

Attachment 1

Scoping comment letter from SELC
et al. (June 16, 2021) and Draft
Environmental Assessment
comment letter from SELC et al.
(November 14, 2022) regarding the
Crossover Project

MountainTrue | The Wilderness Society | Defenders of Wildlife
Southern Environmental Law Center

June 16, 2021

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Re: Crossover Project

Dear Andy,

Please accept the following comments on behalf of MountainTrue, The Wilderness Society, Defenders of Wildlife, and the Southern Environmental Law Center. We also incorporate and endorse the comments submitted by the Nantahala-Pisgah Forest Partnership, of which we are members.

We write here to offer additional detail explaining why the Forest Service should develop a new alternative that removes all stands located within Natural Heritage Natural Areas (NHNAs), old growth, and the Ash Cove backcountry area from harvest; adopts strong and specific mitigation measures to protect steep slopes and prevent the spread of non-native invasive plants; and incorporates input from tribal representatives. The project analysis must disclose the tradeoffs between alternatives, and it must address the serious and long-term impacts of “temporary” road construction.

I. The Crossover Project Needs A New Collaborative Direction

We appreciate the scoping letter’s invitation to “continue the collaborative process” and are prepared to assist in shaping a viable project alternative. We must note, however, that this project has so far not been collaborative. Collaboration requires more than meetings and online information sharing. If the Districts genuinely want to collaborate, then they must integrate stakeholder input when setting project priorities. Setting priorities based on stakeholder input is most important where, as here, diverse stakeholders have developed a consensus strategy to meet ecological, social, and economic needs without unnecessary conflict. Collaboration is not served by proposing a zero-sum choice between protecting ecological values and creating early

successional habitat, then forcing stakeholders to negotiate over how much of their needs will be sacrificed.

Further, project-level collaboration does not occur in a vacuum. Individual projects implicate landscape-level issues that are more properly addressed during forest planning. Fortunately, the forest planning process has produced a clear, implementable collaborative framework for meeting diverse needs at the project level. The Forest could have used that framework to propose a project with the same acreage but without the unnecessary risk and controversy.

Of the 1,526 acres proposed for regeneration harvest in this project, 335 are clearly inconsistent with the Partnership's collaborative plan revision recommendations. Not only did the Forest have the benefit of the general recommendations, but Partnership members also applied those recommendations to the project area using the web-based application set up by the Forest. We identified specific areas where rotational harvest would be incompatible, and in contrast, areas offering flexibility for noncontroversial work, including rotational harvest, subject only to general forest-wide recommendations.

After soliciting and receiving such information, the Forest should have been aware that these 335 acres would cause conflict. The proposal threatened to drive a wedge between stakeholders primarily advocating for active management and others primarily advocating for protection of high conservation value areas. It created a near guarantee of conflict, objection, and likely litigation. At a time when the Forests are attempting to finalize a collaborative forest plan, the proposal threatened to drive stakeholders into their corners.

This was a mistake, and we hope that it will be a lesson learned. As a testament to the Partnership's work, the project did *not* drive stakeholders apart. It brought us closer together, with a collective voice calling for the Forest to abandon the controversial work that would otherwise lead to continued gridlock. Moving forward, we urge the Forest Service to develop proposals based on the Partnership recommendations.

With respect to the other 1,191 acres, the Forest still has more work to do. The scoping proposal does not show a careful approach to harvesting on steep slopes, especially where concentrated in a water supply watershed. Nor does it show that tribal representatives have been adequately consulted. Still, with appropriate consultation, strong sideboards, and specific mitigation plans, these stands can move forward with our support.

Below, we offer two types of considerations that should be addressed in the EA: (1) those that should be addressed by comparison to a new alternative that does not include rotational harvest of high conservation value areas, and (2) those that should be addressed by forthright analysis and specific mitigation measures in any action alternative.

II. Steep Slopes and Water Quality Impacts

The current Forest Plan requires aerial cable or helicopter logging on slopes greater than 40% (henceforth "steep slopes"), and there are an abundance of stands sited on steep slopes in the Crossover project (see Table 1). Unfortunately, the Scoping Record does not disclose the logging methods planned for each stand, and for several stands in excess of 40% slopes, no access routes

to the top of the stand, which would be required for aerial cable logging, are disclosed. The EA must disclose the logging methods and mitigation measures for each stand. If aerial cable logging will not be used on steep slopes, the analysis must demonstrate that the chosen method will be at least as protective as aerial cable logging.

Table 1. Stands with at least partial steep slopes (>40%) in the Crossover project					
53/23	53/24	53/25	54/3	54/27	54/28
56/22	56/23	77/4	78/5	78/7	78/8
83/1	83/18	85/13	85/14	86/24	86/52
86/27	87/13	87/14	87/29	87/30	87/32
106/11	106/19	108/6	108/8	109/20	113/30

Additionally, the Crossover project would harm a significant number of High Quality Waters (HQP) and trout stream (Tr) watersheds. The characteristics of the receiving waters are important to evaluating the risk of sedimentation impacts. HQWs are “rated excellent based on biological and physical/chemical characteristics” by the state.¹ The project proposes to log a substantial number of stands in water supply or HQW watersheds (see Table 2). Twelve stands are in WS-I water supply watersheds, including Long Creek, Rock Creek, and Panther Creek, and nine of those stands require logging on steep slopes. Long Creek in particular is a small watershed, and the proposed logging would disturb soil on a large percentage of the watershed, creating outsized risks of water supply impacts. Based on the Forest Service’s rule of thumb allowing up to 15% of activity areas to suffer soil impairment, we estimate that this small watershed could see up to 60 cumulative acres of erosion and soil loss, even if everything goes right.

Many other stands are near WS-III waters, another water supply classification. These primary (WS-I, WS-III) and supplemental (HQP, Tr) classifications represent waters of high integrity, with significant public health and ecological value. Each of these designations carries its own water quality standards.

Table 2. Significant Surface Water Classifications in the Crossover project	
53/23	C; HQW - Britton
53/24	C; HQW - Britton
53/25	C; Tr
56/22	C; Tr
56/23	C; Tr
77/1	C; Tr
77/7	C; Tr
85/13	WS-I; Tr, HQW - Rock
85/14	WS-I; Tr, HQW - Rock
86/21	WS-I; Tr, HQW - Long
86/22	C; Tr, HQW - Burgan
86/23	C; Tr, HQW - Burgan

¹ <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications#classes>

86/24	WS-I; Tr, HQW - Long
86/25	C; Tr, HQW - Burgan
86/26	C; Tr, HQW - Burgan
86/27	C; Tr, HQW - Burgan
87/2	C; Tr
87/13	WS-I; Tr, HQW - Long
87/14	WS-I; Tr, HQW - Panther
87/15	WS-I; Tr, HQW - Panther
87/16	WS-I; Tr, HQW - Long
87/25	WS-I; Tr, HQW - Panther
87/29	WS-I; Tr, HQW - Panther
87/30	WS-I; Tr, HQW - Panther
87/31	C; Tr
87/32	WS-I; Tr, HQW - Panther
106/11	WS-III
106/15	WS-III
106/19	WS-III
106/20	WS-III
108/6	WS-III
108/8	WS-III
108/13	WS-III
109/2	WS-III
109/3	WS-III
109/4	WS-III
109/18	WS-III
109/20	WS-III
111/2	WS-III
111/5	WS-III
111/11	WS-III
111/26	WS-III
111/30	WS-III
111/32	WS-III
111/42	WS-III
111/43	WS-III
111/44	WS-III
111/45	WS-III
111/46	WS-III
111/47	WS-III
112/2	WS-III; Tr - Tulula
112/9	WS-III; Tr - Tulula
112/10	WS-III; Tr - Tulula
112/11	WS-III; Tr - Tulula
112/12	WS-III; Tr - Tulula
113/7	WS-III; Tr - Tulula
113/10	WS-III; Tr - Tulula

113/20	WS-III; Tr - Tulula
113/21	WS-III; Tr - Tulula
113/28	WS-III; Tr - Tulula
113/29	WS-III; Tr - Tulula
113/30	WS-III; Tr - Tulula
113/37	WS-III; Tr - Tulula

Not only must the Forest Service avoid introducing visible sediment into these streams, as it must for all streams, the agency must also ensure that its actions do not cause violations of water quality standards.² This project cannot qualify for a FONSI unless the Forest Service can specifically find that water quality standards will be met, which is impossible without incorporating specific mitigation measures to prevent erosion and sedimentation. Such measures should include but are not limited to aerial cable logging and phasing implementation over time to space out impacts to the water supply.

In recent projects, the Forest Service has ignored concerns about sedimentation impacts to waters from road construction and logging by citing to extremely high BMP efficacy rates. However, as implementation of recent projects and our previous comments have demonstrated, these BMP rates simply are not reliable in our region and in these portions of the Nantahala National Forest in particular.³ As a reminder, in the Buck Response to Objection, the Tusquitee District committed to work with conservation stakeholders during calendar year 2020 to better understand whether monitoring efforts accurately reflect actual water quality impacts. That dialogue was delayed by the pandemic, but we expect to follow up soon about this issue, with additional information that must be addressed in the EA. For present purposes, however, we note that logging in these stands and in these watersheds creates a substantial risk of sedimentation and violation of state water quality standards. The Forest Service must analyze the tradeoffs created by these risks in the EA.

III. Old Growth and NRV

a. The Forest Service Must Analyze Impacts of Harvesting Old Growth

The Crossover project as proposed would log existing old growth in several stands, including 53/23, 54/3, 86/26, and possibly others, such as 86/24, 86/25, and 109/20. This is the latest in a

² Under the federal Clean Water Act, the Forest Service is obligated to meet the requirements of state water quality protection laws, including North Carolina's Water Quality Protection Act and Sedimentation Pollution Control Act. 33 U.S.C. § 1323. The NC Water Quality Protection Act prohibits pollution (from any source, including forestry) that violates state water quality standards. NCGS § 143-215.1(a)(6); see also 15 NCAC 2B .0211(12). The use of BMPs is not a shield to liability if the activity is not in full compliance with the Forest Practice Guidelines, which prohibit the introduction of visible sediment to streams.

³ See SELC, MountainTrue, The Wilderness Society, Defenders of Wildlife, Sierra Club, Appalachian Voices, Notice of Objection and Statement of Reasons for the Buck Project (Nov. 5, 2019), 18-28, available at <https://cara.ecosystem-management.org/Public/Letter/2126589?project=50345> ("Buck Objection").

series of recent projects in the Nantahala National Forest that have proposed to log existing old growth,⁴ and we again strenuously object to the liquidation of existing old growth.

Old growth is a rare and underrepresented resource in the Southern Appalachians with extremely high ecological significance, providing and protecting biological diversity, wildlife habitat, recreation, esthetics, soil productivity, water quality, aquatic habitat, and cultural and spiritual values. Even the faulty Spectrum analysis performed as part of plan revision, which significantly overestimates levels of old growth and underestimates the amount of young forest being produced by natural disturbance,⁵ shows that these Forests are nowhere near meeting NRV for old growth.

Remarkably, the Forest proposes to log old growth even while explaining how serious the old growth deficit is. The Scoping Record notes that “appreciable” levels of gap-phase regeneration due to senescence “will not start occurring across the Nantahala and Pisgah National Forests for another 100 years or more.” Scoping Record at 5. In other words, old-growth characteristics (snags, large woody debris, all-aged forests regenerating in small gaps) will not be present in appreciable amounts for the next century. Logging *existing* old growth merely because there are 100-year-old forests that may start to exhibit old growth characteristics in *another* 100 years is inexcusable.

The choice to log existing old-growth forests seems to be part of every project nowadays on the Nantahala National Forest, but the Forest Service has never adequately analyzed the values at stake in that decision. When we have raised these issues in past projects, the Forest’s general response has been the same: because some parts of the forest are in designated future old growth patches or inoperable areas, the Forests will eventually reach NRV for old growth after all of those patches have gotten old enough to qualify.⁶ In fact, if the Forest Service does not allow substantial logging of older forest, the agency seems to argue that we will have *too much* old growth and be behind on NRV for other age classes. This response misses the point for multiple reasons.

First, the new planning rule’s emphasis on ecological integrity (defined as the condition of being within NRV) cannot be squared with a program of work that liquidates existing old growth based on the rationale that commonplace younger forests may eventually—more than 100 years from now—begin to exhibit old-growth characteristics. Because replacement of old growth is purely hypothetical and, at best, in the distant future, removal of old growth today moves the forest

⁴ See SELC, MountainTrue, The Wilderness Society, Defenders of Wildlife, Appalachian Voices, Sierra Club, Comments on Buck Project Draft EA (May 10, 2019), 6-11; SELC, Defenders of Wildlife, The Wilderness Society, MountainTrue, Notice of Objection and Statement of Reasons for the Southside Project (Aug. 27, 2018), 7-10.

⁵ SELC, The Wilderness Society, MountainTrue, Defenders of Wildlife, Comments on the Nantahala and Pisgah National Forests Draft Land Management Plan and Draft Environmental Impact Statement (June 29, 2020), 21-53, available at https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_5328176.

⁶ See Environmental Assessment, Buck Project (May 2020), 84-87; Final Environmental Assessment, Southside Project (Feb. 2019), 55-60, 191-92. This argument was also raised in particular at an objection meeting attended by commenters, where the Forest Service showed and discussed a graph showing the amount of forest that would reach old forest age in 50 years as part of an explanation for logging old forest and intact ecosystems in the project.

farther away from NRV. If this is the kind of project that the Forest expects will be implemented under the new forest plan, the plan itself will not comply with the planning rule.

Second, the assumption that *all* forest in the designated patch network will become old growth (i.e. meet the Region 8 criteria) if it is “managed” for old growth is inaccurate. Stand age does not equate to old growth. The percentage of trees that the Forest Service estimates will have reached a certain tree age 50 years from now does not equal the percentage of forest that will be in old growth condition by that time. While the presence of old trees is a prerequisite for old growth, and areas with a stand age exceeding Region 8 thresholds should be examined as potential existing old growth, old growth is characterized by more than just tree age. The Region 8 Guidance for classifying old growth, for example, is based on age, size, basal area, and disturbance. Many other factors separate old forest from true old growth, including variation in tree size and spacing; various stages of dead trees, snags, and decay; and developed canopy layers. It is simply not true that all forest of *old age* necessarily also meets the list of requirements to be *old growth*, much less old growth of the highest ecological value and integrity.

The Forest Service should and *must* make the effort to restore old growth through management choices like the designated patch network in order to promote ecological resilience and achieve NRV. But it cannot rely solely on hypothetical old growth at some future time, while actively cutting old growth and moving the forest further away from NRV in the present. Further, the Forest Service belies its own rationale by proposing to cut stands that are on a good trajectory, but have some disturbance history and do not presently show all old growth characteristics. If the Forest Service actually intended to restore old growth in the future, it would be setting aside older stands with high ecological value and integrity.

The Forest Service should be very careful about whether to bring areas into timber production that have so far escaped that fate. Intact forest communities are even more valuable in the midst of a climate and biodiversity crisis. Because the Nantahala is not treating this rare resource with care but is instead targeting old growth in each of its recent projects, the project-level analysis must address the cumulative impacts of those choices, on both NRV and carbon storage. The argument that the Forest is doing a small amount in any given project such that effects will not be significant does not carry weight if it chooses to keep taking the same “small” action over and over again. Any NEPA document that fails to undertake both a particularized and cumulative analysis of the ecological and climate change impacts of logging old growth in this and other projects will be insufficient.

The Forest Service has never accounted for these realities, on a particularized nor cumulative basis. If the Forest Service chooses to move forward with the proposed work in stands 53/23, 54/3, 86/26, and possibly others like 86/24, 86/25, and 109/20, it must perform a full examination of potential old growth on the ground, and complete a full analysis of the effects in Crossover and the Forest’s recent and continuing effort to target old growth for harvest across the Nantahala National Forest.

At a minimum, the Forest Service should visit and closely inspect all stands that, according to FS Veg, are old enough to meet old growth requirements, several of which are listed below. Any stands that meet the Region 8 Guidance for old growth should be removed from the project. We further note that the necessity of preserving old growth in the Southern Appalachians involves issues like impacts to resources of significant scientific and cultural value, 40 C.F.R. § 1508.27 (2018), as well as an “unresolved conflict[] concerning alternative uses of available resources,” 42 U.S.C. § 4332(2)(E). Thus, if the Forest Service chooses to move forward with logging old growth in the Crossover project, we believe comparison to an alternative that fully protects old growth, as well as a full EIS documenting the impacts of the choice, would be required.

b. Existing and Possible Old Growth Proposed for Harvest in Crossover

Multiple stands proposed for harvest in the Crossover project meet the Region 8 Guidance criteria for old growth:

- Stand 53/23 is a Montane Oak-Hickory Forest with a large component of white oak. The upper portion of the stand shows signs of high-grading, likely in the 1980s. The majority of the stand shows little-to-no signs of logging, with the possible exception of chestnut salvage. Canopy trees in excess of 150 years are common in the stand, and white oaks over 200 years are easy to find. The FS Veg database lists the stand age as 150 years, which exceeds the Region 8 Guidance for the age of the oldest trees for Old-Growth Type 21 (130 years).
- Stand 54/3 is another Montane Oak-Hickory Forest (Basic Subtype) in old-growth condition. Aside from a road built through the stand in 1987, there are no signs of logging in the stand. At least five species of trees – White Oak, Northern Red Oak, Red Hickory, Tulip Poplar, and Chestnut Oak – reach ages of over 150 years in the stand, and trees over 200 years of age are easily found. Tree sizes are irregular and the spacing between canopy trees is broad. Old-growth features, such as a large woody debris, snags, pit and mound formation, and a multilayered canopy, abound. The geology underlying this forest produces an exceptionally rich herb layer, including a large population of the rare Mountain Catchfly (*Silene ovata*) and the uncommon Green Violet (*Cubellium concolor*). The FS Veg database lists the age of the stand as 173 years, which exceeds Region 8 Guidance for the age of the oldest trees for Old-Growth Type 21 (130 years). The superlative nature of this stand is representative of the Gipp Creek Slopes NHNA, in which it is included.
- Approximately 7 acres of proposed Stand 86/26 appear to be in old-growth condition. This section of forest is Montane Oak-Hickory Forest dominated by Northern Red Oak. This portion of the stand was formerly part of Stand 86/15 with an FS Veg age of 150 years, which exceeds Region 8 Guidance for the age of the oldest trees for Old-Growth Type 21 (130 years). Similarly, the portion of Stand 86/24 comprised of former Stand 86/6 has a minimum age of 125 years according to FS Veg. We plan a closer inspection of Stand 86/25 and Stand 86/24 prior to the EA comment period, and we urge the Nantahala National Forest to carefully examine the age-class of these stands.

- While we have not visited Stand 86/25, we believe that it could be in old-growth condition due to the steep terrain it occupies, which may have prevented historical logging operations.
- Stand 109/20 is composed of Northern Hardwoods Forest. The FS Veg age for the stand is 136 years, which is greater than the minimum age of the oldest trees for Old-Growth Type 1 (100 years) in the Region 8 Old-Growth Guidance. This stand is also included in the Gipp Creek Slopes Natural Heritage Natural Area, which is regarded as a site of “High” significance by the NC Natural Heritage Program, in part because of the healthy forests of unusually old age found at the site. We urge the Nantahala National Forest to carefully examine the age-class of this unit.

Where the Forest Service finds old growth meeting the Region 8 Guidance, we urge the agency to drop proposed logging in those stands from the project, in at least one alternative. We do not believe the Forest Service can meet the high bar under NFMA for analyzing and justifying cumulatively logging old growth and driving further departure from NRV, and we doubt the Districts are prepared to do the work necessary to comply with NEPA for destruction of this significant resource.

As a related matter, we find the following statement in the Scoping Record problematic: “Natural disturbances can provide ESH, but those events occur at irregular and unpredictable intervals. Therefore, relying on natural disturbance regimes to establish ESH instead of scheduled management activities does not ensure ESH in desired amounts and locations.” Scoping Record at 5. Within the natural range of variation, disturbances do not happen “in desired locations” on a schedule, and that is the point. Variability creates heterogeneity creates diversity. A program of scheduled harvest will not restore NRV; it will only keep the forest on a treadmill in which the development of old growth characteristics (and the natural disturbances that drive that development) are always somewhere in the hypothetical future.

IV. Temporary Roads and Roadbuilding

The Crossover project proposes a huge amount of temporary roadbuilding. While not disclosed in the Scoping Record, our analysis of the provided GIS layers indicates that over 11 miles of new roads are currently proposed, with the vast majority of those (and likely all in the final decision) characterized as temporary roads. We believe this to be a significant underestimate of the actual amount of road needed in the project, given the presence of steep slopes that would require skyline logging under the Forest Plan in many stands and the lack of *any* access to other stands proposed for harvest.

The effects of this road construction must be disclosed and analyzed in the NEPA analysis. Values that would be impacted by road construction include high quality and water supply streams and watersheds, cultural and historic resources, recreation resources, and wilderness values for the Ash Cove Wilderness Inventory Area. This additional roadbuilding creates a significant risk of the spread of non-native invasive species (NNIS) into areas where they are not

already present, a serious impact that must be fully considered under NEPA and Executive Orders 13112 and 13751, which forbid taking actions that will exacerbate the spread of NNIS.⁷

The analysis of roads in this project cannot rely on the implementation of BMPs to escape consideration of sedimentation impacts to streams, because the Forest Service is not implementing BMPs or complying with agency policy in the use or closure of temporary roads. We will follow up soon to discuss why the Forests' inflated BMP performance numbers are unreliable. Instead, the Forest Service must acknowledge the high risk that BMPs will fail to prevent sediment from entering streams, and analyze road construction impacts with that frame.⁸

Additionally, as we have flagged in other recent projects, the Forest Service is again proposing to re-use "old" temporary road prisms in new projects, effectively using the "temporary road" designation to avoid the required transportation analysis to re-use or add new permanent roads to the system. Namely, the temporary road proposed to access stand 53/23 is a temporary road prism used in projects in 1968, 1980, and 1988; the road proposed to access stand 54/3 was utilized in a 1987 project; the road proposed to access stand 54/27 was used in a 1963 project; the road proposed to access stand 57/15 was used in 1979 and 1995; and the road proposed to access stand 109-18 was used in a 1976 timber project. It is likely that other temporary roads in the project have similar histories of which we are not aware.

We emphasize again that a road used in one project, closed to use but not obliterated or otherwise returned to characteristic forest and protection of hydrological function, then reused in a future project, is effectively a permanent, maintenance level 1 road, FSH 7709, Sec. 62.32, and should be treated and analyzed as such. This distinction matters. "Temporary" roads have caused legacy problems in other projects because they are left on the landscape for future use but receive no maintenance consideration. Adding a substantial eleven miles of new road that will not be obliterated or returned to resource production but rather held in storage for use in future projects will only risk the same future problems. The Forest Service must explain how these roads will be closed out and returned to resource production so that their impacts are actually "temporary" as claimed. If the Forest Service will not commit to doing so, then they should be disclosed and analyzed as permanent. Indeed, there are many indicia establishing beyond a doubt that these are not "temporary" roads, such as project-level decisions to make precommercial investments in advance of a later project's commercial removal, or temporary roads constructed into "suitable" MAs and potentially accessing other stands scheduled for later harvest. Such roads are system roads and must be analyzed as such.

Similarly, the impact of roadbuilding cannot be dismissed because re-using old "temporary" road prisms has less impact than bulldozing entirely new roads into the forest. If it is true that old temporary roads are still on the ground, it means that temporary roads have long-term effects on

⁷ Executive Orders 13112 and 13751 direct agencies to "refrain from authorizing, funding, or implementing actions that are likely to cause or promote the introduction, establishment, or spread of invasive species in the United States unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions." Exec. Order No. 13,751, Safeguarding the Nation From the Impacts of Invasive Species, 81 Fed. Reg. 88,609 (Dec. 8, 2016).

⁸ See Buck Objection at 18-28.

the forest—significant enough effects that they are functionally not the same as forest where road has not been constructed, despite claims to the contrary in various NEPA analyses. The Forest Service cannot have it both ways. The impacts of roadbuilding cannot be dismissed because a temporary road is only temporary, and also dismissed because reusing old road prisms lessens impacts.

Additionally, despite the very high amount of roadbuilding already included in the scoping notice, we believe the Forest Service is significantly underestimating the amount of road construction that will be required for this project. First, we believe that some existing roads, like FSR 2603, will have to be reconstructed to allow for access by logging vehicles and equipment. Any necessary reconstruction must be disclosed and analyzed fully under NEPA. Second, as discussed above, numerous stands in the project have very steep slopes that, in order to comply with the Forest Plan and NFMA, would require skyline or aerial logging. Skyline logging, in turn, requires road access to both the top and bottom of the stand. Only some of these very steep units currently show that type of road access, suggesting that the Forest Service would have to build additional, currently undisclosed roads to log these areas. The planned method of logging for each stand individually, as well as any additional required roadbuilding, must be disclosed to the public and analyzed under NEPA.

Based on the maps and GIS layers provided with the Scoping Record, it also appears that several stands with proposed treatments currently have no road access. Specifically, stands 77/4, 77/5, 78/5, 106/15, and 113/10 do not appear to be accessible based on the provided maps. While some of these stands (77/5 and 106/15) are slated for TSI treatments that may be possible by hiking in with carried equipment (information which should be disclosed to the public if that is the plan), others are slated for either shelterwood or clearcut logging, which would not be possible without road access. If the Forest intends to build roads to these stands, that information must be disclosed and the increased impacts analyzed.

V. Other Resource Concerns

a. NNIS

Logging and roadbuilding are vectors for spreading non-native invasive species throughout the forest. With a whopping eleven miles of proposed road construction, and even more roadbuilding yet undisclosed, this project as proposed would guarantee the spread and dispersal of non-native invasive plants through areas valued for unique and rare ecological communities.

Wherever the Forest Service proposes to perform timber treatments, and particularly where it plans to build and use roads, it should be inventorying for NNIS. Similarly, wherever the Forest Service proposes to enter relatively undisturbed areas of high ecological integrity, like mountain treasure areas and WIAs (e.g., the Ash Cove WIA that would be impacted by treatments proposed in stands 54/3, 56/22, 56/23, and 57/15) or NHNAs (54/3 and 109/20), the harm of NNIS spread is particularly acute. The reality that logging leads to NNIS spread and puts these areas at risk must be acknowledged and fully analyzed in the NEPA analysis. Given the substantial mileage of proposed roads, and the intact ecological areas that will be entered, these risks are likely to be unacceptable for portions of the project. The EA also needs to analyze,

based on the reality of past experience, that planned treatments to control the spread of NNIS will not occur.

b. Tribal and Cultural Resources

Stands 53/24, 53/25, 54/28, and 87/13 are within the Trail of Tears Corridor. Stands 57/15 and 109/18 span the historic Juts Gap Trail. These are cultural resources and potential archeological resources that must be addressed through the correct channels. The Forest Service should consult with and incorporate recommendations from tribes and tribal communities. *See, e.g.*, 40 C.F.R. § 1501.7(a)(1) (2018); 54 U.S.C. § 306108.

c. NHNAs

The Gipp Creek Slopes Natural Heritage Natural Area is prominent in the Crossover Project. Much of this Natural Area is inaccessible in the Ash Cove WIA. We were disappointed to find that two portions of this Natural Area that are accessible by road were targeted for logging. Our disappointment should come as no surprise to the Districts given the numerous conversations we have had with the Districts and our comments submitted in past projects and in preparation for this project. The area is rated “High” for both Compositional and Collective values. NHNAs like Gipp Creek Slopes should be managed for their existing values, which can include restoration of interrupted natural processes.

We are troubled by the change to the Natural Area boundaries, which occurred without public input and appears to sacrifice the integrity of the broader Natural Area, which is notable for its large expanse of healthy forest of exceptional age, along with several rare species. Carving out portions of a natural area in order to facilitate timber harvest results in a “shrinking island” effect. While we acknowledge that there will sometimes be a need to refine NHNA boundaries, and we support the Forest Service working with North Carolina Natural Heritage Program staff for that purpose, here the boundary was clearly changed to accommodate a Forest Service management action that is intended, at least in part, for timber production. The Forest Service must justify its belief that the excluded portion was not contributing to the integrity of the area or, if that is not the case, why it believes this management action was so important that the integrity of the area should be sacrificed.

In the case of the Gipp Creek Slopes NHNA, logging is inappropriate for the site, but fire would be very beneficial. We are supportive of the backcountry burn proposed by this project. The site description for the Gipp Creek Slopes Natural Area notes an abundance of Oak-Hickory Forests, Dry Oak Forests, and Low Mountain Pine Forest that will benefit from the controlled burn.

d. Proposed Slash/Burn/Plant Treatments

Three areas are proposed in the Crossover project for slashing, burning, and planting. The Scoping Record provides few specifics about whether any trees will be left as residual trees, and if so, which species or type. It is extremely likely that characteristic trees providing ecological benefits are present at these sites. We support slashing down trees uncharacteristic of dry ecozones and dense thickets of evergreen shrubs and saplings. We believe that, if possible, 20-60 BA of characteristic trees should be maintained in these areas and that planting should only be done to reintroduce extirpated species, if there are any. If no species have been extirpated from these areas, we believe that the residual trees will serve as sufficient seed trees. Furthermore, low

productivity sites like those chosen for this treatment are ideal for long-term management as woodlands, and we would support that approach.

e. Recreation Resources

We are pleased to see that the proposal includes maintenance of the Bartram Trail Extension from Highway 129 to Teyahalee Bald, with consideration of opening the trail to new recreational uses. This part of the proposal is responsive to collaborative input from the Partnership's recreation team. This collaborative recommendation, however, was part of a broader vision for recreational development in Graham and Cherokee Counties.

The project area and surrounding mountain ranges offer some of Western North Carolina's most stunning scenery, exciting terrain, and largest blocks of backcountry. Recreational opportunity and investment has not been commensurate with this extraordinary potential, especially when compared to areas suffering from overuse like the Pisgah District. This area of the State is poised for growth in recreational use and the economic benefits that go along with it. Accordingly, this is not the time to disinvest in trail infrastructure within or potentially connected to the project area. To be clear, we do not object to closure of the Snowbird Loop Trail, but we are concerned that the Forest Service is not standing up for the public's right of access via the Snowbird Mountain Trail where it connects to Big Junction. Although that trail segment is not within the project area, it is a related action, because an extension of the Snowbird Mountain Trail could eventually connect all the way to Tatham Gap, providing long-distance linkage between the Benton MacKaye and Bartram Trails.

VI. Prejudice to the Forest Planning Process

The Scoping Record notes that the Crossover Project "will be consistent with the active plan when it is signed." Scoping Record at 7. That is not the rule. The project must be consistent with the current forest plan when it is *implemented*. *Cherokee Forest Voices v. Forest Serv.*, 182 F. App'x 488 (6th Cir. 2006). If the project is not finalized until summer of 2022, as the Scoping Record indicates, there is almost no chance that the project will be implemented under Amendment 5; it will instead be implemented under a new plan that must comply with the new planning rule.

If the Forest wants to future-proof the project, it will focus on actions that are likely to be consistent with the new plan. The controversial portions of this project, which propose to log in an NHNA, in existing old growth, and in the Ash Cove WIA, would all be inconsistent with at least one of the alternatives included in the draft forest plan. They would also be inconsistent with the Partnership's collaboratively developed and recommended alternative. If the Forest Service proceeds with the current proposal, it will prejudice the decision on the forest plan. Such a decision cannot be made without fully considering the cumulative, landscape-level implications of that prejudice in the project-level analysis.

We note two examples of possible prejudice: Draft Alternative C (and the Partnership recommendations) would allocate the Ash Cove WIA to the backcountry MA. Draft Alternative D would allocate portions of the WIA to backcountry and the Ecological Interest Area, which limits timber harvest to address site-specific species composition needs. Several stands in the project would be inconsistent with either of these alternatives: 54/3, 56/22, 56/23, and 57/15. Is

the Forest proposing that it will choose Alternative B's allocation for this area? If so, the Forest Service must analyze the project-level and programmatic implications of that choice. If it is not the Forest's intent to forecast selection of Alternative B (with the concomitant burden to analyze the landscape and long-term implications of that choice), then these stands should be dropped.

VII. Conclusion

For the reasons explained above, the Forest Service must develop an alternative that drops proposed logging in the 335 acres in old growth, the NHNA, and recommended backcountry. There are of course sunk costs in these stands that will be lost, but the Forest Service should not throw good resources after bad. The Districts should instead make up for the lost work by looking for opportunities consistent with the Partnership's recommendations.

If the Forest Service can work through issues related to steep slopes, cultural resources, and the other complications for the remainder of the project, this would leave around 1200 acres of commercial harvest—at historical levels, over four years' worth of harvest for the entire Nantahala National Forest. Moving forward with such a large project will certainly stretch the Districts' capacity in an area with notable risk factors, such as steep slopes, sensitive watersheds, and rich forests vulnerable to the introduction of NNIS. In our experience monitoring recent projects, even much smaller projects are not receiving adequate oversight to prevent unexpected harm. Consequently, we expect a full and honest disclosure of the Crossover project's risks, with clear and specific commitments to mitigate those risks. Vague promises of oversight and professional judgment are not a strong enough backstop when the Forest Service takes on such an ambitious project.

Still, despite our reservations, we are willing to help you move this project forward successfully. We strongly encourage you to use this opportunity to establish a genuine collaborative process in which staff learn how to identify work that is consistent with collaborative priorities. We also ask that you take all precautions so that this project does not prove the Forest Service incapable of increasing its harvest levels without unacceptable impacts.

Thank you for your attention to these comments, and please contact us if we can provide further information or explanation. We look forward to hearing from you about collaborative opportunities to refine the Crossover project and for further discussion about BMP implementation on the Nantahala National Forest.

Sincerely,



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November 14, 2022

Via Email and CARA

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Re: Crossover Project Draft Environmental Assessment

Dear Mr. Gaston,

Please accept the following comments on behalf of MountainTrue, The Wilderness Society, Defenders of Wildlife, and the Southern Environmental Law Center. When the Crossover Project (“the Project”) was scoped, we submitted extensive comments urging the Forest to do more than merely pay lip service to a collaborative approach, and instead to genuinely listen to and incorporate partner feedback. We urged the Forest to be particularly attentive to management area allocations from the Nantahala-Pisgah Forest Partnership (“the Partnership”), which would steer the Project away from conflict. By focusing the Project on areas enjoying widespread consensus for timber harvest and adopting strong mitigation measures to curb non-native invasive species (“NNIS”) and threats to soil and water quality, we noted that the project would be able to move forward with our support.

Accordingly, we write with gratitude for the changes that have been made to protect State Natural Heritage Natural Areas (“NHNAs”) and old growth from timber harvest, honoring the important resource values found in those unique places, as well as the Partnership’s hard work to find consensus around protecting these values. We thank the Forest Service for listening to our concerns and removing those controversial stands from its plan for harvest.

We also write to reaffirm our comments on problems that remain unresolved since scoping. In particular, the project fails to protect the Ash Cove Wilderness Inventory Area (“WIA”) from commercial timber harvest, and fails to commit to mitigation measures that would protect resources from the impacts of timber harvest and roadbuilding throughout the project

area. Below, we summarize the previous recommendations that have gone unheeded, offering additional detail where possible. The Ash Cove area provides a useful lens for illustrating the value of WIAs and why these areas should not be developed for timber production.

If the Forest insists on moving forward with harvest in the Ash Cove WIA and without the resource-protective measures we recommend, it must at least fully analyze the negative impacts of doing so in its Final Environmental Assessment (“EA”). Logging in WIAs will continue to be controversial because of recreation and ecosystem values which would be uniquely impacted by timber harvest, and this must be acknowledged during the National Environmental Policy Act (“NEPA”) process, by fully comparing the effects of an action alternative without the Ash Cove stands. The Draft EA also fails to analyze realistic impacts to soil and water by ignoring site-specific characteristics and by erroneously relying on 100% implementation and efficacy of best management practices (“BMPs”). Moreover, failing to implement mitigation measures to protect against the spread of NNIS will result in significant impacts that must also be examined. Site-specific impacts of all project activities must be fully analyzed in the public eye as required by NEPA.

I. Important Improvements Made Since Scoping

We are thankful that the known areas of old-growth forest – 53/23, 54/3, and 86/15 – are no longer included in Alternative B. Old growth is vanishingly rare in the Eastern United States, is becoming rare globally, and is critical for the maintenance of biodiversity and for carbon storage and sequestration. Old growth is also one of the deficit structural classes that prevent the Nantahala National Forest from being within the Natural Range of Variation as described in the Forest Plan. For all these reasons, we think it was prudent to remove these stands from commercial timber harvest under Alternative B.

Likewise, we are relieved that areas within NHNAs are no longer being considered for commercial harvest under Alternative B. NHNAs are healthy portions of the landscape that provide the best quality habitat for rare and common species alike. Protecting these areas from commercial timber harvest gets us closer to supporting the Crossover Project.

II. Impacts to the Ash Cove Wilderness Inventory Area

While the current proposal avoids some priority conservation areas included at scoping, it still includes regeneration harvest in the Ash Cove WIA. Stands 56-22, 56-23, and 57-15, proposed for Shelterwood with Reserves, are all within the Ash Cove WIA. These proposed units are ecologically damaging, divisive, and controversial.

WIAs are areas identified in the Nantahala-Pisgah planning process as qualifying for consideration for wilderness recommendation in the Forest Plan.¹ These areas have been priority

¹ Areas identified in Forest Plans for consideration for wilderness recommendation were referred to as Roadless Areas in the 1982 NFMA Regulations. Sept. 30, 1982 Fed. Reg. 36 CFR Part 219 National Forest System Land and Resource Management Planning. Vol. 47 No 190., Sec. 219.17. pp. 43037-43038. The current Planning Rule refers to these areas identified in plan inventories for wilderness consideration as “lands that may be suitable for inclusion in the National Wilderness Preservation.” April 9, 2012 Fed. Reg. National Forest System Land Management

conservation areas for stakeholders including the undersigned for a long time. The WIAs correspond to areas identified as North Carolina Mountain Treasure Areas, an inventory of priority conservation areas that has been maintained for decades.² All of these areas possess wilderness and roadless characteristics that require special consideration under both the National Forest Management Act (“NFMA”) and NEPA.³ National Forest lands that qualify under these criteria are relatively rare, and they attract intense public interest; activities in these areas that threaten wilderness or roadless characteristics or the potential for future protective designations will continue to be controversial.

The Ash Cove area does in fact possess significant wilderness values and was recommended for Backcountry by the Partnership during Forest Plan revision. While improperly downplaying and minimizing wilderness values in Ash Cove, the wilderness evaluation in the Plan Environmental Impact Statement (“EIS”) does not deny that the area has wilderness values and characteristics.⁴ The fact that Ash Cove was inventoried as “lands that may be suitable for inclusion in the National Wilderness Preservation System” using criteria established in NFMA Regulations demonstrates that wilderness characteristics exist. The Forest knows that this area is natural appearing and offers many opportunities for primitive and unconfined recreation. While the wilderness evaluation disqualifies the area for a supposed lack of solitude, this was a factual and legal error. The relevant requirement is that an area provide opportunities for solitude *or* primitive recreation, and there is no requirement that either or both attributes be present on every acre.⁵ Similarly, the evaluation feints at a rationale that surrounding private lands make the area unmanageable, but it provides no example of any threat to wilderness characteristics created by surrounding private lands. Because of these improper rationales, the Forest screened out Ash Cove and failed to disclose or consider adverse impacts of road construction and timber production on its character. Having been skipped in the Plan EIS, that work must now be done at the project level.

Under agency regulations, an EIS is required whenever a project would substantially impact an inventoried roadless area or potential wilderness area.⁶ Attributes that qualify an area as potential wilderness “possess independent environmental significance.”⁷ In addition, the potential for designation as wilderness areas is an independent factor of significance.⁸ Impacts that would make an area ineligible for inventory in the future are likely to be “significant,”

Planning. Vol. 77, No. 68. 36 CFR Part 219.p. 21263. For simplicity we refer to these areas as Wilderness Inventory Areas (“WIAs”).

² The Wilderness Society, *North Carolina’s Mountain Treasures: The Unprotected Wildlands of the Pisgah and Nantahala National Forests* (2012).

³ See 16 U.S.C. § 1604(e)(1) (NFMA); 36 C.F.R. § 219.10(a)(1); (same); 36 C.F.R. § 220.5(a)(2) (NEPA).

⁴ Nantahala and Pisgah National Forest, Final Environmental Impact Statement for the Land Management Plan, App’x E at E259-E263.

⁵ 16 U.S.C. 1131(c)(2).

⁶ 36 C.F.R. § 220.5(a)(2). Although this regulation specifically addresses impacts to “potential wilderness areas,” the terminology used for inventory at the time it was adopted, these terms are functionally equivalent. Compare FSH 1909.12, Ch. 70 (2007) with FSH 1909.12, Ch. 70 (2012).

⁷ *Lands Council v. Martin*, 529 F.3d 1219, 1230 (9th Cir. 2008) (EIS that provided “a three-page analysis on ‘roadless character’” was “cursory” and therefore insufficient); *Or. Natural Desert Ass’n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1116–22 (9th Cir. 2010) (effects on “wilderness values” and/or “roadless character[istics]” in the planning area must be evaluated under NEPA).

⁸ *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1078–79 (9th Cir. 1994).

requiring full consideration in an EIS.⁹ Development of this area for timber production would make it ineligible for future designation, and it would also destroy the underlying characteristics that make the area eligible in the first place—its unroaded character, its opportunities for primitive recreation away from roads, and its natural appearing forests. Indeed, it is generally agreed that the proposed silviculture will degrade the species composition in these stands. Thus, an EIS would be required if the Forest Service continued to pursue roadbuilding and logging in WIAs like Ash Cove.

III. Steep Slopes and Water Quality Impacts

A few stands have been entirely or partially dropped from timber harvest since scoping, but there are still many steep slopes slated for harvest in the Crossover Project. *See* Table 1. The Project area also includes many high quality and water supply waters, among other special designations with their own water quality standards. *See* Table 2. The potential for significant impacts to water quality from logging in these areas has been unlawfully obscured in several ways: 1) different logging methods, with materially different site-specific impacts, remain undecided and therefore undisclosed; 2) distinct characteristics of affected watersheds are insufficiently considered; and 3) the Draft EA overstates the efficacy of proposed mitigation.

NEPA requires that agencies undertake and disclose site-specific analysis before making decisions with site-specific impacts.¹⁰ In other words, whenever an agency proposes to choose among options that have different site-specific environmental consequences—like ground-based logging versus cable logging—the agency must provide site-specific analysis of those environmental consequences during the NEPA process before making a final decision.¹¹ A site-specific analysis must include “a reasonably thorough discussion of the distinguishing characteristics and unique attributes of each area affected by the proposed action.”¹² Logging methods, road placement, and watershed characteristics are all material site-specific characteristics that require analysis under NEPA.

⁹ *See* 36 C.F.R. § 220.5(a)(2) (“Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area” will ordinarily require an EIS.).

¹⁰ *E.g.*, *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (holding that site-specific impacts must be “fully evaluated” when an agency proposes to make an “irreversible and irretrievable commitment” of resources to a project at a particular site). Congress alone may make exceptions to this rule. *E.g.*, 16 U.S.C. §§ 6591a(b)(2), 6591b(a)(1), 6591(d) (allowing the Forest Service to skip NEPA for site-specific actions that otherwise would require an EA or EIS, provided that all the requirements for eligibility are met. Such exceptions are narrow and rare).

¹¹ *See, e.g.*, *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1049 (9th Cir. 2013) (internal citation omitted) (holding that BLM has a “critical duty to ‘fully evaluate[]’ site-specific impacts” even after issuing a programmatic EIS); *City of Tenakee Springs v. Block*, 778 F.2d 1402, 1407 (9th Cir. 1985) (finding that “NEPA requires both a programmatic and a site-specific EIS,” and that agencies do not have discretion “to determine the specificity required by NEPA” in a site-specific EIS but must instead adhere to the statute); *Wilderness Soc’y v. U.S. Forest Serv.*, 850 F. Supp. 2d 1144, 1150, 1157 (D. Idaho 2012) (holding that the U.S. Forest Service was required to “take a ‘hard look’” at the impact of 94 miles of roads under NEPA “before making them a part of the designated route system in the area” despite the roads having been used unofficially for years); *Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv.*, No. 2:05-CV-0299, 2006 WL 1991414, at *9–10 (E.D. Cal. July 14, 2006) (invalidating the use of an EA without site-specific analysis for project locations).

¹² *Stein v. Barton*, 740 F. Supp. 743, 749 (D. Alaska 1990); *see Klamath-Siskiyou Wildlands Ctr.*, 2006 WL 1991414, at *9–10.

A. Logging on Steep Slopes

The prevalence of steep slopes in the Project area (see Table 1) dramatically increases risks to soil and water resources, and aerial cable logging (rather than ground-based logging) is an important way to minimize those risks. Unfortunately, the Draft EA still does not disclose the logging methods planned for each stand. Our comments at scoping pointed out the importance of site-specific analysis, noting that different logging methods and concomitant ground disturbance and road placement have dramatically different impacts that must be analyzed in the NEPA process.¹³ Instead of conducting the appropriate analysis, the Draft EA unlawfully defers this consequential decision: “The decision about which harvest methods to use and the timing of phasing is determined following the completion of the environmental analysis.” Draft EA at 30.

Table 1. Stands with at least partial steep slopes (>40%) in the Crossover Project					
53/23	53/24	53/25	54/3	54/27	54/28
56/22*	56/23	57/15	78/4	78/5	78/7
78/8	83/1	83/18	85/13	85/14	86/24*
86/52	86/27	87/13	87/14	87/29	87/30
87/32	106/11	106/19	108/6	108/8	109/20
113/30					

~~Strikethrough~~ – This stand has been removed from the Project since scoping.

*A portion of this stand has been removed since scoping.

NEPA analysis must be site-specific and must be based on the actual work that will occur on the ground. It is therefore impossible to do the required analysis before site-specific decisions are made. The Draft EA cannot disclose the *effect* because it doesn’t yet know the *cause*. The Final EA must disclose the logging methods and mitigation measures for each stand. If aerial cable logging will not be used on steep slopes, the analysis must demonstrate that the chosen method will be at least as protective as aerial cable logging. Where aerial cable logging will occur, associated access roads must be disclosed and analyzed.

B. Characteristics of Receiving Waters

In addition to logging methods, the characteristics of the receiving waters are important to evaluating the risk of sedimentation impacts. Significant portions of the project area are classified by the State as Outstanding Resource Waters (“ORW”), High Quality Waters (“HQW”), Water Supply Sources (“WS”), and Trout Waters (“Tr”). This raises major concerns around sedimentation, maintaining stream quality, and logging and road building on steep slopes.

Compartments 53, 85, 86, and 87 overlap with watersheds classified by the North Carolina Department of Environmental Quality (“NC DEQ”) as HQWs. HQWs are “rated excellent based on biological and physical/chemical characteristics” by the state.¹⁴ The Project proposes to log a substantial number of stands in Water Supply or HQW watersheds (see Table 2). Twelve stands are in WS-I water supply watersheds, including Long Creek, Rock Creek, and

¹³ See also Forest Plan Objection at 134 – 36 (describing monitoring results showing the detrimental impacts of ground-based logging on steep slopes) (Attached).

¹⁴ <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications#classes>

Panther Creek, and nine of those stands require logging on steep slopes. Many other stands are near WS-III waters, another water supply classification. With few exceptions, most of the streams throughout the project area are classified as trout waters by NC DEQ and Wild Trout Waters by the NC Wildlife Resources Commission.

Table 2. Significant Surface Water Classifications in the Crossover project	
53/23	C; HQW - Britton
53/24	C; HQW - Britton
53/25	C; Tr
56/22*	C; Tr
56/23	C; Tr
77/1	C; Tr
77/7	C; Tr
85/13	WS-I; Tr, HQW - Rock
85/14	WS-I; Tr, HQW - Rock
86/21	WS-I; Tr, HQW - Long
86/22	C; Tr, HQW - Burgan
86/23	C; Tr, HQW - Burgan
86/24*	WS-I; Tr, HQW - Long
86/25	C; Tr, HQW - Burgan
86/26*	C; Tr, HQW - Burgan
86/27	C; Tr, HQW - Burgan
87/2	C; Tr
87/13	WS-I; Tr, HQW - Long
87/14	WS-I; Tr, HQW - Panther
87/15	WS-I; Tr, HQW - Panther
87/16	WS-I; Tr, HQW - Long
87/25	WS-I; Tr, HQW - Panther
87/29	WS-I; Tr, HQW - Panther
87/30	WS-I; Tr, HQW - Panther
87/31	C; Tr
87/32	WS-I; Tr, HQW - Panther
106/11	WS-III
106/15	WS-III
106/19	WS-III
106/20	WS-III
108/6	WS-III
108/8	WS-III
108/13	WS-III
109/2	WS-III
109/3	WS-III
109/4	WS-III
109/18	WS-III
109/20	WS-III

111/2	WS-III
111/5	WS-III
111/11	WS-III
111/26	WS-III
111/30	WS-III
111/32	WS-III
111/42	WS-III
111/43	WS-III
111/44	WS-III
111/45	WS-III
111/46	WS-III
111/47	WS-III
112/2	WS-III; Tr - Tulula
112/9	WS-III; Tr - Tulula
112/10	WS-III; Tr - Tulula
112/11	WS-III; Tr - Tulula
112/12	WS-III; Tr - Tulula
113/7	WS-III; Tr - Tulula
113/10	WS-III; Tr - Tulula
113/20	WS-III; Tr - Tulula
113/21	WS-III; Tr - Tulula
113/28	WS-III; Tr - Tulula
113/29	WS-III; Tr - Tulula
113/30	WS-III; Tr - Tulula
113/37	WS-III; Tr - Tulula

~~Strikethrough~~ – This stand has been removed from the Project since scoping.

*A portion of this stand has been removed since scoping.

These primary (WS-I, WS-III) and supplemental (HQW, Tr) classifications represent waters of high integrity, with significant public health and ecological value. Not only must the Forest Service avoid introducing visible sediment into these streams, as it must for all streams, but the agency must also ensure that its actions do not cause violations of water quality standards.¹⁵ Each of these designations carries its own water quality standards.

These classifications highlight the importance of approaching activities within the project area with caution and adequate mitigation to ensure that high water quality is maintained. This project cannot qualify for a Finding of No Significant Impact unless the Forest Service can specifically find that water quality standards will be met, which is impossible without incorporating specific mitigation measures to prevent erosion and sedimentation. Such measures should include but are not limited to aerial cable logging and phasing implementation over time

¹⁵ Under the federal Clean Water Act, the Forest Service is obligated to meet the requirements of state water quality protection laws, including North Carolina's Water Quality Protection Act and Sedimentation Pollution Control Act. 33 U.S.C. § 1323. The NC Water Quality Protection Act prohibits pollution (from any source, including forestry) that violates state water quality standards. NCGS § 143-215.1(a)(6); see also 15 NCAC 2B .0211(12). The use of BMPs is not a shield to liability if the activity is not in full compliance with the Forest Practice Guidelines, which prohibit the introduction of visible sediment to streams.

to space out impacts to the water supply. Moreover, site-specific impacts cannot be adequately analyzed under NEPA without consideration of the special qualities of affected waters indicated by these protective designations.

C. Misplaced Reliance on BMPs

The Draft EA inflates the performance of ordinary BMPs to minimize the impact of management activities on water quality. *See* Draft EA at 29; 75; 77 – 81. For example, mitigating ground disturbance by seeding, mulching, and working during dry periods are three measures described in the EA to minimize sediment impacts to streams. *E.g.*, Draft EA at 123. We support these measures, but they do not guarantee zero impacts as suggested by the Draft EA. The possibility of rainfall (including heavy storms and microbursts) exists at any time of year, and visible sediment could easily result, particularly if it occurs close in time to the ground disturbance, before stabilizing measures have been performed or had time to take effect.

Our Objection to the Revised Forest Plan describes our concerns with the Forest’s pattern of relying on 100% BMP efficacy at both the forest planning and the project levels.¹⁶ We incorporate these comments by reference here. In summary, incomplete and skewed monitoring results are improperly used to bolster BMP performance, allowing the Forest to downplay the impacts of management activities on soil and water resources. For example, BMPs have only been monitored in a tiny fraction of past projects, and such monitoring excluded both short-term impacts (by failing to measure impacts during implementation and prior to closure) and long-term effects (by failing to measure impacts more than once after project closure).¹⁷ As we describe in the attached Objection, available data from similar projects shows that in truth, the risk to soils and water quality is much greater than disclosed.¹⁸ The failure to grapple with these problems in the Plan EIS means that concerns must either be mitigated or further analyzed at the project level.

Logging in these stands and in these watersheds creates a substantial risk of sedimentation and violation of state water quality standards. The Forest Service must disclose these risks. Instead, based on the erroneous assumption that BMPs are 100% implemented and effective, the Draft EA makes no further attempt to analyze how site-specific factors influence soil erosion and sedimentation risks, like slope, soil erosion rating, or logging in erosion-prone soils near ORWs.

One illustration of this lack of site-specific analysis is the Draft EA’s dismissive response to our concern at scoping that relying on the discredited 85/15 soil disturbance standard¹⁹ will allow dramatic impacts to a large portion of the Long Creek watershed. Draft EA at 32. Specifically, the Draft EA Response to Comments vaguely gestures at BMPs and makes the conclusory statement that “the implementation of the NFsNC practice to limit detrimental soil disturbance to 15% of each timber sale unit will protect soil productivity and minimize soil loss.”

¹⁶ Objection at 129 – 131 (Attached).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See* Objection at 136 - 38 (explaining why 15% disturbance is unscientific and insufficiently protective, particularly on steep slopes) (Attached).

That “standard” has been disavowed, and the District has no scientific or analytical basis to back up the naked assumption in this response.²⁰ This exhibits the erroneous reliance on BMPs described above, and further ignores site-specific impacts based on factors like slope and characteristics of the receiving watershed.

IV. Temporary Roads and Roadbuilding

The Crossover Project proposes 8.5 miles of temporary roadbuilding. Draft EA at 35. However, we continue to believe this underestimates the actual amount of road needed in the project. We appreciate the clarifications and changes made to explain or correct the appearance that certain stands in the Project without existing road access would not need new roadbuilding to accomplish Project activities. Draft EA at 31. However, the Draft EA declined to respond to some of our scoping comments noting that the amount of roadbuilding included is an underestimate.

For example, we noted that undecided or undisclosed logging methods result in a variety of possible road mileage outcomes. The Response to Comments simply admits that logging method decisions have been deferred until the NEPA process is over, without acknowledging the impact of those decisions on roadbuilding. Draft EA at 30. Because the Forest continues to defer decisions on logging methods until after the NEPA process has concluded, the amount of roadbuilding required, which depends in part on logging method, has also been deferred. The road reconstruction needs we pointed out at scoping also remain undisclosed in the Draft EA.

The effects of this road construction must be disclosed and analyzed in the NEPA analysis. These are *site-specific* impacts, and the obligation to assess them cannot be met by merely acknowledging that there will be greater impacts *somewhere* because of the “underestimate.” Values that would be impacted by road construction include high quality and water supply streams and watersheds, cultural and historic resources, recreation resources, and wilderness values for the Ash Cove WIA. This additional roadbuilding creates a significant risk of the spread of NNIS into areas where they are not already present, a serious impact that must be fully considered under NEPA and Executive Orders 13112 and 13751, which forbid taking actions that will exacerbate the spread of NNIS.²¹

We appreciate the Forest’s commitment in the Draft EA to decommissioning all temporary roads used for this project, *e.g.*, Draft EA at 30; 40. However, the Forest Service must commit to decommissioning in more detail and explain how these roads will be closed out and returned to resource production so that their impacts are actually “temporary” as claimed. That has not been the case on recent projects on this District.

²⁰ *Id.*

²¹ Executive Orders 13112 and 13751 direct agencies to “refrain from authorizing, funding, or implementing actions that are likely to cause or promote the introduction, establishment, or spread of invasive species in the United States unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.” Exec. Order No. 13,751, Safeguarding the Nation From the Impacts of Invasive Species, 81 Fed. Reg. 88,609 (Dec. 8, 2016).

Additionally, as we flagged at scoping with no response, the Forest Service is again proposing to re-use “old” temporary road prisms in new projects, effectively using the “temporary road” designation to avoid the required transportation analysis to re-use or add new permanent roads to the system. This occurs in the following areas that we know of, and likely others: the temporary road proposed to access stand 54/27 was used in a 1963 project; the road proposed to access stand 57/15 was used in 1979 and 1995; and the road proposed to access stand 109-18 was used in a 1976 timber project. We made this comment at scoping, but it bears repeating here: a road used in one project, closed to use but not obliterated or otherwise returned to characteristic forest and protection of hydrological function, then reused in a future project, is effectively a permanent, maintenance level 1 road, FSH 7709, Sec. 62.32, and should be treated and analyzed as such. Permanent road impacts cannot be dismissed as temporary.

Finally, the Draft EA analysis of roads again inflates the implementation and efficacy of BMPs on the Forest. See Draft EA at 39 – 45. As described above, the NEPA analysis cannot simply point to BMPs to escape consideration of sedimentation impacts to streams. Moreover, if the Forest believes that re-using old “temporary” road prisms as opposed to bulldozing entirely new roads is lower impact, it must also acknowledge in its NEPA analysis that “temporary” roads are functionally not the same as forest without road construction. BMPs and vague commitments to decommissioning “temporary” roads do not fully negate the impacts of roadbuilding, and they cannot be used to obscure the true impacts of roadbuilding in this Project’s NEPA analysis.

V. Non-Native Invasive Species

As we pointed out in our comments at scoping, logging and roadbuilding are vectors for spreading non-native invasive species throughout the forest. As an initial matter, we agree that identifying NNIS existing in the project area is an important first step, but the Draft EA omits two non-native invasive plants (“NNIP”): *Budleja davidii* – found in the transmission right-of-way for the towers on Teyahalee Bald – and *Philadelphus coronarius* – found on FSR 2616B. Beyond identifying NNIS, however, the Draft EA does not fully examine the risks posed by NNIS due to the proposed actions. These risks are particularly acute in areas with road construction and in sub-watersheds where NNIPs do not currently occur, and most acute where those conditions overlap.

In addition to the above concerns with the way temporary roads are analyzed in the Draft EA, we have concerns about roads and NNIPs. With proposed road construction at a likely underestimate of 8.5 miles, this project would guarantee their spread and dispersal. The soil disturbance posed by new road construction is much greater than that caused by road maintenance or reconditioning. This greater level of soil disturbance will assuredly become a prime location for the establishment and dispersal of NNIPs for years. New road construction will greatly increase NNIPs in the project area by increasing the area occupied by those plants and subsequently increasing their seed production and dispersal into adjacent areas.

This is particularly problematic for the Ash Cove WIA, (impacted by treatments in stands 56/22, 56/23, and 57/15), a relatively undisturbed area of high ecological integrity. Compartment 56 in the Ash Cove Wilderness Inventory Area is currently free of NNIPs as far as we know. However, Forest Service Road 2616, which will be reconstructed to access proposed

commercial timber harvest units in Compartment 56, has a robust population of garlic mustard (*Alliaria petiolaris*). Compartment 56 has good quality Rich Cove Forests that are likely to be severely degraded by garlic mustard and other NNIPs if new road construction is approved in the Crossover Project, a negative impact that could be permanently forestalled if the proposed action is not taken; garlic mustard relies either on downhill dispersal or being carried by tire tread. Introducing garlic mustard into the headwaters of Compartment 56 via road construction and ground-based logging would result in permanent and irreversible impacts to the composition of the forests of Compartment 56.

As the Draft EA acknowledges, “the risk of new or larger infestations is high,” particularly in rich cove forests. Draft EA at 48. Thus, “[i]t will be very important to treat NNIS infestations prior to any rich cove forest harvest and continue to assess after the harvest.” *Id.* Unfortunately, the Draft EA elsewhere admits that this “important” treatment is very unlikely to occur. In general, the Draft EA fails to commit to the bare minimum to prevent the rampant spread of NNIS via project activities. Some basic preventive measures are adopted, but no surveys will be conducted to determine the presence of NNIS, and the Draft EA only commits to treatment “[i]f time and funding are available for treatment of NNIP prior to timber harvest.” Draft EA at 26. Based on past experience, this is tantamount to an admission that no pre-treatment will occur. The Draft EA does state that stands “should” be treated for at least two years after harvest occurs, but does not specify the timing or frequency of such treatments. *Id.*

The Draft EA does not adequately describe the impacts of NNIS spread considering its candid admission that treatment measures are unlikely to be implemented. For example, with respect to garlic mustard, the Draft EA states that “[t]reatment . . . on these roads and targeted pre-treatment . . . adjacent to rich cove stands with rare plant occurrences . . . may help reduce impacts.” Draft EA at 69. Of course, such treatments will not reduce impacts if they do not occur. Garlic mustard is allelopathic and known to kill the soil fungi native plants, such as Trillium and sugar maple, need to germinate and thrive. Garlic mustard is dispersed primarily on the tires of vehicles and thrives with soil disturbance. It is extremely difficult to control once it has become established and is one of the greatest threats to the integrity of Rich Cove Forest.

Wherever the Forest Service proposes to perform timber treatments, and particularly where it plans to build and use roads, it should be inventorying for NNIS and committing to treatment *prior* to exacerbating existing problems with timber harvest activities. The District must provide full assurance that it will actually follow through on these commitments in order to justify a FONSI and a conclusion that it will comply with the prohibition on causing spread of NNIS. In the alternative, the Final EA must analyze the true extent of impacts considering that treatments to control the spread of NNIS are unlikely to occur, rather than dodging that obligation by talking about how treatment “may” prevent harm.

VI. Tribal and Cultural Resources

Stand 57-15 contains the Jutte Gap Trail, which is a historic Native American trail. This cultural resource adds to the natural characteristics of the Ash Cove area and is a unique characteristic that contributes to the wilderness value of the area under wilderness evaluation criteria. In addition to the cultural value, the trail significantly contributes to the opportunities

for solitude and primitive and unconfined recreation. The issue of historic trails was raised in scoping comments. The Draft EA addresses the Trail of Tears but fails to address issues around the Jutte Gap Trail, its contribution to unique cultural and backcountry resources, and the impact of timber harvest and road upgrades to the trail. We urge the Forest Service to protect this trail by removing this stand from harvest, and at a minimum, to undertake required tribal consultation.²²

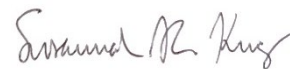
VII. Proposed Slash/Burn/Plant Treatments

Three areas are proposed in the Crossover Project for slashing, burning, and planting. We commented at scoping that the record did not specify whether any trees will be left as residual trees, and if so, which species or type. These details are also absent from the Draft EA, so we reiterate our comments at scoping here. In sum, we support slashing down trees uncharacteristic of dry ecozones and dense thickets of evergreen shrubs and saplings. However, we believe that, if possible, 20-60 basal area of characteristic trees should be maintained in these areas and that planting should only be done to reintroduce extirpated species, if there are any. Finally, we would support long-term woodland management for such low productivity sites like those chosen for this treatment.

VIII. Conclusion

We thank the Forest Service for turning the Crossover Project in a more collaborative direction by heeding some Partnership management area recommendations and protecting NHNAs and old growth from timber harvest. However, we are still very concerned about the remaining timber harvest planned for the Ash Cove WIA, along with missing mitigation measures and a full analysis of site-specific impacts. We look forward to continuing to work with you on this Project and urge you to consider the corrective measures we suggest above. Please do not hesitate to reach out to us with any questions, we would welcome the opportunity to discuss this Project and our comments further.

Sincerely,

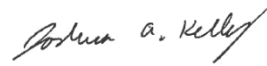


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²² See, e.g., 40 C.F.R. § 1501.7(a)(1) (2018); 54 U.S.C. § 306108.



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