

Data Submitted (UTC 11): 11/14/2022 5:00:00 AM

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Comments: 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 ([ldquo]the Project[rdquo]) 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 ([ldquo]the Partnership[rdquo]), 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 ([ldquo]NNIS[rdquo]) 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 ([ldquo]NHNAs[rdquo]) and old growth from timber harvest, honoring the important resource values found in those unique places, as well as the Partnership[rsquo]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 ([ldquo]WIA[rdquo]) 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 ([ldquo]EA[rdquo]). 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 ([ldquo]NEPA[rdquo]) 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 ([ldquo]BMPs[rdquo]). 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 [ndash] 53/23, 54/3, and 86/15 [ndash] 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 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 ([ldquo]NFMA[rdquo]) 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.

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 [ldquo]lands that may be suitable for inclusion in the National Wilderness Preservation.[rdquo] April 9, 2012 Fed. Reg. National Forest System Land Management Planning. Vol. 77, No. 68. 36 CFR Part 219.p. 21263. For simplicity we refer to these areas as Wilderness Inventory Areas ([ldquo]WIAs[rdquo]).

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

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

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 ([ldquo]EIS[rdquo]) does not deny that the area has wilderness values and characteristics.⁴ The fact that Ash Cove was inventoried as [ldquo]lands that may be suitable for inclusion in the National Wilderness Preservation System[rdquo] 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.

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

5 16 U.S.C. 1131(c)(2).

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 [ldquo]possess independent environmental significance.[rdquo]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 [ldquo]significant,[rdquo] 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[mdash]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.

6 36 C.F.R. [sect] 220.5(a)(2). Although this regulation specifically addresses impacts to [ldquo]potential wilderness areas,[rdquo] 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 [ldquo]a three-page analysis on [lsquo]roadless character[rsquo][rdquo] was [ldquo] cursory[rdquo] and therefore insufficient); Or. *Natural Desert Ass[rsquo]n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1116[ndash]22 (9th Cir. 2010) (effects on [ldquo]wilderness values[rdquo] and/or [ldquo]roadless character[istics][rdquo] in the planning area must be evaluated under NEPA).

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

9 See 36 C.F.R. [sect] 220.5(a)(2) ([ldquo]Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area[rdquo] will ordinarily require an EIS.).

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[mdash]like ground-based logging versus cable logging[mdash]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 [ldquo]a reasonably thorough discussion of the distinguishing characteristics and unique attributes of each area affected by the proposed action.[rdquo]¹²

Logging methods, road placement, and watershed characteristics are all material site-specific characteristics that require analysis under NEPA.

10E.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. [sect][sect] 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).

11See, 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[rsquo]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[ndash]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[ndash]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.

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

Table 1. Stands with at least partial steep slopes (>40%) in the Crossover Project

53/2353/2453/2554/354/2754/28
56/22*56/2357/1578/478/578/7
78/883/183/1885/1385/1486/24*
86/5286/2787/1387/1487/2987/30
87/32106/11106/19108/6108/8109/20
113/30

Strikethrough [ndash] 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 ([ldquo]ORW[rdquo]), High Quality Waters ([ldquo]HQW[rdquo]), Water Supply Sources ([ldquo]WS[rdquo]), and Trout Waters ([ldquo]Tr[rdquo]). 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 ([ldquo]NC DEQ[rdquo]) as HQWs. HQWs are [ldquo]rated excellent based on biological and physical/chemical characteristics[rdquo] 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 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.

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

Table 2. Significant Surface Water Classifications in the Crossover project

53/23C; HQW	Britton
53/24C; HQW	- Britton
53/25C; Tr	
56/22*C; Tr	
56/23C; Tr	
77/1C; Tr	
77/7C; Tr	
85/13WS-I; Tr, HQW	- Rock
85/14WS-I; Tr, HQW	- Rock
86/21WS-I; Tr, HQW	- Long
86/22C; Tr, HQW	- Burgan
86/23C; Tr, HQW	- Burgan
86/24*WS-I; Tr, HQW	- Long
86/25C; Tr, HQW	- Burgan
86/26*C; Tr, HQW	- Burgan
86/27C; Tr, HQW	- Burgan
87/2C; Tr	
87/13WS-I; Tr, HQW	- Long
87/14WS-I; Tr, HQW	- Panther
87/15WS-I; Tr, HQW	- Panther
87/16WS-I; Tr, HQW	- Long
87/25WS-I; Tr, HQW	- Panther

87/29WS-I; Tr, HQW - Panther
87/30WS-I; Tr, HQW - Panther
87/31C; Tr
87/32WS-I; Tr, HQW - Panther
106/11WS-III
106/15WS-III
106/19WS-III
106/20WS-III
108/6WS-III
108/8WS-III
108/13WS-III
109/2WS-III
109/3WS-III
109/4WS-III
109/18WS-III
109/20WS-III

111/2WS-III
111/5WS-III
111/11WS-III
111/26WS-III
111/30WS-III
111/32WS-III
111/42WS-III
111/43WS-III
111/44WS-III
111/45WS-III
111/46WS-III
111/47WS-III

112/2WS-III; Tr - Tulula
112/9WS-III; Tr - Tulula
112/10WS-III; Tr - Tulula
112/11WS-III; Tr - Tulula
112/12WS-III; Tr - Tulula
113/7WS-III; Tr - Tulula
113/10WS-III; Tr - Tulula
113/20WS-III; Tr - Tulula
113/21WS-III; Tr - Tulula
113/28WS-III; Tr - Tulula
113/29WS-III; Tr - Tulula
113/30WS-III; Tr - Tulula
113/37WS-III; Tr - Tulula

Strikethrough [ndash] 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.

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. [sect] 1323. The NC Water Quality Protection Act prohibits pollution (from any source, including forestry) that violates state water quality standards. NCGS [sect] 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.

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 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 [ndash] 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.

¹⁶ Objection at 129 [ndash] 131 (Attached).

¹⁷Id.

¹⁸Id.

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.

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

Specifically, the Draft EA Response to Comments vaguely gestures at BMPs and makes the conclusory statement that [ldquo]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.[rdquo]

That [ldquo]standard[rdquo] 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.

²⁰Id.

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 [ldquo]underestimate.[rdquo] 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

²¹ Executive Orders 13112 and 13751 direct agencies to [ldquo]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.[rdquo] Exec. Order No. 13,751, Safeguarding the Nation From the Impacts of Invasive Species, 81 Fed. Reg. 88,609 (Dec. 8, 2016).

We appreciate the Forest[rsquo]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 [ldquo]temporary[rdquo] as claimed. That has not been the case on recent projects on this District.

Additionally, as we flagged at scoping with no response, the Forest Service is again proposing to re-use [ldquo]old[rdquo] temporary road prisms in new projects, effectively using the [ldquo]temporary road[rdquo] 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 [ndash] 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 [ldquo]temporary[rdquo] road prisms as opposed to bulldozing entirely new roads is lower impact, it must also acknowledge in its NEPA analysis that [ldquo]temporary[rdquo] roads are functionally not the same as forest without road construction. BMPs and vague commitments to decommissioning [ldquo]temporary[rdquo] roads do not fully negate the impacts of roadbuilding, and they cannot be used to obscure the true impacts of roadbuilding in this Project[rsquo]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 ([ldquo]NNIP[rdquo]): *Budleja davidii* [ndash] found in the transmission right-of-way for the towers on Teyahalee Bald [ndash] and *Philadelphus coronarius* [ndash] 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, [ldquo]the risk of new or larger infestations is high,[rdquo] particularly in rich cove forests. Draft EA at 48. Thus, [ldquo][i]t will be very important to treat NNIS infestations prior to any rich cove forest harvest and continue to assess after the harvest.[rdquo] Id.

Unfortunately, the Draft EA elsewhere admits that this [ldquo]important[rdquo] 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 [ldquo][i]f time and funding are available for treatment of NNIP prior to timber harvest.[rdquo] 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 [ldquo]should[rdquo] 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 [ldquo][i]treatment . . . on these roads and targeted pre-treatment . . . adjacent to rich cove stands with rare plant occurrences . . . may help reduce impacts.[rdquo] 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 [ldquo]may[rdquo] 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

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

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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