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USDA Forest Service
Ecosystem Management Coordination
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Re: Notice of Appeal pursuant to 36 CFR 217.9 regarding the new forest plan for the Allegheny National Forest (ANF). The Record of Decision (ROD) was signed on February 2, 2007 by Region 9 Supervisor Randy Moore.

The Allegheny Forest Alliance (AFA), a non-profit coalition consisting of thirty-three townships, seven school districts, several special interest groups, businesses and local citizens within and around the Allegheny National Forest (ANF), files this appeal to the new forest plan decision.

The decisions and documents appealed are the *Record of Decision* (ROD), the *Land and Resource Management Plan* (LRMP) and the *Final Environmental Impact Statement* (FEIS). All of said items are sometimes termed "Plan Documents" or "new plan." This appeal is filed because several procedural errors were committed during the planning process and additional substantive issues or conclusions in the Plan Documents are erroneous. Each is outlined below.

PROCEDURAL ERRORS

Because of the following procedural errors the planning process did not comply with law and the Plan Documents are therefore not credible. The *1986 Plan* must remain in effect until these issues are addressed by recommencing the planning process to correct these errors.

1. **The planning process failed to provide meaningful public comment and participation.** Case law firmly supports and promotes citizen participation at all stages of the planning process. In fact, such participation is a vital ingredient in the success of the *National Environmental Policy Act* (NEPA). Affording meaningful opportunity for local citizens and other interested parties to participate and cooperate in the preparation of the environmental analysis is mandatory under NEPA. (See *36 CFR 219.9*) The spirit of cooperation must extend to the earliest stages of the planning process, but simply did not happen in this case.

Moreover, Federal agencies are required to invite participation of other impacted agencies at all levels of government and provide them with an opportunity to assist in the preparation of an *Environmental Impact Statement* (EIS). (See *40 CFR 1501.7*) A 2003 case in Wyoming

concluded “When a federal agency is required to invite the participation of other governmental entities and allocate responsibilities to those other governmental entities, that participation and delegation of duty must be meaningful.” A good faith effort must be made, but was not during the initial stages of planning and in some cases throughout the entire planning process.

In brief, the planning process began in 1997, was suspended until 2003, and concluded in May of 2006. Several local governmental agencies were not brought into the process until late spring of 2005. The first recorded meeting dates with local governmental agencies were: April 22, 2005 - Warren County Commissioners, August 23, 2005 - Forest Area School District, and June 27, 2006 - Elk County Township Supervisors. (See *FEIS*, A-9) There is no recorded participation by sub-agencies of the Appalachian Regional Commission (e.g., North Central Commission, Northwest Commission and Southern Tier West Board) even though these agencies were created to analyze and assist in the economic development of the region. (See *FEIS*, Appendix A) Suffice to say several planning benchmarks such as the “Need For Change” (NFC) were selected prior to any of these scheduled meetings.

A strong indication of the problem is evident in contradictory responses to “Public Interest” (PI) comments in the *Appendix A* of the *FEIS*. The planning team concludes in #22 that public participation and collaboration occurred “...throughout the planning process...” while at the same time stating in PI #23 that “...government to government consultation began fully one year prior to the recommendation of the preferred alternative...” which was 2005. Unfortunately, many critical decisions affecting the blueprint of the new plan were concluded prior to 2005. The response to PI #23 further states that meetings with all the local governing agencies individually were “impractical” even though the regulations require it. Meeting with the Appalachian Regional Commission subdivisions was not only practical, it was required as well as necessary. (See *FEIS*, A-23)

The AFA includes within its membership the very local governmental bodies that were to have been consulted early in the planning process. On behalf of those townships and school districts it is the specific allegation in this appeal that the required early consultation with those governmental bodies was not done. As a consequence, important views represented by those townships and school districts were either never heard by the ANF planning team, or were heard far too late in the process, after important decisions had been made (such as the selection and rejection of plan alternatives).

Substantive items not properly/timely heard by the Planning Team are discussed in more detail below. However, examples of these include the important relationship between the AFA’s members (townships and school districts) and the operations of the ANF. The ANF was formed after the local communities (and the associated townships and school districts) already existed. The ANF takes up huge tracts of land within these school districts and townships. The townships and school districts have always been required by state law to rely upon real estate taxes for the major portion of their funding. The land owned by the ANF is not subject to those taxes. Nevertheless, the townships must still provide vital services such as road maintenance and fire protection to both the lands owned by the ANF and the surrounding lands. School Districts must still educate local children regardless of the revenue (or lack thereof) which is generated upon the ANF.

Had the ANF followed the proper planning procedures these AFA members (school districts and townships) would have been consulted early in the planning process. That they were not is manifest in at least two ways. The Plan Documents make certain conclusions about

“stakeholders”. See for example the *Draft Analysis of Management Situation Summary* (DAMSS) from 2004. At page 89 that document makes conclusions that the relevant stakeholders prioritize values such as fish, wildlife habitat, scenery, and wilderness above items such as wood products. That erroneous conclusion is carried into the new plan.

But, that prioritization is not at all shared by the townships and school districts located in the ANF. At the end of the planning process, when written comments were solicited to the draft plan, the townships and school districts submitted comments. These were submitted both through the AFA and in some cases by the townships and school districts individually. Those written comments make absolutely clear that none of those townships share the prioritization cited by the ANF Planning Team.

What kind of “stake” do those townships and school districts properly have? The planning regulations give the local governments an important stake (early input), one not accorded to the regular public. But the stakeholders polled by the ANF were merely the general public. Had local governments been accorded the opportunity for early input as required by the planning regulations how would the ANF’s prioritization have been different? We cannot know that because the necessary discussion/input was not forthcoming in a timely way. The only remedy for that serious failure is to recommence the planning process.

The prioritization problem leads to a second manifestation. Had the townships and school districts been afforded the early input, the ANF Planners would have received, early in the planning process, information relative to local impact of Forest Plan issues. The local impact is exemplified in the fact that 80% of ANF users come from a 100 mile radius around the ANF, with most of those coming from the four counties making up the ANF. Other local impact is exemplified in the importance ANF revenue has directly on local governments in the form of direct payments to townships and school districts, as well as indirect revenue from job maintenance and creation.

These local impacts are given very short shrift in the Plan Documents. No analysis is made of any township’s or school district’s budget depending upon different plan alternatives. The overall economic analysis for the local communities is rudimentary. Had the local governments been afforded appropriate early input these factors would have carried the appropriate level of significance throughout the planning process.

The same is true with respect to the local land use programs. Factors of importance consistent with those above are contained in local land use plans. As with townships and school districts, however, there were no early meetings with local counties or their local planning commissions.

Another planning procedural problem common to all local governments was the approach taken at the public meetings. The only early meetings which local governments were invited to (prior to their complaints about being excluded from the process) were the general public sessions. At those sessions the ANF planning team insisted upon using the collaborative learning approach. This approach was not conducive to receiving input since it forced the participants to try to reach consensus on issues brought to the table by the planning team.

The undersigned, on behalf of the AFA, attempted to participate in the general public sessions. The process was frustrating and time consuming because the process did not allow the undersigned to communicate the AFA’s points of view. The attempted input was always cast alongside an opposing point of view and the collaborative approach then required the

discussion to reach consensus. I didn't want to reach consensus on points raised by other individuals there who I thought were being grossly unreasonable. Instead, I wanted to give input about complicated items or issues that were supported by facts that were verifiable and of major concern to the coalition. Regrettably, I had to try to compromise because the collaborative system required compromise if I was to be allowed to participate. If the test of input is "meaningful," I can certainly say my input (and that of others from local government) was restricted and not at all "meaningful."

Another example of failing to plan in good faith relates to oil, gas and minerals (OGM) ownership. Unlike nearly all other national forests, subsurface rights on the ANF are 93% privately owned. Significant decisions regarding the "design criteria" for standards and guidelines within the plan were effectively consummated without meaningful and substantive consultation with private oil and gas owners. (See *FEIS Chapter 2*) This occurred even though Forest Service regulations require consultation with "affected communities, groups, or persons" during the land use planning process. (See *36 CFR 219.9*) The response to PI #403 is incorrect when it concludes that the ANF does not have the ability to "accelerate or reduce" OGM activity. The new standards and guidelines contained in the Plan Documents will in fact hinder mineral extraction thereby reducing activity.

Also, there is a very big different between oil and gas matters in the draft documents and the final plan documents. All of the design criteria and other items that will so much "reduce" mineral extraction were not present in the draft documents. A simple example is the 100 foot restriction buffering vernal pools. (See *ROD-34*) We had no opportunity to comment on these matters, to discuss their impact, or other alternatives, because they showed up by surprise in the final Plan Documents. This is not representative of a good faith planning process.

The remedy for these procedural errors is to start the planning process over again. The obligation of the ANF Planning Team to get early input from local governments cannot be remedied by a patch applied in the latter stages of the process. If the early input requirement is to be given its proper role and be truly meaningful that early input must be present in order to shape alternatives and priorities. The exclusion of the local governments and the "affected" group of private oil and gas owners is so fundamental that the whole planning process is flawed by the failure.

- 2. The new plan fails to address the impact the ANF has on the regional wood products industry.** The ANF is the repository for 25% of the premier black cherry in the Commonwealth of Pennsylvania. Indeed, it is the highest quality wood material in the world. (See *FEIS*, 3-386-388) Demand for the black cherry remains high and it can be reasonably assumed the ANF would do its part to meet demand. In fact, the 3rd Circuit in 2005 opined it was appropriate to grow and market black cherry on the ANF. (See *Allegheny Defense Project, Inc. v. United States Forest Service*) Further, both the *Organic Administration Act of 1897* and the *Multiple-Use Sustained Yield Act of 1960* support the production of wood as do federal regulations (See *36 CFR 221*) Failure on the part of the Forest Service to do their fair share places an undue burden on neighboring timber producing entities, both private and public, to meet continually rising demand. In fact, in the face of increasing demand, supply from the ANF is scheduled to decrease in the new plan. It is unfortunate the Planning Team's scope of cumulative was basically restricted to the proclamation boundary of the ANF. If it had been extended throughout the region, a different conclusion would have been likely.

Moreover, management failures of any sort (e.g., insect and pest control, non-native vegetation control, inadequate regeneration activities, fire, etc.) by the Forest Service either by omission or co-mission are amplified on adjacent property and on inholdings within the proclamation boundary of the ANF (approximately 32%). The new forest plan fails to adequately address these issues, which calls to question the willingness to be a good neighbor.

What was needed and never done was a regional assessment of resources similar to what was done in Region 8 for the purpose of determining the role the USFS played in the wood products industry. It would have been most appropriate to have conducted such a study in partnership with the three Appalachian Commissions mentioned in #1 above. Unfortunately, the cumulative effects analysis in the new plan analysis was limited to the four county region, which is far too limiting to gain a worthwhile perspective. (See *FEIS*, 3-166) Absent a wide regional approach, the actual impact the ANF has on the region is severely distorted. For this reason alone, the plan should not move forward until the role the ANF plays in the region is clearly defined.

Finally, we strongly disagree with the statement made in the “Items outside the Scope of the Plan” where it is asserted that “community stability” is non-applicable. (See *FEIS*, 1-3) Planning regulations clearly state the responsible officer is to involve interested and affected people in the planning process to better understand the contribution national forests make to the economic and social sustainability of local communities, region and nation. The analyses must study the effect national forest management will have on the well-being of communities. (See *36 CFR 219.21*) The charge is a fundamental obligation of the USFS. The statement needs to be stricken from the plan.

The planning process needs to be reopened to include a thorough study of the important the ANF and its hardwoods play in the regional woods products industry.

3. **The revised forest plan violates 36 CFR 219.10.** Pursuit to this regulation, the Forest Service is required to “evaluate relevant economic and social conditions and trends as appropriate.” In the opinion of the AFA, the Planning Team disregarded cooperating agency expertise pertaining to social and economic sustainability when it neglected to engage government agencies and commissions charged with such responsibility at the earliest stages of the planning process. Failure to do so in effect skews results dramatically in favor of ecological conditions, the third leg of the “Pillars of Sustainability.”

As stated in the responses to PI #14 and PI #16, the Planning Team must achieve “certain biological and ecological objectives,” which are “central to the development of the LRMP.” (See *FEIS*, A-19,20) Unfortunately, in the Planning Team’s zeal to accomplish that mission, they rendered as secondary the economic and social consequences by substantially restricting and in some cases ignoring appropriate input from local governing agencies and commissions. (See #1 above) Preserving more while producing less in each subsequent planning cycle does not promote the social and economic condition and must be stopped.

Again, the proper remedy is to recommence the planning process. Not only must local governmental input be received early in the process, but also these economic and social components must be properly considered in the planning process. The rudimentary treatment contained in the Plan Documents (derived without meaningful and early input from local governments and planning agencies) is not resonabnle.

SUBSTANTIVE ISSUES

Several substantive issues of concern related specifically to forest management emerge from the new *LRMP*. At best, each may result in achieving some desired future condition, but available science along with conventional management wisdom suggests otherwise. Examples include, but are not limited to the following.

1. **An allowable sale quantity (ASQ) ceiling of 54.1mmbf annual is too low.** The *Analysis of Timber Harvest Program Capability* (THPC) done in 1995 suggests a ceiling of 77.1mmbf is appropriate provided “adequate tree seedlings develop in shelterwood seed cuts slated for harvest.” (See *FEIS* 3-390) The 54.1mmbf ceiling reported in the *ROD* suggests the Planning Team has little faith in successfully achieving required regeneration during this planning sequence, which calls to question the results of the 10 year administrative study regarding regeneration of upland hardwoods initiated as a result of the THPC analysis. There is no indication in the new plan how the results of that study impact the stipulated ASQ.

Admittedly, funding issues will undoubtedly affect the final outcome. Perhaps too, is the fact that even-age management (EAM), having a 94% to 96% successful regeneration rate, will be scaled back by nearly 35% while uneven-age management (UEAM), having only a 37% successful regeneration rate will be increased by nearly 25%. (See *FEIS*, 3-112, 116, *LRMP*, A-2) Moreover, the cost of applying UEAM silviculture rises considerably over that of EAM resulting in more frequent intrusion, fewer acres treated, and less material harvested. (See *FEIS*, A-24, 84)

For all of these reasons the ASQ target is too low. Moreover, the Forest Service’s own professional staff at the Research Lab in Irvine has stated on more than one occasion that deer density issues make UEAM incompatible with successful regeneration. On the one hand, sustainable management is reported to be a priority. However, planning decisions do not support that priority. The ASQ needs to be raised and the plan alternatives modified to be consistent with that revised figure.

2. **The *LRMP* fails to address the mature condition of the forest.** Shade- intolerant species, largely Allegheny and upland hardwoods, grew abundantly on the ANF after its purchase in 1923. Such species grow rather quickly reaching physical and economic maturity in approximately 80 to 100 years. (See *FEIS*, 1-8) Given the time of the current planning cycle, the majority of inventory on the ANF is within the range stated and requires immediate attention. The issue was grossly neglected in the last planning cycle, which achieved only 49% of the scheduled harvest. (See *The Year In Review 2006*, p.16) The new plan virtually sidesteps the issue by simply advancing structural stages. For example, the *1986 Plan* classified late structural stage as being 110+ years, whereas the new plan classifies that age group as mid-structural and identifies late structural now as being 151+ years. (See *FEIS*, 1-8) The maneuver is recognized for what it is, an irresponsible plan to avoid sustainable harvest.

The *Forest Service Handbook* (FSH) provides the opportunity to deal with such conditions by allowing for a departure from the base sale schedule (BSS) during the forest planning process. Departure can be done when any or all of five conditions do or are likely to exist. Three of those conditions do exist on the ANF and warrant departure. The criteria includes: 1.) the possibility of significantly reducing or preventing high mortality; 2.) the possibility of improving timber age or size class distribution; and 3.) implementation of the corresponding

BSS would have a substantial adverse impact on a community in the economic area in which the forest is located. (See *FSH, 2409.13, Chapter 30*)

It was reported in the DEIS that a departure analysis was conducted, but detailed results of the work were never released and it was eliminated from further study. (See *ROD-12*) Apparently by the Planning Team's analysis, "...the alternative models that were considered all provided for a sustainable forest," as suggested in PI #129, provides the rationale, but such a critical decision warrants full and complete public disclosure. (See *FEIS, A-78*) Local municipalities and school districts are suffering financially in ways unknown to the ANF because the Planning Team did not bother receiving the necessary input from those bodies. Now those bodies must suffer the ridiculous wasting of the ANF's resource via self destruction from old age. The plan even recognizes the dilemma when it states, "The vast majority of these types (Allegheny hardwoods) are rapidly maturing and are anticipated to soon start to decline in health." (See *FEIS, I-8*) Yet the new plan compromises the problem in any number of ways, most of which are unacceptable.

The plan must be modified to address the wasting of the mature forest by scheduling significantly greater numbers of acres for treatment and by greater use of even age management. Moreover, the artifice of the revised class structures must be stricken. Finally the other steps listed above must be taken in order to mitigate the high mortality that already exists and will only worsen if the new plan is implemented.

3. **Emphasis on non-motorized recreation is unwarranted.** The following single statement is made in the *FEIS* for all alternatives, "Provide a diverse range of high quality, sustainable recreation opportunities consistent with public demand and resource capability emphasizing locally popular recreation places and those important to the tourism industry." (See *FEIS, 3-312*) If this statement is in fact true, it is incomprehensible that the plan emphasizes semi-primitive non-motorized recreation.

Capable conditions both current and future on the landscape offer a great opportunity to develop motorized recreation of all sorts given the expansion of OGM activity. Less and less area will meet the definition of semi-primitive non-motorized recreation offered in the plan regardless of management area designation primarily because of subsurface ownership. (See *LRMP, C-1*) The Planning Team failed to recognize that reality and are promoting a recreational activity whose required condition in all likelihood will be difficult if not impossible to achieve.

Moreover, local records indicate over the life of the *1986 Plan*, far more recreational visitor days (RVD) were spent on motorized activities than non-motorized. (See *The Year In Review 2006 – 16*) The new plan offers no rationale to justify that fact.

4. **Additional wilderness study areas on the ANF are unwarranted.** When applying the evaluative criteria for wilderness consideration, an area must pass the acid test that it is "capable, available and needed." In order to be capable for wilderness study, an area must possess defined characteristics that make it suitable for wilderness. And, for an area to be available for wilderness study, it must possess wilderness values that outweigh whatever resource values (tangible and intangible) it has. Need for more wilderness is substantially measured by expressed "desire." (See *FEIS, C-31*) Need (desire) certainly does not translate into action since only 2% of all site visits to the ANF are to wilderness destinations. (See *FEIS, 3-297*) All totaled, the analysis is highly subjective and admittedly so. (See *FEIS, C-*

39) From the coalition's perspective, we also believe the subjective conclusions drawn are inaccurate.

Specifically with regard to availability, all the areas studied would be better served if they were not recommended because wilderness severely limits accessibility. The first Forest Chief, Gifford Pinchot, charged that national forest lands should be managed "for the greatest good of the greatest number in the long run," which is not the case in this plan. Wilderness affords very limited recreational opportunity as noted. (See *FEIS*, C37-38) Regardless of the fact the ANF is within six hours of one third of the nation's population, which undoubtedly reflects the need (desire) for more wilderness, only 20% of the visitors to the ANF come from outside a hundred mile radius of the forest, most come from within the four counties that comprise the ANF. (See *FEIS*, 3-296) In fact, the plan suggests that promoting wilderness as a tourist attraction may even result in restricted use if too much visitation threatens the landscape. (See *FEIS*, C-38)

One cannot ignore two additional points. Wilderness poses a threat (e.g., fire, non-native vegetation, disease and pest, etc.) to adjacent lands due to management restrictions. It also does not provide for habitat diversity, which was identified as a primary need for change issue. (See *FEIS*, C-3)

Perhaps the most compelling reason not to recommend Minister Valley and Chestnut Ridge for wilderness study specifically is the inability of the Forest Service to provide a true wilderness condition given the fact that subsurface rights are privately owned in these two areas. (See section 6 below.) Short of purchasing those rights and then removing them from the obligation to lease, there is little guarantee the land will not be developed thereby destroying the "capability" of the area. For all the aforementioned reasons, recommending more wilderness is inexplicable and needs to be withdrawn from the plan.

5. **The range of alternatives considered in the planning process is not sufficiently broad to account for existing and foreseeable OGM activity.** The alternatives, and particularly the selected alternative Cm, are not consistent with facts known about oil and gas on the ANF. The plan estimates that wells on the ANF will only be drilled 800 to 1000 feet apart. Wells are actually being drilled much closer than that. The ANF has maps of all wells being drilled and knows that the actual well densities are much greater than what is planned for in the Plan Documents.

The plan only expects 512 new wells per year. In 2006 alone the number of new wells was 985 (*FEIS* Appendix F). New wells are going up in 2007. How can the plan alternatives properly deal with oil and gas when the plan has so drastically underestimated actual numbers of new wells?

The plan assumes that oil and gas development will stay only in the areas where there are currently wells. The price of oil and gas has been going up steadily. Oil and gas is an exploration business and that means new areas will be explored. The higher the price for crude oil and natural gas, the more exploration will occur. The Plan Documents hopefully state that oil and gas development will not migrate to wilderness and other areas where oil and gas development would be inconsistent with plan goals. But, the migration of development is not only foreseeable, it is actually occurring on the ANF.

The plan also ignores deep gas development entirely; an amazing development given that deep gas development has been moving toward the ANF for years and is now just outside the

Forest. The new plan acknowledges and addresses the migration of insects encroaching on the forest. Why does it not offer a plan for the migration of deep gas development onto the Forest?

The plan needs to examine other management alternatives that address the above items. For example, there needs to be an alternative that addresses the rate of new wells at over 900 per year or greater. There needs to be an alternative that considers the migration of oil and gas activities/exploration into new area because of higher oil and gas prices or because of deep gas drilling. The wilderness, remote recreation and other plan components that are inconsistent with oil and gas development need to be re-examined after an accurate understanding of oil and gas activity is gathered. Until the inaccuracies are accounted for and until there are appropriate alternatives that meet the realities, the plan does not have integrity.

In the Forest Service's zeal to integrate the ANF into the nationwide system, the Planning Team failed to account for many unique and compelling aspects this patch of woods offers. I would equate it to forcing a square peg in a round hole. Most profoundly, the Forest Service is at worst demonizing and at best ignoring subsurface ownership rather than seeking ways to work cooperatively in a co-partner relationship. There are many ways cooperation would be beneficial. To name just a few: road construction and maintenance, OHV trail use/expansion, winter trail grooming, and regeneration treatment. Instead, an adversarial relationship is being cultivated that makes negotiation with co-owners nearly impossible.

Keep in mind, the oil and gas heritage for this region predates the establishment of the ANF by many years and is an integral part of our culture. To shield the visiting public from that heritage, visually or otherwise, presents an artificial representation of the region and should not be promoted in any way by any public land managers.

As you examine most aspects of the new forest plan, it is hard to find an issue that is not in some way affected by OGM activity. As I mentioned above, planning true wilderness and more semi-primitive non-motorized recreation in the established setting is impossible as well as foolhardy. It is time to recognize the reality of the situation on the ANF and work to maximize the many opportunities co-ownership affords.

I want to conclude by citing a statement in the *FEIS* that for me encapsulated what I believe has become the new mission in forest planning. It states, "In cases where resource conditions deteriorate, restoration and/or use restrictions may occur." (See *FEIS*, 3-312) In final analysis, that appears to be the direction the new plan has selected. As the forest is allowed to grow old, thus diminishing its productive capacity along with emphasizing recreation activities geared to few, one cannot help but to believe that making the ANF less and less user friendly has become the ultimate mission of the Forest Service. Indeed, new planning must recommence.

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