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COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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Kathleen S. Kilpatrick
Director

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October 5, 2007

Planning Rule Comments
USDA – Natural Resources and Environment
P.O. Box 162969
Sacramento, CA 95816-2969

Re: National Forest System Land Management Planning – Draft EIS
DHR File No. 2007-1240; DEQ #07-146F

To Whom It May Concern:

We have received for review the document referenced above. It is our opinion that this Draft Environment Impact Statement (DEIS) does not adequately address the potential impacts to cultural and historic resources nor does it advise the reader on applicable Federal regulation regarding effects to historic properties.

It is our opinion that the implementation of Forest Service Land Management Plans, guided by this document, has the potential to impact historic properties. The development and implementation of these plans should be coordinated with the State Historic Preservation Officer pursuant to Sections 106 and 110 of the National Historic Preservation Act (NHPA; 16 U.S.C. 470) and 36 CFR Part 800. We recommend that the Forest Service request the comments of its Federal Preservation Officer Mr. Michael Kaczor (FPO) on this DEIS and revise the document to include a discussion on the potential effects to historic properties and a recognition of the responsibilities of the Forest Service under the NHPA.

Thank you for the opportunity to comments on this DEIS. If you have questions concerning these comments or the Section 106 process, please do not hesitate to contact me at (804) 367-2323, Ext. 153 or email roger.kirchen@dhr.virginia.gov.

Sincerely,

Roger W. Kirchen, Archaeologist
Office of Review and Compliance

Cc: Mr. Ernst F. Aschenbach, DEQ OEIR

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NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

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Reese Fullerton

Deputy Cabinet Secretary

October 15, 2007

Planning Rule Comments
P.O. Box 162969
Sacramento, CA 95816-2969

RE: Comments on Proposed National Forest System Land Management Planning Rule

Dear Sir or Madam:

I am writing to express the New Mexico Energy, Minerals and Natural Resources Department's opposition to the United States Department of Agriculture (USDA), Forest Service's proposed National Forest System Land Management Planning Rule, which essentially readopts the 2005 rule. The New Mexico Energy, Minerals and Natural Resources Department has reviewed the proposed rule and opposes the rule because it does not comply with the National Forest Management Act's requirements.

The National Forest Management Act (NMFA) requires forest plans to determine harvesting levels and "reflect proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest". In addition, the NMFA requires the Secretary of Agriculture to adopt regulations for the development and revision of land management plans that specify guidelines to require plans to identify the "suitability of lands for resource management"; "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area"; and ensure that timber will be harvested from National Forest System lands only where soil and other watershed conditions are not irreversibly damaged, and protection is provided for watercourses.

While the proposed rule requires that plans must identify areas as generally suitable for various uses, it does little to comply with the other requirements in NMFA. In addition, the proposed rule should be modified to clearly state that if the plan has not identified an area as suitable for a particular use that such use cannot occur in that area unless the plan is amended.

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Page 1 of 2

F - 2

Planning Rule Comments
Page 2


Examples of failing to meet the requirements of the NFMA include the following:

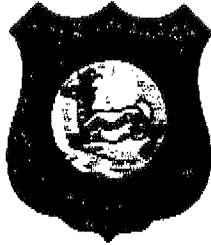
- The proposed rule does not require that the plans determine harvesting levels or reflect proposed actions, including the timber sale program.
- The proposed rule does not meet the NMFA requirement that the Secretary of Agriculture adopt regulations for the development and revision of land management plans that provide for diversity of plant and animal communities based on a land area's suitability and capability.
- The proposed rule does not provide guidelines that ensure timber will only be harvested where soil and other watershed conditions will not be irreversibly damaged.
- The proposed rule does not provide guidelines that ensure timber will only be harvested if protection is provided for watercourses.

The proposed rule only mentions the diversity of native plant and animal communities in Section 219.10. That section provides no requirement that plans must provide for the diversity of plant and animal communities even though the NMFA requires it. The proposed rule also fails to even mention that timber cannot be harvested where soil and watershed conditions would be irreversibly damaged, much less provide guidelines that ensure timber will not be harvested where soil and other watershed conditions would be irreversibly damaged.

The USDA must revise its proposed planning rule to address and comply with the NMFA requirements. One means of accomplishing this would be to reinsert requirements from the 1982 planning rule, particularly Section 219.14 that dealt with timber resource land suitability and specifically addressed soils and watershed conditions, and Section 219.19 and 219.26, which addressed species diversity. In addition, in order to comply with the requirement that plans address the timber sale program, the USDA should, at a minimum, include the requirements from Section 219.29 of the 2000 planning rule. While the USDA may wish to streamline its land management planning process, it cannot by regulation divest itself of the NMFA's requirements. It is, after all, the statute that requires the Forest Service to develop land management plans.

Sincerely,


Joanna Prukop



WYOMING GAME AND FISH DEPARTMENT

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October 17, 2007

WER 11630
United States Forest Service
Proposed Rule
National Forest System Land
Management Planning
Docket ID No. fr23au07-29

Regis Terney
Planning Specialist
PO Box 162969
Sacramento, CA 95816-2969

Re: Planning Rule Comments

Dear Mr. Terney:

The staff of the Wyoming Game and Fish Department has reviewed the proposed rule for the National Forest System Land Management Planning. We recommend the planning rule include or address the following items:

Cumulative Impacts Assessment – Failure to perform a full EIS in a Forest Plan (as in the 2005 Planning Rule) results in lack of cumulative impacts assessment across the landscape. This oversight must be captured in follow-up documents, as each project-level EIS would then have to provide the cumulative impacts from immediately surrounding projects. This would make each project-level analysis more cumbersome if cumulative impacts assessments are not to be ignored.

Allocation Decisions – Whether called allocation or “suitability,” a decision on priority land use needs to be rendered at the Land Use Plan level if the plan is to be useable in guiding management.

Standards and Guidelines – The 2005 rule ignores past “standards and guidelines” that were developed to guide on-the-ground management, and fails to replace these with similar guidance. We particularly found the standards useful in pointing toward those management items that would achieve desired conditions or maintain land use suitability, and recommend adding them or their equivalent back into the rule process. Without this, the forest plans contain little actual planning guidance, but rather would rely heavily on the discretion of the Forest Supervisor, which may change as a result of political direction rather than resource realities and, at the very least, may not adequately support the long-term nature of forest resource planning and management.

Adaptive Management/Performance-Based – We support the adaptive management process being part of the planning rule (e.g., continual use of updated research/management


TRD262

Mr. Regis Terney
October 17, 2007
Page 2 - WER 11630

information, increased management flexibility to respond to updated information). This also should allow for State agency cooperators to provide ongoing management information and collaboration in planning and implementing project-level work.

Thank you for the opportunity to comment.

Sincerely,


JOHN EMMERICH
DEPUTY DIRECTOR

JE:VS:gfb

cc: USFWS

APPENDIX F - COMMENTS FROM OTHER AGENCIES

FRD293

Planning Rule Comments
P.O. Box 162969
Sacramento, CA 95816-2969

Dear Sir/Madam:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA) and the National Environmental Policy Act (NEPA), the Environmental Protection Agency (EPA) has reviewed the Forest Service's (FS's) Draft Environmental Impact Statement for National Forest System Land Management Planning" (CEQ # 20070367).

The draft EIS evaluates the adoption of a proposed rule that is essentially identical to the 2005 planning rule. The proposed rule evaluated in the draft EIS sets forth a framework for National Forest System land management planning to provide for sustainability of social, economic, and ecological systems and establishes direction for developing, amending, and revising, land management plans. The proposed rule clarifies that, absent extraordinary circumstances, land management plans developed, amended, or revised under the proposed rule are strategic and are one stage in an adaptive cycle of planning for management of National Forest System lands. The intent of the proposed rule is to: streamline and improve the planning process by making plans more adaptable to changes in social, economic, and environmental conditions; strengthen the role of science in planning; strengthen collaborative relationships with the public and other government entities; and reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained -Yield Act and other authorities.

The draft EIS identifies Alternative A as the preferred alternative. As described in the draft EIS, Alternative A is the 2005 rule with updated effective and transition period dates. S) However, we would like to identify the following issues that we believe need clarification in the final EIS and final rule. Specifically, the issues are as follows:

As discussed in the draft EIS and planing rule, the use of Environmental Management Systems (EMSs) is a key feature of the planning process. Annual monitoring is mentioned as playing a vital role in the ability of the plan process to be adaptable to changing conditions. However, there is little to no discussion in either the draft EIS or rule on how the FS will ensure that annual monitoring will be required. The final EIS and rule should discuss how the FS will require that annual monitoring be carried out. For example, we suggest that the final rule and EIS address whether the FS would require that a budget for

APPENDIX F - COMMENTS FROM OTHER AGENCIES

FRD293

annual monitoring be set up during plan development, whether validation monitoring be conducted and by who, and whether the results of validation monitoring would be feedback into the planning process.

Although the planning rule states that the responsible official only needs to notify public on any changes in monitoring strategies versus preparing a plan amendment; the draft EIS does not discuss this issue. Arguably, any changes in monitoring strategies could potentially have environmental effects depending on the nature of the required monitoring. Thus, we suggest that the final EIS should address under what circumstances only a notification to the public are warranted compared to a plan amendment. It would reasonable be assumed that any changes in a monitoring plan/strategy should be addressed in greater detail through a plan amendment and any associated environmental review.

Both the planning rule and the draft EIS acknowledge that land management plans are approved as categorical exclusions (CEs). However, it was unclear as to whether CE memos are prepared for such actions. We would suggest that the planning rule and final EIS address whether CE memos are prepared for these actions and whether the public may obtain copies for review.

EPA appreciates the opportunity to comment on the draft EIS and proposed rule for National Forest System Land Management Planning. Should you have questions about our comments, I can be reached at 202/ 564-5400 or your staff can contact Elaine Suriano at 202/564-7162.

Sincerely,

Anne Norton Miller
Director
Office of Federal Activities

APPENDIX F - COMMENTS FROM OTHER AGENCIES
Congress of the United States

PRD419

Washington, DC 20515

October 19, 2007

Mark Rey
Undersecretary for Natural Resources
and Environment--USDA
1400 Independence Avenue, SW
Room 217 E, Whitten Building
Washington, DC 20250

Dear Undersecretary Rey:

We write to express our serious concerns with the 2007 proposed National Forest System Land Management Planning Rule.

Over the past two years, you received correspondence from many Members of Congress urging you to withdraw the proposal in the 2005 Planning Rule to categorically exclude forest management plans from National Environmental Policy Act (NEPA) requirements. During the original public comment period on the NEPA categorical exclusion for forest plans in 2005, we sent a letter from 55 Members of Congress expressing serious concerns with the proposal. Furthermore, shortly before the Forest Service finalized the NEPA categorical exclusion for forest plans in December 2006, Representatives Rahall and Tom Udall again wrote you to strongly urge you to withdraw this proposal. We have attached a copy of these letters for your review.

Much to our disappointment, the Forest Service ignored these concerns and finalized the NEPA categorical exclusion for national forest plans in December 2006. Not surprisingly, the 2005 Planning Rule was enjoined in federal court on March 30, 2007, when the court ruled that the Forest Service had violated NEPA by failing to prepare an Environmental Impact Statement (EIS) on the Planning Rule itself, and further violated the Endangered Species Act (ESA) and Administrative Procedures Act (APA) in enacting the Rule.

The 2007 proposed Land Management Planning Rule is essentially identical to the 2005 Planning Rule. We fundamentally disagree with the Forest Service's position that forest plans are documents that should not be subject to a full NEPA review. The public involvement and environmental analysis requirements of NEPA are critical to providing balanced use of our federal forest lands. Also, categorically excluding forest management plans from NEPA will result in the failure to evaluate the cumulative impacts of forest management decisions.

The Government Accountability Office (GAO) has found that nearly three-quarters of Forest Service vegetation management projects are also categorically excluded from NEPA. Our strong concern is that these actions, combined with the other NEPA changes made by the Forest Service in the past five years, show a weakening of

the NEPA process forest system-wide under this Administration. The result is less public involvement in their publicly-owned National Forests, and less cumulative analysis of decisions affecting individual National Forests and the National Forest System as a whole. Management by exclusion is not a management policy.

Upon reviewing the Draft Environmental Impact Statement (DEIS) for the 2007 proposed Land Management Planning Rule, we find it wholly inadequate. The Forest Service completely failed to analyze the environmental impacts of the alternatives proposed in the DEIS, and to compare these with the impacts of the proposed Rule (which it also failed to analyze), as required by NEPA. Alternatives analysis is widely viewed as the "heart of the NEPA process", but a careful look at the DEIS shows that the alternatives analysis section, a mere 33 pages long, simply describes the various management approaches taken in each alternative, and offers no analysis of the impacts that each of these approaches would have on the resources of our National Forests.

This falls far short of satisfying NEPA. The markedly different approaches taken toward resource protection in the alternatives would have significantly different impacts on forest resources, impacts that it is the purpose of an EIS to explore. For example, with regard to wildlife protection, the 1982 Rule (Alternative C) requires that plans ensure viable populations of all vertebrates and desired invertebrate species. The 2000 Rule (Alternative B) requires a high likelihood of persistence for *all* species, with limited exceptions. Whereas, the 2005 Rule (Alternative A) completely eliminates the species viability requirement and substitutes an unclear direction for plans to "establish a framework to provide the characteristics of ecosystem diversity in the plan area" (36 CFR 219.10(b)(1)). The same is true of the various alternatives' disparate treatments of restrictions on even-aged management, protection of streams, and other resource issues of vital importance. Yet the DEIS concludes, without any impact analysis, that: "When considered in conjunction with applicable laws, regulations, and Forest Service directives, all alternatives would result in similar resource protection." This is decidedly not NEPA analysis, but at best wishful thinking.

We also find it highly ironic that both you and the Forest Service have complained in the past that NEPA is a time-consuming process, yet now you claim to have been able to do a comprehensive and legally sufficient NEPA process for the Land Management Planning Rule for the entire National Forest System in just four and one-half months.

In conclusion, we fundamentally disagree with the 2007 proposed National Forest System Land Management Planning Rule and request that you withdraw it so it can be rewritten to incorporate the environmental impact analysis required by NEPA as part of national forest system land management planning. We encourage you to apply the 1982 forest planning regulations to any forest plan amendments or revisions until you lawfully finalize new forest planning regulations.

Sincerely,

Nick Rahall

Nick J. Rahall II

Raul M. Grijalva

Raul M. Grijalva

Tom Udall

Tom Udall

Carolyn B. Maloney

Carolyn B. Maloney

Maurice D. Hinchey

Maurice D. Hinchey

Sander M. Levin

Sander M. Levin

Jan Inslee

Jan Inslee

George Miller

George Miller

Peter DeFazio

Peter A. DeFazio

John Lewis

John Lewis

James P. Moran

James P. Moran

Michael R. McNulty

Michael R. McNulty

Dennis Moore

Dennis Moore

Richard E. Neal

Richard E. Neal

Patrick J. Kennedy

Patrick J. Kennedy

Ellen O. Tauscher

Ellen O. Tauscher

Earl Blumenauer

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Sam Farr

Sam Farr

Lois Capps

Lois Capps

Susan Davis

Susan Davis

Donald M. Payne

Donald M. Payne

Henry A. Waxman

Henry A. Waxman

Ron Kind
Ron Kind

Pete Stark
Pete Stark

Chris Van Hollen
Chris Van Hollen

Grace F. Napolitano
Grace Napolitano

Jerrold Nadler
Jerrold Nadler

Betty McCollum
Betty McCollum

Elijah E. Cummings
Elijah E. Cummings

David Wu
David Wu

Tammy Baldwin
Tammy Baldwin

Barbara Lee
Barbara Lee

Loretta Sanchez
Loretta Sanchez

Eleanor Holmes Norton
Eleanor Holmes Norton

Betty Sutton
Betty Sutton

Jose E. Serrano
Jose E. Serrano

Joseph Crowley
Joseph Crowley

Dennis J. Kucinich
Dennis J. Kucinich

Robert Wexler
Robert Wexler

Howard L. Berman
Howard L. Berman

Thomas H. Allen
Thomas H. Allen

Hilda L. Solis
Hilda L. Solis

Ben Chandler
Ben Chandler

Lloyd Doggett
Lloyd Doggett

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD419

Hank Johnson
Hank Johnson

Charlie Rangel
Charlie Rangel

Jim McDermott
Jim McDermott

John W. Olver
John W. Olver

James R. Langevin
James R. Langevin

Brad Miller
Brad Miller

David Price
David Price

Lynn C. Woolsey
Lynn C. Woolsey

Robert E. Andrews
Robert E. Andrews

Corrine Brown
Corrine Brown

James P. McGovern
James P. McGovern

Frank Pallone
Frank Pallone

Nita M. Lowey
Nita M. Lowey

Jane Harman
Jane Harman

Tom Lantos
Tom Lantos

Rosa L. DeLauro
Rosa L. DeLauro

John P. Sarbanes
John P. Sarbanes

Bob Filner
Bob Filner

Michael M. Honda
Michael M. Honda

Wm. Lacy Clay
Wm. Lacy Clay

Edward J. Markey
Edward J. Markey

Luis V. Guterriez
Luis V. Guterriez

Gary L. Ackerman
Gary L. Ackerman

Maxine Waters
Maxine Waters

PRD419

Congress of the United States
Washington, DC 20515

March 7, 2005

Dale N. Bosworth
Chief, United States Forest Service
1400 Independence Ave., SW
Washington, D.C.20250


Dear Chief Bosworth,


As Members of Congress who value our national forests, we write to strongly urge you to withdraw your proposal to change the public input and environmental evaluation process currently used with forest planning. While we have concerns with much of the substance of the final forest planning regulations released in January 2005, we are significantly troubled by your effort to categorically exclude national forest management plans from National Environmental Policy Act (NEPA) requirements.

As published in the Federal Register on January 5th, your proposal creates a *de facto* exemption of national forest management plans from NEPA. While current law and implementing regulations do provide for certain categories of actions to be exempt from the requirements of NEPA, whole forest management plans were never intended to be among them. Both the final forest planning regulations and the proposed change to the NEPA regulation are stipulated on a narrow interpretation that forest management plans do not constitute a federal action triggering NEPA. While we agree that efficiency of the forest planning process is in need of improvement, both the public involvement and environmental analysis requirements of NEPA are critical to providing balanced use of federal forest lands, and must not be sacrificed in the name of streamlining. Additionally, categorically excluding forest management plans from NEPA will likely result in the failure to evaluate the cumulative impacts of land management decisions. Preventing unforeseen cumulative impacts was clearly intended with the enactment of the National Forest Management Act.

Again, we urge you to withdraw your proposal and continue to utilize the important public input and environmental analysis tools of NEPA. We believe that NEPA analysis of forest management plans is a critical and necessary component of national forest management. We further ask that you extend the public comment period on this important issue.

Sincerely,


Tom Udall


Jay Inslee

PRD419

Susan A. Davis
Susan Davis

Raúl M. Grijalva
Raúl Grijalva

Stephen Lynch
Stephen Lynch

Jim McDermott
Jim McDermott

Ed Case
Ed Case

Sam Farr
Sam Farr

Mike Honda
Mike Honda

Peter DeFazio
Peter DeFazio

Nick Rahall
Nick Rahall

Maurice Hinchey
Maurice Hinchey

Rush Holt
Rush Holt

James Moran
James Moran

Ellen Tauscher
Ellen Tauscher

Lois Capps
Lois Capps

Michael H. Michaud
Michael Michaud

Lynn Woolsey
Lynn Woolsey

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Tammy Baldwin
Tammy Baldwin

Lloyd Doggett
Lloyd Doggett

John Dingell
John Dingell

Ron Kind
Ron Kind

Sherrod Brown
Sherrod Brown

Mark Udall
Mark Udall

Richard Neal
Richard Neal

Frank Pallone
Frank Pallone

Maxine Waters
Maxine Waters

Dennis Kucinich
Dennis Kucinich

Janice Schakowsky
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George Miller
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Robert E. Andrews
Robert Andrews

Chris Van Hollen
Chris Van Hollen

Sander Levin
Sander Levin

Donald Payne
Donald Payne

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Daniel Lipinski
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Bob Filner
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John Olver
John Olver

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Terrold Nadler
Terrold Nadler

Dale E. Kildee
Dale Kildee

Carolyn C. Kilpatrick
Carolyn C. Kilpatrick

Edward J. Markey
Edward Markey

Betty McCollum
Betty McCollum

James Langevin
James Langevin

Earl Blumenauer
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Michael McNulty
Michael McNulty


Brian Baird
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Nita Lowey
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Carolyn B. Maloney
Carolyn Maloney

Tom Lantos
Tom Lantos


PRB4/9


Jose Serrano


Lane Evans


Steve Israel


Henry Waxman


Barbara Lee

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD419

RICHARD W. POMBO, CA
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U.S. House of Representatives Committee on Resources Washington, DC 20515

December 5, 2006

NICK J. RAHALL II, WV
Ranking Democrat Member
DALE E. KILDEE, MI
ENI F.H. FALCOMVAEGA, AS
NEIL ABERCROMBIE, HI
SOLOMON P. ORTIZ, TX
FRANK PALLONE, JR., NJ
DONNA M. CHRISTENSEN, VI
RON KIND, WI
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TOM UDALL, NM
RAÚL GRIJALVA, AZ
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JIM COSTA, CA
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JAY INSLEE, WA
MARK UDALL, CO
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Democratic Staff Director

STEVEN J. DING
Chief of Staff

The Honorable Mark Rey
USDA Undersecretary for Natural Resources
and Environment
1400 Independence Avenue, SW
Room 217 E, Whitten Building
Washington, DC 20250

Dear Undersecretary Rey:

We are aware that the Forest Service is currently considering a finalization of the proposal to categorically exclude forest management plans from National Environmental Policy Act (NEPA) requirements. We write to strongly urge you to withdraw this proposal.

We have concerns with much of the final forest planning regulations released in January 2005, and it is our understanding that the finalized regulations are currently being addressed by the courts. However, the proposal to categorically exclude forest management plans from NEPA has yet to be finalized. During the public comment period for this proposal, you may remember that on March 7, 2005, we sent a letter from 55 Members of Congress expressing serious concerns with the proposal. We have attached a copy of that letter for your review.

The public involvement and environmental analysis requirements of NEPA are critical to providing balanced use of our federal forest lands. Without NEPA, efforts to include the public in the forest planning process will be compromised. While the Forest Service claims that NEPA is not necessary at the plan level and should only be undergone at the project level, given the wide variety of categorical exclusions from NEPA requirements for Forest Service projects, there is no assurance that NEPA analysis will be completed at the project level. Most importantly, categorically excluding forest management plans from NEPA will likely result in the failure to evaluate the cumulative impacts of land management decisions.

PRD 419

Honorable Mark Rey
Page Two
December 5, 2006

Again, we urge you to withdraw your proposal and continue to utilize the important public involvement and environmental analysis tools of NEPA in forest planning.

Sincerely,



NICK J. RAHALL, II
Ranking Democrat
Committee on Resources



TOM UDALL
Ranking Democrat
Subcommittee on Forest
And Forest Health

APPENDIX F - COMMENTS FROM OTHER AGENCIES

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



PR0935

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October 22, 2007

Planning Rule Comments

P.O. Box 162969
Sacramento, CA 95816-2969
Facsimile: (916) 456-6724
Email: planningrule@fscomments.org

RE: **Comments on 72 Fed. Reg. 48,514 (August 23, 2007), National Forest System Land Management Planning Proposed Rule (36 C.F.R. pt. 219)**

To United States Department of Agriculture and Forest Service:

The California Attorney General submits these comments in response to the National Forest System Land Management Planning Proposed Rule and Draft Environmental Impact Statement (DEIS) published in the Federal Register on August 23, 2007, 72 Fed.Reg. 48514. The Attorney General submits these comments in his independent capacity to protect the natural resources of the state from pollution, impairment, or destruction in furtherance of the public interest.¹ The Attorney General's Office has participated extensively in national forest planning in California, and continues to be committed to ensuring an open and rigorous national forest planning process based on solid science and public participation. These comments are made on behalf of this office and not on behalf of any other California agency or office.

The proposed changes to the National Forest System Land Management Planning Rule vest discretion in the agency that does not comport with the National Forest Management Act (NFMA) or the National Environmental Policy Act (NEPA). The DEIS prepared for the rule-making fails to analyze adequately the environmental impacts of major changes to forest management contained in the Proposed Rule. In particular, the DEIS does not assess adequately or at all the impacts of (1) categorically excluding all national forest land management plan development, revision and amendment from review under NEPA, (2) eliminating the species viability provision, the management indicator species designation and monitoring requirements, (3) weakening monitoring and evaluation requirements for effects of management activities on habitat and species, and (4) weakening or eliminating timber management and harvesting standards, among other things.

1. See Cal. Const., Art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).

Planning Rule Comments

October 22, 2007

Page 2

1. *Categorically Excluding Land Management Plan Development, Revision and Amendment from Review Under NEPA is Inappropriate*

The Proposed Rule purports to change the manner in which the Forest Service applies NEPA to the development amendment, and revision of forest plans. The NFMA requires implementing regulations to include "procedures to insure that land management plans are prepared in accordance with [NEPA], including, but not limited to, direction on when and for what plans an [EIS] required under section 102(2)(C) of [NEPA] shall be prepared."² Until now, NFMA regulations have required preparation of an EA I prior to adoption, revision or amendment of a forest plan.³ The Proposed Rule eliminates the obligation to prepare an EIS, or to conduct any environmental review pursuant to NEPA, at all stages in the forest planning process, except for project level activities. Instead, the Proposed Rule provides for "evaluations" to be conducted at various stages of the planning process.

This proposal to categorically exclude forest and grassland planning from NEPA continues this administration's disturbing and unfortunate trend towards undermining NEPA. The proposal violates NEPA by precluding environmental review until site-specific proposals are made, effectively foreclosing disclosure and evaluation of both indirect and cumulative impacts at the planning stage, and by declaring, without independent analysis of individual actions, that all development, revision and amendment of forest and grassland plans are exempt from NEPA.

a. *Land Management Plans Are Major Federal Actions*

NEPA requires that all federal agencies prepare an environmental impact statement for any proposed "major federal action significantly affecting the quality of the human environment."⁴ Under regulations issued by the Council on Environmental Quality (CEQ) to implement NEPA (CEQ regulations), forest plans are considered a "federal action" within the scope of NEPA.⁵ Section 1508.18(b) defines "major federal action," to include "actions with effects that may be major." Section 1508.18(b) further describes categories of federal actions, including the "[a]doption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based."⁶ Section 1508(a) defines the term "actions" to include

2. 16 U.S.C. § 1604(g)(1).

3. See 36 C.F.R. s. 219.10 (1982); 36 C.F.R. s. 219.10(b) (2000); Forest Service Handbook ("FSH") s. 1909.15 (1992)

4. 42 U.S.C. § 4332 (2)(C)

5. 40 C.F.R. pt. 1508.18(b).

6. *Id.* 1508.18(b)(2). Check

Planning Rule Comments

October 22, 2007

Page 3

“new and continuing activities. . . new or revised agency rules, regulations, plans, policies, or procedures. . . .”

Land management plans for the national forest system are decisional documents that determine how forests will be managed and how site-specific projects will be implemented. Such plans determine how each national forest and grassland is managed for up to fifteen years and sometimes beyond, and form the basis for every project or action that may be approved and taken within the plan area. Every action on every acre of these forests and grasslands must comply with the land management plan for that forest or grassland. The plan, in other words, sets the stage for the activities and projects that may be approved later.⁷ Land management plans are formal plans prepared by a federal agency to guide uses of federal resources, upon which later projects or actions may be based, and with effects that may be major on the particular forest or grassland under consideration, or on the national forest system as a whole, and thus qualify as “major federal actions.”

The Forest Service cannot sufficiently account for significant environmental impacts and conduct a meaningful cumulative effects analysis at the project level alone. Analyses at this level, by definition, cover only a small portion of a national forest or grassland. Thus waiting until the project stage would mean that significance assessments and cumulative effects analysis would never occur on a plan-wide basis. Such reviews are essential to anticipate the cumulative effects of proposed actions. Even small, localized actions can have far-reaching effects on, for example, watersheds, migratory species, and wide-ranging wildlife species. This is especially the case when numerous actions take place over the life of a forest or grassland plan.

b. Land Management Plans May Significantly Affect the Quality of the Human Environment

The central question in any NEPA evaluation is whether a “major federal action” is one that “significantly affect[s] the quality of the human environment.”⁸ CEQ regulations outline factors of both context and intensity that an agency must consider in determining whether an action “significantly” affects the environment within the meaning of NEPA.⁹ These factors include the “degree to which the effects on the quality of the human environment are likely to be highly controversial,” the “degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks,” and the “degree to which the action may

7. See *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 730 (U.S. 1998) (plan's promulgation “makes logging more likely in that it is a logging precondition; in its absence logging could not take place.”)

8. 42 U.S.C. § 4332(2)(C).

9. 40 C.F.R. § 1508.27.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Planning Rule Comments
October 22, 2007
Page 4

PRD 435

establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.”¹⁰

The Proposed Rule’s rationale for eliminating environmental assessment of forest plans is the contention that forest plans do not have significant environmental effects.¹¹ Ever since NFMA was first enacted, however, there has been no question that forest plans may have significant and immediate environmental impacts on the quality of the human environment. Forest plans govern every action that may be taken in each national forest. Every action on a national forest must be wholly consistent with the governing forest plan.¹² The nature of these impacts is clearly recognized by previous and current Forest Service regulations implementing the forest planning process, which, until now, have explicitly required the preparation of an EIS prior to the adoption, revision or amendment of forest plans.¹³ For example, the initial allocation or reallocation of an area from one management regime (such as “Pristine Wilderness Area” or “Back Country Recreation”) to another management regime (such as “Ski Area” or “Resource Production”) will have significant environmental impacts that are reasonably foreseeable. The environmental impact of different configurations of management regimes must and should be evaluated at the forest plan level in order to allow forest managers to make the most informed decision possible.

The Proposed Rule lays out a radical departure for forest planning, whereby “[t]o a greater extent than before, plans under the proposed planning rule will be strategic and aspirational in nature, setting desired conditions, objectives, and guidance for subsequent on-the-ground projects or activities.”¹⁴ Even under this new interpretation of NFMA and forest plans as merely “aspirational,” however, it cannot reasonably be said forest plans can have no significant environmental impacts.

The Proposed Rule delineates five required components of Forest Plans--desired conditions, objectives, guidelines, suitability of areas and special areas.¹⁵ If the Proposed Rule is to be finalized, each of these plan components will have potential environmental implications.

10. *Id.* § 1508.27(b)(4)-(6).

11. Proposed Rule, 72 Fed. Reg. at 48,525 (“[P]lan components typically cannot be linked in a cause-effect relationship over time and within a geographic area to effects on the human environment.”).

12. 16 U.S.C. § 1604(i).

13. *See* 36 CFR § 219.10 (1982); 36 CFR § 219.10(b) (2000); 36 CFR § 219.6(b) (2000); *see also* FSM 1950 (1992); FSH 1909.15 (1992).

14. Proposed Rule, 72 Fed. Reg. at 48,517.

15. *Id.* at 48,536.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRB435

Planning Rule Comments

October 22, 2007

Page 5

The Forest Service describes the “desired condition” component as the “social, economic, and ecological attributes toward which management of the land and resources of the plan area is directed.” The Forest Service acknowledges that desired condition descriptions provide “context, starting point, and vision for project or activity design” and set forth “what the Agency. . . wants to achieve ultimately on the ground.”¹⁶ The economic, social and ecological conditions that the Agency wants to achieve on the ground will directly influence the type of projects and activities that will be approved. An EIS is necessary to analyze the impacts of selecting desired conditions, and between various desired conditions.

Similarly, forest plan “objectives” are described as “concise projections of intended outcomes of projects and activities to contribute to the maintenance or achievement of desired conditions” for national forest management.¹⁷ Though the Forest Service again represents this component to be aspirational, it acknowledges that objectives are measurable and time-specific, and are the “means of measuring progress toward achieving or maintaining desired conditions.”¹⁸ Forest plans will determine how site-specific projects will be carried out by setting “guidelines” for their implementation.¹⁹ The Preamble to the Proposed Rule states that guidelines “should provide the recommended technical and scientific specifications to be used in the design of projects and activities to contribute to the achievement of desired conditions and objectives,” and the “project or activity may vary from the guideline only if the [alternate] design is an effective means of meeting the purpose of the guidelines.”²⁰ Thus, while the language of the Proposed Rule states that guidelines are aspirational, the Preamble indicates that guidelines will be used as a benchmark for technical and scientific specifications of projects, unless a variance is needed. Surely, technical and scientific specifications of projects and activities could have environmental implications, implications which should be properly analyzed in of an EIS.

Decisions made in forest plans often are controversial, particularly given the potential effect of such plans on all subsequent activities that may be undertaken in the forest. Under NEPA, the potential for significant environmental impact together with the controversial nature of forest plan decisions mandates an open and through investigation of alternatives and an in-depth evaluation of the environmental consequences of each option.²¹ Thus, forest plans are federal actions significantly affecting the quality of the human environment, and the Forest

16. *Id.* at 48,517.

17. *Id.*

18. *Id.*

19. *Id.*

20. Preamble to Proposed Rule, 72 Fed.Reg. 48,514.

21. 72 Fed.Reg. at 48,518.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Planning Rule Comments
October 22, 2007
Page 6

PRD435

Service should maintain the requirement that all forest plans, revisions, and amendments require the preparation of an EIS.

The Forest Service suggests that because plans do not propose any specific actions, the plans themselves can have no effect on the human environment. Although it is possible that this may be the case in a particular instance, it is not plausible to conclude that no plan can have such effect. On the contrary, NEPA and the CEQ regulations make it the responsibility of each federal agency contemplating a major federal action to complete an analysis of the potential effects of that action at before any decision to undertake it is made.

c. Environmental Analysis Should Be Conducted Early in the Planning Process

As interpreted by the Supreme Court, Section 102(2)(C) of NEPA requires that environmental analysis “be integrated into the very process of agency decision-making.”²² The CEQ regulations require that environmental review of federal agency actions that may have a significant affect on the quality of the human environment be conducted “at the earliest possible time.”²³ This is critically important to ensure that members of the public and public officials are informed and allowed to comment of agency proposals before determinative decisions are made.²⁴ CEQ regulations are binding on Forest Service actions and Forest Service procedures must comply with those regulations.

Despite the CEQ regulations and longstanding caselaw directing federal agencies to conduct environmental review of major federal actions at the earliest possible stage, the Proposed Rule would delay NEPA compliance until the latest possible time, at the site-specific project approval stage. Delaying NEPA review until this point in the decision-making process would deprive members of the public and officials of important environmental information until after major planning decisions affecting the allocation and/or use of environmental resources within a forest (i.e, the development, revision, or amendment of the forest plan) have been made. This subverts the purpose of NEPA, and does not comport with CEQ regulations.

22. 16 U.S.C. 1604(i).

23. *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979).

24. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1067 (9th Cir. 2002).

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Planning Rule Comments
October 22, 2007
Page 7

PRD435

d. Eliminating Environmental Review For Forest Plans Skips a Critical Stage For Evaluating Cumulative Impacts

The Proposed Rule fails to provide for adequate review of cumulative impacts. CEQ regulations require that an EIS evaluate the cumulative impact on the environment that results from “the incremental impact of the action when added to the other past, present, and reasonably foreseeable future actions.”²⁵ Cumulative impacts “can result from individually minor but collectively significant actions taking place over a period of time.”²⁶ The logical and most effective place to consider cumulative impacts is at the forest planning stage, where an evaluation will allow the agency to fully consider the incremental effect of all of the reasonably foreseeable actions that could result from the plan. To the extent that the Proposed Rule delays consideration of cumulative impacts until site-specific actions are proposed, it may permit circumvention of these important elements of the NEPA analysis.

e. Forest Plans Cannot Be Categorically Excluded From NEPA

The Proposed Rule relies on a new categorical exclusion for certain forest planning actions that would eliminate NEPA review of such actions entirely.²⁷ Application of NEPA’s categorical exclusion provision in this context is inconsistent with the statute and implementing regulations. The Proposed Rule fails to support application of a categorical exclusion to forest plans, at the very least because it does not support the conclusion that such plans can never have a significant effect on the human environment.

CEQ regulations allow agencies to develop categorical exclusions for minor agency actions that do not have a significant effect on the environment, either individually or cumulatively.²⁸ For such actions, neither an EA nor an EIS is required.²⁹ The Forest Service’s categorical exclusions have generally covered minor actions such as repairing or maintaining administrative facilities, repaving roads, or approving short-term special uses.³⁰ By similarly excluding forest plans from NEPA review, the Forest Service equates comprehensive forest planning documents that guide the development and management of millions of acres of forests and grasslands with proposals for building maintenance. If the Forest Service is going to assume

25. 40 C.F.R pt. 1508.7.

26. *Id.*

27. *See* 2006 Final NEPA Categorical Exclusion Rule, 71 Fed.Reg. 75481.

28. *See* 40 C.F.R. pts. 1508.4, 1507.3.

29. *Id.* at 1508.4.

30. *See, e.g.,* Forest Service Handbook, 1909.15, section 31.1.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Planning Rule Comments

October 22, 2007

Page 8

PRD435

across the board that forest plans cannot have a significant individual or cumulative effect on the environment, it must demonstrate this through data-based and historical analysis. The Proposed Rule fails to do so.

2. *The DEIS For the Proposed Rule Fails to Analyze the Potential Environmental Impacts of the New "Paradigm" For Forest Management That the Proposed Rule Embodies*

The DEIS states that the Proposed Rule is a set of merely procedural regulations, establishing only administrative procedures, and affecting only the "process" of developing, revising or amending forest plans. The Forest Service contends that therefore there is "no reasonable basis" for assessing environmental impacts of the Proposed Rule. The Forest Service concludes that the "proposed planning rule and the alternatives are all the same in that they would have no direct, indirect, or cumulative impact on the human environment."

We understand the Proposed Rule to inaugurate a new era in forest management, in that it significantly weakens and eliminates altogether several important substantive resource protections that have governed national forest management for decades. Specifically, the Proposed Rule eliminates any and all requirements to maintain viable populations of plant and animal communities within national forests, eliminates requirements to manage forests and grasslands through the monitoring and maintenance of management indicator species, weakens monitoring and evaluation requirements for effects of management activities on habitat and species, eliminates enforceable management standards, and weakens or eliminates timber management and harvesting controls.

The DEIS fails to account for and analyze the environmental effects of eliminating these substantive controls and standards. If the intent of the Proposed Rule is to replace forestry rules that in the past provided substantive guidance to forest planners in developing, revising and amending forest plans with a new set of rules that are merely procedural and do not impose any substantive requirements, it is difficult to understand the Forest Service's insistence that this dramatic shift could not possibly have any environmental impact. Because the DEIS fails to analyze the potential impacts of the Proposed Rule on the human environment, it does not comply with the requirements of NEPA.

a. *Sufficiency of an Environmental Impact Statement*

One of the key purposes of the NEPA environmental review process is to "provide decisionmakers with sufficiently detailed information to aid in determining whether to proceed with the action in light of its environmental consequences."³¹ The level of detail required

31. *Northwest Resource Information Center, Inc. v. National Marine Fisheries Service*, 56 F.3d 1060, 1064 (9th Cir. 1995).

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Planning Rule Comments

October 22, 2007

Page 9

PRD435

depends on the nature and scope of the proposed action. The discussion of environmental effects of the proposed action and its alternatives must include information sufficient for the agency to “rigorously explore and objectively evaluate” the environmental consequences of the proposed action and all reasonable alternatives.³² In determining sufficiency, courts generally apply a “rule of reason.”³³

The DEIS for the Proposed Rule states that there are no environmental impacts associated with the proposed action or any of the alternatives. The DEIS fails to support this assertion with any analysis. Indeed, the DEIS provides no basis for this assertion other than the unsupported conclusion that the Proposed Rule is “procedural in nature,” and thus cannot possibly have any environmental effect.³⁴ Given that a merely procedural process devoid of any substantive requirements is proposed to replace a regulatory regime that contained substantive resource protections and standards, this is insufficient to satisfy the agency’s obligations under NEPA.

b. The DEIS Assertion That the Proposed Rule and its Alternatives Can Have No Environmental Impacts is Without Merit

The DEIS asserts that neither the Proposed Rule nor its alternatives can any ground disturbing effects and thus, no environmental impact can result from the proposal or the alternatives. This is because, according to the Forest Service, forest planning rules do not dictate the content of land management plans or determine specific on the ground activities. While planing rules may not dictate the content of land management plans or specific projects, planning rules do establish the framework of management plans and in turn influence the shape, scope and content of specific projects. Indeed, that is their purpose. A planning rule promulgated in accordance with the NFMA ultimately determines how and when certain uses can be conducted, in what areas, and to what extent.³⁵

32. See *Carmel-By-the-Sea v. U.S. Dept. of Transportation*, 95 F.3d 892, 903 (9th Cir. 1996) (internal citations omitted).

33. *Id.* 95 F.3d at 899.

34. See DEIS at pp. 23 and 52.

35. Compare, for example, parts 219.14(a) and 219.27(c)(1), DEIS, Appendix C (1982 Rule) with part 219.12(a)(2), DEIS, Appendix A (Proposed Rule). The cited provisions of the 1982 Rule require identification of lands “not suitable for timber production” according to specific categories, including areas for which there is not reasonable assurance that the harvested lands can be adequately restocked within 5 years. No timber harvesting shall occur on such lands. See 219.27(c)(1), DEIS, Appendix C (1982 Rule). The Proposed Rule contains no such requirement and no standards for determining “lands not suitable for timber production,” and in any event, specifically allows “salvage sales or other harvest” on areas that have been determined to be not suitable for timber production. See part 219.12(a)(2), DEIS, Appendix A (Proposed Rule).

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Planning Rule Comments
October 22, 2007
Page 10

PRD435

The position taken in the DEIS that the environmental effects of forest planning rules are “inherently unknowable” has been rejected in the Ninth Circuit. In *Citizens For Better Forestry v. U.S. Dept. of Agriculture*,³⁶ the Court recognized that because NFMA regulations control the development of both Forest Plans and site-specific projects, the substantial revision of NFMA regulations will result in an actual, physical effect on the environment in national forests and grasslands.³⁷ Discussing the Forest Service’s 2000 Forest Planning Rule, the Court appreciated that the Rule’s environmental impacts could be indirect. “[B]ecause the Rule controls the development of [land management plans] and site-specific plans, it is through these that it poses an actual, physical effect on the environment”³⁸ The Court recognized that lowering environmental standards at the planning level, as the Proposed Rule contemplates, will result in lower environmental standards at the site-specific level.³⁹

The Proposed Rule will have a significant effect on the environment because it eliminates or weakens formerly protective regulatory standards that governed each of 175 forest plans and every site-specific project in the entire National Forest System. The effects of revisions that weaken a regulatory framework must be considered and disclosed in an EIS. The DEIS accompanying the Proposed Rule fails to do so.

c. The DEIS Fails to Analyze the Environmental Impacts of the Varying Degrees of Resource Protections Contained in the Proposed Rule and Alternatives

In clinging to its insistence that the Proposed Rule and its alternatives are merely planning procedures and therefore cannot have environmental impacts, the Forest Service fails to evaluate in the DEIS the potentially significant impacts on the human environment resulting from the Proposed Rule’s shift in approach to forest management, *in relation to existing forest planning rules*.

For example, the DEIS states that the Proposed Rule and all alternatives provide for diversity of species.⁴⁰ In its analysis of this issue, the Forest Service concludes that neither the Proposed Rule nor the alternatives would have any effect to threatened, endangered, or proposed species or to designated or proposed critical habitat, because all of the options “set up aspirations for lands to sustain biological diversity, to sustain populations of rare species, and to sustain habitat for over 3,000 species of birds, mammals, reptiles, fish, amphibians, and over 10,000

36. 341 F.3d 961 (9th Cir. 2003).

37. *See Id.*, 341 F.3d at 973.

38. *Id.* at 973.

39. *Id.* at 975.

40. *See DEIS* at p. 23.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD 435

Planning Rule Comments

October 22, 2007

Page 11

plant species.”⁴¹ The Forest Service again asserts that the Proposed Rule and alternatives would not result in any on-the-ground effects, and do not “predetermine management activities for specific project areas or land management plan decisions;” nor do they “authorize, fund, or carry out any habitat or resource disturbing activities” or “make any land use allocations, or establish specific standards or guidelines for management of resources.”⁴² The Proposed Rule and several of the alternatives do, however, delete the species viability standard contained in both the 1982 and 2000 forest planning rules, and replace it with nothing more than an “overall goal” to “provide a framework to contribute to sustaining native ecological systems.”⁴³ This shift from protective standards to aspirational goals is not evaluated for its potential effect on the human environment.

The Proposed Rule also eliminates existing requirements to monitor management indicator species and focal species population trends. Instead, it substitutes existing monitoring requirements with broad goals that do not explicitly describe how monitoring objectives are to be achieved. For example, section 219.6(b) of the Proposed Rule also simply calls for plans to “describe the monitoring program for a plan area.”⁴⁴ The Proposed Rule permits monitoring strategies to be modified without public comment through a process of administrative corrections, which are within the complete discretion of the responsible official.⁴⁵ It does not provide any guidance regarding what or how to monitor for species diversity.

By contrast, the 2000 Planning Rule set forth specific monitoring requirements to evaluate sustainability (ecological, economic and social), required that the responsible official include scientists in the design and evaluation of monitoring strategies, and provided for an independent, scientific peer review of plan monitoring on at least a biennial basis.⁴⁶ This system provided the responsible official with flexibility so that adaptive management could be performed, but also established concrete standards that all monitoring programs had to meet.

The impacts of modifying the monitoring requirements from those provided in the 2000 Rule to those that provide far more discretion to the responsible official, and which may be designed without the input of the scientific community, has not been addressed in the DEIS. The DEIS merely relies on the argument that all of the alternatives establish monitoring requirements

41. *Id.* at p. 52.

42. *Id.* at p. 51.

43. *See* Proposed Rule, 72 Fed.Reg. at 48,538.

44. *See id.* at 48,536.

45. *See id.* at 48,536, 48,537.

46. *See* 36 C.F.R. pt. 219.11 (2000).

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Planning Rule Comments
October 22, 2007
Page 12

PRD435

which include identifying actions, effects, and resources to be measured, the frequency of measurement, the method of monitoring and reporting intervals. However, by departing from the monitoring approach established in the 2000 rule, and undermining the ability of forest managers to evaluate implementation of a plan as well as the impacts of plans and projects, the Proposed Rule is substantively weakening environmental requirements for national forest planning. The DEIS fails to analyze the environmental impacts of this shift.

In another example, the Proposed Rule and several of the alternatives substantially weaken or eliminate the timber management standards and requirements contained in the existing forest planning rules. In place of specific timber resource protection standards and guidelines contained in existing regulations, the Proposed Rule places responsibility on the Chief of the Forest Service to include timber management requirements in the Forest Service Directives System.⁴⁷ By moving these obligations to the directive system, they are rendered unenforceable, and thus without any effect or meaning. Moving these obligations to the directive system results in a substantive weakening of the timber managements requirements for national forest plans, since obligations set forth in the directives cannot be enforced. The effects of this shift were not evaluated in the DEIS.

In sum, the DEIS does not contain any analysis of the varying degrees of species diversity protection and timber resource management requirements contained in the Proposed Rule and its alternatives *in relation to past and existing planning rules*. Nor does it evaluate the Proposed Rule's elimination of meaningful monitoring requirements *in relation to past and existing planning rules*. In this respect, the DEIS falls short of the agency's obligations under NEPA.

d. The DEIS Fails to Adequately Evaluate Cumulative Effects

The cumulative effects analysis in the DEIS reiterates the Forest Service's position that none of the alternatives, including the Proposed Rule, will have any environmental effects. "For cumulative impacts to accrue there must first be an impact from the action under review that can then be added to the impacts of other past, present, and reasonably foreseeable future actions."⁴⁸ According to the Forest Service, neither the Proposed Rule nor any of the alternatives dictate how national forests are to be managed; rather, they merely establish administrative procedures and do not determine the mix of uses on any of the units of the National Forest System.⁴⁹ No further analysis is included.

The general rule under NEPA is that, in assessing cumulative effects, an EIS must give a

47. See DEIS at p. 24.

48. DEIS at p. 49.

49. *Id.* at 49.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Planning Rule Comments

October 22, 2007

Page 13

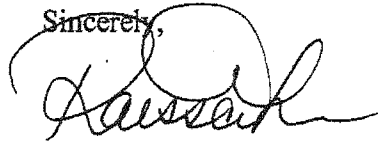
PRD435

sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment.”⁵⁰ The Forest Service here makes no attempt to consider the effects of the dramatic changes to forestry regulations contained in the Proposed Rule, together with other significant changes to forestry regulations that have been proposed and/or enacted in recent months or years. In this respect, the DEIS again falls short of the agency’s obligations under NEPA.

Conclusion

The Attorney General has advocated persistently for sound management practices in the national forests, for the public’s right to participate in the process, and for adherence to the requirements of NEPA. The Attorney General remains committed to informed decision-making with respect to our national forests, particularly those located in California, as responsible management of national forests and grasslands provides a unique opportunity to maintain viable populations of fish and wildlife in our national forest system. The DEIS for the Proposed Rule violates NEPA in that it mocks the environmental review process and minimizes the significance of the “paradigm shift” embodied in the management practices put forth in the new Rule. The Attorney General thus requests that the Forest Service withdraw the and commit to preparing and environmental analysis for the Proposed Rule that takes seriously the agencies obligations under NEPA.

Sincerely,



RAISSA S. LERNER
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

50. See *Lands Council v. Forester of Region One*, 395 F.3d 1019, 1028 (9th Cir. 2005).


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October 22, 2007

Planning Rule Comments
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Re: National Forest System Land Management Planning; Notice of Proposed Planning Rule

To Whom It May Concern:

The Arizona Game and Fish Department (Department) has reviewed the Federal Register notice dated Thursday, August 23, 2007 in regards to the Notice of Proposed Rule (Rule) and Request for Comments on the National Forest System Land Management Planning processes. The Department, as the state agency responsible for management of wildlife, has been actively engaged in recent local Forest Service (Forest) Land Management Plan (LMP) revision processes (based on the 2005 Planning Rule).

In a letter dated March 16, 2007 (attached), the Department relayed concerns to the Southwest Regional Forester regarding statewide LMP planning issues that were not being resolved at a local Forest level. After reviewing the revised Rule and the Draft Environmental Impact Statement (DEIS), the Department continues to remain concerned. It is our understanding that the Rule (and Proposed Action within the DEIS) does not differ significantly from the 2005 planning rule, with which we have been working under during our recent planning coordination efforts, and for which our letter to the Regional Forester tried to address. It is under this pretext that comments are provided.

Public and agency coordination on local planning efforts

Section 219.9 of the Rule addresses public participation, collaboration, and notification. Previous to the publication of the Rule, the Department requested clarifying direction from the Regional Forester on the LMP revision process and content (focus groups, models, species lists, etc.) The Rule has not been modified from the 2005 version and provides no direction on specific steps or processes for involving entities through the Forest Plan revision, development of monitoring programs as a required component of the plan, development or adoption of an Environmental Management System (EMS) including focus areas, and input/development of the comprehensive evaluation reporting. The Department supports an open and collaborative process of public participation that the Rule describes. However, the Rule also states that the "responsible official has the discretion to determine the methods and timing of public involvement opportunities..". The Department works across the state of Arizona to manage wildlife, and has seen various methods used by Forest Supervisors to engage the public on the LMP processes, in our opinion, some more successful than others. The Department

Planning Rule
October 22, 2007
2

recommends that the public participation process (including interested and affected agencies) be further clarified and standardized (perhaps through the Forest Service Directives system) to avoid inconsistent approaches across administrative units.

If this Rule were to be implemented, the Department foresees needing to be engaged in the development of monitoring programs that address our concerns and ensure our role and authorities are addressed appropriately. We foresee needing to be engaged with the development and updating of the comprehensive evaluation report (every 5 years) and annual plan monitoring and evaluation reports, as these provide the documentation and feedback for change.

Environmental Management System

According to the Rule, the “national EMS framework will serve as the basis for environmental improvement on each unit of the National Forest System”. The national EMS framework includes three focus areas: sustainable consumption, land management, and local. Currently it is only mandatory that the “land management” focus area include 1) vegetation management, 2) wildland fire management, and 3) transportation system management. There are no wildlife management aspects or components. Forests will have the option to adopt the EMS as is, or add to it under the “local” area. The Department foresees needing to be involved in the Arizona efforts to develop the EMS to ensure that wildlife management issues are considered. As stated above, if the Rule or the Forest Directives were to clarify when and how entities would be engaged, we would be more confident about consistent statewide application of our input to those issues that affect wildlife populations, wildlife habitat, management of wildlife, and wildlife related recreational opportunities. We are also unsure how members of the public might be involved in development of the EMS pertaining to local issues of concern.

Species of Concern & Species of Intent

Because Species of Concern (SOC) and Species of Intent (SOI) are not being explicitly incorporated into revised LMPs nor being used on a project level for monitoring purposes, we ask for the following provisions:

- Define how the SOC/SOI lists will be vetted into LMPs
- Clarify how species-specific provisions can be addressed in the LMP.

The overall intent of the Rule is to make planning more flexible and to move decisions to the local level. The “Responsible Official” also has increased discretion to design monitoring programs, decide what management actions might be needed to prevent listing under the ESA and even more discretion in deciding which species meet SOC/SOI criteria. The Department believes this will require a greater demand for our time on a local level to interact with all the appropriate “Responsible Officials”, and all the components of the adaptive management approach to ensure wildlife management concerns and issues are adequately addressed.

What the Department recommends, is a return to a modified Management Indicator System (MIS). Based on our experience working under the 2005 planning rule with Forests in Arizona before the March 30, 2007 supreme court decision, we found the SOC/SOI system to be confusing and extremely time intensive, with criteria for inclusion to the lists that did not address

Planning Rule
October 22, 2007
3

species needs adequately. The MIS was a more coherent system. Our recommendation for modification to the MIS would be to allow for the inclusion of additional species.

Desired Conditions

Desired Conditions are defined in the Rule as the social, economic, and ecological attributes which direct management of the land and resources of the plan area. The Department supports the Rule where it describes that "A thorough desired condition description of what a species needs is often more useful than a long list of prohibitions". However, as is stated in the attached letter to the Southwest Regional Forester, the Department continues to have concerns that Forest objectives may not be met, or will be difficult to ascertain and/or monitor based on inconsistently written and/or vaguely written Desired Conditions. We are requesting that more specific guidance be included in the framework of the Rule. For instance, in an LMP where Desired Conditions are, as currently described, "long-term and aspirational", a Desired Condition might read '*Ponderosa pine forests will resemble the historic range of variability, providing a range of tree densities and spatial structure more common under a pre-settlement disturbance regime*'.

A more specific Desired Condition might read '*Ponderosa pine forests will resemble the historic range of variability, whereby stand level structure provides uneven-aged tree groups that are large in size and are comprised of an aggregation of clumped trees with interlocking canopies. Tree groups will be adjacent to large openings with high understory plant diversity and production, and the juxtaposition of tree groups and openings will resemble a spatial configuration more common under a pre-settlement disturbance regime*'. This specificity will aid in efforts to tier to measurable objectives.

DEIS – Alternative E

The Department supports Alternative E. Only Alternative E incorporates all the requirements related to timber management from National Forest Management Act within the Rule, rather than referring to Forest Directives. Alternative E explicitly allows responsible officials to include standards in plans. It is extremely important to the Department that the Forest be able to include standards within the plan that they are responsible for meeting. For instance, under the current Rule, there would be no direction and responsibility to maintain old growth forest structures. It may be present as a guideline or desired condition, but it wouldn't be mandated. The same would be true for important types of wildlife cover, including snags and downed logs.

In Arizona, the Department has been involved in planning for several years under the 2005 planning rule. Planning efforts were well underway on the Coronado, Coconino, and Kaibab National Forests. The Apache-Sitgreaves, Tonto, and Prescott Forests were slightly behind in the process. However, after the result of the U.S. District Court order dated March 30, 2007, all planning was halted. As of October of 2007, Forests in Arizona are now starting to proceed again and post notices regarding planning on websites, hold meetings, etc. We remain unclear on how various parts of the LMPs will fit together, and we again ask that the Forest consider a modified process that addresses our concerns, and provides consistent and uniform approach where possible.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

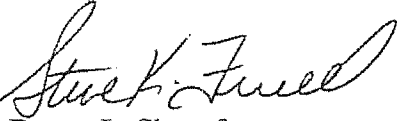
Planning Rule
October 22, 2007

PRD 410

4

Please contact Josh Avey, Habitat Branch Chief, at 602-789-3605 if you have any questions regarding the comments in this letter (or the attached). After November 15th, Mr. Avey can be reached at 623-236-7605).

Sincerely,

(for) 
Duane L. Shroufe
Director

cc: Regional Supervisors
Bob Broscheid, Wildlife Management Assistant Director
Josh Avey, Habitat Branch Chief

Attachment

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD490



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

2221 WEST GREENWAY ROAD
PHOENIX, AZ 85023-4399
(602) 942-3000 • AZGFD.GOV

GOVERNOR
JANET NAPOLITANO
COMMISSIONERS
CHAIRMAN, MICHAEL M. GOLIGHTLY, FLAGSTAFF
WILLIAM H. MCLEAN, GOLD CANYON
BOB HERNBRODE, TUCSON
JENNIFER L. MARTIN, PHOENIX
JOE MELTON, YUMA
DIRECTOR
DUANE L. SHROUFE
DEPUTY DIRECTOR
STEVE K. FERRELL



March 16, 2007

Harv Forsgren, Regional Forester
USDA Forest Service, Southwestern Region (R3)
333 Broadway Street
Albuquerque, NM 87102

Dear Mr. Forsgren:

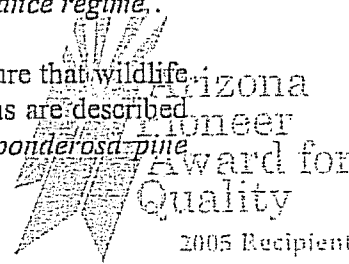
As you are aware, the Arizona Game and Fish Department (Department) has been actively engaged in the USDA Forest Service (Forest Service) Land Management Plan (LMP) revision process. While we have appreciated the local collaboration, we have repeatedly carried forward several concerns that could not be resolved at the local Forest level, and in fact are statewide concerns, and therefore may be best addressed at the Regional Office level.

First, the Department is trying to participate fully in the LMP revision process, but we are having difficulty in knowing where to focus our efforts because of the nature of the process. It has been difficult to understand the relationship of the various parts of the plan, what will have meaning later in the planning process, or how the plan will be implemented. It is also unclear at this time what the local Responsible Official will be obligated to address in the project level Environmental Impact Statement/Environmental Assessment (EIS/EA) document once the LMP revision is finalized. We would appreciate some clarifying direction from a regional perspective on the planning efforts, and how the various aspects of the plans (focus groups, models, species lists, etc.) will fit together.

It is our current understanding that the Forest Service will establish overarching goals to maintain sustainable ecosystems and social/economic uses through the Desired Conditions within the LMP (FSM 1921.7). It is not yet clear how specific the Desired Conditions will be in the LMP, and we have concerns that Forest objectives may not be met, or will be difficult to ascertain and/or monitor based on vaguely written Desired Conditions. We are requesting that the Desired Conditions be as specific as possible for the Geographic Areas, Zones, and Special Areas that they describe.

For example, in an LMP that is "more strategic and less prescriptive in nature" (2005 Planning Rule), a Desired Condition might read *'ponderosa pine forests will resemble the historic range of variability, providing a range of tree densities and spatial structure more common under a pre-settlement disturbance regime'*.

Operationally, there are no specific management guidelines to ensure that wildlife habitat needs are addressed at the project level when the conditions are described that broadly. A more specific Desired Condition might read *'ponderosa pine*



Mr. Harv Forsgren
March 16, 2007
Page 2 of 5

forests will resemble the historic range of variability, whereby stand level structure provides uneven-aged tree groups that are large in size and are comprised of an aggregation of clumped trees with interlocking canopies. Tree groups will be adjacent to large openings with high understory plant diversity and production, and the juxtaposition of tree groups and openings will resemble a spatial configuration more common under a pre-settlement disturbance regime'.

Next, with regard to the Ecological Diversity models generated in the "Southwest Forest Assessment Project" developed by The Nature Conservancy (on Forest Service contract), the Forest Service and The Nature Conservancy have acknowledged that certain Potential Natural Vegetation Type (PNVT) models were built with very little published information on the Historic Range of Variability and were likely under-describing natural variation in vegetation structure, composition, and the frequency of natural disturbances. Some of the models generated for specific vegetation communities, such as grasslands, mixed-conifer forests, general forest understory, and riparian areas are critical to wildlife and of great interest to the Department. It remains unclear how the information gaps will be rectified by the Forests, and what sort of decision-making process will be used to select model parameters when available science is lacking. We request clarification on this process, and if guidance is being delivered on a statewide level.

We would appreciate your assistance with providing the Department and the Arizona Forests guidance on the following actions:

- Clarify the goals and uses of plan components; we remain unclear how products created by the Focus Group will be used and implemented in the final plans.
- Clarify how the LMP will guide project-level EIS/EA documents, and what specifically will be addressed at the project level.
- Because the SOC/SOI lists are not being explicitly incorporated into revised LMPs (see attachment), nor being used on a project level for monitoring purposes, we ask for the following provisions:
 - Define how SOC/SOI lists will be vetted in the LMP.
 - Clarify how species-specific provisions will be addressed in the LMP for those species not addressed through modeling (because criteria do not allow their inclusion in the SOC/SOI lists).
 - Reconsider the SOC criteria to more pro-actively manage wildlife populations to prevent ESA listing. Not only does pro-active management avoid potential litigation issues, but it also reduces the likelihood of increased management restrictions and expenses.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRM410

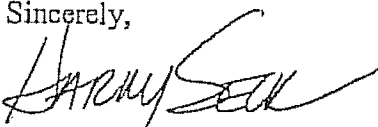
Mr. Harv Forsgren
March 16, 2007
Page 3 of 5

- Commit to a species list or some other method to communicate monitoring and funding priorities to internal and external users to replace the Management Indicator Species and Regional Foresters Sensitive Species lists.
- Commit to the inclusion of Desired Conditions in LMPs that are specific enough to ensure that objectives can be realistically interpreted and tracked over time.
- Continue to consult the Department's CWCS throughout the LMP process, not only for SOC/SOI lists, but also to consider the threats and stressors identified in the CWCS that may assist the Species Diversity and Ecological Sustainability Focus Groups.

For additional information regarding the Department's requests regarding SOC/SOI development, please refer to the attachment "Arizona Game and Fish Department Supplemental Comments for the US Forest Service Species Diversity Plan Component of the Land Management Plan Revision, March 2007".

We are further along in the LMP revision process on the Coronado, Coconino, and Kaibab National Forests compared to the other National Forests. We understand that you may have difficulty changing course for those Forests where we are well into the process. However, for the other National Forests in Arizona (Apache-Sitgreaves, Prescott, and Tonto) we ask that you please consider a modified process that addresses our concerns, and provides consistent and statewide guidance where possible. Please contact me at your earliest convenience to discuss our concerns.

Sincerely,

for 

Duane L. Shroufe
Director

- cc: Bob Broscheid, Wildlife Management Division, Assistant Director
Josh Avey, Habitat Branch Chief
Regional Supervisors
Nora Rasure, Coconino National Forest Supervisor
Mike Williams, Kaibab National Forest Supervisor
Elaine Zieroth, Apache-Sitgreaves Forest Supervisor
Alan Quan, Prescott National Forest
Gene Blakenbaker, Tonto National Forest
Jeanine Derby, Coronado National Forest

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Mr. Harv Forsgren

March 16, 2007

Page 4 of 5

PRD440

ARIZONA GAME AND FISH DEPARTMENT SUPPLEMENTAL COMMENTS TO THE US FOREST SERVICE SPECIES DIVERSITY PLAN COMPONENT OF THE LAND MANAGEMENT PLAN REVISION

The purpose of this document is to supply additional detailed information related to our specific concerns with the development of the Species Diversity plan component. The Department has been most actively engaged in the Species Diversity Focus Group efforts. With regard to the Species Diversity plan component, the Department has the following unresolved concerns:

- It is our understanding that the Species Diversity plan component will be developed from lists of federally-listed species, Species-of-Concern (SOC), and Species-of-Interest (SOI). One of our primary concerns with this stratification of species into SOC and SOI is the lack of clarification about the difference between the two lists, and how they will be treated in the LMP. The Department has been receiving mixed messages: we have been told that SOC have greater intent and legal obligation, but we have also been told that SOC and SOI species will be treated equally within the LMP revision, either way, we understand that the SOC/SOI lists will not be carried forward within the body of the new LMP. Under the current Forest Plan, the Regional Forester's Sensitive Species list and Management Indicator Species list served a function for project review, monitoring, and funding. Our concern is that without this mechanism built into the revised LMPs, it is not clear what will be used for project review, monitoring, and funding.
- We are expressly concerned that the *criteria* for SOC are not meeting the *intent* of SOC within the LMP. FSM 1921.73b states that SOC species are those species for which "plan components may be necessary to prevent listing under the Endangered Species Act [ESA]". SOC criteria (FSH 1909.12.43.22b) do not include species that have been petitioned for listing but for which a US Fish and Wildlife Service positive 90-day finding has not yet been made. SOC criteria do not include species with existing Conservation Agreements, where the primary intent is to pro-actively manage those species to prevent ESA listing. SOC criteria consider NatureServe global rankings (G1-G3, T1-T3), but do not consider state ranking or the conservation concerns of local experts.

The Department's primary intent and goal while working with the Forest Service on the Species Diversity plan component is to prevent species listing under the ESA. We have identified many species of concern from a local and/or state perspective for which management actions may be necessary to prevent listing, but which are still not meeting the SOC criteria; we would argue that the Forest Service is obligated to "insure that viable populations [of wildlife] will be maintained"; "habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." (National Forest Management Act, 1976). Some primary examples, though our concerns are not limited to those listed herein, include Gunnison's prairie dog (*Cynomys gunnisoni*), northern leopard frog (*Rana pipiens*), and narrow-headed garter snake (*Thamnophis rufipunctatus*). We have continually asked that species that meet the SOC intent but not the SOC criteria be considered at many Species Diversity Focus Group meetings. Local Forest Service biologists and planning staff are aware of our concerns, but without State or Regional direction, are unwilling to incorporate the species we are suggesting.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

Mr. Harv Forsgren
March 16, 2007
Page 5 of 5

PRD440

- The Department has repeatedly recommended the Forest Service carry forward the Species of Greatest Conservation Need and the appropriate Tier 1c species identified in the Arizona Game and Fish Department Comprehensive Wildlife Conservation Strategy: 2005-2015 (March 2006). While State Comprehensive Wildlife Strategies are listed as a potential source for consideration on the SOI list (FSH 1909.12.43.22c), the Department has had to spend several Species Diversity Focus Group meetings advocating for their inclusion. We strongly encourage the Forest Service continue to consult our CWCS plan throughout the SOI screening process, and where appropriate in the Ecosystem Diversity plan component.
- Although repeatedly requested, the Department has been unable to acquire documentation from the Forest Service explaining the biological reasoning for why G3/G4 and G3/G5 species were not given further consideration in the SOC screening process (based on "Guidance of the Use of NatureServe Global Conservation Ranks in Preparing Land Management Plan Revisions under the 2005 NFMA Planning Rule, FSM 1920 and FSH 1909.12 – August 1, 2006"). It is our preference, for the task of ensuring species are not lost through the SOC screening process, that a rounded rank be used rather than the Forest Service creating an average of G3.5. In fact NatureServe provides a rounded rank (e.g. a G3G4 has a rounded rank of G3) on the NatureServe web site and can be obtained from local State Natural Heritage Programs as well.

PRD444.

JIM GIBBONS
Governor

STATE OF NEVADA

ANDREW K. CLINGER
Director



DEPARTMENT OF ADMINISTRATION

209 E. Musser Street, Room 200

Carson City, Nevada 89701-4298

(775) 684-0222

Fax (775) 684-0260

<http://www.budget.state.nv.us/>

October 17, 2007

PO BOX 162969
Sacramento, CA 95816

Re: SAI NV # **E2008-104**

Reference: **Planning Rule**

Project: **National Forest Service Land Mgmt Proposed Rule**

The State Clearinghouse has processed the proposal and has no comment.

This constitutes the State Clearinghouse review of this proposal as per Executive Order 12372. If you have questions, please contact me at (775) 684-0209.

Sincerely,

A handwritten signature in cursive script, appearing to read "Krista Coulter".

Krista Coulter
Nevada State Clearinghouse

*COMMONWEALTH of VIRGINIA**DEPARTMENT OF ENVIRONMENTAL QUALITY**Street address: 629 East Main Street, Richmond, Virginia 23219**Mailing address: P.O. Box 1105, Richmond, Virginia 23218*

Fax (804) 698-4500 TDD (804) 698-4021

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural ResourcesDavid K. Paylor
Director(804) 698-4000
1-800-592-5482

October 18, 2007

Mr. David S. Dillard
Director, Ecosystem Management Coordination
U.S. Department of Agriculture – Forest Service
1400 Independence Avenue, SW
Washington, DC 20250

RE: Draft Environmental Impact Statement for National Forest System Land
Management Planning (Rule) (reviewed under DEQ# 07-146F).

Dear Mr. Dillard:

The Commonwealth of Virginia has completed its review of the above-referenced Environmental Impact Statement ("EIS"). The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal environmental documents prepared pursuant to the National Environmental Policy Act (NEPA) and responding to appropriate Federal officials on behalf of the Commonwealth. The following agencies joined in this review:

Department of Environmental Quality
Department of Game and Inland Fisheries
Department of Forestry
Department of Agriculture and Consumer Services
Department of Conservation and Recreation
Department of Mines, Minerals, and Energy
Virginia Marine Resources Commission
Department of Transportation
Department of Historic Resources
Department of Health

The Department of Transportation, the Lenowisco, Cumberland Plateau, Mount Rogers, New River Valley, Central Shenandoah, and Northern Shenandoah Valley Planning District Commissions were also invited to provide comments.

Mr. David S. Dillard
Page 2

Project Description

The U.S. Department of Agriculture, Forest Service has proposed to publish a rule at 36 CFR Part 219 to finish rulemaking on the land management planning rule issued on January 5, 2005 (2005 rule). The 2005 rule guides development, revision, and amendment of land management plans for units of the National Forest System. The Forest Service is considering five (5) alternatives in detail, including the proposed action. The proposed action, the preferred alternative, is the planning rule previously published on January 5, 2005 and amended on March 3, 2006 (Alternative A). The rulemaking is a result of a U.S. district court order dated March 30, 2007, which enjoined the USDA from implementing and utilizing the 2005 planning rule until it complies with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Administrative Procedure Act (APA). The effects analysis concludes that there are no direct, indirect, or cumulative effects from any of the alternatives being considered, including the preferred alternative. The EIS includes a Summary that contains an overview of Alternatives A through E, and an analysis of previous concerns expressed by reviewers in response to the 2005 Rule (Alternative A).

Forestry Management in Virginia

The Virginia Department of Forestry (DOF) is the state agency responsible for managing forestry resources in the Commonwealth of Virginia. DOF's mission is:

- to protect 15.8 million acres of forest land from fire, insects and disease.
 - to manage 17 State Forests and other state lands totaling 47,899 acres for timber, recreation, water, research, wildlife and biodiversity.
 - to assist non-industrial private forest landowners through professional forestry advice and technical management programs.
-

DOF's Comments on the Proposed Rule

The DOF states that Alternative A, Forest Service preferred alternative, appears to be the best course of action for the National Forest System to utilize in the development of a land management planning framework. This alternative seems to have the flexibility to be adaptive to changes in social, economic and environmental conditions and strengthen the role of science in the planning process.

Questions pertaining to Virginia's forestry resources may be directed to the Todd Groh at Department of Forestry (telephone (434) 220-9044); email: todd.groh@dof.virginia.gov).

Environmental Analysis

1. Natural Heritage and Recreational Resources. The Virginia Department of Conservation and Recreation works to protect the environment of the Commonwealth

Mr. David S. Dillard
Page 3

and to advocate the wise use of its scenic, cultural, recreational, and natural heritage resources. Many natural heritage resources, many of the State's scenic attributes, and significant recreation opportunities occur in the Jefferson and George Washington National Forests, which are situated predominantly in Virginia. The forests provide about 1.6 million acres of open space, opportunities for recreation and biological diversity.

Natural Heritage Resources. The DCR's Division of Natural Heritage (DCR - DNH) maintains a Biotics Data System documenting occurrences of natural heritage resources in the Commonwealth. "Natural heritage resources" are defined as the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, significant geologic formations, and similar features of scientific interest. DNH staff can provide valuable information on the occurrences of natural heritage resources in areas of the national forests located in Virginia.

Also, under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and the Department of Conservation and Recreation, DCR has the authority to report for VDACS on state-listed plant and insect species.

Recreational Resources: DCR provides policy and direction to the public and private sectors so they may better manage recreational resources, and outdoor and open spaces. Nearly all Virginia's long distance hiking and horseback riding trails are in the George Washington and Jefferson National Forests, and Shenandoah National Park. These two resources provide more than 2,000 miles of back country trails preferred by backpackers, hikers, and horseback riders. Also, hundreds of miles of multipurpose, primitive roads accommodate foot and equestrian travelers. DCR staff served on a team that wrote management plans for Virginia's two national forests. The DCR is interested in participating in the development of new forest plans and/or amendments to existing plans.

Planning Guidance Relevant to Land Management Plans. The Department of Conservation and Recreation concurs with the need to revise the 2000 Rule and believes that Alternative A, the preferred alternative, is an improvement on the 2000 Rule. DCR reiterates its previous comments on 2005 proposal. According to DCR, the Forest Service is working on a new Forest Service Manual and new planning regulations which address Land Management Plans. These new sources of guidance may supplant the 2000 Planning Rule which was dropped on January 5, according to the Notice. According to DCR, a careful NEPA analysis is required for effective National Forest planning and must be accomplished at some stage of the process. The new rules and the Forest Service Manual may indicate with better precision where the NEPA analysis fits in to the Forest Service process.

Recommendation: We recommend that the DCR-DNH be contacted (Rene Hypes, telephone (804) 786-7951, to secure updated site specific information on natural heritage resources prior to implementing projects under the Forest System Land

Mr. David S. Dillard
Page 4

Management Plan. For guidance on planning and recreation matters contact DCR's Division of Planning and Recreation (Robert Munson, Planning Bureau Manager, telephone (804) 786-6140).

2. Wildlife Resources and Fisheries Management. The Department of Game and Inland Fisheries (DGIF), as the Commonwealth's wildlife and freshwater fish management agency, exercises enforcement and regulatory jurisdiction over wildlife and freshwater fish, including state or federally listed endangered or threatened species, but excluding listed insects (*Virginia Code* Title 29.1). DGIF is a consulting agency under the U.S. Fish and Wildlife Coordination Act (16 U.S.C. sections 661 *et seq.*), and provides environmental analysis of projects or permit applications coordinated through DEQ and several other state and federal agencies. DGIF determines likely impacts upon fish and wildlife resources and habitat, and recommends appropriate measures to avoid, reduce, or compensate for those impacts.

DGIF's Understanding of the Proposed Rule: Based on its review, DGIF understands that this is a proposed land management planning rule to finish rulemaking on the National Forest System land management planning rule issued in 2005 and amended in 2006. The proposed rule would establish administrative procedures and describe a framework whereby National Forest System land management plans are developed, revised, and amended and would not predetermine management activities for specific project areas or land management plan decisions.

Comments on the Proposed Rule: According to the DGIF, the key differences between the alternative rules are their diversity criteria, monitoring requirements, and use of adaptive management principles. The proposed rule requires plans to provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area. This concept is based on the principles of conservation biology. Furthermore, plan components for species-of-concern should provide appropriate ecological conditions to allow self-sustaining populations of the species. Based on the foregoing, DGIF does not anticipate a significant adverse impact upon Threatened, Endangered, or other wildlife resources under our jurisdiction due to implementation of this rule.

Recommendations: DGIF recommends continued coordination between the Forest Service and DGIF to ensure the conservation of wildlife resources, including species-of-concern. DGIF further recommends that species-of-concern include state and federal Threatened or Endangered species and Species of Greatest Conservation Need, per the Virginia Wildlife Action Plan.

Contact DGIF (Amy Ewing, DGIF Environmental Services Section Biologist, telephone (804) 367-2211) for guidance and clarification of wildlife related matters.

3. Water Quality. The DEQ Valley Regional Office (DEQ - VRO) stated that, according to the proposal, the planning alternatives will comply with applicable environmental laws and regulations, including those that are administered by DEQ, and the official

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD 711

Mr. David S. Dillard
Page 5

responsible for planning will develop guidance for protection of natural resources through the collaborative process and considering the best available science. The implementation of aspects of the management plan that affect state waters may be subject to the permitting requirements of the DEQ and other state and federal agencies. In Virginia, there is a joint permit application (JPA) process for impacts to jurisdictional waters of the Commonwealth. The Virginia Marine Resources Commission (VMRC) serves as the clearinghouse for the JPA used by the:

1. U.S. Army Corps of Engineers for issuing permits pursuant to § 404 of the Clean Water Act and § 10 of the Rivers and Harbors Act;
2. Department of Environmental Quality for issuance of Virginia Water Protection Permit pursuant to § 401 of the Clean Water Act, Virginia Code § 62.1-44.2 et seq., Virginia Code § 62.1-44.15:5, and Virginia Administrative Code 9 VAC 25-210-10 et seq.;
3. Virginia Marine Resources Commission regulates encroachments on or over state-owned subaqueous beds as well as tidal wetlands pursuant to Virginia Code § 28.2-1200 through 1400; and
4. local wetlands board for impacts to wetlands.

When applicable, contact VMRC (telephone (757) 247-2200) for a JPA. VMRC will distribute the application to the appropriate agencies. Each agency will conduct its review and respond.

Recommendations: During the planning phase, DEQ recommends that forest management plans incorporate features which avoid stream and wetland impacts to the maximum extent practicable. For unavoidable impacts, DEQ encourages the incorporation of practices which minimize the impacts to wetlands and waterways. These practices include, but are not limited to, the operation of machinery and construction vehicles outside of stream-beds and wetlands; use of synthetic mats when in-stream work is unavoidable; stockpiling of material excavated from the trench for replacement if directional drilling is not feasible; and preservation of the top 12 inches of trench material removed from wetlands for use as wetland seed and root stock in the excavated area. The afore-mentioned recommendations are consistent with the 404(b)(1) guidelines of the Clean Water Act and with the Commonwealth's wetland mitigation policies. Both Federal and State guidelines recommend avoidance and minimization of wetland impacts as the first steps in the mitigation process. Any unavoidable impacts to State water may require compensation such as wetland creation, restoration or other acceptable forms of wetland compensatory mitigation.

Future Coordination: Should you have any questions on Virginia Water Protection Permits or mitigation policies, please contact DEQ Office of Wetland and Water Protection (David Davis, Manager (telephone (804) 698-4105), or the appropriate DEQ regional office listed below.

Contact the DEQ – Valley Regional Office (Keith Fowler, Water Permits Manager, telephone (540) 574-8712) for information pertaining to water quality impacts and

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD711

Mr. David S. Dillard
Page 6

applicable water permitting requirements when working in Bath, Highland, Rockbridge, Augusta, Rockingham, Shenandoah, Frederick, Nelson, Albemarle, Green, Page, Warren, and Clarke Counties and the Cities of Charlottesville and Harrisonburg.

Contact the DEQ – Southwest Regional Office (Allen Newman, Water Permits Manager, telephone (276) 676-4804) for information pertaining to water quality impacts and applicable water permitting requirements when working in Lee, Wise, Dickenson, Buchanan, Scott, Russell, Tazewell, Washington, Smyth, Bland, Wythe, Grayson, and Carroll Counties and the Cities of Abingdon, and Bristol City.

Contact the DEQ West-Central Regional Office (Kip Foster, Water Permits Manager, telephone (540) 562-6782) for information pertaining to water quality impacts and applicable water permitting requirements when working in Giles, Craig, Alleghany, Pulaski, Montgomery, Roanoke, Botetourt, Floyd, Franklin, Bedford, Patrick and Henry Counties and the Cities of Salem and Roanoke.

4. Solid and Hazardous Wastes and Hazardous Materials. DEQ's Waste Division stated that the areas occupied by the national forests in Virginia are extensive. Therefore, for each area where any work is proposed in the future, the Forest Service should conduct an environmental investigation to identify any solid or hazardous waste sites or issues on and near the property before work can commence. This investigation should include a search of waste-related databases. In this regard, the Forest Service should search the following three DEQ Waste databases to complete this review: the Solid Waste Database, CERCLA Facilities, and Hazardous Waste Facilities databases. The attachment to the Waste Division's comments provides information on accessing the DEQ databases.

Contact DEQ-Waste Division (Paul Kohler, telephone (804) 698-4208) for more information on solid and hazardous waste issues.

5. Pollution Prevention. DEQ advocates that principles of pollution prevention be incorporated into forest management plans. Effective siting, planning, and on-site Best Management Practices (BMPs) will help to ensure that environmental impacts are minimized. However, pollution prevention techniques also include decisions related to construction materials, design, and operational procedures that will facilitate the reduction of wastes at the source. We have several pollution prevention recommendations that may be helpful:

- Consider contractors' commitments to the environment (such as an EMS) when choosing contractors. Specifications regarding raw materials and construction practices can be included in contract documents and requests for proposals.
- Choose sustainable materials and practices. These include integrated pest management in landscaping, among other things.
- Integrate pollution prevention techniques into facility maintenance and operation.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD711

Mr. David S. Dillard
Page 7

- Consider environmental attributes when purchasing materials. For example, the extent of recycled material content, toxicity level, and amount of packaging should be considered and can be specified in purchasing contracts.
- Consider development of an Environmental Management System (EMS). An effective EMS will ensure that the proposed facility is committed to minimizing its environmental impacts, setting environmental goals, and achieving improvements in its environmental performance. DEQ offers EMS development assistance and recognizes facilities with effective Environmental Management Systems through its Virginia Environmental Excellence Program.

DEQ's Office of Pollution Prevention provides information and technical assistance relating to pollution prevention techniques and EMS. For additional information, contact Tom Griffin (telephone (804) 698-4545).

6. Historic Structures and Archaeological Resources. Section 106 of the National Historic and Preservation Act of 1966, as amended, requires that federal agencies must consider effects to properties that are listed or eligible for listing on the National Register of Historic Places. The Department of Historic Resources (DHR) conducts reviews of projects to determine their effect on historic structures or cultural resources. DHR indicated that the DEIS does not adequately address the potential impacts to cultural and historic resources nor does it advise the reader on applicable Federal regulation regarding effects on historic properties. According to DHR, the implementation of Forest Service Lands Management Plans, guided by this DEIS, has the potential to impact historic properties. Therefore, the Forest Service should coordinate the implementation and development of the plan with the State Historic Preservation Officer, pursuant to Sections 106 and 110 of the National Historic and Preservation Act of 1966, as amended (NHPA; 16 U.S.C. 470) and 36 CFR Part 800.

Recommendations: DHR recommends the Forest Service coordinate with the Federal Preservation Officer (Mr. Michael Kaczor) to request comments on this Draft EIS. DHR further recommends that the DEIS be revised to include a discussion on the potential effects to historic properties and a recognition of the responsibilities of the Forest Service under the NHPA.

Contact the Virginia Department of Historic Resources (Dr. Ethel Eaton, telephone (804) 367-2323, extension 114) for guidance on satisfying historic and cultural resources requirements.

7. Geologic and Mineral Resources. The Department of Mines, Minerals, and Energy (DMME) stated that the DEIS does not address the potential impact of the various alternatives on mineral resource exploration or extraction in the National Forests. According to DMME, the 1982 rule (Appendix C) appears to be the only rule discussed that specifically requires the consideration of mineral resources in developing land-use plans. DMME stated that if the 2000 and 2005 plans do allow for similar consideration of mineral resources, then these plans would be as protective of mineral resources as the 1982 plan.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

ARD711

Mr. David S. Dillard
Page 8

Recommendation: Mineral resources in the national forest should be addressed in the Final EIS.

Questions pertaining to the geology or mineral resources of the Commonwealth may be addressed to Matt Heller at the DMME (telephone (434) 951-6351).

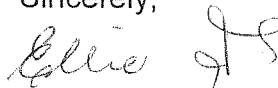
Conclusion

In general, reviewing agencies support the stated intention of the proposed land management planning rule which is to streamline and improve the planning process by increasing adaptability to changes in social, economic, and environmental conditions; by strengthening the role of science in planning; by strengthening collaborative relationships with the public and other government entities; and to reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained-Yield Act and other authorities.

Combined, the George Washington National Forest and the Jefferson National Forest occupy approximately 1,646,328 acres of land in Virginia. Because this proposed rule will not predetermine management activities for specific project areas or land management plan decisions, the Commonwealth of Virginia has no objection to the overall proposal and concurs that it is an improvement on the 2000 plan. However, projects proposed in national forests located in Virginia must be implemented in accordance with all applicable laws and regulations, including applicable state laws.

Thank you for the opportunity to review DEIS for the National Forest System Planning Rule. Comments of reviewing agencies are attached. If you have questions, please feel free to call me (telephone (804) 698-4325) or Ernie Aschenbach (telephone (804) 698-4326).

Sincerely,



Ellie L. Irons, Manager
Office of Environmental Impact Review

Enclosures

- cc: Robert Munson c/o Robbie Rhur, DCR
- Rene Hypes, DCR-DNH
- Paul W. Kohler, DEQ-ORP
- Amy Ewing, DGIF
- Ethel Eaton, DHR
- Susan E. Douglas, VDH-ODW
- Ben Stagg, VMRC

L. Preston Bryant, Jr.
Secretary of Natural Resources



Joseph H. Maroon
Director

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

203 Governor Street
Richmond, Virginia 23219-2010
(804) 786-6124

MEMORANDUM

DATE: October 3, 2007
TO: Ernie Aschenbach, DEQ
FROM: Robert S. Munson, Planning Bureau Manager, DCR-DPRR *Robert S. Munson*
SUBJECT: DEQ 07-146F, Draft National Forest System Land Management Planning

The Department of Conservation and Recreation has reviewed the draft National Forest System Land Management plan and has no comments regarding the scope of this project. Thank you for the opportunity to comment.

PRD711

APPENDIX F - COMMENTS FROM OTHER AGENCIES


If you cannot meet the deadline, please notify ERNST F. ASCHENBACH at 804/698-4326 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

REVIEW INSTRUCTIONS:

- A. Please review the document carefully. If the proposal has been reviewed earlier (i.e. if the document is a federal Final EIS or a state supplement), please consider whether your earlier comments have been adequately addressed.
- B. Prepare your agency's comments in a form which would be acceptable for responding directly to a project proponent agency.
- C. Use your agency stationery or the space below for your comments. IF YOU USE THE SPACE BELOW, THE FORM MUST BE SIGNED AND DATED.

Please return your comments to:

MR. ERNST F. ASCHENBACH
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL IMPACT REVIEW
629 EAST MAIN STREET, SIXTH FLOOR
RICHMOND, VA 23219
FAX #804/698-4319
efaschenbach@deq.virginia.gov


ERNST F. ASCHENBACH
ENVIRONMENTAL PROGRAM PLANNER

COMMENTS

The Department of Forestry finds that Alternative A appears to be the best course of action for the National Forest System to utilize in developing their land management planning framework. Alternative A seems to have the built in flexibility to change with the social, economic, and environmental conditions and strengthen the role of science in the planning process. Since no on-the-ground management work is being proposed for this project, the Department has no further comments on the other alternatives.

(signed) Todd A. Groh (date) 10/10/07
(title) Asst. Director - Forest Resource Management Division
(agency) VA Department of Forestry

Aschenbach,Ernst DEQ-OEIR,CNTRL

From: Zadnik, Andrew (DGIF)
Sent: Wednesday, August 29, 2007 4:29 PM
To: Aschenbach,Ernst DEQ-OEIR,CNTRL
Subject: 07-146F_ESS 24265_National Forest System Land Management Planning

This project involves a proposed land management planning rule to finish rulemaking on the National Forest System land management planning rule issued in 2005 and amended in 2006. The proposed rule would establish administrative procedures and describe a framework whereby National Forest System land management plans are developed, revised, and amended. The intention of this rule is to streamline and improve the planning process by increasing adaptability to changes in social, economic, and environmental conditions; by strengthening the role of science in planning; by strengthening collaborative relationships with the public and other government entities; and to reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained-Yield Act and other authorities. The proposed rule will not predetermine management activities for specific project areas or land management plan decisions.

The key differences between the alternative rules are their diversity criteria, monitoring requirements, and use of adaptive management principles. The proposed rule requires plans to provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area. This concept is based on the principles of conservation biology. Furthermore, plan components for species-of-concern should provide appropriate ecological conditions to allow self-sustaining populations of the species.

We do not anticipate a significant adverse impact upon Threatened, Endangered, or other wildlife resources under our jurisdiction due to implementation of this rule. We recommend continued coordination between the Forest Service and VDGIF to ensure the conservation of wildlife resources, including species-of-concern. We recommend that species-of-concern include state and federal Threatened or Endangered species and Species of Greatest Conservation Need, per the Virginia Wildlife Action Plan.

Thank you,

Andrew K. Zadnik
Environmental Services Biologist
Virginia Department of Game and Inland Fisheries
4010 West Broad St.
Richmond, VA 23230
804-367-2733
804-367-2427 (FAX)
Andrew.Zadnik@dgif.virginia.gov

APPENDIX F - COMMENTS FROM OTHER AGENCIES

FRD 711 -
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OF
FRD 218
OCT 09 2007



DEQ-Office of Environmental
Impact Review

COMMONWEALTH of VIRGINIA

L. Preston Bryant, Jr.
Secretary of Natural Resources

Department of Historic Resources
2801 Kensington Avenue, Richmond, Virginia 23221

Kathleen S. Kilpatrick
Director

Tel: (804) 367-2323
Fax: (804) 367-2391
TDD: (804) 367-2386
www.dhr.virginia.gov

October 5, 2007

Planning Rule Comments
USDA - Natural Resources and Environment
P.O. Box 162969
Sacramento, CA 95816-2969

Re: National Forest System Land Management Planning - Draft EIS
DHR File No. 2007-1240; DEQ #07-146F

To Whom It May Concern:

We have received for review the document referenced above. It is our opinion that this Draft Environment Impact Statement (DEIS) does not adequately address the potential impacts to cultural and historic resources nor does it advise the reader on applicable Federal regulation regarding effects to historic properties.

It is our opinion that the implementation of Forest Service Land Management Plans, guided by this document, has the potential to impact historic properties. The development and implementation of these plans should be coordinated with the State Historic Preservation Officer pursuant to Sections 106 and 110 of the National Historic Preservation Act (NHPA; 16 U.S.C. 470) and 36 CFR Part 800. We recommend that the Forest Service request the comments of its Federal Preservation Officer Mr. Michael Kaczor (FPO) on this DEIS and revise the document to include a discussion on the potential effects to historic properties and a recognition of the responsibilities of the Forest Service under the NHPA.

Thank you for the opportunity to comments on this DEIS. If you have questions concerning these comments or the Section 106 process, please do not hesitate to contact me at (804) 367-2323, Ext. 153 or email roger.kirchen@dhr.virginia.gov.

Sincerely,

Roger W. Kirchen, Archaeologist
Office of Review and Compliance

Cc: Mr. Ernst F. Aschenbach, DEQ OEIR

Administrative Services
10 Courthouse Avenue
Petersburg, VA 23803
Tel: (804) 863-1624
Fax: (804) 862-6196

Capital Region Office
2801 Kensington Ave.
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

Tidewater Region Office
14415 Old Courthouse Way, 2nd Floor
Newport News, VA 23608
Tel: (757) 886-2800
Fax: (757) 886-2808

Roanoke Region Office
1030 Penmar Ave., SE
Roanoke, VA 24013
Tel: (540) 857-7585
Fax: (540) 857-7588

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7031
Fax: (540) 868-7033

FR-54

MILLIS
JR

APPENDIX F - COMMENTS FROM OTHER AGENCIES

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- ENERGY
- GAS AND OIL
- MINED LAND RECLAMATION
- MINERAL MINING
- MINERAL RESOURCES
- MINES
- ADMINISTRATION

COMMONWEALTH OF VIRGINIA

Department of Mines, Minerals and Energy

Division of Mineral Resources

Fontaine Research Park

900 Natural Resources Drive, Suite 500

Charlottesville, Virginia 22903-0667

(434) 951-6341

www.dmme.virginia.gov

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SEP 18 2007

DEQ-Office of Environmental
Impact Review

September 14, 2007

Virginia Department of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, Sixth Floor
Richmond, Virginia 23219
Attention: Ernst Aschenbach

Re: National Forest System Land Management Planning

Dear Mr. Aschenbach:

I have reviewed ^{not} the environmental impact report for the above-referenced project. The report does discuss the impact of the various alternatives on mineral resource exploration or extraction on National Forest land. The 1982 rule (Appendix C) appears to be the only rule discussed that specifically requires the consideration of mineral resources in developing land use plans. If the 2000 and 2005 plans do allow for a similar consideration of mineral resources, they would be as protective of mineral resources as the 1982 plan.

Please contact me at (434) 951-6351 if I can be of further assistance.

Sincerely,

Matt Heller, P.G.
Geologist Manager

CORRECTION
PER MATT HELLER
10/17/2007

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PR 0711

-----Original Message-----

From: Aschenbach,Ernst DEQ-OEIR,CNTRL

Sent: Thursday, October 18, 2007 1:55 PM

To: Aschenbach,Ernst DEQ-OEIR,CNTRL

Subject: FW: DMME clarification of DMME comments re: DEQ Project Number: 07-146F; Draft-EIS National Forest System Land Management Planning

Importance: High

DEQ Project Number: 07-146F;

Project Title: (Draft-EIS) National Forest System Land Management Planning

According to DMME (Matt Heller, telephone (434) 951-6351), the DMME comments should read:

*"The report **does not** discuss the impact of the various alternatives on mineral resource exploration or extraction on National Forest land. The 1982 rule (Appendix C) appears to be the only rule discussed that specifically requires the consideration of mineral resources in developing land use plans. If the 2000 and 2005 plans do allow for a similar consideration of mineral resources, they would be as protective of mineral resources as the 1982 plan.*

Thank you.

Ernie

Ernst Aschenbach

Environmental Impact Review Coordinator

Dept. of Environmental Quality

Office of Environmental Impact Review

Phone: (804) 698-4326

FAX: (804) 698-4319

Email: efaschenbach@deg.virginia.gov <mailto:efaschenbach@deg.virginia.gov>

-----Original Message-----

From: Heller, Matthew (DMME)

Sent: Wednesday, October 17, 2007 5:02 PM

To: Aschenbach,Ernst DEQ-OEIR,CNTRL

Subject: RE: Request clarification of DMME comments re: DEQ Project Number: 07-146F; Draft-EIS National Forest System Land Management Planning

Ernie,

You are correct. It should say "does not." Thanks for catching the error.

Matt

Matthew J. Heller, P.G.

Manager, Geologic Mapping

Virginia Department of Mines, Minerals and Energy

Division of Mineral Resources

900 Natural Resources Drive, Suite 500

Charlottesville, Virginia, 22903

Phone: (434) 951-6351

Fax: (434) 951-6366

PRD711

APPENDIX F - COMMENTS FROM OTHER AGENCIES

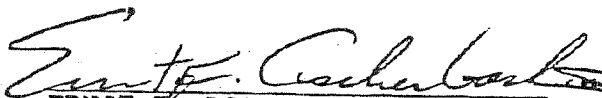
If you cannot meet the deadline, please notify ERNST F. ASCHENBACH at 804/698-4326 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

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Please return your comments to:

MR. ERNST F. ASCHENBACH
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 OFFICE OF ENVIRONMENTAL IMPACT REVIEW
 629 EAST MAIN STREET, SIXTH FLOOR
 RICHMOND, VA 23219
 FAX #804/698-4319
 efaschenbach@deq.virginia.gov


 ERNST F. ASCHENBACH
 ENVIRONMENTAL PROGRAM PLANNER

COMMENTS

No Comment.

(signed)  (Keith R. Tignor) (date) September 14, 2007
 (title) Endangered Species Coordinator
 (agency) VDACS, Office of Plant and Pest Services

PROJECT #07-146F

4/07

RECEIVED

SEP 13 2007

DEQ-Office of Environmental
Impact ReviewMEMORANDUM

TO: Ernst Aschenbach, Environmental Program Planner

FROM: ^{PWK} Paul Kohler, Waste Division Environmental Review Coordinator

DATE: September 12, 2007

COPIES: Sanjay Thirunagari, Waste Division Environmental Review Manager; file

SUBJECT: Environmental Impact Statement; National Forest System Land Management Planning; DEQ Project Code 07-146F

(DEIS)

The Waste Division has completed its review of the ~~Consistency Determination~~ report for National Forest System Land Management Planning. This is a nationwide project related to the lands and resources of the National Forest System. In Virginia, it applies to the National Forests within its borders and as such, involves a large area. We have the following comments concerning the waste issues associated with this project:

The area under study is extensive. For each area where any work is to take place, the applicant needs to conduct an environmental investigation on and near the property to identify any solid or hazardous waste sites or issues before work can commence. This investigation should include a search of waste-related databases. Please see the attached page regarding this database search.

Any soil that is suspected of contamination or wastes that are generated must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations. Some of the applicable state laws and regulations are: Virginia Waste Management Act, Code of Virginia Section 10.1-1400 *et seq.*; Virginia Hazardous Waste Management Regulations (VHWMR) (9VAC 20-60); Virginia Solid Waste Management Regulations (VSWMR) (9VAC 20-80); Virginia Regulations for the Transportation of Hazardous Materials (9VAC 20-110). Some of the applicable Federal laws and regulations are: the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et seq.*, and the applicable regulations contained in Title 40 of the Code of Federal Regulations; and the U.S. Department of Transportation Rules for Transportation of Hazardous materials, 49 CFR Part 107.

Also, structures to be demolished should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9VAC 20-80-640 for ACM and 9VAC 20-60-261 for LBP must be followed.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRO711

Please note that DEQ encourages all construction projects and facilities to implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

If you have any questions or need further information, please contact Paul Kohler at (804) 698-4208.

Attachment: Waste Information

Waste Information

There are four Waste Division databases that are to be used to complete this review. These are the Solid Waste Database, CERCLA Facilities, Voluntary Remediation Program, and Hazardous Waste Facilities databases.

The Solid Waste Database

A list of active solid waste facilities in Virginia.

CERCLA Facilities Database

A list of active and archived CERCLA (EPA Superfund Program) sites.

Hazardous Waste Facilities Database

A list of hazardous waste generators, hazardous waste transporters, and hazardous waste storage and disposal facilities. Data for the CERCLA Facilities and Hazardous Waste Facilities databases are periodically downloaded by the Waste Division from U.S. EPA's website.

Accessing the DEQ Databases:

The report author should access this information on the DEQ website at <http://www.deq.state.va.us/waste/waste.html>. Scroll down to the databases which are listed under Real Estate Search Information heading.

The *solid waste information* can be accessed by clicking on the Solid Waste Database tab and opening the file. Type the county or city name and the word County or City, and click the Preview tab. All active solid waste facilities in that locality will be listed.

The *Superfund information* will be listed by clicking on the Search EPA's CERCLIS database tab and opening the file. Click on the locality box, click on sort, then click on Datasheet View. Scroll to the locality of interest.

The *hazardous waste* information can be accessed by clicking on the Hazardous Waste Facility tab. Go to the Geography Search section and fill in the name of the city or county and VA in the state block, and hit enter. The hazardous waste facilities in the locality will be listed.

The *Voluntary Remediation Program* GPS database can be accessed by clicking on "Voluntary Remediation," then "What's in my backyard" in the center shaded area, and then under "Mapping Applications," click on "What's in my backyard" again.

This database search will include most waste-related site information for each locality. In many cases, especially when the project is located in an urban area, the database output for that locality will be extensive.

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD711

Fisher, John

From: Douglas, Susan (VDH)
 Sent: Tuesday, September 18, 2007 10:41 AM
 To: Aschenbach, Ernst DEQ-OEIR, CNTRL; Fisher, John
 Subject: Environmental Review Response

The Virginia Department of Health, Office of Drinking Water limits project reviews to potential impacts to public drinking water sources (groundwater wells and surface water intakes). Potential impacts to public water distribution systems or sanitary sewage collection systems must be verified by the local utility.

Comments on the most recent projects reviewed are summarized as follows:

PROJECT # and TITLE	PROJECT LOCATION (CITY/COUNTY)	REVIEWER RESPONSE	PROJECT DESCRIPTION
07-145E: Excess Spoil Minimization Stream Buffer Zones	state-wide	SED	No objection to 4 alternatives discussed. Alternative 1 "...is the most environmentally protective" and Regulations Implementing the would therefore be most protective of Control & Reclamation Act of public water supplies.
07-146F: National Forest System Land Mgmt Planning	AFO & LFO regions	SED	Proposed 6-level cancer center Health System Complex, in C
07-153S: Emily Couric Clinical Center, JVA	Charlottesville	SED	New customer service center within Valleypointe Park office Connect to existing water & s previously graded for developo
07-159S: Roanoke Customer Service Center, VA DMV	Roanoke Co	SED	Treat hemlock trees for woolly Pesticides will be registered wi followed. Insecticidal soap, ho systemic insecticide=Imidaclopr
07-158F: Hemlock Woolly Adelgid Control Strategies Along Blue Ridge Parkway	AFO & LFO regions	SED	Relocation & new construction structures. Extension of musel sewer.
07-161S: Frontier Culture Museum of Va - Infrastructure Improvements	Staunton	SED	
07-156S: NE Sector Development, George	Fairfax Co	SED	27 acres NE section of campu:

APPENDIX F - COMMENTS FROM OTHER AGENCIES

PRD711


If you cannot meet the deadline, please notify ERNST F. ASCHENBACH at 804/698-4326 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

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- C. Use your agency stationery or the space below for your comments. IF YOU USE THE SPACE BELOW, THE FORM MUST BE SIGNED AND DATED.


Please return your comments to:

MR. ERNST F. ASCHENBACH
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 OFFICE OF ENVIRONMENTAL IMPACT REVIEW
 629 EAST MAIN STREET, SIXTH FLOOR
 RICHMOND, VA 23219
 FAX #804/698-4319
 efaschenbach@deq.virginia.gov


 ERNST F. ASCHENBACH
 ENVIRONMENTAL PROGRAM PLANNER

COMMENTS

Please be advised that the Commission, pursuant to Section 28.2-1200 et seq of the Code of Virginia, has jurisdiction over any encroachments in, on, or over the beds of the bays, ocean, rivers, streams, or creeks which are the property of the Commonwealth. Accordingly, if any portion of any project or plan amendment involves any encroachments channelward of ordinary high water along natural rivers and streams above the fall line or mean low water below the fall line, a permit may be required from our agency. Any jurisdictional impacts will be reviewed by VMRC during the Joint Permit Application process. Thank you for the opportunity to comment.

(signed)  (date) 9-5-07
 (title) ENVIRONMENTAL ENGINEER
 (agency) VMRC

APPENDIX F - COMMENTS FROM OTHER AGENCIES



RECEIVED

PRD 711

SEP 17 2007

DEQ-Office of Environmental
Impact Review

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

West Central Regional Office

3019 Peters Creek Road, Roanoke, Virginia 24019

Telephone (540) 562-6700, Fax (540) 562-6725

www.deq.virginia.gov

L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

September 14, 2007

Mr. Ernst F. Aschenbach
Department of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, Sixth Floor
Richmond, VA 23219

RE: EIR Comments: National Forest System Land Management Planning
Project Number: 07-146F

Dear Mr. Aschenbach:

The West Central Regional Office (WCRO) of the Virginia Department of Environmental Quality has completed the Environmental Impact Review for the proposed USDA, Forest Service's National Forest System Land Management Planning, project number 07-146F. WCRO has no comments.

If you have any questions or comments related to this review, please do not hesitate to contact me by phone at 540-562-6788 or email at kaharlow@deq.virginia.gov.

Sincerely,

Handwritten signature of Kevin A. Harlow in cursive.

Kevin A. Harlow
Environmental Engineer, Sr.

Cc: EIR Files

Aschenbach,Ernst DEQ-OEIR,CNTRL

P.F.

From: Phillips,Ronald
Sent: Monday, August 27, 2007 3:48 PM
To: Aschenbach,Ernst DEQ-OEIR,CNTRL
Cc: Simmons,Larry
Subject: EIR Comments for 07-146F

The DEQ-Valley Regional Office has reviewed the National Forest System Land Management Planning proposal. The report describes and compares the alternatives considered for the proposed planning rule. The report states that the planning alternatives will comply with applicable environmental laws and regulations, including those that are administered by DEQ. Furthermore, it states that during planning, the responsible official will develop guidance for protection of natural resources through the collaborative process and considering the best available science. Based on these statements in the report, DEQ-VRO has no further comments on the planning proposal.

Ron Phillips
Air Compliance Manager
DEQ Valley Regional Office
P.O. Box 3000
4411 Early Rd.
Harrisonburg, VA 22801
540-574-7846 (phone)
540-574-7907 (fax)
rdphillips@deq.virginia.gov
www.deq.virginia.gov



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

355 Deadmore Street, P.O. Box 1688, Abingdon, Virginia 24212
(276) 676-4800 Fax (276) 676-4899
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Michael D. Overstreet
Regional Director

September 17, 2007

Mr. Ernst F. Aschenbach
Department of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, Sixth Floor
Richmond, VA 23219

Re: National Forest System Land Management Planning – USDA/Forest Service

Dear Mr. Aschenbach:

The Southwest Regional Office of the Department of Environmental Quality (DEQ) received the referenced draft Environmental Impact Statement on August 24, 2007. The proposed planning rule and alternative planning rules would establish administrative procedures whereby National Forest System land management plans are developed, revised, and amended.

DEQ has no objections to the proposal provided the applicant abides by all applicable state, Federal, and local laws and regulations. In general, features which prevent significant adverse impacts on ambient air quality, water quality, wetlands, historic structures, fish, wildlife, and species of plants, animals, or insects listed by state agencies as rare, threatened, or endangered must be incorporated.

Thank you for the opportunity to review and comment on this project. If you have any further questions, please contact Alice Warren at (276)676-4803.

Sincerely,

Allen J. Newman, P.E.
Water Permit Manager

cc: File

Aschenbach,Ernst DEQ-OEIR,CNTRL

From: Wagner,Terry
Sent: Thursday, October 04, 2007 8:57 AM
To: Aschenbach,Ernst DEQ-OEIR,CNTRL
Subject: RE: Courtesy Reminder, Need Your Comments re: DEQ Project Number: 07-146F; Project Title: (Draft-EIS) National Forest System Land Management Planning

Sorry for not replying earlier, I have not comments.

-----Original Message-----

From: Aschenbach,Ernst DEQ-OEIR,CNTRL
Sent: Thursday, October 04, 2007 8:44 AM
To: Groh, Todd (DOF); Tignor, Keith (VDACS); Eaton, Ethel (DHR); Horton, Tonia (DHR); Wagner,Terry
Cc: Aschenbach,Ernst DEQ-OEIR,CNTRL
Subject: Courtesy Reminder, Need Your Comments re: DEQ Project Number: 07-146F; Project Title: (Draft-EIS) National Forest System Land Management Planning

DEQ Project Number: 07-146F;

Project Title: (Draft-EIS) National Forest System Land Management Planning

Project Description: The United States Department of Agriculture, Forest Service (Agency) has proposed to publish a rule at 36 CFR Part 219 to finish rulemaking on the land management planning rule issued on January 5, 2005 (2005 rule). The 2005 rule guides development, revision, and amendment of land management plans for units of the National Forest System. The Agency is considering five (5) alternatives in detail, including the proposed action. The Proposed Action and Preferred Alternative is the planning rule previously published on January 5, 2005 and amended on March 3, 2006 (Alternative A). The effects analysis concludes that there are no direct, indirect, or cumulative effects from any of the alternatives being considered, including the preferred alternative. The EIS includes a Summary that contains an overview of Alternatives A through E, and an analysis of previous concerns expressed by reviewers in response to the 2005 Rule (Alternative A).

Dear review-agency representatives:

The Department of Environmental Quality – Office of Environmental Impact Review (DEQ-OEIR) distributed the above-referenced EIR on August 22, 2007. To date, DEQ-OEIR has not received your comments representing your agency. The deadline for review-agency comments is September 14, 2007.

Summary:

- DEQ-OEIR is finalizing the review of the above project.
- **If your agency has comments or concerns that need to be included, please provide them no later than Friday, October 5, 2007.**
- In addition to providing the customary signed paper-copy of your comments, please send comments as an email attachment (in format allowing text to be copied) so that DEQ can insert your comments directly into the DEQ document.

Please call me if you have questions or need to discuss. Thank you for your help.

Ernie

Ernst Aschenbach
 Environmental Impact Review Coordinator
 Dept. of Environmental Quality

APPENDIX F - COMMENTS FROM OTHER AGENCIES