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Submitted online via <https://cara.ecosystem-management.org/Public/CommentInput?Project=46063>

Mary Yonce, District Ranger
Lee Ranger District
George Washington and Jefferson National Forests
95 Railroad Avenue
Edinburg, Virginia 22824

Re: Sandy Ridge Yellow Pine Enhancement Project

Dear Ms. Yonce,

Thank you for the opportunity to comment on the draft environmental assessment (EA) for the proposed Sandy Ridge Yellow Pine Enhancement Project. We offer the following comments on behalf of the Virginia Wilderness Committee and the Southern Environmental Law Center.

First, we reiterate that the name of this project is a misnomer, which obscures the fact that the project has other objectives including hundreds of acres of regeneration harvest. We urge the District to rename this project to better reflect its stated objectives (*e.g.*, Sandy Ridge Yellow Pine Enhancement and Vegetation Management Project).

Second, we are pleased to see the District make a draft EA available for public comment. We acknowledge that draft EAs will not always be fully developed such that they would satisfy NEPA or the Forest Plan if issued as a final EA, and the draft EA for the Sandy Ridge project falls into this category. As we explain below, the draft EA is incomplete in several important ways, especially related to the yellow pine enhancement aspects of the project. We may have additional comments on the proposed action once missing information is disclosed.

1. Yellow Pine Enhancement

We are eager to learn more about the proposed yellow pine enhancement treatments. We support ecological restoration on the George Washington National Forest (GW), which can include restoration activities that use timber harvest as a tool in the right places. The yellow pine enhancement activities proposed for this project sound worthwhile, but the draft EA ultimately describes a proposal that is not fully developed.

The draft EA describes a sliding scale approach to treatments within the yellow pine enhancement units.¹ Within a 1,571 acre area, the District proposes to treat up to 1,500 acres using a variety of regeneration systems and thinning, including approximately 200 acres that will not receive any treatment and will serve as a scientific control group.² Each treatment is given a maximum acreage to which it will apply, but the total potential acreage exceeds 1,500 acres, apparently because the District has not decided which treatment should be applied to a given site. Indeed, the draft EA acknowledges that “[t]he final distribution of thinning and regeneration has not been determined”³ and that the “specific location on the ground” of the yellow pine enhancement units “has not been determined yet.”⁴

The final EA must describe the affected sites and distribution of treatments with specificity. A sliding scale approach obscures the ecological impacts (positive and negative) of the proposed action, and it is legally insufficient. Ecological restoration is the process of assisting in the recovery of an ecosystem that has been degraded, damaged, or destroyed by addressing deficiencies in structure, function, composition, and connectivity.⁵ Ecological restoration requires identification of a reference (or desired) condition, comparing current, site-specific conditions to that reference condition, and moving sites towards the restored condition through restoration activities. We do not dispute the District’s general assessment that the 1,571 acre yellow pine enhancement area is degraded from its reference condition, and we could support efforts to restore yellow pine species such as shortleaf pine in this area. Restoration, however, is site-specific, even at this scale. The same silvicultural treatments applied on different sites in the Southern Appalachians are unlikely to yield the same results; indeed, management can constitute restoration at one site and degradation at another. To restore species composition, the District must consider the current condition and the reference (or desired) condition, and the treatment must be tailored to move from one to the other.

If the District has identified criteria for deciding how to treat particular sites in the yellow pine enhancement units, the draft EA does not disclose them. When we spoke earlier this month, you indicated that the District plans to hold a virtual open house to discuss the Sandy Ridge project and the yellow pine enhancement activities in particular. We look forward to attending and learning more.

We also emphasize that NEPA and the Forest Plan require the final EA to identify which sites the District proposes to treat and the silvicultural prescriptions the District proposes to use on those sites. The GW Forest Plan provides that it “will be implemented through a series of project-level decisions based on appropriate site-specific environmental analysis and disclosure to assure compliance with [NEPA].”⁶ NEPA also demands the type of site-specific information that the draft EA lacks. Where site-specific information is relevant to site-specific decisions, NEPA requires analysis and disclosure of that information before site-specific decisions are

¹ See Draft EA at 10–12, 14.

² *Id.*

³ *Id.* at 11.

⁴ *Id.* at 61.

⁵ See generally FSM Ch. 2020 – Ecosystem Restoration; 36 C.F.R. Part 219.

⁶ GW Forest Plan at 5-1.

made.⁷ And as discussed above, site-specific information is highly relevant to the District's restoration proposal.

Furthermore, the draft EA could not support a finding of no significant impact (FONSI) if it were issued as the final EA because the District cannot reach a defensible FONSI without conducting site-specific analysis. A FONSI "briefly presents the reasons why the proposed agency action will not have a significant impact on the human environment."⁸ But an agency cannot conclude that a project's impacts will not be significant if the agency does not know what those impacts will be (*e.g.* what treatments will be implemented) and when or where they will occur (*e.g.* what stands will be treated). Simply stated, the same actions in different places will have different impacts.⁹

Moreover, the District cannot rely on mitigation to reach a FONSI until it considers site-specific factors.¹⁰ "A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA."¹¹ Rather, mitigation must be detailed with enough specificity "to ensure that environmental consequences have been fairly evaluated."¹² The Forest Service cannot meet that standard until it knows (or discloses) where impacts will occur and what they will be. Indeed, more broadly, a "perfunctory description of mitigating measures" is inconsistent with NEPA's "hard look" requirement altogether.¹³

The draft EA forthrightly acknowledges that design criteria and mitigation measures in the yellow pine enhancement units will depend on site selection. The draft EA states that "[t]he yellow pine enhancement units and associated logging plans will require additional review, and possible revision, in relation to aquatic features, soil, and water resources and sinkholes once the proposed treatment locations are determined on the ground."¹⁴ It also acknowledges that additional "site specific design criteria" may be necessary¹⁵ and that "revisions to the proposed logging plan features may be needed to provide adequate protection to soil and water resources."¹⁶ It sounds like the District proposes to address those issues in the field after a decision is signed. Do we understand that correctly? If so, we emphasize that those issues must be addressed in the final EA and subject to public notice and comment, not addressed on an ad hoc basis after the fact.

⁷ See *Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1094–95 (9th Cir. 2006).

⁸ *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 757–58 (2004).

⁹ See, *e.g.*, *New Mexico ex rel. Richardson v. Bureau of Land Mgmt*, 565 F.3d 683, 706 (10th Cir. 2009) ("Disturbances on the same total surface acreage may produce wildly different impacts on plants and wildlife depending on the amount of contiguous habitat between them.").

¹⁰ If the Forest Service proposes to reach a FONSI, it must be clear about whether it is proposing a mitigated FONSI.

¹¹ *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

¹² *Id.*

¹³ *Id.*

¹⁴ Draft EA at 21.

¹⁵ *Id.*

¹⁶ *Id.* at 22.

In sum, the draft EA does not provide sufficient information for the public or a decision-maker to understand the probable impacts of the yellow pine enhancement activities. We look forward to learning more, potentially during a virtual open house and certainly from the final EA, and we may have additional comments at that time.

2. Coppice With Reserves

In addition to the yellow pine enhancement activities, the draft EA also proposes 487 acres of regeneration via coppice with reserves “to regenerate oak and other species important for wildlife and to create [early successional habitat (ESH)].”¹⁷

We reiterate and incorporate by reference our position expressed during scoping that the project should promote age class and canopy structure in proportion to the departure levels identified in the ecological departure analysis,¹⁸ which would entail more thinning to create mid- and late-open successional forest instead of myopically focusing on creating ESH. Indeed, the draft EA acknowledges that the amount of open canopy is significantly more departed from desired levels than is ESH.¹⁹

At a minimum, the final EA must evaluate an “increased thinning” alternative, which the draft EA eliminated from detailed study.²⁰ NEPA requires agencies to evaluate alternatives, even for EA projects, for “any proposal which involves unresolved conflicts concerning alternative uses of available resources.”²¹ The draft EA’s response to comments asserts that there are no such identified conflicts with this project,²² but that is not correct. An unresolved conflict exists when the agency’s objective “can be achieved in one of two or more ways that will have differing impacts on the environment.”²³ The draft EA states that part of “this project’s purpose and need is to create and enhance wildlife habitat through the promotion of desired structure (successional stages and open canopy conditions), species composition, fire regimes, and soil and water conservation-[sic] that would provide habitats to maintain plant and animal species viability and diversity.”²⁴ That broad objective plainly “can be achieved in one of two or more ways that will have differing impacts on the environment.”²⁵ Nothing about the purpose and need requires regeneration to create ESH—it specifically identifies promoting open canopy conditions—and the District cannot dismiss its obligation to at least consider increased thinning.

We also have some questions and concerns about the impacts and efficacy of the proposed regeneration harvest. First, it appears that a significant portion of the proposed temporary road construction would come from a single temporary road to access coppice-with-

¹⁷ Draft EA at 9.

¹⁸ See Scoping Comments at 2–3.

¹⁹ Draft EA at 27–30.

²⁰ *Id.* at 19.

²¹ 42 U.S.C. § 4332(2)(E).

²² Response to Comments at 11.

²³ *Trinity Episcopal School v. Romney*, 523 F.2d 88, 93 (2nd Cir. 1975).

²⁴ Draft EA at 5.

²⁵ *Trinity Episcopal School*, 523 F.2d at 93.

reserves units 8–10 on the west side of Wildcat Ridge. As we stated during scoping,²⁶ 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. Even restoring the land to its original contours results in a permanent irreversible alternation of geologic condition that can affect slope stability, surface and subsurface drainage, and stormwater runoff. This is particularly important on temporary roads on a slope. Moreover, these roads are frequently used to justify re-entries for another round of harvest. As the Forest Geologist recently explained, “There is nothing so permanent as a temporary road.”²⁷ We urge the District to consider whether these harvest units justify the amount of road construction it would take to reach them.

Second, we are concerned that the proposed action includes regeneration harvest in units with steep slopes, which risk erosion and sedimentation of creeks and rivers. GIS review indicated that units 6, 7, 18, and 19 include slopes exceeding 35%. Although the draft EA includes a design criterion requiring winching of logs on “small inclusions of steeper slopes (over 35%),”²⁸ the units above appear to include more than just “small inclusions” of slopes greater than 35%. The District should consider whether to exclude steep areas from those units entirely.

Finally, the EA acknowledges that regenerating oak on productive sites can be challenging.²⁹ It is important that the District confirm it will be able to perform the pre- and post-commercial treatment necessary to ensure that oak regeneration actually occurs, and to monitor and disclose whether the project creates the desired conditions. Likewise, the District should analyze the impacts of the proposed management if regeneration units cannot receive post-commercial treatment due to budgetary or logistical issues.

3. Other Comments

In addition to the foregoing, we have the following other comments on the draft EA.

- a) We are pleased to see that the District will not harvest stands meeting the Region 8 old growth criteria.³⁰ The July 2015 Clarification Letter for the GW Forest Plan provides that “[a]ny existing old growth patches that are identified [during project planning] will be recorded in a manner that allows their existence and contribution to the GWNF’s old growth network to be documented, tracked over time, and considered in future project—or forest—planning.”³¹ The GWJNF Old Growth Survey Protocol (attached) explains that all old growth patches of at least 5 acres “are spatially delineated in FSVeg Spatial” as “a separate polygon with unique data, while patches less than 5 acres are “entered as inclusion acres in

²⁶ Scoping Comments at 9.

²⁷ Ewing Mountain Vegetation Project Environmental Assessment: Draft Geology Report (Apr. 12, 2021), available at https://www.fs.usda.gov/nfs/11558/www/nepa/99079_FSPLT3_5622305.pdf.

²⁸ Draft EA.

²⁹ Draft EA at 10.

³⁰ Draft EA at 32.

³¹ GW Forest Plan Clarification Letter at 2.

FSVeg Spatial and a note in the Remarks column would indicate that the inclusion is [old growth].”³²

- b) We ask that the District confirm it is recording the identified old growth patches accordingly. Finally, we received old growth surveys for the project dated March and June of 2020, received in January 2021 in response to a Freedom of Information Act request. Have other surveys been conducted since June 2020?
- c) We remain concerned about impacts to wood turtle. We understand those impacts were analyzed in detail in the biological evaluation,³³ which is still in draft pending concurrence from the U.S. Fish and Wildlife Service.³⁴ We look forward to reviewing the biological evaluation upon publication of the final EA and we may have detailed comments at that time.
- d) The provided maps in the Squirrel Gap North and South areas appear to show proposed temporary roads that serve no purpose: they do not appear to serve as firebreaks nor do they lead to any apparent harvest units. Are these GIS relics of proposed harvest units that were dropped before the draft EA was published? If so, are they included in the draft EA’s calculation of the temporary road construction proposed for this project? In all events, the District should absolutely not build temporary roads without compelling and articulated reasons for doing so.
- e) Is there any compelling reason why the District prefers to use glyphosate in place of other herbicides? Although the draft EA acknowledges scientific and public uncertainty surrounding glyphosate as a carcinogen,³⁵ it dismisses those concerns without explaining why the agency must use glyphosate at all.

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³² GWJNF Old Growth Survey Protocol, Ex. A, at 2.

³³ Draft EA at 41.

³⁴ *Id.* at 40.

³⁵ Draft EA at 39.

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,

A handwritten signature in blue ink, appearing to be 'SG', with a horizontal line underneath.

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Attachments