



Southern
Environmental
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Via electronic submission at <https://cara.ecosystem-management.org/Public/CommentInput?Project=59670>

Jessie Howard
George Washington and Jefferson National Forests
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Roanoke, Virginia 24019
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Re: VDOT — Route 33 Rawley Pike Road Improvement

Dear Jessie,

Thank you for the opportunity to comment on scoping for the Route 33 Rawley Pike Road Improvement proposal. We submit these comments on behalf of Alliance for the Shenandoah Valley (ASV) and the Southern Environmental Law Center (SELC).

Safety is a top priority and we support measures to enhance safety on Route 33. However, we are concerned that this important work ultimately will be delayed if the Forest Service approves this proposal using the categorical exclusion (CE) at 36 C.F.R. § 220.6(e)(3). This CE and others are currently being challenged in litigation in *The Clinch Coalition v. U.S. Forest Service*, Case No. 2:21-cv-00003-JPJ-PMS (W.D. Va.). Moreover, this CE was promulgated in reliance on a standard codified in a separate rulemaking by the Council on Environmental Quality (CEQ), which is being challenged in litigation in *Wild Virginia v. Council on Environmental Quality*, Case No. 3:20-cv-00045-JPJ-PMS (W.D. Va.). CEQ disclosed in a recent court filing that it has substantial concerns about the lawfulness of the rule on which this CE is based, and that it intends to comprehensively reconsider the rule in the coming weeks. In sum, there is a serious risk that this CE will be deemed unlawful in court or fatally undermined upon reconsideration of the CEQ rule on which it is based. Either outcome would require the Forest Service to restart this proposal from scratch, which would only serve to delay completion of needed safety enhancements. To avoid delay, we encourage the Forest Service to prepare an environmental assessment for this proposal so the work can be completed expeditiously.

Sincerely,

Spencer Gall, Associate Attorney
Kristin Davis, Senior Attorney

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