context for its project-level analysis of MIS (EA, p. 14). This analysis identifies MIS relevant to the project and presents and discusses quantitative site-specific effects to habitat components important to these species as set forth in the Forest Plan (EA, pp. 14-16). The BE uses information on site-specific occurrences of PETS species from the VDNH database, and from site surveys conducted in support of this project (BE, p. 1). In addition, site-specific surveys for the James spineymussel are referenced (EA, p. 18). Apparently none of these site-specific sources indicated the presence of PETS within or immediately adjacent to treated areas. Habitat within treated areas is judged potentially suitable for Indiana bats (BE, p. 1). Inventory and monitoring requirements for the Indiana bat are described as part of the Terms and Conditions of the <i>Biological Opinion of the U.S. Fish and Wildlife Service on the Effects of Management Activities Conducted by the George Washington and Jefferson National Forests on the Indiana Bat</i> (60) issued on September 16, 1997. Results of implementing these requirements are documented in the Monitoring and Evaluation Report, referenced previously. Tree-by-tree surveys for roosting Indiana bats during project planning are deemed by the USFWS as not practical; they have not recommended their use (BO, p. 28). I find that the analysis for this project includes adequate site-specific information on MIS and PETS species, and that requirements for monitoring population trends have been met.</p>
(3)	<p>A process to simply evaluate the effects on species viability through habitat modification and not through population numbers does not meet NFMA. It also does not address the requirement to deal with recovery</p>	<p>Not specifically addressed.</p>

	“objectives” which must be “accomplished” to deal with a sensitive species delisting.	
(4)	There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers. Also, how will the agency know when they are going to significantly reduce sensitive species numbers when they don't know where these rare species are clustered?	Not specifically addressed.
(5)	My client SABP has already filed a 60-day notice of intent to sue the USFS and USFWS for violating the ESA. Specifically, SABP intends to legally challenge the fact that the USFS has violated and continues to violate the prohibition on “take” of listed fish and wildlife species, 16 USC 1538(a)(1)(B), by undertaking the Cuba, Enterprise, Taylor Branch, and Peters Mountain timber sales and the associated road building. These federal actions are destroying habitat for the James spiny mussel, <i>Pleurobema collina</i> , in the New Castle Ranger District of the GWJNF.	Not specifically addressed.
(6)	Despite repeated entreaties by SABP, Heartwood, SEDG, and PAW, the USFS has refused to undertake Section 7 consultation for the James spiny mussel. In addition, the Taylor Branch Salvage Sales will increase both sediment and temperature in Rolands Run and Craig Creek, which will cause a “take” of the spiny mussel in violation of Section 9 of the ESA. Following the rejection of our administrative appeal, we are forced to resort to litigation under the Citizen Suit provision of the ESA to force consultation and prevent the take of the James spiny mussel.	Not specifically addressed.
(7)	Road construction and timber harvest activities in the proposed Taylor Branch Salvage Sales will increase sedimentation and stream temperature, irreparably damaging large areas of forests adjacent to and in James spiny mussel habitat. This	Not specifically addressed.

	violates the take prohibition of the ESA.	
(8)	The BE is completely devoid of any site-specific species population surveys. Because there are no population surveys in this project area, the USFS has no way of knowing what the impact of the proposed action will be on the Indiana Bat, a federally listed endangered species. Without this necessary baseline data, the USFS has no valid way to monitor the effects of this project on PETS species.	Not specifically addressed.
(9)	Without sound science (or even any science at all), showing that methods less than surveys are reliable ways to meet the viability requirements of NFMA and its regulations, then the decision not to require surveys for all PETS species whenever a project may impact them is arbitrary and capricious.	Not specifically addressed.
Timber Harvesting		
(1)	The NFMA is violated because the EA fails to demonstrate that even-aged management is the optimum method of management for stand 8.	The EA (p.7) states that “[w]hile the entire compartment has been designated for uneven-aged management as it meets all Plan criteria for this management technique, stand 8 will be treated using even-aged management (seed tree harvesting) because of the salvage needs of this stand.” You suggest that, because the compartment has been designated to receive only uneven-aged management by the Forest Plan, it is violating the Forest Plan by using an even-aged regeneration method. The EA, page 1, states that the planned actions occur in MA 7, which involves the Forest’s scenic corridors and the Highland Scenic Tour. The Forest Plan (p. 3-32), states that on lands suitable for timber production, silvicultural practices may be employed that achieve the DFC of the MA, and meet the appropriate VQO. The EA (p.20) discloses that the VQO for stand 8 is Modification. The DN discloses that the timber harvesting will occur only on suitable forestland (p.3). The finding required by NFMA at 16 USC 1604(g)(3)(F)(i): (F) insure that clearcutting, seed tree cutting, shelterwood cutting, and other such

		<p>cuts designed to regenerate an even-aged stand of timber will be used as a cutting method on NFS lands only where – (i) for clearcutting, it is determined to be the optimum method, and for other such cuts it is determined to be appropriate to meet the objectives and requirements of the relevant land management plan.</p> <p>Other such cuts are the other even-aged regeneration methods, i.e. seed-tree, shelterwood, and modifications of regeneration methods that are designed to reestablish an even-aged stand. Because the seed-tree regeneration method is being used, the optimality requirement is not required. I find that the EA was not required to determine that even-aged management is the optimum method of harvest. The NFMA requires only that clearcutting must be found to be the optimum method to meet the objectives and requirements of the relevant land management plan.</p>
Water Resources		
(1)	<p>NEPA requires the USFS to analyze the potential effects the proposed timber sale will have on water quality, however, the complete lack of any site-specific water quality data prevented the New Castle Ranger District from complying with NEPA in this case.</p>	<p>NEPA procedures require that environmental consequences be considered and that those consequences be disclosed to the public. It also specifies that if there is incomplete or unavailable information, then scientific evidence which is relevant to evaluating the impacts should be used. Analysis of effects on water is on pages 17-19 of the EA. An example of a site-specific water analysis is “[t]here would be no significant increase in sedimentation affecting Johns Creek. The temporary road to access stand 8 will be well-buffered by forested land on both sides and the harvesting operation will require minimal use of FSR 5060” (EA, p. 18). The project file contains letters from the Forest Supervisor which addresses impacts to water quality. The project file also contains rapid bioassessment protocol data sheets taken in May 1999 on a stream adjacent to the project area. I find that effects on water quality were adequately addressed.</p>
(2)	<p>There is no discussion or analyses in the Taylor Branch EA, which would even begin to analyze what the</p>	<p>Not specifically addressed.</p>

	impacts of the proposed management activities will be on the quality or quantity of water in Johns Creek. Rather, the EA assumes that there will be no impacts to either of these waters because of the implementation of federal and state BMPs. This assumption is not NEPA sufficient under NEPA.	
(3)	The Taylor Branch EA assumes that simply because the three intermittent streams within the project area were dry during the summer of 1999, a drought year, that there will be no impact to water quality.	Not specifically addressed.
(4)	The USFS mantra in this case is simply that the intermittent streams within the Taylor Branch project area were dry last summer, and thus, sediment could not reach Johns Creek. However, this ignores the following facts: (1) summer of 1999 was a drought summer; and (2) intermittent streams could easily transport high sediment loads into Johns Creek after a short period of heavy rainfall. That is, there are important variables which must be considered in making the required determination of effect.	Not specifically addressed.
(5)	Will the cutting of trees on this block, alter or degrade the ability of these intermittent streams to drain the compartment area? Will the ground disturbances caused by the proposed action modify the structure or integrity of these stream beds in such a way that when they do transport water into Johns Creek, high sediment loads will accompany the water flow? Will such ground disturbances cause an increase or decrease in water quality or quantity when water does flow through these stream beds? The EA simply ignores these important considerations.	Not specifically addressed.
Wetlands		
(1)	In addition to legal requirements imposed by NEPA, NFMA (and their implementing regulations), Executive Orders 11988 and 1190 require the USFS to consider impacts of management activities on floodplains and wetlands, and to ensure that management actions will not adversely effect the natural and beneficial values of the floodplains	You correctly point out that the EA does not discuss compliance with Executive Orders on wetlands and floodplains. The EA does disclose that “there is a natural wetland/water area in the southern end of the compartment near private land” (EA, p.17). The EA (Appendix A, pp. A-1 and A-2) discloses mitigation measures to ensure protection of the

	<p>and wetlands. The Taylor Branch EA provides absolutely no data or analysis concerning the “natural wetland/pond area located in the southern end of the compartment near private land” referred to on page 3 of the EA. Nor does the EA does not discuss whether the action alternative will be in compliance with Executive Order 11988 and USFS policy in relation to floodplains or whether there are wetland/pond areas which will be affected by the proposed actions. Thus, the Taylor Branch EA violates both of the above referenced Executive Orders. Therefore, the EA is legally insufficient to support the Final DN/FONSI, and thus, the EA must be remanded to the District Ranger unless or until site-specific facts and analysis concerning wetlands and floodplains in the Taylor Branch project area are provided in this EA.</p>	<p>intermittent streams in the compartment. Indications are, from the protections given to aquatic resources, that there are no adverse effects on wetlands or floodplains. Although the EA discloses project design and mitigations that ensure protection of streams – and likely the adjacent floodplains and any wetlands, the EA does not clearly state that wetlands or floodplains are not adversely affected.</p>
Wildlife		
(1)	<p>As evidence that wildlife inventories for the Taylor Branch Project are incomplete, compare it with that done for the “Witness Rock Timber Sale” in the Grandfather Ranger District of the Pisgah NF. The preferred alternative for the Witness Rock sale would harvest 220 acres, less than that proposed in the Taylor Branch Project. Yet the surveying for Witness Rock involved more personnel and much more time.</p>	<p>Not specifically addressed.</p>

APPENDIX L
THE CUBA TIMBER SALE

Table 1L

Public Comments on the CTS SN

Category	Commenter	
	Heartwood	Sherman Bamford
Access		•
Aesthetics		•
Alternatives	•	•
Aquatic Communities	•	•
Categorical Exclusions		•
Chemicals		•
Cumulative Effects	•	•
Ecological	•	•
Economics	•	•
Environmental Analyses/Documentation	•	•
Forest Health	•	•
Hydrological	•	•
Local Communities	•	
Mitigation		•
Old Growth	•	•
Prescribed Burning	•	•
Recreation/Tourism	•	•
Riparian Areas		•
Roadless Areas		•
Roads	•	•
Soils		•
TES/PETS/MIS	•	•
Timber Harvesting	•	•
Timber Theft	•	
Water Resources	•	•
Wilderness		•
Wildlife	•	•
The Proposed Action	-	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 2L

Public Comments on the CTS 30-day Review Notice

Category	Commenter					
	AFMG	Heartwood	Forest Guardians/FCC	George O’Nale	PAW/Heartwood/ SEDG	SABP
Aesthetics						•
Alternatives	•	•		•		•
Aquatic Communities		•				
Archaeological/Natural Heritage Resources					•	•
Categorical Exclusions					•	
Chemicals						
Cumulative Effects		•				•
Ecological		•	•			•
Economics	•	•	•	•		•
Ecosystem Management						•
Environmental Analyses/Documentation		•		•		•
Exotic/Invasive Species						•
Forest Health	•	•				•
Hydrological		•				
Local Communities		•		•		
Mitigation	•					•
Old Growth		•				•
Prescribed Burning	•	•				•
Public Involvement				•		
Recreation/Tourism		•		•		•
Regeneration	•					•
Riparian Areas						•
Roadless Areas						•
Roads		•				•
Silviculture	•					
Soils	•					•
TES/PETS/MIS		•			•	•
Timber Harvesting		•				•
Timber Theft		•				
Water Resources	•	•				•
Wild and Scenic Rivers						•
Wilderness						•
Wildlife		•				•
The Proposed Action	N/A	-	N/A	N/A	-	-

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

Table 3L

Public Comments on the CTS EA

Category	Commenter			
	Heartwood	AFMG	SEDG/Heartwood/ Steven Krichbaum	SABP
Alternatives	•	•		•
Aquatic Communities	•			
Cumulative Effects	•	•		•
Ecological	•			•
Economics	•			•
Environmental Analyses/Documentation	•		•	•
Forest Health	•			•
Hydrological	•			
Local Communities	•			
Mitigation	•			
Old Growth	•			
Prescribed Burning	•			
Public Involvement		•		
Recreation/Tourism	•			
Roads	•			•
TES/PETS/MIS	•			•
Timber Harvesting	•	•		•
Water Resources	•			
Wildlife	•			•
The Proposed Action	-	+	-	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 4L

SABP's Administrative Appeal of the CTS DN/FONSI

Category	Appeal Issue	ADO Response
Air Quality		
(1)	<p>The Cuba Timber Sale EA lacks any data or analyses concerning air quality (see EA p. 17). Rather, the EA merely supplies an unsupported statement that there will be no effect on air quality. The USFS simply has not performed site-specific or even region-specific air quality analysis in order to even guess as to what the impacts of this project will be on air quality.</p>	<p>There is a disclosure stating that existing air quality is “good” and there will be no environmental consequence (EA, p. 17). There are no Class I air sheds near the project area. Scoping did not raise air quality as an issue, nor did Appendix E comments have any air quality related issues. The scoping letter discloses that no unique or sensitive natural resources are in the compartment. Individual burn plans are prepared and the smoke management section addresses any existing air quality problems or smoke sensitive areas along with mitigation. Burn authorizations or permits are issued by the State who approve the individual burns and support that favorable smoke dispersal indices (dispersion index, mixing heights, transport wind speeds) are forecasted for that day. The State was scoped on the project as well and did not raise any air quality related issues as a connected action of conducting 70 acres of prescribed fire in stands 1 & 15 to facilitate regenerating table mountain pine and releasing bear oak understory. The DN discloses on page 3 that the activities are consistent with the FLRMP, NFMA, and the effects of the proposed activities are within the scope of the effects analyzed and approved in the Forest Plan, of which air quality is discussed. The FONSI (DN p. 4) disclosures support that no impacts to air quality from the projects action would occur. I find that the Responsible Official adequately considered impacts to air quality and the determination is based on site specific and local analysis.</p>
Alternatives		
(1)	<p>NEPA is violated because the EA failed to consider an adequate range of alternatives, and the existence of a single viable but unexamined alternative renders an environmental analysis legally inadequate. The</p>	<p>The EA’s no-action alternative discusses the likely change in species composition to red maple as the oak is replaced. It does not say that all oaks will die, but explains the likely succession, including the loss of early</p>

	USFS improperly slants its consideration of the “no action” alternative by implying that “no action” would result in the entire forest dying from oak decline and other diseases, and that the forest would be irreversibly damaged without this proposed logging operation. Actually, the exact opposite is true. This is not a proper consideration of the alternatives under NEPA.	serial habitat if there are no natural disturbances to create openings. The EA also discloses that the District considered, but did not develop an alternative with no road construction (would not meet the purpose and need) and an alternative that used clearcutting for regeneration (EA, p. 7). Because there were no real, site-specific issues, there was no need to develop additional alternatives. I find that the range of alternatives was adequate.
(2)	The “No Action” alternative is ineffectively considered, and the EA only provides one other alternative, the action alternative. There is cursory acknowledgment of the no action alternative, and MINIMAL analysis of the action alternative.	Not specifically addressed.
(3)	As stated in Idaho Conservation League v. Mumma (1992), the existence of a single viable but unexamined alternative renders an environmental impact analysis inadequate. In this case, a reasonable range of alternatives is not considered because the EA merely considers one action alternative and the no action alternative. While it does mention briefly two alternatives considered, but rejected, that does not remedy this legal violation. Those two alternatives were not “considered” in the EA. They were merely rejected when the USFS reached a predawn conclusion to log this project area before it even began drafting the EA. This is not a consideration of a reasonable range of alternatives.	Not specifically addressed.
(4)	NEPA is violated because the EA failed to adequately consider the no-action alternative. While the no action alternative is consistent with the FLRMP, the EA presumes from the outset that an action MUST occur. There is a lack of a reasonable range of alternative because the Cuba Timber Sale EA provides only one action alternative and the no action alternative. The “no action” alternative is the perennial straw man for the USFS’s <i>pro forma</i> compliance with NEPA. The Forest Service appears to use the “no action” alternative as a threat.	Not specifically addressed.

(5)	<p>A “no action” alternative needs to be given fair treatment. If the “no action” alternative was chosen, it would not mean that forest rangers could not enter the New Castle Ranger District for ten years. “No action” simply means not implementing this proposal at this time. This alternative is not given a fair shake when it is treated as a total hands-off alternative. Forest management would still be proper under a “no action” alternative. Forest monitoring, Southern Pine Beetle suppression, and other management activities could still be accomplished if “no action” was chosen on this proposal. Yet the EA makes several misleading and incorrect assumptions regarding the “no action” alternative.</p>	<p>Not specifically addressed.</p>
<p>Cumulative Effects</p>		
(1)	<p>NEPA is violated because the EA fails to identify and analyze cumulative impacts, defined as, “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions” There is nothing site-specific at all about cumulative impacts here, and there is nothing at all about other actions (public or private) in the area and how they will interact with this proposal.</p>	<p>You contend that the EA does not disclose other projects or nearby activities, yet you do not give any site-specific examples of activities that would have had a cumulative effect on any resource. The EA (p. 20) discloses that the compartment is surrounded by private land with well established use patterns, and that no significant change is expected over the next 10 years. The District, based on the effects of past activities, determined that there will be no significant cumulative effects of this proposal. Your client, SABP, commenting on the EA submitted comments almost identical to those sent for Taylor Branch, i.e. that the cumulative effects analysis is grossly incomplete and that it ignores adjacent timber sales, including Taylor Branch and Enterprise. The District’s response to comments referenced the response to comments on the Taylor Branch Salvage Sale Project, which was incorporated by reference: “There are no timber sales adjacent to Taylor Branch. All three projects mentioned are miles away across several mountains from Taylor Branch” (Taylor Branch EA, Appendix E, p. 4). The EA discloses the effects on each resource given the project location, design, and</p>

		mitigations. The BE documents coordination with the USFWS and Virginia Game and Fish Commission in a joint review of streams in the project vicinity and the finding that the proposal and its mitigations for stream protection are adequate to protect downstream PETS. Where no cumulative effects were expected, none were disclosed (EA, pp. 7-20). I find that the EA adequately disclosed effects, including cumulative effects.
(2)	The Forest Service Handbook requires every EA to identify and consider cumulative effects.	Not specifically addressed.
(3)	A FONSI cannot be issued without an analysis of cumulative effects.	Not specifically addressed.
(4)	Cumulative effects analysis requires more than ticking off a list of other things in the area; it requires identification and analysis of the impacts from those actions and the proposed action together.	Not specifically addressed.
Ecological		
(1)	There is no discussion of fragmentation. The Cuba Timber Sale Draft EA fails to quantify or meaningfully analyze in any manner the effects of habitat fragmentation resulting as a cumulative impact of the numerous commercial timber sales this Ranger District is simultaneously proposing. Habitat fragmentation will result from logging, road construction, and re-road construction activities planned in the Cuba Timber Sale, and is an underlying cause of many of the predicted adverse effects on native species. The Forest Service also has failed to apply any models or any technique what so ever for evaluating fragmentation and resulting edge effects.	Not specifically addressed.
Economics		
(1)	The Cuba Timber Sale EA avoids any discussion of the economic impacts to recreation. This is a blatant failure to comply with NEPA duties. Simply stating that there are no developed recreation facilities in these compartments and dispersed recreation, except for hunting, is not a management focus, is not an analysis of the economic impacts of this project on recreation. In fact, tourism	The EA states that the main recreation use in this project area is hunting. There are not developed or dispersed recreation sites in the compartment. The Ferrier Trail/Lick Branch Loop, a seven-mile trail, runs along the upper boundary of the compartment (EA, p. 17). The Acting District Ranger states there will be no effects on recreationists using the trails near the project compartment (EA, p. 18). The

	<p>is a major industry in the area. Recreation may occur within the project area despite the absence of “developed recreation facilities.” The JNF receives millions of tourist per year, who spend over \$100 million annually to recreate, providing income for thousands of jobs. Increases in the number of recreationalist and money spent by them are expected annually. The USFS must state explicitly what the economic impact on recreation, tourism and aesthetics will be from this sale. Rather than fulfill this legal duty, you ignore potential recreational opportunities which could be lost due to timber extractions such as this one. The EA fails to consider the economics of recreation. There is no discussion at all of the economics of fishing, hunting, hiking, wildflower viewing, bird watching, canoeing, horseback riding, or other recreational uses of these areas -- despite its proximity to well developed recreational areas.</p>	<p>Acting District Ranger believes this project will not have a material effect upon the recreation resource. In absence of recreation being affected by this project on the GWNF, there is no need to perform an economic impact analysis of the recreation resource. I, therefore, find that the Acting District Ranger’s analysis of this project is adequate.</p>
(2)	<p>USFS figures show that recreation in the NF created over 33 times as many jobs as USFS logging did in 1994. The figures also show that recreation contributed 38 times more to the economy than logging did (National Summary Timber Sale Program Annual Report Fiscal Year 1994 and Explanatory Notes for the 1997 Forest Service Budget). There is no analysis of any types of recreation in the Cuba Timber Sale project area or its potential. If the USFS is able to determine that recreational uses in the NF created over 33 times as many jobs as Forest Service logging did in 1994 and that recreation contributed 38 times more to the economy than logging did, then the JNF can certainly determine what parts of that use and economic impact involve the New Castle Ranger District and even what parts impact the Cuba Timber Sale project area specifically.</p>	<p>Not specifically addressed.</p>
(3)	<p>There are countless legal requirements to consider the economic impacts of logging.</p>	<p>Not specifically addressed.</p>

(4)	The ID Team must contain the expertise necessary to evaluate the economic impacts of the project. Even if the economic impacts were truly “intangible” and difficult to address, the EA still cannot refuse to address the issue.	Not specifically addressed.
Environmental Analyses/Documentation		
(1)	NEPA is violated because the EA environmental effects analysis is not supported by site-specific data or analysis.	Not specifically addressed.
(2)	NFMA is violated because the New Castle Ranger District failed to conduct adequate site-specific inventorying and monitoring in order to insure that the agency is capable of evaluating the effects of management practices on forest resources.	Not specifically addressed.
(3)	The Final Decision and FONSI for the Cuba Timber Sale Project must be remanded to the agency because the New Castle Ranger District failed to collect site-specific data, and thus, the environmental effects analysis in the EA is <i>arbitrary and capricious</i> .	Not specifically addressed.
(4)	The agency failed to analyze, for each alternative, how the proposed action would impact forest resources within this specific project area. Numerous environmental laws and regulations require the USFS to base the environmental effects analysis upon high quality, site-specific information, and yet, the New Castle Ranger District relied solely upon generalized, boiler-plate (and often out-dated) references and data to support conclusory unsupported findings of no significant environmental impacts. The violations render the DN/FONSI void. The legal violations committed during the NEPA process are fatal and require that the ADO remand the decision to the agency until or unless these deficiencies are cured.	Not specifically addressed.
(5)	The decision to cut the Cuba Timber Sale Project is a ‘critical decision’ which does require the collection of site-specific data and the performance of site-specific analysis in order to make a legally enforceable decision under NEPA.	Not specifically addressed.

(6)	The Cuba Timber Sale Project EA was produced during the second level of planning, and thus, the EA must provide the decision-maker and the public with site-specific analysis to meet NEPA requirements for decision making.	Not specifically addressed.
(7)	The Cuba Timber Sale Project Final DN/FONSI violates the above referenced NEPA and NFMA mandates because the considerations of environmental effects in the EA are not supported by site-specific data or analysis. Nor does the EA analyze whether the proposed state and federal mitigation measures will effectively reduce the level of impacts of the proposed action on the forest resources.	Not specifically addressed.
Mitigation		
(1)	NEPA is violated because the EA failed to discuss how mitigation measures will actually be implemented and because the EA failed to consider whether the proposed mitigation measures will be effective.	Most of the mitigation measures listed in the E4 (Appendix A) are Forest Plan standards, which specify under which conditions they will be applied. An example from Appendix A (A, p. 2) illustrates further specificity: "For the intermittent stream channel (Rolands Run) located greater than 1,000 feet from Craig Creek, a perennial non-trout stream: Leave 50% of the canopy cover within a 50-foot area on either side of the channel..." The EA (p. 15) states, "[t]he Virginia Department of Forestry conducted extensive water quality monitoring in association with timber harvests from 1989 to 1996 (VA. Dept. of Forestry, 1998). This monitoring showed that when forestry BMPs are properly implemented, timber harvests can be accomplished without a large or persistent increase in sediment discharge to adjacent stream waters from overland flow, an increase in stream water temperatures, or a shift in macroinvertebrate species composition." The EA also discloses that "[t]he Forest has initiated a monitoring program to evaluate the effectiveness of standards. The result of this program will be a feedback process to continually adjust the standards as needed to improve implementation and effectiveness" (EA, pp. 14-15). Additional monitoring measures are disclosed on

		page 20 of the EA. I find that the mitigation measures are adequate.
(2)	Courts have found that merely listing mitigation measures without site-specific discussion of how they will be really used is not legally sufficient.	Not specifically addressed.
(3)	NEPA requires that the potential mitigation measures must be supported by data and site-specific information. This site-specific data and analysis should be sufficient to demonstrate that the proposed mitigation measures will be effective during the proposed action and that the proposed mitigation measures will actually minimize impacts below a level of significance. Otherwise, the USFS is merely providing the public with a meaningless laundry list of good intentions – in violation of NEPA.	Not specifically addressed.
(4)	In this case, the New Castle Ranger District relies upon past experience, the management plan, and state BMPs to find that there will be no significant impact as a result of the proposed timbering project. Thus, according to Graber v. USFS (1999), the New Castle Ranger District must revise the EA to provide for specific mitigation measures, to include in the record and provide the public with substantial evidence of the efficacy of all the proposed mitigation measures, to provide for monitoring of the effectiveness of the mitigation measures, and to provide alternative measures in the event the original measures fail.	Not specifically addressed.
Recreation/Tourism		
(1)	The Cuba Timber Sale EA analysis pretends that cutting down the forest has no adverse effects on recreation. The USFS has an obligation to disclose these effects. It is not legal to pretend they do not exist or to ignore them merely because considering them would be “difficult.”	Not specifically addressed.
Remedies		
(1)	Appellant objects to the Final Decision adopting proposed “Action Alternative 2” from the EA prepared for the Decision Notice and FONSI for the “Cuba Timber Sale Project.”	Not specifically addressed.

	<p>The New Castle Ranger District violated NEPA, NFMA, and numerous regulations as detailed. Therefore, Appellant SABP respectfully requests that this decision notice and FONSI be remanded to the agency unless or until the agency complies with all applicable laws and regulations.</p>	
Soils		
(1)	<p>Based solely upon generalized soil maps, the Cuba Timber Sale Project EA attempts to analyze the potential effects the proposed alternative may have on soil productivity in the project area. It is clearly information taken directly from reference materials pertaining to the general geographic region. There is nothing in the EA to suggest that a USFS official visited the project area to perform site-specific soil inventories. Nor is there evidence that the proposed cut has been planned to avoid steep slopes within this project area or that the USFS took any measures to determine whether or not the proposed mitigation measures will actually “negate the effect” of any of the alternatives on soil productivity. Moreover, there is no cumulative effects analysis regarding soil resources.</p>	<p>Site-specific soil analysis is on pages 16-17 of the EA. The project file contains a list of soil series that are site-specific to the compartment analyzed in this EA. An example of a site-specific soil analysis is the table on page 17 of the EA, which lists the acreage of soil impacts under Alternative 2 for modified shelterwood, landings, and roads. Mitigation measures relating to soils are on page A-2 of the EA. For protection of soil productivity, the EA (p. A-2) incorporates standards and guidelines from the <i>JNF LRMP</i>. This document contains references from which effectiveness of mitigation measures have been determined. Concerning cumulative effects analysis, the EA states “[t]he impacts from primary skid trails and unbladed landings are considered short-term effects...there will be no significant impact to the soil resulting from proposed vegetation management activities” (EA, p.16).</p>
(2)	<p>The EA merely is a cut and paste “White Paper” which fails to adequately analyze the impacts of the proposed timber sale on soil resources. Obviously, the USFS has not learned from the lessons of the OIG’s report!</p>	<p>Not specifically addressed.</p>
(3)	<p>Without site-specific soil monitoring and inventories, the USFS could not perform the level of analysis NEPA requires for this second level of decision making. Moreover, because the New Castle Ranger District has failed to monitor and inventory soil productivity within the Cuba Timber Sale Project area, the USFS cannot fulfill its NFMA duty to evaluate the effects of management activities to soil productivity.</p>	<p>Not specifically addressed.</p>

TES/PETS/MIS		
(1)	<p>This project will have an adverse effect on the James spineymussel by increasing sediment in Rolands Run, an intermittent stream which runs directly into Craig Creek where there are known populations of the spineymussel. Therefore, the USFS has violated and continues to violate the prohibition on “take” of listed fish and wildlife species, 16 USC 1538(a)(1)(B), by undertaking the Cuba, Enterprise, Taylor Branch, and Peters Mountain timber sales and the associated road building. The USFS has violated the requirement that they consult with the USFWS before undertaking these actions, as required by 16 USC 1526(a)(2).</p>	<p>Both the BE and EA for this project disclose that the James spineymussel is known to occur downstream in Craig Creek (BE, p. 2; EA, p. 15). The BE indicates that sedimentation from road construction and tree skidding could potentially have a negative impact on populations of this species (BE, p. 2). For this reason, mitigation measures are included that would strictly limit disturbance of intermittent stream channels and opportunity for sediment entry to these channels (EA, Appendix A, p. 2; BE, p. 3 and addendum). Monitoring has shown mitigation measures such as these to be effective at protecting water quality (EA, p. 15). The USFWS has concurred that these measures are sufficient to protect mussel populations (BE, pp. 2-3; EA, p. 15). Based on this concurrence, the Biologist writing the BE determined the project would have “no effect” on the James spineymussel (BE, p. 3). “No effect” findings do not imply “take” and do not require consultation with the USFWS. I find that effects to James spineymussel have been considered adequately and that consultation with the USFWS is not required due to the BE’s finding of “no effect”.</p>
(2)	<p>The EA fails to indicate whether surveys were performed for PETS or MIS species. Nowhere in the EA does the USFS indicate whether population surveys were performed for the MIS or PETS species found in the Cuba Timber Sale Project area. In the case of the Cuba Timber Sale Project, surveyors of sensitive wildlife species failed to meet their obligation of evaluating diversity “in terms of its prior and present condition” and their duty to collect population data when a site has high potential to harbor a T&E or FSC species. They also fell far short of evaluating the various alternatives “in terms of both the amount and quality of habitat and animal population trends of the [MIS].” Thus, the USFS has again failed to fulfill mandates of NFMA and the LRMP which require the</p>	<p>Populations are best assessed at a scale similar to their distribution. Populations of species that are widely distributed over a national forest are best monitored and evaluated at the Forest level. The latest Forest-wide results of MIS and PETS population and habitat monitoring on the Jefferson National Forest are reported in <i>Detailed Monitoring and Evaluation Report, Fiscal Years 1997 and 1998</i>, for the GWJNF. The EA for Taylor Branch Salvage Sale references the Forest's <i>Monitoring and Evaluation Report</i> as context for its project-level analysis of MIS (EA, p. 12). This analysis identifies MIS relevant to the project and presents and discusses quantitative site-specific effects to habitat components important to these species as set forth in the Forest Plan (EA, pp. 12-14).</p>

	USFS to conduct site-specific analyses of MIS and PETS species.	The BE uses information on site-specific occurrences of PETS species from the VDNH database, and from site surveys conducted in support of this project (BE, p. 1). In addition, site-specific surveys for the James spineymussel are referenced (EA, p. 15). Apparently none of these site-specific sources indicated the presence of PETS within or immediately adjacent to treated areas. Habitat within treated areas is judged potentially suitable for Indiana bats (BE, p. 1). Inventory and monitoring requirements for the Indiana bat are described as part of the Terms and Conditions of the <i>Biological Opinion of the U.S. Fish and Wildlife Service on the Effects of Management Activities Conducted by the George Washington and Jefferson National Forests on the Indiana Bat</i> (60) issued on September 16, 1997. Results of implementing these requirements are documented in the Monitoring and Evaluation Report, referenced previously. Tree-by-tree surveys for roosting Indiana bats during project planning are deemed by the USFWS as not practical; they have not recommended their use (60, p. 28). I find that the analysis for this project includes adequate site-specific information on MIS and PETS species, and that requirements for monitoring population trends have been met.
(3)	A process to simply evaluate the effects on species viability through habitat modification and not through population numbers does not meet NFMA. It also does not address the requirement to deal with recovery “objectives” which must be “accomplished” to deal with a sensitive species delisting.	Not specifically addressed.
(4)	There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers. Also, how will the agency know when	Not specifically addressed.

	they are going to significantly reduce sensitive species numbers when they don't know where these rare species are clustered?	
(5)	My client SABP has already filed a 60-day notice of intent to sue the USFS and USFWS for violating the ESA. Specifically, SABP intends to legally challenge the fact that the USFS has violated and continues to violate the prohibition on “take” of listed fish and wildlife species, 16 USC 1538(a)(1)(B), by undertaking the Cuba, Enterprise, Taylor Branch, and Peters Mountain timber sales and the associated road building. These federal actions are destroying habitat for the James spineymussel, <i>Pleurobema collina</i> , in the New Castle Ranger District of the GWJNF.	Not specifically addressed.
(6)	Despite repeated entreaties by SABP, Heartwood, SEDG, and PAW, the USFS has refused to undertake Section 7 consultation for the James spinymussel. In addition, the Cuba Timber Sale Project will increase both sediment and temperature in Rolands Run and Craig Creek, which will cause a “take” of the spinymussel in violation of Section 9 of the ESA. Following the rejection of our administrative appeal, we are forced to resort to litigation under the Citizen Suit provision of the ESA to force consultation and prevent the take of the James spinymussel.	Not specifically addressed.
(7)	Road construction and timber harvest activities in the proposed Cuba Timber Sale Project will increase sedimentation and stream temperature, irreparably damaging large areas of forests adjacent to and in James spinymussel habitat. This violates the take prohibition of the ESA.	
(8)	The BE is completely devoid of any site-specific species population surveys. Because there are no population surveys in this project area, the USFS has no way of knowing what the impact of the proposed action will be on the Indiana Bat, a federally listed endangered species. Without this necessary baseline data, the USFS has no valid way to monitor the effects of this	Not specifically addressed.

	project on PETS species.	
(9)	Without sound science (or even any science at all), showing that methods less than surveys are reliable ways to meet the viability requirements of NFMA and its regulations, then the decision not to require surveys for all PETS species whenever a project may impact them is arbitrary and capricious.	Not specifically addressed.
Water Resources		
(1)	NEPA requires the USFS to analyze the potential effects the proposed timber sale will have on water quality, however, the complete lack of any site-specific water quality data prevented the New Castle Ranger District from complying with NEPA in this case.	NEPA procedures require that environmental consequences be considered and that those consequences be disclosed to the public. It also specifies that if there is incomplete or unavailable information, then scientific evidence which is relevant to evaluating the impacts should be used. Analysis of effects on water is on pages 14-16 of the EA. An example of a site-specific water analysis is “[s]ediment is not expected to have a significant impact on Rolands Run. The temporary road to access stand 15 will be well-buffered by forested land on both sides and the harvesting operation will require minimal use of FSR 5027” (EA, p. 15). The project file contains letters from the Forest Supervisor which addresses impacts to water quality. The project file also contains macroinvertebrate sampling data sheets and a water samples data sheet, both which contain data collected from Rolands Run Branch in Spring of 1998. I find that effects on water quality were adequately disclosed.
(2)	There is no discussion or analyses in the Cuba EA, which would even begin to analyze what the impacts of the proposed management activities will be on the quality or quantity of water in either Rolands Run or Craig Creek. Rather, the EA assumes that there will be no impacts to either of these waters because of the implementation of federal and state BMPs. This assumption is not NEPA sufficient under NEPA.	Not specifically addressed.
(3)	Will the cutting of trees on this block, alter or degrade Rolands Run? Will the ground disturbances caused by the proposed action modify the structure or integrity of these stream beds in	Not specifically addressed.

	such a way that when they do transport water into Rolands Run sediment loads will accompany the water flow? Will such ground disturbances cause an increase or decrease in water quality or quantity when water does flow through these stream beds? The EA simply ignores these important considerations.	
Wetlands		
(1)	In addition to legal requirements imposed by NEPA, NFMA (and their implementing regulations), Executive Orders 11988 and 1190 require the USFS to consider impacts of management activities on floodplains and wetlands, and to ensure that management actions will not adversely effect the natural and beneficial values of the floodplains and wetlands. The EA does not discuss whether the action alternative will be in compliance with Executive Order 11988 and USFS policy in relation to floodplains or whether there are wetland/pond areas which will be affected by the proposed actions. Thus, the Cuba Timber Sale EA violates both of the above referenced Executive Orders. Therefore, the EA is legally insufficient to support the Final DN/FONSI, and thus, the EA must be remanded to the District Ranger unless or until site-specific facts and analysis concerning wetlands and floodplains in the Cuba Timber Sale project area are provided in this EA.	You correctly point out that the EA is silent on wetlands and does not discuss compliance with Executive Orders on wetlands and floodplains. The EA does disclose that there is an intermittent stream in the vicinity of activities and that harvesting will not occur in the floodplain (EA, Appendix A-2 and Appendix E-1). The EA (Appendix A-2) discloses special mitigations to ensure protection of the intermittent stream, Rolands Run. The mitigation buffer width is double that required by the LRMP and no skidding is permitted across the stream. Indications are, from the protections given to aquatic resources, that there are no adverse effects on wetlands or floodplains. Although the EA discloses project design and mitigations that ensure protection of streams – and likely the adjacent floodplains and any wetlands, the EA does not clearly state that wetlands or floodplains are not adversely affected.

APPENDIX M
THE MCJENNINGS PROJECT

Table 1M

Public Comments on the MJP SN

Category	Commenter				
	Heartwood	Robert Fener	Sherman Bamford	FCC/NFPA	Lori Foote
Aesthetics	•		•	•	•
Alternatives	•			•	
Aquatic Communities	•		•		
Cumulative Effects	•		•	•	
Ecological	•	•		•	
Economics	•	•		•	
Environmental Analyses/Documentation	•		•		
Exotic/Invasive Species	•				
Forest Health	•	•			
Hydrological	•			•	
Mitigation	•				
Old Growth	•		•	•	
Public Involvement	•				
Recreation/Tourism	•	•	•	•	•
Regeneration	•				
Riparian Areas	•		•		
Roadless Areas	•				
Roads	•		•	•	•
Silviculture	•	•			
Soils	•		•	•	
TES/PETS/MIS	•		•	•	
Timber Harvesting	•	•		•	•
Vegetation	•				
Water Resources	•			•	
Wetlands	•				
Wildlife	•		•		
The Proposed Action	-	-	-	-	N/A

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 2M

Public Comments on the MJP SN

Category	Commenter				
	SABP	VFW/AV/SABP	VFW	Mike Walker	Gardner Bond
Adjacent Landownership					•
Aesthetics		•	•		
Alternatives	•				
Aquatic Communities		•			
Archaeological/Natural Heritage Resources		•			
Cumulative Effects		•			•
Ecological	•	•			
Economics		•	•		
Environmental Analyses/Documentation	•	•	•		
Forest Health	•	•	•		•
Mitigation		•			
Old Growth	•	•	•		
Public Involvement	•			•	
Recreation/Tourism		•	•		
Regeneration	•	•			
Roads	•	•			
Silviculture		•			•
Soils	•	•			
TES/PETS/MIS	•	•	•		
Timber Harvesting	•	•	•		•
Water Resources	•				
Wildlife					•
The Proposed Action	-	-	-	+	N/A

+ = in favor of the proposed action
 - = opposed to the proposed action
 N/A = not applicable

Table 3M

Public Comments on the MJP EA

Category	Commenter			
	Gardner Bond	SABP	VFW/AV	VFW
Cumulative Effects			•	
Ecological	•		•	
Economics			•	•
Environmental Analyses/Documentation			•	•
Forest Health	•			•
Mitigation			•	
Old Growth			•	•
Recreation/Tourism			•	•
Regeneration	•		•	
TES/PETS/MIS				•
Timber Harvesting	•		•	•
Vegetation				•
Water Resources			•	
Wildlife	•			
The Proposed Action	-	N/A	-	-

+ = in favor of the proposed action

- = opposed to the proposed action

N/A = not applicable

Table 4M

VFW/AV's Comments on the MJP SN

Category	Comment	USFS Response
Aesthetics		
(1)	Concern that visual quality is not considered, other than to say that VQOs will remain the same on paper as they are now. NEPA requires that the real world visual impacts be fully identified and considered.	This issue is procedural in nature, pertaining to the method of analysis rather than an environmental impact per se. Significant issue 23, regarding impacts to visual quality, will be addressed in the EA. The McJennings analysis will strive to maintain objectivity by describing or displaying effects in an absolute or objective form. The Deciding Official will consider the impacts, both positive and negative, to all uses before reaching a Decision.
(2)	Tracts 59 and 60 appear to be visible from the Blue Ridge Parkway and particularly the Falling Creek trail on the adjacent NPS land. The EA must include visual quality impacts analysis.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	Please analyze impacts to views from the Blue Ridge Parkway, the Falling Water/Flat Top Overlook, and the Falling Water/Flat Top/Cascades National Recreation Trail.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Aquatic Communities		
(1)	Concern that aquatic species be adequately surveyed in and below the project such that adverse impacts to them can be avoided.	This issue is procedural in nature and is concerned with the adequacy of surveys. Adequate surveys commensurate with the potential of this project to impact the resource of concern will be performed. Significant Issues 1 and 24 identify a concern for the impact of the project on various aquatic species and this issue will be addressed in the analysis. Meanwhile, rather than amass needless detail, this particular issue regarding the adequacy of surveys has been deemed non-significant.
Archaeological/Natural Heritage Resources		
(1)	Concern that all historic and archaeological sites be adequately surveyed and considered prior to any proposed decision on this project.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Cumulative Effects		
(1)	Other past and future public land cuts in the area must be fully addressed and their impacts considered. There must be a full analysis of other past,	Cumulative impacts will be analyzed as required by law. Rather than amass needless detail, this issue has been deemed non-significant. Furthermore,

	present, and reasonably foreseeable USFS projects in the area.	the scope of actions to be included in the cumulative impact analysis is defined by temporal and spatial impacts of the proposed action.
(2)	What information is there on the impacts (especially cumulative impacts) from road and forest fragmentation on wildlife, water quality, soils, and recreation?	
(3)	We have further concerns that past EAs from this District have not given proper consideration to cumulative impacts. Many of them have had a near total lack of cumulative impacts/effects analysis.	Not specifically addressed.
Ecological		
(1)	Concern about the need to maintain and enhance natural and native forest types and trees species in this project area.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	Concern that early successional habitat is being favored in this project and in the District in general.	Not specifically addressed.
Economics		
(1)	Concern about the economics of the proposed project, and that the final decision fully identify and consider not just the economics of the timber harvest but also the economics of recreational impacts, wildlife impacts, and water quality impacts.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	We expect you to fully explore the economic implications of this logging proposal and to use fair and fully supportable numbers for what the proposal's economic impacts will be to recreational users. You must make sure that the benefits outweigh the costs, and you must be able to document that analysis in the draft EA.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	Concern that you will abide by the legal requirements to maximize economic benefits.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(4)	According to an article titled "Gypsy Moth on the Move Again" by Andy Roberts, VA Forest Landowner Update Vol.14, No.4, published by the Virginia Tech Department of Entomology, "The unusually wet summer this year should be favorable for the fungus, so it is possible that some populations in 2001 will be lower than originally expected due to mortality caused by this disease." Is the costly logging on these 179 acres worth it if gypsy moth populations are	Not specifically addressed.

	likely to fall again following the wet summer? Please analyze the costs of this project compared to the benefits of natural gypsy moth mortality.	
(5)	If the USFS intends to use the existing data as a basis for the economic analysis – a significant issue in a helicopter cut – the economics could not possibly be accurate.	Not specifically addressed.
Environmental Analyses/Documentation		
(1)	Concern that any BE be prepared with site-specific data and information, not just with generic modeling or consideration of broad habitat types, and that the BE be fully completed before publication of the draft EA and included for public review.	This issue is procedural in nature. Law requires the completion of a BE for this project. It is the policy of this District to complete BEs prior to release of the EA for public comment. There is no law or policy requiring the inclusion of the BE in the EA. The BE will be available for review to any member of the public upon request. Since this issue is concerned with procedure and does not relate a concern for an environmental impact, it has been deemed non-significant.
(2)	Please include the BE in the EA in order to provide this important information to the public for their consideration.	Not specifically addressed.
(3)	Please include better maps in future documentation showing road numbers, trails, horse trails, etc. The maps included with scoping lacked this important information, making it difficult for the concerned public to visit the project area and locate harvest units.	Not specifically addressed.
Forest Health		
(1)	Our first and fundamental concern is that personnel at this District Office could not readily produce data on moth infestation on the tracts in this proposal. Our observations of the ground-based logging tract revealed no signs of current gypsy moth activity whatsoever and little, if any, on the cable logging tracts.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	The fungus that attacks gypsy moth has thrived in this past summer's cool, damp weather. As such, "it is possible that some populations in 2001 will be lower than originally expected due to mortality caused by the [fungal] disease. What impact does the USFS anticipate from the fungal disease?"	Not specifically addressed. Classified as a significant issue to be addressed in the EA.

	(3)	In considering the No Action alternative, please include positive impacts which could potentially accrue from gypsy moth invasion of these areas.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
	(4)	The predominance of poplars on many plots of course begs the question, what are the gypsy moths to eat here?	Not specifically addressed.
Mitigation			
	(1)	Provide site-specific mitigation measures to protect water quality on the sites adjacent to surface waters, particularly since most adjacent banks are steeply sloped.	Not specifically addressed.
Old Growth			
	(1)	We are concerned that Russ's old-growth survey should have used random sampling rather than self-chosen plots. His method makes it too easy to select out stands of older trees. To our observation, parts of units 59 and 60 could meet old growth guidelines.	This issue is procedural in nature and is concerned with the adequacy of surveys. Adequate surveys have been performed complying with the pertinent Regional Guidance and the data has been supplied to the commenter. Meanwhile, significant issue 13, which identifies a concern regarding impacts to old growth, will be addressed in the EA. The status of stands 59 and 60 as old growth and any reasons for including or not including them as old growth will be discussed. Rather than amass needless detail, this issue is deemed non-significant.
	(2)	The selective survey methodology failed to accurately document old growth in these tracts. Our observations identified at least one potential old growth plot on the eastern slope of tract number 59. It appears that these tracts are not accurately documented in the field survey. Moreover, the filed notes indicate where old growth was considered the sites failed to meet criteria number 4 but no explanation was provided. Accurate evaluation of the plot on the eastern slope of tract 59 must be performed. The record should include the information from the CISC database for these tracts. For example, are the sites identified in CISC as old growth or future old growth, suitable or unsuitable for timber production? You will need to fully examine alternatives that protect old growth and potential old growth.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.

Recreation/Tourism		
(1)	Concern that timber harvesting is given preference over recreational uses. Concern that impact to recreation from active logging operations are downplayed and considered inconsequential merely because they are temporary. District needs verifiable information that recreational users are not adversely impacted by logging operations before such impacts are dismissed.	Any analysis should not provide value-based judgments. The McJennings analysis is no different and will strive to maintain objectivity by describing or displaying effects in an absolute or objective form. Value judgments or preferences are made at the time of Decision and are the purview of the Deciding Official. Thus this issue pertains primarily to the DN/FONSI and is beyond the scope of the analysis. The Deciding Official will consider the impacts, both positive and negative, to all uses before reaching a Decision. The longevity of impacts will certainly be considered in reaching that decision.
(2)	The helicopter landing site and road must be clearly identified, and the impacts to recreation and visual quality from reopening the foot trail must be evaluated as it winds through tracts 27, 33, and 34.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(3)	Concern that the impacts to recreation be fully documented and supported by site-specific data and information.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(4)	Please analyze impacts to the Horse Trail running through the project area.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Regeneration		
(1)	Specifically in regards to tracts 27, 33, and 34, there is considerable secondary growth occurring in the understory that could serve as regenerative growth for the forest if the gypsy moths, in fact, do cause widespread mortality. The logging activity proposed for these sites would kill the regeneration currently underway. The EA must include an accurate evaluation of regeneration that would occur naturally on these sites were they left undisturbed at this time.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
Roads		
(1)	Concern that impacts from roads and road construction have not been adequately identified and assessed in this area or in the District at large.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	The upper-slope or eastern-most road shown dissecting tracts 27 and 33 is shown on the district map as a horse trail and is in fact a foot trail at this time. The scoping notice indicates	Not specifically addressed.

	2500 feet of road would be reopened to access 58, 27, and 33, but it is not clear from the notice exactly where this will be.	
Silviculture		
(1)	The methodology used to collect data on tree species distribution is inherently subjective. Our observations of tree species distribution suggest that many of these tracts support significant populations of poplar. The subjective survey methodology has produced distorted species distribution data and the forest type classifications likely are misrepresented.	This issue is procedural in nature and is concerned about the adequacy of surveys. Adequate surveys have been performed and the data has been supplied to the commenter. Overstory plots were placed in a manner to reflect all physiographic aspects (i.e. eastern/western aspect, cove/upland, high/low elevation) and vegetation types, rather than a simple systematic sample which often overlooks such nuances. Additional comments made by this commenter indicate that cove portions of the stands dominated by yellow poplar were visited. A thorough survey of the area reveals that several different vegetative types are present in the stands and that oak species do indeed dominate in all areas except the coves.
(2)	Concern about data and information showing that the tree type favored on each site is the type that existed on each site naturally and historically.	Not specifically addressed.
Soils		
(1)	Concern that soils in the project area be identified in a site-specific manner with field data showing where each soil type is, what its condition is, and how these proposed activities will impact it.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
(2)	Concern that site-specific data and information on soils, past soil loss, current sediment load in the streams, and realistic estimations of future sedimentation of streams in and below the project area be collected and use for any decision.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.
TES/PETS/MIS		
(1)	Unit 59 should be dropped from this proposal because it is adjacent to the known range of the Peaks of Otter Salamander. Habitat for this species is available in the proposed harvest unit. In the interest of best preserving genetic diversity and population stability for this species, it is better to err on the side of caution and not log adjacent to the known distribution of POS.	Not specifically addressed. Classified as a significant issue to be addressed in the EA.

(2)	<p>Tracts 58, 59, and 60 are close to the conservation area for the Peaks of Otter Salamander, and tract 59 is immediately adjacent to the area. Actual on the ground site investigations for the salamander must be performed at a reasonable time of the year. It is well known that the USFS influenced the boundary determination for the conservation areas to exclude potentially valuable timber resources from the areas. However, that does not pardon the USFS from conducting field surveys for the salamander at appropriate times of the year.</p>	<p>Not specifically addressed. Classified as a significant issue to be addressed in the EA.</p>
(3)	<p>Concern about adequate site-specific data and information on types and populations of PETS species in the project area and in the District in general such that NFMA viability requirements can be shown and met. Concern that information and decisions about impacts to PETS species be based on site-specific data and information in the project area and on the District as a whole.</p>	<p>Not specifically addressed. Classified as a significant issue to be addressed in the EA.</p>
(4)	<p>Concern that all potentially impacted PETS species have their populations (both project and district wide) determined through actual surveys and that such data be made available in the EA and BE.</p>	<p>Not specifically addressed. Classified as a significant issue to be addressed in the EA.</p>
(5)	<p>Please be sure to survey for PETS species during the growing season, preferably in the springtime.</p>	<p>Not specifically addressed. Classified as a significant issue to be addressed in the EA.</p>
(6)	<p>The rocky outcrops in units 59 and 60 need to be surveyed for rare plants species.</p>	<p>Not specifically addressed. Classified as a significant issue to be addressed in the EA.</p>
(7)	<p>Concern about adequate site-specific data and information on types and populations of MIS in the project area and in the District in general such that NFMA viability requirements can be shown and met.</p>	<p>The monitoring of MIS and other species is performed at a Forest level rather than this site-specific scale. However, the results of this population monitoring as summarized in Appendix G of the Detailed Monitoring and Evaluation Report for Fiscal Years 1997 and 1998 for the GWJNF will be considered. Rather than amass needless detail, this issue has been deemed non-significant.</p>
Timber Harvesting		
(1)	<p>Concern that timber harvesting methods not be limited to even-aged management methods only, that selective, uneven-aged methods be</p>	<p>The consideration of uneven-aged management is a NFMA requirement. Since this is required by law and it will be done, rather than amass</p>

	fully considered.	needless detail, this issue is deemed nonsignificant. Regarding “selective” management, individual tree selection is neither appropriate for the timber types involved due to shade intolerance, nor is this harvest method supported by the JNF LRMP (Forest Plan, page IV- 168). To utilize single tree selection harvest methods would be a violation of the Forest Plan.
(2)	Concern that cut-to-length equipment be used for this logging. USFS and other studies show that CTL can accomplish the same work with much less impact to soils and nearby waterways.	In the context of “cut to length” versus “whole tree” harvesting, whole tree harvesting has not been utilized on this District and is not expected to be used anytime in the future. Insofar as helicopter logging is concerned, trees are bucked in the woods to optimize load capacity and minimize the number of turns. Since these logs are not dragged on the ground but lifted into the air, potential to damage the soil and water resource is negligible. Otherwise, we restrict skidding to a 2 log length maximum. Such a restriction reduces the number of turns that would need to be made in skidding were a single log length to be skidded, thus reducing impacts to the soil and water resource. Significant issues 18, 2, and 24 all pertain to the soil and water resources and these impacts will be addressed in the EA. Rather than amass needless detail, this issue has been deemed non-significant.
(3)	Concern that use of even-aged methods comply with NFMA requirements regarding optimal methods analysis.	This issue pertains to the DN/FONSI. A finding of compliance with “other laws” in the DN/FONSI is required by law. Such a finding will be made in the DN/FONSI. Meanwhile, rather than amass needless detail, this issue is deemed non-significant.
(4)	The majority of tall straight trees in this sale appear to be Tulip trees. Is this sale really about gypsy moth or is it about harvesting merchantable tulip trees? The scoping notice states that existing species composition is primarily oak, from our observations, this was not necessarily the case.	Comments made by this commenter indicate that cove portions of the stands dominated by yellow poplar were visited. A thorough survey of the area reveals that several different vegetative types are present in the stands and that oak species do indeed dominate in all areas except the coves.
(5)	Is any logging occurring adjacent to previously harvested units in the 0-10 age class? There appears to have been significant previous harvesting around units 27, 33, and 34. VFW would appreciate inclusion of a map	Not specifically addressed. Classified as a significant issue to be addressed in the EA.

	demarcating past logging units.	
(6)	Concern that timber harvesting methods will be used which have the least amount of impact to soils, water quality, ground water, wildlife, and plant diversity.	Not specifically addressed.

Table 5M

VFW/AV's Comments on the MJP EA

Category	Comment	USFS Response
Cumulative Effects		
(1)	<p>The EA fails to consider reasonably foreseeable indirect and cumulative effects because the information in each section is inadequate to determine the validity of the conclusions made in regard to cumulative effects. No where else in the EA, other than the economic section, is any specific information disclose about anticipated and proposed timber sales or any other projects being considered in the assessment of cumulative effects. An additional factor that has not been addressed in cumulative effects analysis is the hemlock adelgid infestations and the resulting certain death of the cove hemlocks. The EA fails to include the loss of these forests in the assessment and analysis of the creation of early age classes and forest regeneration in the near future.</p>	<p>Cumulative effects are disclosed for every resource. The analysis of cumulative effects can be found throughout Chapter 3 of the EA (pages 18 through 107). In all cases, all types of activities that contribute to cumulative effects were considered. It is important to note that the analysis area for any given resource may differ both in time and space depending upon the potential for the proposed action to impact that resource (EA, pg. 18). The EA defines this analysis area in the section titled "Scope" under each resource area. The specific activities and quantified data are presented within many resource areas other than economics. As to the hemlock woolly adelgid (HWA), the EA states that HWA are present in stands 58, 59, and 60 (EA, pg. 79). On page 81, the EA states that this project would have no effect on HWA. Since the project would have no effect on HWA, there is no potential for cumulative effects of this project combined with any other project on the HWA.</p>
(2)	<p>The EA lacks adequate indirect and cumulative effects analysis required by NEPA. The failure to include cumulative impacts analysis in assessment documents appears to be a systematic problem within the USFS.</p>	<p>Not addressed specifically.</p>
Ecological		
(1)	<p>The USFS is proposing this project without determining the minimum numbers of reproductive individuals for each vertebrate species to make habitat distribution determinations and other information on the effects of logging, road building and related activities, to ensure that even-aged management is consistent with protecting the soil, watersheds, fish, and wildlife. The USFS is proposing this project without knowing the location and number of individuals of species that would enable determining whether the habitat for each vertebrate</p>	<p>Page 57 of the EA states, "The existing conditions regarding habitat and populations of MIS species are adapted from the LRMP: Detailed Monitoring and Evaluation Report, Fiscal Years 1999 and 2000, Appendix G." Appendix G also contains statements regarding minimum viable populations for MIS and these were considered in the analysis of impacts to MIS in this EA. It is not necessary to know the location and number of individual species in order to determine the adequacy of habitat components in a</p>

	species is “well-distributed” so as to allow interaction.	given area. Various Standards and Guidelines in the Forest Plan incorporate research findings and professional experience regarding the appropriate mix of habitat types needed by various animals. The determination of minimum population and “well distributed” habitats is required at the Forest Plan level and is verified/validated through Forest Plan Monitoring (Appendix G), not at the site-specific level. Thus, we manage habitat within the Standards and Guidelines of the Forest Plan to ensure that the “stage is set” for healthy populations of animals.
Economics		
(1)	The economics are flawed because the EA describes the units proposed for harvest as predominated by poplar in the coves and oak in the upland portions. The field data, however, has characterized the units as oak forests and, in turn, the value of the timber harvest is based on oak species. How would the predicted value of the harvest change if the volume of poplar was accurately reflected in the harvest figures? How would the economics change if the poplar, which is not at risk from gypsy moth defoliation, was eliminated from the harvest altogether as proposed in the discussion of alternatives?	Field survey plots were distributed throughout the stands in a manner to reflect the variable species composition within each stand. The map of plot locations found in the project file indicates that plots were placed in coves and uplands as well as on various aspects and elevations within each stand. A review of the field data itself indicates that in some stands all plots contained a significant amount of oak (stand 34), some stands had a little more poplar (3 out of 10 plots, stands 27 and 33), and other stands had even more poplar (4 out of 8, stand 58). The field surveys reflect the species composition of the stands and the economic analysis based upon those surveys is adequate.
(2)	The EA avoids any meaningful discussion of the economic impacts to recreation. This is a blatant failure to comply with the agency’s NEPA duties. There is only superficial discussion of the economics of fishing, hunting, hiking, wildflower viewing, bird watching, horseback riding, or other recreational uses of these areas while the project is active and no discussion of the effects over the long-term particularly in the areas surrounding units 27, 33, and 34. There is no identification or analysis of any types of recreation in the project area or its potential.	The economic impacts related to recreation are addressed on pages 104 and 105 of the EA. On page 105, the EA concludes “While it is unlikely that these limited adverse impacts, which only pertain to very short segments of the affected trails or the Parkway, would result in reduced recreation participation, it is possible that minor reductions in recreation related dollars could result from the activities proposed for stands 27, 33, and 60 under Alternative 2. As stated previously, the remaining proposals under Alternative 2 and all proposals under the remaining alternatives would have little or no potential to result in a reduction in tourism in the area and consequent reductions in economic viability of the tourism or

		recreation related industry in this area.” As to the last statement of this issue, the commenter is self contradictory when she first admits that there are “superficial discussions,” but later says there is no identification or analysis of any types of recreation. The analysis is adequate to determine the significance/non-significance of the preferred alternative on the recreation and visual resources.
(3)	According to an article titled “Gypsy Moth on the Move Again” by Andy Roberts, VA Forest Landowner Update Vol.14, No.4, published by the Virginia Tech Department of Entomology, “The unusually wet summer this year should be favorable for the fungus, so it is possible that some populations in 2001 will be lower than originally expected due to mortality caused by this disease.” Is the costly logging on these 179 acres worth it if gypsy moth populations are likely to fall again following the wet summer? Please analyze the costs of this project compared to the benefits of natural gypsy moth mortality.	The USFS did not respond directly to VFW’s comment because it was filed after the comment period closed.
Environmental Analyses/Documentation		
(1)	We are concerned that the EAs issued by your office are exceptionally thick and heavy with information. As you know, a large EA is a strong indication that a project will have significant impacts such that an EIS must be performed.	It is curious that the commenter decries the EA due to it being “exceptionally thick and heavy with information,” given the previous 6 pages of her comment letter reflected in the previous 7 issues which accuse the USFS of not providing enough information or including enough analysis. This statement seems contradictory to the rest of her comments and appears only as an argument to further postpone or end the project. A similar argument was raised during litigation of three timber sales on this District. Judge Ervin’s 1999 opinion responding to this issues states “SEDG also argued that the very length of the EAs prepared for these three timber projects proves that their environmental impacts will be significant; SEDG essentially insists that if there was enough information to write a 100 page EA, then surely an EIS is warranted. We find this argument to be meritless. As argued

		persuasively by the USFS, we find the EAs were so long because they were prepared in strict accordance with the lengthy applicable regulations... Given these statutory requirements, it would have been hard for the USFS to be concise while still giving proper consideration to all required factors and providing detailed answers to all required questions... Although the USFS's EAs exceeded the requisite target length, we find that this did not undermine the strength of the agency's determination that the environmental impacts of the timber sales would not be so significant as to require an EIS."
	(2) VFW requested that the USFS please include the BE in the EA in order to provide this important information to the public for their consideration.	The USFS did not respond directly to VFW's comment because it was filed after the comment period closed.
Forest Health		
	(1) In considering the No Action alternative, please include positive impacts which could potentially accrue from gypsy moth invasion of these areas. These issues do not appear to have been addressed. Please do so in the DN and Revised EA.	The USFS did not respond directly to VFW's comment because it was filed after the comment period closed.
Mitigation		
	(1) You lack information on the effectiveness of alleged mitigation measures. Nowhere does the EA or BE demonstrate that the proposed mitigation will, in fact, work.	Not specifically addressed.
Old Growth		
	(1) We are concerned that Russ's old-growth survey should have used random sampling rather than self-chosen plots. His method makes it too easy to select out stands of older trees. To our observation, parts of units 59 and 60 could meet old growth guidelines.	The USFS did not respond directly to VFW's comment because it was filed after the comment period closed.
	(2) The LRMP for the GWNF informs that the Plan is inadequate to address old growth issues until the regional guidance, unavailable at the time of LRMP revision, is adopted. The LRMP further instructs that the Plan may require revision to incorporate regional old growth policy. The regional guidance adopted in 1997 and the LRMP has yet to be revised to	The McJennings Project is located on the JNF. Page 1 of the EA states "All proposed actions are located on MA 7 lands. The JNF LRMP as Amended has designated these lands to be managed for multi-resource objectives with an emphasis on timber production and wildlife habitat." The GWNF Plan has no bearing on this activity. However, we would also

	<p>address the policies set forth in the guidance. As such, any projects impacting old growth and potential old growth on the GWNF cannot go forward without violating the LRMP and NEPA. The proposed project will impact potential old growth proposed for harvest and old growth stands reportedly removed from the project scope and cannot move forward at this time.</p>	<p>point out that significant issue 11 expressed a concern that the project may adversely impact old growth or potential old growth, a rare and invaluable piece of forest heritage, especially in stands 58, 59, and 60. The analysis on page 44 in the EA states “Since no stand proposed for harvesting met the Region 8 Old Growth Criteria, no acres of old growth forest would be affected under this alternative” (Note that since Alternatives 2 and 3 are quite similar with respect to vegetation impacts, the analysis of Alternative 2 was referenced during the disclosure of vegetation impacts under Alternative 3).</p>
<p>Recreation/Tourism</p>		
<p>(1)</p>	<p>The EA identifies effects that will result from the sale upon significant recreational and cultural resources. The impacts to these resources will be significant, particularly to the interpretive and recreational experience currently available on the horse trail. These impacts demand analysis under a full EIS.</p>	<p>The determination of significant impact is the sole discretion of the Deciding Official based on the analysis of impacts contained within the EA. That determination has yet to be made and would be documented in a FONSI if that conclusion is reached. The EA has disclosed the impact to the recreation experience on the horse trail on pages 95 and 96: “The impacts to the H/T would be somewhat more severe. The portion of the H/T from Welch Hollow Road to McFalls Creek Road, approximately 5 miles, would be closed during operation of the sale, primarily during harvesting in stands 27, 33, and 34 of compartment 3026. Again, this impact would be short-term in nature; approximately 6 to 8 months once harvesting operations begin. Once re-opened, impacts to the horse trail would be primarily of a visual nature. As previously discussed in the Visual Quality section of this document, the relatively lighter harvesting proposed for stands 27 and 33 would comply with the VQO for these stands. Visual impacts are not expected to severely adversely impact the recreation experience on the H/T. Elsewhere on the H/T in this study area, primarily as the trail traverses Chestnut Mountain, impacts would be limited to noise impacts. These impacts would be very similar to</p>

		those described for the noise impacts on the A/T above given that the distances and positions would be comparable.”
(2)	We feel that the impacts to views and the recreational experience from the Blue Ridge Parkway, the Falling Water/Flat Top Overlook, the Horse Trail, and the Falling Water/Flat Top/Cascades National Recreation Trail are unacceptable. The USFS must either drop logging units which will impact these resources or create more effective mitigation measures.	The USFS did not respond directly to VFW’s comment because it was filed after the comment period closed.
(3)	The area will become a less desirable recreation attraction following these sales, and the EA fails to document these impacts.	Not addressed specifically.
Regeneration		
(1)	On page 57 of the EA the concern in regard to the concentration of regeneration sites in the vicinity is addressed citing a standard in the Forest Plan of no more than one third of each square mile being within the 1-20 year age class. The EA further identifies 178 acres currently in the 0-20 ages class and concludes the area is currently meeting the standard. In addition to the absence of any description of the one square mile radius, what is missing from this statement is any determination of compliance with the standard after adding the acreage in the proposed project to the analysis. When the total 179 acres proposed in this project are added to the figure, the total acreage exceeds and violates the standard.	Significant issue 5 expressed a concern that the proposed harvesting would result in a concentration of regenerated stands in this area as there appears to have been significant previous harvesting around stands 27, 33, and 34. As the commenter has stated, the existing condition regarding this issue is presented on page 57 of the EA. On page 64 of the EA, the proposed action is added to this existing condition, stating “The square mile area in and around stands 27, 33, and 34 would contain approximately 242 acres in the 0-20 age class, about 31 acres more than is desired. However, after one year this concentration of regenerated areas would drop to approximately 192 acres because two stands harvested in 1982 would become older than 20 years. Thus, after one year, the area would again meet the DFC identified in the Forest Plan.”
TES/PETS/MIS		
(1)	Unit 59 should be dropped from this proposal because it is adjacent to the known range of the Peaks of Otter Salamander. Habitat for this species is available in the proposed harvest unit. In the interest of best preserving genetic diversity and population stability for this species, it is better to err on the side of caution and not log adjacent to the known distribution of POS. VFW resubmits this comment to the USFS and again requests that	The USFS did not respond directly to VFW’s comment because it was filed after the comment period closed.

	unit 59 be withdrawn.	
(2)	Please be sure to survey for PETS species during the growing season, preferably in the springtime. Since this information was not included in the EA, Russ, could you please send me a copy at the above address?	The USFS did not respond directly to VFW's comment because it was filed after the comment period closed.
(3)	The rocky outcrops in units 59 and 60 need to be surveyed for rare plants species. This information must be included in the EA – please send!	The USFS did not respond directly to VFW's comment because it was filed after the comment period closed.
Timber Harvesting		
(1)	The USFS is violating 16 U.S.C. 1604(g)(3)(F)(v) and 36 C.F.R. 219.27©(6) in approving and carrying out even-aged management without ensuring that it is “consistent with the protection of soil, watersheds, fish, wildlife, recreation, aesthetic resources, and the regeneration of the timber resources. The USFS is engaging in even-aged management in this proposal and throughout the NF in VA without sufficient information and analyses, including, but not limited to, PETS population inventory information, MIS population trend data and quantitative data, and determination of numbers of reproductive individuals or vertebrate species.	Significant issues 1, 2, 12, 13, 14, 16, 19, 20, 21, and 22 identify concerns related to protection of soil, watersheds, fish, wildlife, recreation, and aesthetic resources, and the regeneration of timber resources. The analyses presented in Chapter 3 of the EA for all of the various resources respond to these concerns and display the expected impact of the preferred alternative on these resources. Mitigation measures intended to ameliorate these impacts are displayed on pages 7 through 14 of the EA. In each case, the preferred alternative has been designed and mitigated to lessen the potential impact to these resources and the conclusions in the analysis pertaining to the preferred alternative are that the impacts would not be severe. Thus, we believe that the preferred alternative is consistent with the protection of soil, watersheds, fish, wildlife, recreation, and aesthetic resources, and the regeneration of timber resources. As to the PETS inventory information, the BE cites surveys performed in the areas proposed for disturbance. The project file contains these surveys. Please refer to the response regarding minimum viable populations of vertebrate species.
(2)	The majority of tall straight trees in this sale appear to be Tulip trees. Is this sale really about gypsy moth or is it about harvesting merchantable tulip trees? The scoping notice states that existing species composition is primarily oak, from our observations, this was not necessarily the case.	The USFS did not respond directly to VFW's comment because it was filed after the comment period closed.
(3)	Is any logging occurring adjacent to previously harvested units in the 0-10 age class? There appears to have been	The USFS did not respond directly to VFW's comment because it was filed after the comment period closed.

	significant previous harvesting around units 27, 33, and 34. VAFW would appreciate inclusion of a map demarcating past logging units. The question does not appear to have been answered, and these maps do not appear to have been included. Russ, would you be able to send this information to me at the above address?	
Water Resources		
(1)	You lack information on the sediment carrying capacity or TMDL for the waters receiving sediment from timber harvesting and road building.	Not specifically addressed.

Table 6M

VFW/AV's Administrative Appeal of the MJP DN/FONSI

Category	Appeal Issue	ADO Response
Alternatives		
(1)	<p>The District is in a hurry to implement the project due to gypsy moths, however, they do not dine on poplar, and yet, the poplar is included in the harvest. The District should have included an alternative that proposes harvest of impacted tree species only. In some stands, retaining poplars would mitigate the visual impacts from this project. The “no action” alternative needs to be given fair treatment. It is apparent from the language of the Draft EA the “no action” alternative is nothing more than legalistic window dressing. In fact, using the language included in the EA to discuss the impacts of a “no action” alternative, the USFS will never choose this alternative. It is clear that some alternatives that should have been given full consideration are harvest of only those tree species susceptible to gypsy moth, a plan for regeneration through uneven-aged mgt., and an alternative that used only CTL equipment. The appellants object to the lack of a reasonable range of alternatives.</p>	<p>Limiting regeneration harvests to those species host to the gypsy moth was not an issue. The EA (p. 2) discloses that regeneration of yellow poplar, among other species, is a DFC disclosed in the Forest Plan. The EA (p. 6) discloses that under the no-action alternative, no regeneration or site preparation activities would occur as described under the proposed action. The disclosure of effects of the no-action alternative assumes the proposal does not occur, and that existing trends continue for the near-term. Obviously the no-action does not preclude a different proposal tomorrow, but it would be nonsense to attempt to evaluate the effects of a proposal without considering what would happen if the project, or one similar to it, was not done. The EA’s use of the no-action alternative is consistent with the regulations implementing the NEPA. The EA (pp. 125-126, Appendix A, Issue Development) discloses why the use of uneven-aged harvest methods is a non-significant issue. The EA (p. 125) discloses why cut-to-length logging is a non-significant issue. Alternatives are not developed in response to non-significant issues. I find that the range of alternatives is adequate.</p>
(2)	<p>The appellants object to the decision to implement a Modified Alternative 3.</p>	<p>Not specifically addressed.</p>
Ecological		
(1)	<p>The USFS is proposing this project without determining the “minimum number of reproductive individuals” for each vertebrate species, thus violating 36 CFR 219.19. The USFS has established, and is implementing, the LRMP and is proposing this project without knowing the location and number of individuals of the species that would enable determining whether the habitat for each vertebrate species is “well-distributed” so as to</p>	<p>You raised this issue during the public comment period for the proposed project (EA, Appendix A Addendum, Response to Comments, p. 7), and it was addressed. I find that the EA adequately considers maintenance of viable populations.</p>

	allow interaction.	
(2)	The appellants object to the failure to maintain viable populations of vertebrate species.	Not specifically addressed.
Environmental Analyses/Documentation		
(1)	EAs issued by this office are exceptionally thick and heavy with information. A large EA is a strong indication that a project will have significant impacts such that an EIS must be performed.	The fact that an EA is lengthy does not mean that the effects are significant or that an EIS is required. I find that the EA adequately supports the FONSI and that an EIS is not required.
(2)	The appellants object to this timber sale being made without a full EIS being prepared for this sale and the numerous other sales like it that have been done and which are still in the planning stages in the GWJNF.	Not specifically addressed.
Regeneration		
(1)	The Plan requires harvest units to be distributed such that no more than one-third of each square mile is in the 0-20 age class. The Notice states this project will violate that standard for a year until the nearby sites harvested in 1982 catch up to the next age class. Failure to implement the standards and guidelines in accordance with the Forest Plan violates the NFMA and as such the decision cannot be implemented.	The Forest Plan direction in question is under the heading of “General Standards and Guidelines” for Wildlife (LRMP, p. IV-67). While there is a difference between “standards” and “guidelines,” these differences were not defined in the 36 CFR 219 planning regulations (1982). However, it is commonly accepted that “standards” represent direction that must be met, while “guidelines” provide “guidance” on how to meet the desired conditions. As such, projects may not meet “exactly” the wording of the guidelines as long as the intent of the guideline is being met. In those situations, the decision document needs to explain how the intent of the guideline will still be followed. Since the Jefferson Forest Plan did not identify which plan direction is a “standard” and which is a “guideline,” one has to look closely at the wording to determine if it is “guidance” or a “standard.” Guidelines will have wording such as “if needed,” “where feasible,” “should be,” etc. In looking at the direction in question, it states, “to ensure diversity within each Analysis Area, distribute harvest units so that no more than one-third of each square mile is in the 0-20 age class.” This wording does not lead to the interpretation that it is a “guide,” and therefore, it must be treated as a standard. The EA recognizes that going beyond the

		<p>acreage limit would not be in compliance with the Plan. Under Alternative 1 on page 60, it is stated that, “[n]o additional acres of 0-10 year age class would be created. The area would remain in compliance with the Forest Plan regarding the number of acres in the 0-20 year age class...” (Since Alternative 1 is the No-Action Alternative, the only reason to have this statement is if some of the other alternatives are not in compliance, which is the case for Alternative 2, the selected alternative). On page 64, the EA documents how Alternative 2 (the selected alternative) will exceed the number of acres in the 0-20 year age class by 31 acres. The DN on page 11 states that, “in just one year, the area will be back in compliance with the Forest Plan...” and that meeting the other DFCs “justify the harvest of these units despite a brief violation of a single Forest Plan Standard and Guide.” Therefore, in order to be in compliance with the Forest Plan, the implementation of a portion of the selected alternative (31 acres or more) will need to be delayed for one year until the stands harvested in 1982 become older than 20 years and the direction to have no more than one-third of each square mile in the 0-20 age class will continue to be met. I find that, as proposed, the selected alternative is not in compliance with the Jefferson’s Forest Plan.</p>
TES/PETS/MIS		
	<p>(1) Sites for logging in the McJennings sale are within the range of the POS. In fact, a POS was found during field surveys only 100 meters from the edge of a stand. The USFS has failed to address the HCA and the guidelines for conducting timber harvests within the probable range of the POS. The EA for this project fails to recognize the CA and HCA for the POS.</p>	<p>The units selected for the proposed actions are outside of the area identified as the proposed range of the POS (HCA for the POS, p.29) and outside of the primary and secondary conservation range (HCA, p.11). Units 58 and 59 are the closest to the proposed range boundary of the POS and the POS found during surveys conducted in accordance with the protocol stated in the HCA was found about 100 meters outside of unit boundary 59 (BE, p.5 and EA, p.76). The EA references the HCA in its discussion of the home range size of the POS (EA, p.76) and states that the known location of POS will be avoided (EA, p.76). I find that the</p>

		Forest considered the habitat needs of the POS
(2)	The fact that this sale lies within the probable range of the POS, and a POS was found within 100 meters of a stand, makes this project significant.	The FONSI is supported by the EA for which a BE was prepared. Just because the project is within the range of the POS does not make it significant.
(3)	The BE and EA show that the Forest has no overall population data for the vast majority of MIS and PETS species. Allowing impacts to habitats and individuals of MIS and PETS species without knowing the overall forest populations is not NFMA compliance. The District has not performed site-specific surveys for or obtained current population or inventory data on all the MIS species in the project area.	You raised this issue during the public comment period for the proposed project (EA, Appendix A Addendum, Response to comments, p. 7). Pages 57-58 of the EA disclose population data for the MIS species selected for analysis. In response to the issue of site-specific surveys for MIS, the Forest responded “[t]he determination of minimum population and ‘well-distributed’ habitats is required at the Forest Plan level and is verified/validated through Forest Plan Monitoring (Detailed Monitoring and Evaluation Report, Fiscal Years 1999 and 2000, appendix G), not at the site-specific level.” (Appendix A Addendum, Response to comments, p. 7). The criteria for selection of MIS are determined by NFMA Regulations [36 CFR 219.19(a)(1)]. Regulations require that effects of proposed actions on MIS be analyzed “[o]n the basis of available scientific information,” that “[w]here appropriate, measures to mitigate adverse effects shall be prescribed,” and “planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends” [36 CFR 219.9(a)(1) and (2)]. This information is summarized in the Detailed Monitoring and Evaluation Report, Fiscal Years 1999 and 2000. I find that the Forest has population data for MIS.
(4)	The District has failed to address the requirements for the conservation of the POS.	Not specifically addressed.
(5)	The USFS has not taken the “hard look” at the impacts to the POS, as mandated by NEPA. It is absolutely essential that adequate data on species location and information on other possible ramifications of the presence of the POS be collected and considered by the USFS.	Not specifically addressed.

(6)	Although the District notes looking for the POS, there is no description of exactly how they looked for it. Did they look for it in the proper season and after rains had made the ground properly moist? The District references use of a protocol but does not identify the protocol for public review. The record does not reveal the necessary details such that the USFS's "expertise" can be reasonably relied upon here.	Not specifically addressed.
(7)	This action may result in the irreparable and irreversible destruction of ecologically critical areas for the POS. That clear potential, plus the high degree of uncertainty about POS distribution and presence, indicate that this is a federal action requiring an EIS.	Not specifically addressed.
(8)	The BE and EA show that the Forest has no overall population data for the vast majority of PETS species. Allowing impacts to habitats and individuals of PETS species without knowing the overall forest populations is not NFMA compliance.	You raised this issue during the public comment period for the proposed project (EA, Appendix A Addendum, Response to comments, p.7). For PETS species, the Forest responded "the BE cites surveys performed in the areas proposed for disturbance. The project file contains these surveys" (Appendix A Addendum, Response to Comments, p. 8). I find that the Forest has population data for PETS species.
(9)	The appellants object to the lack of forest-wide and project level surveys and data for PETS species.	Not specifically addressed.
(10)	This project EA relies on the Detailed Monitoring and Evaluation Report for the GWJNF to assess impacts of MIS. Conclusions about the impacts of the project on MIS are drawn, yet there is no actual inventory or population data on many of the MIS species.	Not specifically addressed.
(11)	The appellants object to the lack of forest-wide and project level surveys and data MIS.	Not specifically addressed.

APPENDIX N
CASE ATTRIBUTES

Table 1N

Case Attributes

Attribute	Case											
	RLTS	HTS	ASTS	AGP	TMP	WMP	GMPRS	BBFS	TBSS	CTS	CRTS	MJP
Adjacent Landownership	•										•	•
Aerial Spraying							•					
CE			•					•	•	•		
EA	•	•		•	•	•	•	•	•	•	•	
Even-aged Harvesting	•	•		•	•	•				•	•	•
Ground Logging	•	•	•	•	•	•		•	•	•	•	
Helicopter Logging												•
Old Growth		•										
Chemical Application				•			•					
Prescribed Burning									•		•	
Road Construction		•			•	•			•	•	•	•
Salvage			•						•			
TES				•								
Thinning	•			•				•	•		•	
Uneven-aged Harvesting				•					•			

APPENDIX O
CASE LENGTH TRENDS

Table 10

Case Length Trends

Activity	Case					
	RLTS	HTS	ASTS	AGP	TMP	WMP
SN Mailed	1/12/95	2/10/95	8/5/96	5/18/95	5/20/96	5/20/96
SN Comment Period Ends	2/16/95	5/30/95	8/30/96	6/28/96	10/1/96	6/21/96
EA Mailed	10/30/95	3/1/96	9/3/96 ^a	2/10/97	3/31/97	7/14/97
EA Comment Period Opens	11/2/95	3/3/96	9/6/96 ^a	2/14/97	4/3/97	7/18/97
EA Comment Period Closes	12/2/95	4/2/96	10/5/96 ^a	3/16/97	5/3/97	8/17/97
DN/FONSI Mailed	2/20/96	5/17/96	10/17/96 ^b	3/20/97	10/3/97	10/6/97
Appeal Period Opens	3/1/96	5/21/96	10/20/96	3/25/97	10/7/97	10/9/97
Appeal Period Closes	4/14/96	7/6/96	12/3/96	5/9/97	11/21/97	11/23/97
Appeal Decision	6/7/96	8/22/96	1/11/97	7/3/97	1/12/98	1/29/98
Total Time for Appeal Procedures	4 months	3 months	3 months	3 months	3 months	4 months
Total Time for Comments and Appeals Procedures	1 year, 5 months	1 year, 6 months	5 months	2 years, 1 month	1 year, 8 months	1 year, 8 months
Complaint filed in U.S. District Court	4/16/97	11/19/96	4/30/97	4/16/98		
Final Order in U.S. District Court	6/24/97	7/3/97	8/27/98	8/17/98		
Appeal to U.S. Court of Appeals	11/12/97	3/31/98	-	8/20/99		
Final Order in U.S. Court of Appeals	6/23/98	4/9/98	1/8/99	9/24/99		
Total Time for Litigation	1 year, 2 months	1 year, 5 months	1 year, 8 months	1 year, 5 months		
Total Time for Case	3 years, 5 months	3 years, 2 months	2 years, 1 month	4 years, 4 months	3 years, 4 months	3 years, 4 months

^a This project was categorically excluded, therefore there is no EA, just a 30-day Review Notice comment period.

^b Indicates the documentation of a Decision Memo, instead of a Decision Notice.

Table 20

Case Length Trends

Activity	Case					
	CRTS	GMPRS	BBFS	TBSS	CTS	MJP
SN Mailed	5/30/96	12/21/99	3/6/98	8/5/98	9/29/98	11/8/00
SN Comment Period Ends	7/5/96	1/22/00	4/3/98	9/8/98	10/29/98	12/18/00
EA Mailed	1/17/97	3/1/00	2/22/99 ^b	-	1/6/99 ^b	8/16/01
EA Comment Period Opens	1/25/97	3/4/00	3/1/99 ^b	-	1/9/99 ^b	8/21/01
EA Comment Period Closes	2/23/97	4/3/00	3/31/99 ^b	-	2/8/99 ^b	9/19/01
DN/FONSI Mailed	11/12/97	4/12/00	5/7/99 ^c	9/29/98 ^c	2/24/99	9/26/01
Appeal Period Opens	11/17/97	4/16/00	5/13/99	10/3/98	2/27/99	10/2/01
Appeal Period Closes	12/31/97	5/31/00	6/27/99	11/17/98	4/13/99	11/15/01
Appeal Decision	3/13/98	6/12/00	-	-	6/18/99	1/14/02
Total Time for Appeal Procedures	4 months	2 months	-	-	4 months	4 mos.
EA Mailed	8/20/98 ^a	-	2/8/00	1/5/99 ^b	1/21/00	-
EA Comment Period Opens	8/24/98	-	2/14/00	1/8/99 ^b	1/15/00	-
EA Comment Period Closes	9/23/98	-	3/16/00	2/7/99 ^b	2/24/00	-
DN/FONSI Mailed	2/1/99	-	3/17/00	3/8/99 ^c	3/28/00	-
Appeal Period Opens	2/5/99	-	3/24/00	3/11/99	4/1/00	-
Appeal Period Closes	3/17/99	-	5/8/00	4/25/99	6/16/00	-
Appeal Decision	5/18/99	-	7/10/00	7/9/99	6/18/00	-
Total Time for Appeal Proc.	4 months	-	4 months	4 months	3 months	-
EA Mailed	-	-	-	12/29/99	-	-
EA Comment Period Opens	-	-	-	12/31/99	-	-
EA Comment Period Closes	-	-	-	1/30/00	-	-
DN/FONSI Mailed	-	-	-	3/20/00	-	-
Appeal Period Opens	-	-	-	3/22/00	-	-
Appeal Period Closes	-	-	-	5/6/00	-	-
Appeal Decision	-	-	-	7/18/00	-	-
Total Time for Appeal Procedures	-	-	-	3 months	-	-
Total Time for Comment and Appeal Procedures	3 years	6 months	2 years, 4 months	1 year, 11 months	1 year, 10 mos.	1 year, 2 mos.
Complaint filed in U.S. District Court	2/4/00	8/9/00				3/21/02
Final Order in U.S. District Court	3/19/01	9/21/01				12/13/02
Total Time for Litigation	1 year, 1 month	1 year, 1 month				9 mos.
Total Time for Case	4 years, 10 months	1 year, 8 months	3 years, 6 months	3 years, 2 months	3 years, 2 months	2 years, 1 month

^a Indicates a Revised Environmental Assessment.

^b This project was categorically excluded, therefore there is no EA, just a 30-day Review Notice comment period.

^c Indicates the documentation of Decision Memo, instead of a Decision Notice

VITA

Anthony V. Scardina

Anthony is the son of Marion and Linda Scardina and was born in Scottsdale, Pennsylvania on December 18, 1978. He earned two Bachelor of Science degrees in Forestry and Wildlife and Fisheries Sciences at West Virginia University in May 2002, with three majors in forest resources management, wildlife sciences, and fisheries sciences. While pursuing his Bachelor degrees, Anthony worked as an Undergraduate Teaching and Research Assistant at West Virginia University, and as a Forest Technician for the Idaho Department of Lands. Anthony was also a student member of the Davis College Student Council (Treasurer), Gamma Beta Phi, Gamma Sigma Delta, Kappa Alpha Fraternity, MOUNTAIN, the Society of American Foresters (President and Treasurer), and Xi Sigma Pi, and he was awarded the Gamma Sigma Delta Student Service/Leadership Award of Merit, the West Virginia University Forestry Endowment Fund Scholarship, the West Virginia University Mr. Mountaineer Award, and the West Virginia Vegetation Management Scholarship.

While pursuing two Master degrees in Forestry and Public Administration at Virginia Tech, Anthony worked as a Forest Policy Intern for the National Association of State Foresters, and as a Graduate Teaching Assistant. Anthony has published several articles pertaining to the issues discussed in the thesis with his major professor, Dr. Michael J. Mortimer, has given several presentations on issues related to his thesis, and also had the opportunity to present his thesis in an interactive roundtable discussion at the 2004 American Society for Public Administration National Convention in Portland, Oregon. Anthony was also a student member of the American Society for Public Administration, the Graduate Student Appeals Committee, the Graduate Student Budget Board, Phi Sigma (Secretary), Public Administrators of Virginia Tech (President), the Society of American Foresters, and Xi Sigma Pi.

Following graduation in May 2004, Anthony will begin work in Washington, DC, as a Budget Analyst for the United States Forest Service under special status as a Presidential Management Fellow. He hopes to be able to fulfill his goals of becoming a quality public servant, and plans to follow his passion and concern for National Forests through work and future research.