

September 15, 2020

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**Re: Sandy Ridge Yellow Pine Enhancement Project**

Dear Ms. Yonce and Mr. Martin,

Thank you for the opportunity to comment on the August 12, 2020 scoping notice for the proposed Sandy Ridge Yellow Pine Enhancement Project. We offer the following comments on behalf of the Southern Environmental Law Center and the Virginia Wilderness Committee.

We are pleased to see that the District is addressing multiple resources with this project, including vegetation management, watershed improvement, recreation improvement, wildlife habitat enhancement, and roads management. The current name, however, does not accurately reflect the numerous objectives of this project. While yellow pine enhancement is a significant part of this project, the District is also proposing 600 acres of regeneration harvest, which is also a significant component of the project. Accordingly, we urge the District to rename this project to better reflect the vegetation objectives of this project (e.g., Sandy Ridge Yellow Pine Enhancement and Vegetation Management Project).

In reviewing this project, we are eager to understand the planning regulations that the District is relying on. As you are likely aware, CEQ's revised NEPA regulations that went into effect on September 14, 2020 are being litigated in various lawsuits across the country.<sup>1</sup> Since the Forest Service has not finalized its proposed NEPA changes, we assume the District is following all existing Forest Service NEPA regulations. We will follow up to confirm this or understand the process used.

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<sup>1</sup> See, e.g., *Wild Virginia v. Council on Env'l Quality*, No. 3:20-cv-00045-JPJ-PMS (W.D. Va.)

As you move forward with planning and environmental analysis, we offer the following points for your consideration, most of which relate to proposed regeneration harvest.

**A. Using Ecological Departure Analysis to prioritize vegetation structure objectives across project area**

We are pleased the District included promotion of open canopy conditions as an important aspect of this project and plans to conduct an ecological departure analysis (EDA). It does not appear though, that the current proposal prioritizes an open canopy objective *across the project area*, as we believe it should. The Forest Plan confirms that both Oak and Pine forest need far more open canopy conditions.<sup>2</sup> Yet the proposed management in the eastern part of the project area would not increase open canopy conditions at all, instead focusing on ESH creation alone. Why? We believe the District should expand its proposal to include thinning (or other management) that will increase open canopy in stands in the eastern part of the project area, rather than focusing on age class alone (ESH).

We also encourage the District to expand its analysis in the preliminary EDA, which is not equivalent to EDAs used in other projects such as Lower Cowpasture and North Shenandoah. Importantly, it does not relate the departure levels for ESH to Open Canopy conditions. The preliminary EDA, however, obscures the reality that the project area has *much* further to go to achieve Open Canopy objectives in comparison to ESH objectives. Specifically, it does not grapple with the fact that, in Pine and Oak forest, the GW Forest Plan calls for approximately 6 times as many acres of Open Canopy conditions as acres of ESH.

The Forest Plan provides that around 12% of Oak forest and 13% of Pine forest should be ESH. On the other hand, approximately 67% of Oak forest and 79% of Pine forest should be open (mid- or late-). Since less than 1% of the project area is ESH or Open Canopy conditions, *the departure for ESH is thus about 11%, while the departure for open canopy conditions is 66-78%*. If this were a footrace, we would run a 5K (about 3 miles) to achieve ESH goals and a marathon (about 26 miles) to achieve Open Canopy goals. Accordingly, we encourage the District to increase its focus on achieving Open Canopy conditions also, and we strongly believe that any proposals for creating Open Canopy conditions, as well as ESH, should proportionally track the departure levels set forth in the EDA.

The current proposal does not do this. Indeed, the preliminary EDA indicates that the proposed regeneration harvest in the Waites Run-Capacon River watershed

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<sup>2</sup> See Forest Plan at 2-16 (67% of Oak forest and 79% of Pine forest should be mid- or late- open conditions).

does not increase Open Canopy at all. Why is the District focusing only on ESH creation here? We encourage the District to better balance the objectives of creating ESH and Open Canopy conditions.

The major lack of late-open conditions and existing old growth is one reason why we would greatly prefer not to see ESH created out of existing, relatively healthy late successional forest. Among its other important biological values, late successional forest cannot be created quickly, is needed to contribute to meeting desired conditions for late-open forest, and will in time develop gaps and greater structural diversity. Additional openings and patchy conditions, if needed, can be created with less intrusive methods, such as prescribed fire in appropriate ecosystems.

## **B. Virginia Mountain Treasure Areas and Old Growth**

The Forest Service's July 29, 2015 letter of clarification regarding the Forest Plan acknowledges that many of the areas described in "The Wilderness Society's *Virginia's Mountain Treasures* ... have distinctive and/or a high level of public interest" and that characteristics of these areas "will be considered in the project-level planning and analysis."<sup>3</sup> The District needs to do so now.

Many of the proposed oak regeneration units are within the Big Schloss and Great North Mountain areas identified in *Virginia's Mountain Treasures*.<sup>4</sup> The book identifies many characteristics that make these areas special. The interior of the Great North Mountain area (in which the proposed regeneration harvest is proposed) provides "remote habitat and solitude." Recreation is important in both areas, with opportunities for hiking, backpacking, horseback riding, and mountain biking.

Not surprisingly, both of these areas also contain a significant amount of potential old growth forest.<sup>5</sup> We strongly urge the District to protect all existing old growth forest identified in the project area. The Southern Region "recognizes old-growth forests as a valuable natural resource worthy of protection, restoration, and management" for its various biological and social values.<sup>6</sup> The network of large, medium, and small patches of old growth is intended to provide the ecological integrity of old-growth communities, representation of all old growth forest community types,

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<sup>3</sup> USFS, Letter of Clarification from the Forest Supervisor (July 29, 2015), available at <https://www.fs.usda.gov/detail/gwj/landmanagement/planning/?cid=stelprd3799959>.

<sup>4</sup> The Wilderness Society, *Virginia's Mountain Treasures: The Unprotected Wildlands of the George Washington National Forest* at 23, 24 (attached).

<sup>5</sup> *Id.*

<sup>6</sup> *Guidance for Conserving and Restoring Old-Growth Forest Communities on National Forests in the Southern Region: Report of the Region 8 Old-Growth Team* (June 1997) ("Regional Guidance") at 1, 12-14.

distribution of these patches and types across the landscape, and connectivity between the old growth patches.<sup>7</sup>

Yet as the Forest Service acknowledged in the Final EIS supporting the 2014 Plan, even developing the Regional Guidance for old growth was difficult because “so few representatives of old growth conditions exist[.]”<sup>8</sup> Indeed, “old growth communities are rare or largely absent in the southeastern forests from Virginia south to Florida,” perhaps representing only around 0.5% of the total forest acreage in the Southeast.<sup>9</sup> And according to the Regional Guidance for Old Growth, old growth is “the missing portion of the southern forest ecosystems.”<sup>10</sup>

Given the rarity and importance of old growth forest in the Southern Appalachians and the little existing old growth forest that has been identified in the field on the GW, we firmly believe that any existing old growth should be protected and not logged. This seems particularly necessary given that the GW has no forest-wide, field-verified existing old growth inventory. As a result, project-level surveys are the only means for identifying existing old growth on the Forest. And given the notorious unreliability of both stand age and stand type within FSVeg data, actual existing old growth, once inventoried on the ground, is likely to be significantly less than the pool of possible old growth. In light of all this, it seems particularly appropriate to protect any existing old growth that is identified. Conversely, logging existing old growth based on unverified assumptions about its existence elsewhere seems contrary to the evidence before the agency regarding the significance and rarity of old growth conditions. This would be very difficult to justify, especially without an EIS.<sup>11</sup>

Indeed, the Forest Plan Harvest prohibits harvest of old growth in all old growth forest types except for two, and even in these two types, harvest is prohibited unless the District can demonstrate during project analysis that the old growth in question does not contribute to the Forest old growth inventory.<sup>1</sup> The Forest Plan Clarification Letter further explains the required analysis:

The Plan allows existing old growth within Old Growth Forest Type . . . 21 Dry-Mesic Oak Forest and Type 25 Dry & Dry-Mesic Oak-Pine Forest to be considered for timber harvest, following

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<sup>7</sup> *Regional Guidance* at 15-18; *Forest Plan* at 2-21, Appendix B.

<sup>8</sup> FEIS at 3-229.

<sup>9</sup> FEIS at 3-229; *Regional Guidance* at 1.

<sup>10</sup> *Regional Guidance* at 1.

<sup>11</sup> Old growth forests hold biological, wildlife, recreational, research, scientific, educational, cultural, aesthetic, and spiritual values. *See* *Region 8 Guidance* at 12-14. Old growth forest takes centuries to develop, so it is irreplaceable on a human time scale if it is replaceable at all. *See* *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1382 (9<sup>th</sup> Cir. 1998); *Idaho Sporting Congress v. Alexander*, 222 F.3d 562 (9<sup>th</sup> Cir. 2000).

certain analysis required by the Plan. Any such analysis will include consideration of the contribution of identified patches [of old growth] to the representation, distribution, and abundance of the specific forest type within the old growth community classifications and the desired condition of the appropriate prescription. These decisions will be part of the project-level analysis and subject to public involvement.<sup>121</sup>

It is also worth noting that according to our GIS analysis, most of the regeneration logging units were inventoried during the Forest Service's Roadless Area Review and Evaluation process (RARE II) in 1979.<sup>13</sup> (See attached map.) This was the second assessment "of 'primitive' areas within the national forests as potential wilderness areas as required by the Wilderness Act."<sup>14</sup> The District should consider the impacts that the proposed logging, logging roads (including temporary roads), and other management would have on the wilderness and roadless characteristics and values, regardless of whether the areas are IRAs.<sup>15</sup>

### C. Prescribed Burns

Is prescribed fire being proposed as part of this project? The scoping notice mentions prescribed fire only in vague terms.<sup>16</sup> If prescribed fire is proposed, the District needs to provide more information about this aspect of the project so the public can provide meaningful comments on potential impacts. For example, where are the burns and control lines proposed? We will likely have additional comments to share once we learn more about the sites involved.

Additionally, the District should consider structural changes likely to result from the proposed prescribed burn. For example, recent analysis of fire effects monitoring on the GWJNF indicates prescribed burns led to 5% ESH on the North Zone, 7% ESH on the Eastern Divide, and 3% ESH on the South Zone. Much as the District has estimated how many acres of open conditions will be created by prescribed fire and how many acres of ESH will be created by harvest, it should consider how to estimate fire effects for this project and then use fire monitoring results to inform future planning and management.

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<sup>12</sup> Clarification Letter at 2.

<sup>13</sup> Forest Plan at F-37.

<sup>14</sup> *Id.*

<sup>15</sup> See *The Lands Council v. Martin*, 539 F.3d 1219, 1230-32 (9th Cir. 2008); *Sierra Club v. Austin*, 82 F. App'x. 570, 573 (9th Cir. 2003); *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1077-79 (9th Cir. 1994).

<sup>16</sup> Scoping Notice at 3, 6.

#### D. Wood Turtle Habitat

We are concerned that the proposed action could impact wood turtles in the project area or vicinity. The wood turtle is listed as threatened in Virginia and as a Tier I Species of Greatest Conservation Need, indicating a critical conservation need because the species faces an extremely high risk of extinction or extirpation.<sup>17</sup> The Forest Plan EIS acknowledges that the wood turtle is imperiled in Virginia and very vulnerable to extirpation from the state, locally rare, as well as globally vulnerable.<sup>18</sup>

We understand that this project would span the Three Springs Run-Lost River, Trout Run, and Waites Run-Capacon River sub-watersheds within the drainage of the Capacon River.<sup>19</sup> We also understand that wood turtles have been found in Waites Run, Trout Run, and Slate Rock Run. The Forest Plan EIS defines wood turtle habitat range to include the Capacon River watershed on the Lee and North River Ranger Districts.<sup>20</sup> Within this range, the Final EIS provides a number of goals and conservation measures including managing watersheds to maintain and enhance the nesting and overwintering habitat of wood turtles by, among other things, minimizing stream sedimentation and human interaction with wood turtles.<sup>21</sup>

The District needs to assess how wood turtles could be impacted by this project and will need to follow specific management objectives in project implementation, as required by the Forest Plan.<sup>22</sup> For example, how will logging truck traffic impact the wood turtle? If prescribed fire is part of this project, how will it impact the wood turtle? The comments of wood turtle expert Dr. Krichbaum should be very helpful to the District in this analysis, as well as in developing important mitigation measures to protect the wood turtle.

The District should also consider modifications to the project that would better protect the wood turtle. For example, the District should consider improving wood turtle habitat in and around Slate Rock Run and Waites Run by diverting vehicles and logging equipment away from wood turtle habitat and promoting vegetation structure that is most beneficial to the wood turtle. Again, Dr. Krichbaum will have valuable insight into these issues.

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<sup>17</sup> Virginia Department of Game and Inland Fisheries, Wildlife Action Plan 6-14, 7-2 (2015), available at <http://bewildvirginia.org/wildlife-action-plan/pdf/2015-Virginia-Wildlife-Action-Plan.pdf>.

<sup>18</sup> Forest Plan, FEIS, Appendix G at G-39; Virginia Department of Conservation and Recreation, Natural Heritage, Definitions of Abbreviations used on Natural Heritage Resource Lists, available at <http://www.dcr.virginia.gov/natural-heritage/help>.

<sup>19</sup> Scoping Notice at 1.

<sup>20</sup> Final EIS Appendix G at G-45

<sup>21</sup> *Id.* at G-45 to G-47

<sup>22</sup> *Id.* at 3-10 to 3-11.

## E. Eco-Zones

We encourage the District to disclose for public comment a description of the silvicultural activities that will occur in particular ecozones. The scoping notice states that this project is focused primarily on regenerating and managing viable communities of short-leaf pine and other yellow pine species, and that most of the project area lies in Low Elevation Pine and Pine-Oak Heath ecozones.<sup>23</sup> However, the scoping notice also states that the District intends to regenerate approximately 600 acres with a substantial oak component.<sup>24</sup> The District should assess and disclose whether the oak regeneration units are within ecozones where oak is characteristic, and focus any oak-regeneration efforts in appropriate ecozones.

## F. Forest Plan Management Prescription Standards

We appreciate the District sharing the shapefiles for this project. Our preliminary GIS analysis indicates a few places where management may be disallowed or restricted under the Forest Plan.

- 12D – Remote Backcountry Areas. In our GIS review, it appears that small areas of oak regeneration units 4, 5, and 6 overlap lands in Management Prescription 12D – Remote Backcountry Areas. These lands are unsuitable for timber production and timber harvest is generally not allowed.<sup>25</sup> The Forest Plan identifies certain limited circumstances when timber may be cut, but such activities are “expected to be infrequent.”<sup>26</sup> The District should confirm that any shapefile overlap onto lands subject to Management Prescription 12D is inadvertent and that no regeneration or other timber harvest will occur on these lands. If the overlap is intentional, the District must justify its proposal under NEPA and the Forest Plan.
- 4D – Special Biological Areas. The scoping notice and our preliminary GIS analysis indicate that some of the project area overlaps lands in Management Prescription 4D – Special Biological Areas.<sup>27</sup> What management activities will occur in these areas? The scoping notice states that non-native, invasive plant treatments may occur in MA-4D,<sup>28</sup> but GIS also appears to show an oak shelterwood unit overlapping the Buck Mountain Special Biological Area. MA-4D lands are designated

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<sup>23</sup> Scoping Notice at 4.

<sup>24</sup> *Id.* at 6.

<sup>25</sup> GW Forest Plan at 4-128.

<sup>26</sup> *Id.*

<sup>27</sup> *See* Scoping Notice at 2.

<sup>28</sup> *Id.* at 6.

unsuitable for timber production, and vegetation management can occur only in limited circumstances.<sup>29</sup> As with the MA-12D lands, the District should confirm that these overlaps are inadvertent.

- 7G - Pastoral Landscapes and Rangelands. GIS indicates the yellow pine enhancement unit 6 overlaps lands in Management Prescription 7G - Pastoral Landscapes and Rangelands. As with MA-12D and MA-4D lands, these lands are unsuitable for timber production, and vegetation management is permitted only in limited circumstances.<sup>30</sup> If the District is proposing management activities in MA-7G lands, the District must take care to ensure compliance with the applicable limitations in the Forest Plan.

### **G. Steep Slopes and Soils**

We encourage the District to analyze the slopes and soils in the proposed logging units, considering soil erosion hazards and soil suitability for logging roads, log landings, and ground-based timber harvest, and to begin thinking early about how to avoid and mitigate risks associated with steep slopes, particularly with highly erodible soil types. Specifically, we encourage the District to analyze GIS data as a “first filter” to help identify and avoid ground-based logging in areas with steep slopes and high erosion-hazard soil types, which risk erosion and sedimentation of creeks and rivers.

We conducted such GIS analysis for the Lower Cowpasture project to identify potential high-risk sites in the proposed commercial harvest units that had moderate to severe erosion hazards and slopes over 35 percent (because the Forest Plan prohibits ground-based logging on sustained slopes of 35% or greater).<sup>31</sup> We then created maps to indicate Moderate risk areas (in which some erosion is likely) and Severe risk areas (in which significant erosion can be expected). We attach one of those maps as an example.

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<sup>29</sup> GW Forest Plan at 4-55.

<sup>30</sup> *Id.* at 4-102.

<sup>31</sup> *See* GW Forest Plan at 4-13. The information needed to conduct this analysis is readily available for download and GIS analysis. To determine slopes within the proposed commercial harvest units, we relied on USGS’ National Elevation Dataset (10-meter resolution) and identified steep slopes of 35% or greater. We identified potential erosion risks from the construction and use of forest roads and trails in the project stands using soil data from the National Resources Conservation Service (NRCS). NRCS’ Gridded SSURGO (gSSURGO) database contains information about soil as collected by the National Cooperative Soil Survey over the course of a century. The information was gathered by walking over the land and observing the soil. Many soil samples were analyzed in laboratories. The maps outline areas called map units, which describe soils and other components that have unique properties, interpretations, and productivity. The SSURGO database provides information about the location, characteristics, limitations, and risks of various soil types.

(Attached.) Including this information early in the process allows the District to avoid potentially problematic areas without significant additional time and labor in the field.

## **H. Roads**

We discourage extensive temporary road construction to access new, less accessible timber harvest units. Temporary roads leave a lasting imprint on the land and a legacy of hydrology impacts. In addition to erosion and sedimentation risks, these roadbeds are vectors for the spread of non-native invasive species and illegal ATV use. And unless the land is returned to its original contours, these roads are frequently used to justify re-entries for another round of harvest. The 5 miles of temporary roads proposed here is not insignificant. Where does the District intend to place them? We may have additional comments when we learn more about this aspect of the proposal.

In addition, while we have some concerns about whether the TAP was adequate and sufficiently realistic in identifying a road system that can be adequately maintained within realistic budgets, and in addressing the highest sediment risk roads, the District certainly should consider the TAP in developing and analyzing this project. At a minimum, potential project activities should be consistent with TAP findings. This is an important step in the Forest Service's efforts to "right size" the road system and prevents unnecessary investment in roads recommended for downgrading.

## **I. Trails**

There are many trails within the project area. Are there any harvest units that abut the trails or prescribed fire that crosses or uses the trails as a control line? With other projects, we have seen such management cause damage to trails. For example, a fairly recent prescribed burn around Hone Quarry caused many trees to fall or begin to fall over trails maintained by volunteers. This creates dangerous conditions for volunteers and can inhibit or undo much of their work. In addition, blackberries and other vegetation grow quickly in the trails following a burn, making it difficult for volunteers to keep them passable. The District should analyze and mitigate impacts to these trails, as well as commit to restoring these trails if management causes negative impacts. Mitigation could include a buffer of 50 feet on both sides of trails, which we believe District Ranger Lauren Stull may have used in recent projects.

## **J. Non-Native Invasive Species**

Infestations of non-native plants (NNIP) pose one of the greatest stresses and threats to oak forest and woodlands.<sup>32</sup> What is the extent of existing NNIP in the proposed units and access roads. The District should not propose management that is likely to lead to new infestations of NNIP, particularly in characteristic, native, and

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<sup>32</sup> Forest Plan at 3-5.

relatively healthy forest. The District should also control existing infestations and commit to necessary mitigation measures, including post-harvest assessments and treatment of NNIP. Likewise, the District should not propose management that would exacerbate existing infestations. The District should commit to treating NNIP and preventing the spread of NNIP in the project area, and the EA should detail how the District intends to do so.

## **K. Wildlife Openings**

Where does the District intend to enhance wildlife openings and how in each location? We may have additional comments when we learn more about this aspect of the proposal.

## **L. Cumulative Impacts**

Forest Service regulations require the District to analyze all impacts, including cumulative impacts.<sup>33</sup> In doing so, the District must “give a 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.”<sup>34</sup>

- Other Management in the Project Area and vicinity. With regard to this project, the District should consider other past, present, and future management within the project area. This includes the recent Molly’s Hill Thinning project, and we believe additional timber sales have occurred in the area. Does recent management account for the fact that the Three Springs-Lost River watershed already has an estimated 5% ESH?<sup>35</sup>
- Prescribed fire. The District needs to analyze the impact of all proposed management, including prescribed fire, whether it is considered in this NEPA decision or as part of a separate project.
- Climate Change. The District must also consider climate change impacts of the project, cumulative and otherwise. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”<sup>36</sup> Further, courts have explained that the “impact

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<sup>33</sup> 40 C.F.R. § 1508.9(b); § 1508.27(b)(7).

<sup>34</sup> *Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep’t of Interior*, 608 F.3d 592, 603 (9th Cir. 2010).

<sup>35</sup> Scoping Notice at 7.

<sup>36</sup> 40 C.F.R. § 1508.7.

of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.”<sup>37</sup>

#### **M. Draft Environmental Assessment**

We strongly encourage the District to make a draft Environmental Assessment available for public comment, prior to issuing a draft Decision Notice. In recent years, this seems to have become routine on the GWJNF, and we believe it is a significant improvement over the two-step process used with past projects (i.e., providing a scoping notice for public comment and then issuing a final EA with the Decision Notice). Offering a draft EA for public comment and considering those comments *before* issuing a draft Decision Notice and finalizing decision documents is more consistent with a collaborative approach and gives the District an opportunity to incorporate additional information into the EA, make any final adjustments to the project, or otherwise respond to and address comments in the final EA and decision. Such responsiveness likely would increase public support for the decision and could reduce objections, expediting the project in the end.<sup>38</sup> Moreover, we believe NEPA and its implementing regulations require that the public have an opportunity to comment on the environmental effects of the proposal and alternatives – information normally made available in a draft EA.

#### **N. Monitoring and Adaptive Management.**

We also encourage the District to begin thinking about monitoring early in this process. Identifying restoration goals, establishing measurable objectives, and monitoring will be essential to determine whether and to what extent quantifiable objectives for the project activities are being met – and so that adjustments can be made if the results or effects are not as expected. Related, we encourage the District to consider an adaptive management approach.

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<sup>37</sup> *Ctr. for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1217 (9th Cir. 2008).

<sup>38</sup> On the other hand, skipping this step requires those wishing merely to give input on the EA to offer it through the more adversarial objection process, which is no substitute for an opportunity to give input and dialogue.

Thank you for your consideration, and please let us know if you have questions. We look forward to continuing to participate and providing additional comments as the project moves forward. We hope to have opportunities to discuss the project further with you and your staff during that process.

Sincerely,



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Attachments