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RE: PROPOSED ACTION FOR THE FOOTHILLS LANDSCAPE PROJECT

The Chattooga Conservancy submits these comments regarding the Foothills Landscape Project (“FLP”), and associated *Proposed Action for the Foothills Landscape Project*, as published by the Chattahoochee National Forest on October 30th, 2017 (“PA”). The Chattooga Conservancy is a non-profit conservation organization whose mission is to protect, promote, and restore the natural ecological integrity of native Chattooga River watershed ecosystems; to ensure the viability of native species in harmony with the need for a healthy human environment; and, to educate and empower communities to practice good stewardship on public and private lands. The Chattooga Conservancy has an organizational interest in the proper and lawful management of public lands within the Chattooga River watershed, including the Sumter, Nantahala and Chattahoochee-Oconee National Forests. Members, staff, and board members participate in a wide range of activities on these national forest lands, including those areas that will be impacted by the FLP. We represent approximately 600 total members that support our work.

Generally speaking, we support the Chattahoochee National Forests’ stated goal of “restoring the biological integrity, resilience to disturbance, connectivity, and soil and water quality across the Foothills Landscape.” In addition, we would encourage efforts that are designed to “aid in the recovery of degraded, damaged and/or destroyed ecosystems and watersheds.” We also note that from October 2016 to the present, Chattooga Conservancy staff, board members, and members attended and participated in four (4) workshops, three (3) field trips, two (2) “community conversations,” one (1) science symposium, and one (1) meeting whose purpose was to discuss our concerns with the FLP’s compliance, or lack thereof, with the NEPA process. We left each such event with a greater understanding of the goals, considerations and implications that have gone into creating the FLP and each supporting draft of the restoration management plan. However, throughout the FLP’s “collaborative” process as well as the ongoing scoping process, we have identified a number of emergent and significant issues, and contentions, that need to be addressed, as follows:

I. The FLP Must Be Supported by an Environmental Impact Statement (“EIS”) Because it is a Major Federal Action Significantly Affecting the Quality of the Human Environment, Particularly in the Chattooga River Watershed

The National Environmental Policy Act (NEPA) requires all federal agencies to evaluate the environmental impacts of their actions.¹ In its opening provisions, NEPA plainly states that all federal actions must be approached with due regard for any potential impacts on the environment: “[I]t is the continuing policy of the Federal Government . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”² It goes on to set forth certain “action-forcing” provisions to ensure that federal agencies act according to the letter and spirit of the Act.³ One such “action-forcing” provision is the requirement to prepare an Environmental Impact Statement (“EIS”). To continue with the FLP as currently proposed, the Chattahoochee-Oconee National Forests must prepare an EIS.

Preparation of an EIS is required for “major Federal actions significantly affecting the quality of the human environment.”⁴ In order to determine whether this requirement is triggered, it is necessary to ask three distinct questions: First, whether the action in question is a “major Federal action”; second, whether it is “significant”; and third, whether it impacts the “human environment.”⁵ The FLP, as currently proposed, answers each of these questions affirmatively; and, as such, requires preparation of an EIS.

The FLP is a “Major Federal Action” “Major Federal action” is defined to “include actions with effects that may be major and which are potentially subject to Federal control and responsibility.”⁶ The FLP is an action that is “subject to Federal control and responsibility,” because it has been, and will continue to be, “financed, assisted, conducted, regulated, or approved,” by the Chattahoochee National Forest.⁷

The FLP’s Impacts are “Significant” The second question to ask in determining whether a project requires preparation of an EIS is whether its impacts are “significant.” The word “affecting” in the key phrase “significantly affecting the quality of the human environment,” is defined to mean “will or may have an effect on.”⁸ “Effects,” in this regard, not only include direct impacts of an action, but also indirect impacts—those which are later in time or farther removed in distance from the proposal, but which nevertheless are reasonably attributable to it and reasonably foreseeable in time.⁹ The determination of whether an impact would “significantly” affect the environment, moreover, entails an analysis of context

¹ National Environmental Policy Act of 1969 (NEPA) §§ 101-102, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S. C. §§4331-4332 (2000)).

² 42 U.S.C. § 4331(a) (2000).

³ 40 C.F.R. §1500.1(a).

⁴ 42 U.S.C. § 4332(2)(C) (1994).

⁵ Id.

⁶ 40 CFR §1508.18.

⁷ 40 CFR §1508.18 defining what, precisely, constitutes a “major Federal action.”

⁸ 40 C.F.R. § 1508.3 (1996).

⁹ 40 C.F.R. § 1508.8 (1996).

and intensity, where “context,” refers to the setting, such as national, regional or local,¹⁰ and whereas “intensity” refers to the severity of impact, and includes such factors as public health, effects on unique characteristics or values, the degree the effects are likely to be scientifically controversial, the extent to which potential impacts are uncertain or involved unique or unknown risks, the degree to which the action would establish precedent, and whether the proposal threatens to violate legal requirements enacted to protect the environment.¹¹ Based upon the “context” surrounding the FLP, as well as its “intensity,” its impacts are “significant.”

The Context Surrounding the FLP Renders Its Impacts “Significant” The first step in determining whether the impacts of a major Federal action are “significant” calls for an inquiry into its surrounding “context.” “[C]ontext” is evaluated by analyzing the significance of an action in several contexts such as society as a whole, the affected region, and affected interests, and the locality.¹² In consideration of these factors, the FLP is undoubtedly significant in the region, across interests and in the locality. Generally speaking, land managers have promoted the FLP as being the first of its kind on the Chattahoochee National Forest developed with collaborative input. The project is also the largest in the history of the Chattahoochee National Forest, impacting a vast 143,000 acre landscape, touching multiple ranger districts on the forest and spreading across eight counties in Georgia. The FLP also proposes a unique “toolbox” approach during implementation, which is a new and significant difference from past projects. The FLP, moreover, proposes to impact a variety of “interests” on the forest, ranging from recreation to timber harvesting, ecological restoration, wildlife and road construction.

The “context” evaluation is particularly important with respect to the locality of the Chattooga River watershed. The FLP is based on the underlying assumption that lands constituting the project area are located within an ecoregion known as the “foothills.” It prescribes goals, desired conditions and objectives in accordance with the characteristics of a “foothills” landscape—namely, one that is primarily pine dominated. Unfortunately, this characterization is inconsistent with Roland Harper’s seminal ecoregion maps, which show that the transitional area between the Piedmont and Blue Ridge Mountain Ecoregions, known as the “foothills,” does not extend into the Chattooga River watershed.¹³ In fact, in the landmark book *The Natural Environments of Georgia*, Dr. Charles Wharton uses Roland’s map to delineate the northern boundary of the “foothills” ecoregion south of Tallulah Falls, Georgia, approximately 15 miles south of the Chattooga River watershed.¹⁴ Wharton goes on to define the area north of Tallulah Falls, GA, as being in the Blue Ridge Province, a predominantly broadleaf forest ecoregion.¹⁵ Contextually, this means that the FLP will implement efforts that are based on ecological baselines that simply don’t exist within the Chattooga watershed. In this “context,” it is hard to imagine a more “significant” action.

The “Intensity” of the FLP Renders Its Impacts “Significant” The second step in determining whether a major Federal action has impacts that are “significant” requires an inquiry into its “intensity.”

¹⁰ 40 C.F.R. § 1508.27(a) (1996).

¹¹ 40 C.F.R. § 1508.27(b) (1996).

¹² 40 C.F.R. §1508.27.

¹³ Roland Harper (1930).

¹⁴ Wharton, P. 30.

¹⁵ Id.

“Intensity” refers to the “severity of impact.”¹⁶ The CEQ has promulgated ten (10) factors to consider when making this determination.¹⁷ “The presence of one such factor,” moreover, “may be sufficient to deem the action significant.”¹⁸ Generally speaking, we believe that these ten (10) factors are relevant to the FLP and again point to the need for preparing an EIS. We also believe that four (4) of these factors are present, and particularly compelling, when viewed within the context of the Chattooga River watershed.

One factor to be considered in determining whether an action is “significant” based on its “intensity,” is “[u]nique characteristics of the geographic area [that will be impacted by the project] such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.”¹⁹ The portions of the FLP falling within the Chattooga watershed contain some of the most unique and widely-renowned characteristics in the United States. Primarily, this portion of the project area contains the Chattooga Wild and Scenic River and associated Wild and Scenic corridor, which has been called “the gem of the Southeast,” and contains natural and undeveloped settings, as well as plant and animal communities, that are not found anywhere else in the world. The FLP portions of the Chattooga watershed also contain wetlands and other “ecologically critical areas,” such as bogs, fens, spray-cliff zones, salamander habitat, migratory corridors, and endangered ecosystems, that are, by definition “unique characteristics.” The northern boundary of the FLP project area, finally, is within a close proximity to a historic Cherokee settlement, known as Chattooga Old Town, which houses significant historic and cultural resources for the region. Given the vast scope of the FLP, which calls for logging, road building and enhanced access to recreational resources, these unique characteristics are likely to be impacted within the Chattooga watershed.

Another way to determine that an action is “significant” based on its intensity is to evaluate “the degree to which the effects on the quality of the human environment are likely to be controversial.”²⁰ “[C]ontroversial” refers to instances where a substantial dispute exists as to the size, nature, or effect of the major Federal action, rather than to the existence of opposition to a use.”²¹ Concerning the Chattooga watershed, and for reasons already stated above, we contend that the size of the FLP is not ecologically appropriate, not supported by science and, as such, controversial within the purview of CEQ regulations. Particularly, we have no specific information as to where certain environmentally destructive activities, including large-scale timber harvesting and road construction, is proposed to occur. We also have no information as to where certain ecological restoration activities and goals—which, we might add, are based on an ecological context that is different from that of the Chattooga watershed—will be implemented. The mere fact that a predominantly pine, “foothills” ecoregion vision is being potentially pursued in the Chattooga watershed, a “Blue Ridge” primarily broadleaf forest ecoregion, is in itself controversial; and, the added fact that we don’t have enough information to determine where, precisely, associated on-the-ground efforts will occur only adds to the controversy.

Yet another way to find that a project is “significant” based on its intensity involves a determination of the “degree to which the possible effects on the human environment are highly uncertain or involve

¹⁶ 40 C.F.R. §1508.27(b).

¹⁷ Id.

¹⁸ *Klamath-Siskiyou Wildlands v. U.S. Forest Serv.*, 373 F. Supp. 2d 1069, 1079 (E.D. Cal. 2004).

¹⁹ 40 C.F.R. §1508.27(b)(3).

²⁰ 40 C.F.R. §1508.27(b)(4).

²¹ *Sierra Club v U.S. Forest Serv.*, 843 F.2d 1190, 1193 (9th Cir. 1988).

unique or unknown risks.”²² The FLP triggers this provision. Implementation of the FLP is expected to occur over a period of time that exceeds a decade. During this time, there may be substantial changes in the landscapes across the project area and especially within the Chattooga watershed. Again, we have no information as to where environmentally significant and potentially destructive activities would occur throughout the FLP project area, highlighting the uncertainty of the project’s possible effects. In addition, the FLP’s foreign “toolbox” approach is a risk that is both unique and unknown on the Chattahoochee National Forest.

Fourth, a project may trigger the need for an EIS where it may “establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.”²³ The FLP does both. The new “toolbox” approach, that proposes “condition-based,” enhanced adaptive management techniques, and delay in assessing “on-the-ground conditions” until “implementation,” are all significantly new approaches to forest management on the Chattahoochee National Forest that may establish a precedent for future actions. The FLP also makes decisions in principle (i.e., that prescribed burning will occur) about future considerations (i.e., where prescribed burning will occur). This process, as articulated by the Forest Service, also does not comply with NEPA’s requirements to adequately consider direct, indirect, and cumulative project impacts²⁴.

The FLP Impacts the “Human Environment” The final analysis that goes into determining whether a project is a “major Federal action significantly impacting the human environment,” is simply whether a “human environment” is being impacted. The term “human environment” is broadly defined and goes well beyond impacts on earth, air and water. It is a “comprehensive” term that includes “the natural and physical environment and the relationship of people with that environment.”²⁵ Actions on national forest system lands certainly impact the “human environment” to some degree.

For these reasons, we believe that the FLP is a “major Federal action significantly impacting the human environment.” As such, moving forward with the project as currently planned requires preparation of an EIS.

II. The FLP Proposed Action

One of the primary goals of the Chattooga Conservancy is to work cooperatively with the Forest Service to develop a sound ecosystem initiative for the Chattooga River watershed. The Foothills Collaborative has included a portion of the Chattooga River watershed in this initiative and therefore, based on our stated goal we have and will continue to work cooperatively to resolve remaining differences in the proposed action, with the objective of making the Foothills Restoration Plan a successful venture. To that end, the following comments outline our ideas for resolving these differences, in regard to legal compliance, ecological management concepts, and social concerns.

²² 40 C.F.R. §1508.27(b)(5).

²³ 40 C.F.R. §1508.27(b)(6).

²⁴ 40 C.F.R. § 1508.8

²⁵ 40 C.F.R. §1508.14.

Ecological Boundary Delineation Our first concern relates to “the foothills” ecological delineation. This is important because ecological boundary delineation dictates the potential natural vegetation of a given landscape, and the processes that sustain the ecoregion. In *The Natural Environments of Georgia*, written by noted ecologist Dr. Charles Wharton, the Foothills Ecoregion boundary is located along the Brevard Fault near Long Creek, S. C., and across to the Gainesville Ridges, far below where it is defined in the Foothills Restoration Plan. In fact, most ecological classifications refer to most of the lands outlined in the Foothills Restoration Plan as the Southern Blue Ridge Broadleaf Ecoregion, that is dominated by Appalachian hardwood forests, whereas, the Foothills Ecoregion harbors more pine-dominated forests. The Foothills Restoration Plan states that “Shortleaf pine and pitch pine forests are the dominant forest type, with hardwoods accounting for about a quarter of the landscape.” This assertion is obviously based on wrongful ecoregion delineation, and places emphasis on a pine-dominated forest when, in fact, much of the Foothills Restoration Area is a hardwood-dominated forest. Therefore, proposed management prescriptions for the area defined within much of the proposed Foothills Restoration Plan violate natural principles for composition, structure pattern and ecological processes.

Forest Regeneration Another major contention we have with the Foothills Restoration Plan concerns forest regeneration. Though the plan correctly points out that heavy human disturbance and fire suppression have degraded the landscape, we differ on the type of processes whereby we might restore these degraded landscapes. The Foothills Restoration Plan leans heavily on some of the same practices that cause the original landscape degradation, including logging with heavy, ground-based equipment, excessive burning, and unnatural even-age management.

The Foothills Restoration Plan proposes to restore the majority of the forests to a pine type, using intensive logging practices followed by herbicide treatments, where most trees are removed to establish a two-age or even-age stand of featured tree species to be managed as a tree crop. We do not believe that the majority of the forests in the Southern Blue Ridge Ecoregion naturally regenerate as even-age forests, but are indeed forests that contain a diversity of tree and herbaceous understory species, and that are multi-layered, uneven age forests. If the proposed treatments to these areas as per the FLP’s Proposed Action involves heavy logging followed by herbicides, the result will be soil degradation and compaction, degraded water quality from forest roads, the perpetuation of an unnatural forest type, and a regeneration process dependent on human manipulation rather than the natural gap-phase reproduction cycle that originally maintained these forests.

Connectivity The Foothills Restoration Plan fails to properly define connectivity. Whereas the Proposed Action defines connectivity as special, interconnected and well-distributed “patches” of young forests and old growth across the landscape in separate, even-age conditions, we believe that the result of this type of management will be fragmentation, rather than connectivity. Our definition of connectivity is management based on the principles of conservation biology, that connects and buffers existing or restored native, uneven-age forests across the landscape, with areas that are allowed to regenerate naturally to an old growth condition.

Resilience The Foothills Restoration Plan gives little attention to managing native forests to allow adaptation to the effects of climate change. To address the effects of climate change, forest management practices should strive to restore and connect native forest types (as stated previously), to allow the

migration of both plant and animal species to northern and higher elevation, to aid their survival. Even more disturbing, the Foothills Restoration Plan states, "...carbon sequestration is not a direct purpose of the Foothills landscape Project."

Early Successional Habitat The Foothills Restoration Plan is weighted much too heavily toward the creation of early successional habitat, with minor emphasis on old growth protection and restoration. This is evidenced by the fact that the proposed restoration plan includes creating an increase of early successional habitat by 17%, whereas old growth designation is set at just 1% of the landscape. This is clearly an ill-conceived priority, since any initiative for restoring native forests should certainly involve a much higher percentage of old growth forests. It is important to note that it is well-accepted by forest ecologists that old growth is a true representation of the very type of forests that are truly resilient, self-maintaining examples of our true native forests.

Recreation Management While we support management that promotes recreation, we are also concerned about the recreation experience. Wild areas and backcountry experiences must include management that limits access when appropriate to protect the opportunity for solitude. The Foothills Management Plan fails to recognize this management mandate. For example, the Proposed Action includes a new parking lot on the east side of Dicks Creek, near the Chattooga National Wild and Scenic River corridor. This parking lot is on a Rabun County Road, that leads directly to an over-used area on the banks of the Chattooga River. This parking lot will only increase traffic in a wild section of the Chattooga Wild and Scenic River corridor, and the result will be a further degradation of a backcountry experience.

We appreciate this opportunity to comment on the FLP's Proposed Action. Please do not hesitate to contact us for further discussion. We look forward to continuing a productive dialog with the FLP's planning team.

Sincerely,



Nicole Hayler
Executive Director