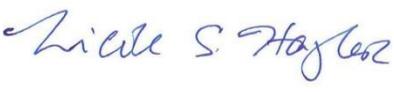


BEFORE THE OBJECTION REVIEWING OFFICER, USFS FOREST SUPERVISOR
FOR NATIONAL FORESTS IN NORTH CAROLINA

Re: Objection to Draft Decision Notice (DN) and
Finding of No Significant Impact (FONSI)
for the Southside Project, Nantahala Ranger District,
Nantahala-Pisgah National Forest

NOTICE OF OBJECTION, STATEMENT OF REASONS & REQUEST FOR RELIEF

Submitted by: CHATTOOGA CONSERVANCY
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By: 

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Submitted via email to: objections-southern-north-carolina@fs.fed.us
August 27, 2018

Introduction

Pursuant to 36 CFR § 218, the Chattooga Conservancy (“CC”) objects to the DN and FONSI for implementing the Southside Project (“the Project”). In accordance with 36 CFR § 218.8(a), this objection is made to Reviewing Officer Allen Nicholas, Forest Supervisor, National Forests in North Carolina, 160 Zillicoa Street, Suite A, Asheville, NC 28801-1082. For the purposes of this objection, the Responsible Official is District Ranger Mike Wilkins of the Nantahala Ranger District, Nantahala National Forest. Legal notice of this objection period was published by the Nantahala Ranger District on July 11, 2018, in the *Franklin Press*, the stated newspaper of record.

Our objections to the Southside Project encompass the Project’s Environmental Assessment (EA), DN & FONSI for: 1) harvesting old growth forests; 2) failing to address the need for a connected network of old growth and native forest types across the landscape, to facilitate adaptation to climate change and mitigate its effects; 3) applying excessive herbicides; 4) implementing excessive prescribed fires in the analysis area; 5) failure to consider and disclose the cumulative effects analysis of prescribed fire in conjunction with proposed activities in the Bull Pen and Jack’s Creek (State Line) areas, in violation of legal requirements under the National Environmental Policy Act (NEPA); 6) destroying critical habitat for threatened, endangered and sensitive species of plants and animals; 7) disruption of existing wildlife corridors; 8) implementing activities within the Terrapin Mountain and Ellicott Rock Extension potential wilderness areas, that would affect their potential qualification for designation during the ongoing Nantahala-Pisgah Forest Plan revision; 9) failure to incorporate the use of the most current scientific information; and, 10) implementing road building activities and a below-cost timber sale project.

Standing

The Chattooga Conservancy is a non-profit organization working to protect, promote, and restore the natural ecological integrity of the 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. CC has an organizational interest in the proper and lawful management of public lands within the Chattooga River watershed, including the Sumter, Nantahala-Pisgah and Chattahoochee-Oconee National Forests. Members, staff, and board members participate in a wide range of recreational activities on these national forest lands, including those areas encompassed by the Southside Project within the Nantahala National Forest. CC represents approximately 600 total members.

CC claims standing to participate in the public land decision-making process for the Project on the grounds that we have participated in all aspects of commenting on the Southside Project. Consequently, we have legal standing to participate in this process and object to those aspects of the Project that are unacceptable and inconsistent with applicable laws, regulations and established science.

CC filed comments on the preceding scoping notice and draft environmental assessment, and has fully participated in the U.S. Forest Service's ("USFS") review of the Project. Pursuant to 36 § CFR 218.8(b), the comments previously submitted by the Chattooga Conservancy are hereby incorporated by reference. CC reserves the right to supplement these objections based on agency records supplied by our FOIA request, a portion of which was received in an untimely manner barely 1 business day before the objection period deadline.

OBJECTION

Relationship to Prior, Written Comments: The Chattooga Conservancy has submitted comments on the Southside Project's scoping notice and draft environmental assessment, participated in meetings with Nantahala Ranger District staff, participated in subsequent conversations and otherwise has been fully engaged in the U.S. Forest Service's ("USFS") NEPA process for the Project. Pursuant to 36 § CFR 218.8(b), the previous comments and associated documents submitted by the Chattooga Conservancy are hereby incorporated by reference into this objection.

1. Old Growth Patch Connectivity Must Be Established & Preserved

Statement of Objection: The CC objects to the Project's cutting of old growth stands, and furthermore, objects to the Forest Service's response in the Project's Decisional EA regarding our comprehensive comments about old growth.

Discussion: Specifically, the Forest Service's response did not adequately address our assertion that the EA fails to address the necessity to connect old growth patches across the landscape to function as unfragmented migratory corridors, and to buffer the effects of climate change. The Forest Service claims that the proposed action for the Project provides "...a vast network of old growth and future old growth conditions and opportunities," and further that "...designated old growth patches and the lands defined as unsuitable for timber production represents 68% of the Southside Project's analysis area." The Forest Service claims that these lands "...will allow natural forest processes to occur in these areas, which, in the absence of active management, will serve as undisturbed corridors for wildlife and could serve as a buffer for the effects of climate change." However, the Forest Service's response does not demonstrate in any way how these "patches" of old growth are connected to form a "vast network" of old growth that "will allow natural forest processes to occur." In fact and to the contrary, the activities proposed in the Project prescribe the cutting of old growth in the matrix between non-suitable lands and designated old growth.

Old growth forests, that have developed extraordinary resiliency and biological diversity over long periods of natural selection, constitute biologically rich genetic characteristics necessary to survive climate extremes that will occur as the climate changes. Cutting old growth in the matrix reduces the opportunity to allow forests to adapt to and mitigate the effects of climate change. Conversely, early successional habitat created by cutting old growth forest in the matrix results in young forests that have inferior survival characteristics.

Furthermore, the Forest Service's claim that 68% of the analysis area is a "vast network" of connected existing or future old growth is a smoke screen for crop tree management prescribed in the outdated forest plan, which is over 20 years old. This EA implies that the Project provides adequate protection for old growth. The fact is that only .5% (1/2 of 1%) of old growth forests remain in the southeastern US. Cutting old growth in the Project's analysis area, where there is much protected land, does not justify eliminating rare patches of old growth

timber. In the larger view, all old growth and near old growth, should be protected. Because this area is an optimum location to protect, restore and connect the biologically rich and genetically superior forests exhibited by a large area of already protected old growth makes it a primary target for establishing a true network of connected, older native forests to address climate change and a myriad of unique, dependent ecological services. Eliminating old growth in the Project area would be analogous to a museum that has an unusually large collection of rare art work, and then selling these rarities off at half-price, to make room for future art yet to be discovered at a yard sale.

2. Old Growth Stands At Brushy Mountain (35-41) & Granite City (31-18) Must Be Preserved

Statement of Objection: The CC objects to cutting old growth at Brushy Mountain (compartment 35, stand 41) and Granite City (compartment 31, stand 18). We also object to the Forest Service's response to our comment that old growth stands at Brushy Mountain and Granite City should be preserved. In addition, the CC objects to cutting stands that are over 100 years old, that include compartment/stands 41/42, 41/44, 41/40, 41/47, 40/42, 40/41, 40/13 and 29/16.

Discussion: Last fall, two students participating in the Institute for the Environment program at the Highlands Biological Station completed assessment projects investigating the Southside Project. These studies included mapping the old growth forests of the Chattooga watershed and using scientific criteria to determine if the stands in this area qualified as old growth. This research confirmed that old growth exists at Brushy Mountain in compartment 35, stand 41, and at Granite City, compartment 31, stand 18.

Concerning the existing old growth stand of upland hardwoods and white pine at Granite City, its position in the landscape provides a perfect place to protect an old growth stand that is contiguous with a NC Natural Heritage Area and an adjacent, designated old growth stand. Concerning the stands scheduled for harvesting on Brushy Mountain, compartment 35/41 and 35/42, the Forest Service has confirmed that 35/41 is, in fact, existing old growth.

We also note that 35/42 on Brushy Mountain may be old growth as well, because the CISC data shows that 35/42 is 114 years old—the exact same age as 35/41. As stated above, when 35/41 was studied by students at the Highlands Biological Station, the trees were determined to be in excess of 200 years old. However, 35/42 has not been field-checked to determine if the CISC data age is accurate (CISC data has proven potential to be notoriously inaccurate, as evidenced by field work done by HBS students in 35/41). The Project would also harvest other stands whose CISC data shows that they are over 100 years old, which includes compartment/stands 41/42, 41/44, 41/40, 41/47, 40/42, 40/41, 40/13 and 29/16. With the acknowledged errors in the Forest Service's CISC data, these stands could actually be existing old growth, or near old growth.

In addition and of significance, we note that by the Forest Service's own admission, there are compartments in the Project's analysis area that clearly lack their required acreages of existing

old growth. This deficiency of existing old growth supports our objection to cutting the existing old growth at Granite City and Brushy Mountain.

Lastly, the CC calls attention to the Forest Service assertion that they expressed a “willingness to withdraw stand 35/41 from consideration and invited the NGO [non-governmental organization) to propose other stands that could be supported by the NGO...[but] the NGO provided no alternatives...”. In fact, the Chattooga Conservancy is included in the subject NGOs pressing for withdrawing stand 35/41, and our comments on the draft EA clearly state an alternative scenario: "We would support management in a matrix interspersed with a network of connected older, uneven aged forests, using silvicultural techniques such as single tree selection, small group selection, thinning and occasional prescribed fire along with permanent wildlife openings that could create ESH without the heavy use of herbicides and unnatural two-age (even-age) management. Logging existing old growth forests to create ESH as proposed in the draft EA is unacceptable and inconsistent with goals to restore and maintain old growth."

In sum, the Project should not cut existing old growth at Granite City and Brushy Mountain as named above. In addition, the Forest Service should complete comprehensive field studies and age class verification of stands over 100 years old in the Project area as previously described, to correct potential errors in CISC data that may result in identifying additional, existing old growth. Old growth forests are the most resilient forests that are also rich in biological diversity, and are extremely rare. With only ½ of 1% of existing old growth left in the Southeast, existing stands of old growth trees should be preserved, not destroyed.

3. The Southside AA Includes 2,484 Acres of Forest Lands Designated For Prescribed Burns and Fails To Disclose Cumulative Impacts in the EA

Statement of Objection: The Project’s EA and subsequent DN & FONSI have failed to carry out the directive to disclose cumulative effects in relation to the prescribed burns, by rushing forward with this EA before the terms and cumulative effects of the burning are set.

Discussion: The Forest Service plans to burn 2,484 acres of forest lands inside the Southside Project Analysis Area for the purpose of wildlife habitat creation or improvement (722 acres in the Bull Pen area and 1,765 acres in the Jack’s Creek & Whitewater River areas). These areas will be burned with prescribed fire every other year for 6 years, then every 5 years afterwards. The burns are scheduled to occur during the “dormant season” between October 15 and April 15. The action is supposedly designed to mimic natural fire behavior.

This proposed action defies logic, sound science and common sense. The Bull Pen area and forest lands near the state line where this massive burning is proposed is a part of an ecosystem that receives the second highest rainfall in North America, sometimes exceeding 80 inches per year. It is oftentimes referred to as a temperate rain forest. However, droughts do occur. Nonetheless, because of the wet conditions during a normal year, natural fire intervals are 15-20 years. The excessive use of fire in this wet ecosystem is clearly ill conceived.

The proposal for prescribed fire in the analysis area (AA) states it is to be carried out during the “dormant” season, that is identified as being between October 15th and April 15th, which is simply false. Vegetation begins to come out of dormancy as early as late February, and by the arrival of spring in late March, many plants are in full bloom. By early April, wild turkeys are already on the nest, and sap in trees has already risen. Burning as late as April 15th could cause great harm to both plants and animals (including Green Salamander). The citation for this assertion is “common sense.”

The Forest Service claims that prescribed fire will regenerate “fire adapted” species. This is not necessarily true according to Beverly Collins, ecologist with Western NC University, who has studied low intensity fire and has concluded that these types of burns do not always result in promoting fire adapted species, and that fire is often used by the Forest Service to produce and manage commercial timber crops.

Much of the forest in the AA’s prescribed burning areas is potential old growth. This potential is often overlooked, because forest stand age is based in a Continuous Inventory of Stand Condition (CISC) that is often incorrect (*An Assessment of the Old-Growth Forest Resource on National Forest System Lands in the Chattooga River Watershed*, by Paul Carlson, 1995). This is underscored by our findings on Brushy Mountain, where the Forest Service claimed that although they knew there were “a few old trees up there,” it was not old-growth. When we requested that the Brushy Mountain stand should be inventoried using *Regional Old Growth Guidance*, the Nantahala Ranger District’s report supporting the previous statement contained a disclaimer that no trees were bored because of problems with the instrument. Then, after it was studied by students from UNC/Chapel Hill employing extensive measurements that concluded the stand was old growth, the Forest Service capitulated and admitted it met criteria for old growth classification. 180 acres of stands in the Southside Project are admittedly 100 years and older, and have not been properly inventoried, including stands in the prescribed burn area. Managing these forests in the burn area as tree crops without knowing what is really there is irresponsible.

Furthermore, while low intensity burns within natural fire cycles do not do excessive damage, oftentimes prescribed fires on Forest Service lands have resulted in burns that are much hotter than intended, resulting in damage to soil and resulting erosion, and associated detrimental impacts to aquatic and terrestrial ecosystems.

The proposal for prescribed fire in the Southside AA is clearly excessive for the mixed deciduous forests of the upper Chattooga River watershed. The proposal to use the Chattooga River’s sensitive riparian area at Bull Pen as a fire line defies all logic, and to risk damage to a National Wild and Scenic River Corridor is a bad gamble. The proposal for excessive burning in the Southside Project defies common sense, is not based on good science, and important cumulative effects are unknown.

In fact, the prescribed burns presently under consideration by the Forest Service within the Southside Project AA render inadequate the EA’s cumulative impacts analysis in relation to fire.

The assessment of cumulative impacts in NEPA documents is required by Council on Environmental Quality (CEQ) regulations. By mandating the consideration of cumulative impacts, the regulations ensure that the range of actions that is considered in NEPA documents includes not only the project proposal but also all actions that could contribute to cumulative impacts.

Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis. According to EPA guidance on consideration of cumulative impacts, the adequacy of cumulative impact analysis depends on how well the analysis considers impacts that are due to past, present, and reasonably foreseeable actions. (EPA Publication No. 2252A). Particularly, the inclusion of other actions occurring in proximity to the proposed action is a necessary part of evaluating cumulative effects.

Here, there can be no doubt that the Bull Pen and State Line burn units combine and interact with the effects of Southside Project at a “particular place and within a particular time.” Indeed, the EA explains the intended impact of the prescribed burns that will occur within harvest units of the Southside Project, during the Project term. While these two prescribed burn units are discussed in separate documents, that fact of course does not relieve the Forest Service from consideration of cumulative impacts in this EA.

The manner in which the EA addresses these burn units implicates two major legal errors. First of all, given the simultaneous, shared and collaborative objectives of the burn units and the Southside Project, the Forest Service erred in separating consideration of these projects under NEPA. The Supreme Court has acknowledged that NEPA requires a comprehensive impact statement when several concurrent proposals have a cumulative or synergistic impact. Kleppe v. Sierra Club, 427 U.S. 390, 409, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976). This is exactly the circumstance at hand, where the prescribed burns are meant to accentuate the objectives of the Southside Project, and both projects are under consideration by the Forest Service at the same time, yet separate NEPA analyses have been undertaken, with the effect of diminishing the total environmental impacts.

Although the Forest Service has some discretion to define the scope of NEPA review, certain actions must be considered together to prevent an agency from “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir.1985). The relationship between the Southside Project and the controlled burns is indicative of a single NEPA project. For example, it is clear that the Bull Pen burn is a part of the prescription for reducing undesirable species connected to the silvicultural treatment proposed in the Southside Project for unit 31/20. Yet the impacts of the controlled burns were categorically excluded from NEPA review, rather than being considered as a part of the Southside Project for purposes of NEPA. It is an error that the NEPA analysis of these related actions was handled separately.

Secondly, even the limited cumulative impacts analysis that was undertaken in the EA is necessarily inadequate and premature, given that the particular environmental effects of the prescribed burns remain undefined. The Forest Service previously solicited public comments on its proposal to reauthorize prescribed fire in 33 separate units, including the two units within the AA, with comments due on January 19, 2018. The terms of that reauthorization remain undefined, with the Forest Service having indicated that a reassessment of the previous burn plan is ongoing. Considering the presently undefined results of these controlled burns, a meaningful analysis of cumulative impacts is not yet possible.

The fact that the Forest Service has endeavored to consider the Bull Pen and State Line burns in this EA, while those burns are yet undefined, suggests that the outcome of the EA was predetermined and that the Forest Service is merely “going through the motions” with its cumulative impacts analysis. NEPA, however, ensures that agencies conduct environmental analyses in an objective fashion by prohibiting them from predetermining the outcome of their review. See 40 C.F.R. § 1502.2(g) (an EIS must “serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made”); id. at § 1506.1(a) (“Until an agency issues a record of decision ... no action concerning the proposal shall be taken which would ... [l]imit the choice of reasonable alternatives.”).

Under the NEPA authority laid out above, other present actions that may be detrimentally affecting the resources of concern need to be considered at the same time impacts of the proposed action are considered. The Forest Service has failed to carry out this directive in relation to the prescribe burns, by rushing forward with this EA before the cumulative impacts of the burning are disclosed. Indeed, the EA’s cumulative effects analysis baldly states that the “cumulative effects of the burns are the expected direct and indirect effects.” What? The EA does not disclose these direct and indirect effects; thus, the cumulative effects analysis is woefully inadequate.

Legal Implications: The EA purports to analyze the site-specific impacts of the Bull Pen and State Line burns, but has offered an analysis that is incomplete and fails to consider the practical consequences of these prescribed burns. We believe that this failure to consider the cumulative impacts of the burns violates the National Environmental Policy Act (“NEPA”).

This analytical gap constitutes a “tiering” defect in the Project’s EA. Use of earlier analyses as a substitute for more complete environmental evaluation of subsequent projects or project phases is known as “tiering,” and is intended to avoid duplicative analysis. If an agency has prepared an EIS on a broad program, there may be no need to repeat the analysis when it later considers individual projects that are components of the broader program. Tiering is justified, however, only when the potential effects of individual implementing actions have been fully considered at the programmatic stage. Where an issue has not been analyzed in an earlier environmental document to which a site-specific document may tier, the scope of the required analysis in the project-specific EA is correspondingly increased. The Project’s EA fails to reach this increased analytical threshold.

Furthermore, an action is “arbitrary and capricious” within the purview of the Administrative Procedures Act when the agency fails to consider the “relevant factors and articulate a rational connection between the facts and the choices made.” In light of the approach presented in the Project’s EA, the agency has failed to disclose relevant factors, and has failed to disclose a rational connection and cumulative effects analysis for the Bull Pen and State Line burns vis-à-vis the Southside Project.

4. The EA Fails to Analyze Impacts to Wilderness Inventory Areas (WIA)

The EA includes timber harvesting in stands 29-15 and 29-16 within the Ellicott Rock WIA, and 31-20 within Terrapin Mountain WIA, yet fails to provide an adequate impact analysis of this proposed action as required by NEPA. Furthermore, due to the potential significance of disturbance activities and their impacts to these WIAs, an EIS would be required. In addition, the EA must assess whether and to what extent harvest in stands 35-41 and 35-42 will impact the adjacent Terrapin Mountain WIA and existing Ellicott Rock Wilderness. The speculative treatment in the EA about the proposed actions in the Ellicott Rock and Terrapin Mountain WIA vis-à-vis the ongoing Nantahala-Pisgah Forest Plan revision process does not satisfy the requirements of NEPA.

5. The EA Is Flawed By Relying On An Outdated Forest Plan Biased Toward Commercial Timber Harvesting To Create Early Successional Habitat (ESH)

The EA is biased toward commercial timber harvesting to create Early Successional Habitat as a primary management tool, based on direction in the outdated Nantahala-Pisgah Land & Resource Management Plan, even though a more natural way of achieving this goal exists. This assertion is supported by the statement in the EA that “Natural disturbance can provide ESH; however, they do not assure a regular and sustained flow of habitats across the forest through space and time as directed in the LRMP.” There are 6,204 acres of forests or 33% of the national forest lands in the AA that are older than 100 years old, and that are, or soon will be, exhibiting old-growth characteristics. Almost all are forest types that naturally reproduce by canopy gap phase reproduction, which creates an uneven age forest of many layers that naturally create a wealth of habitats, including ESH. 180 acres of 317 acres or 57% of the forest scheduled for harvesting in the Southside Project draft EA are over 100 years old. These old forests, along with the other 6,204 acres across the rest of the national forest in the AA will soon create needed ESH naturally, without timber management. The EA continues to discount this obvious source of ESH that would develop naturally using “benign neglect” at almost no cost, simply because of direction in the outdated forest plan.

It is also relevant to note that the NC Wildlife Resources Commission recently acknowledged (August 2018) a resurgence of deer populations, and that “numbers are increasing somewhat on Forest Service land in Macon County,” and that “Macon County has a considerable amount of farm land and open habitats on private land,” signifying that the EA’s dogged justifications for the need to create more ESH are overblown.

6. The EA Fails to Analyze Potential Impacts to Green Salamanders

The EA's analysis of impacts to the Green Salamander is inadequate to fully disclose impacts, or to explain how these salamanders and their unique habitats are being avoided and mitigated. This includes proposed activities in stands 29-11, 29-16 and 41-44. The EA also fails to consider the impacts of barriers to connectivity created by project roads on Green Salamanders and other dispersal-limited species, and thus fails to satisfy NEPA's requirements for analyzing impacts to this sensitive species.

7. The EA Proposes Widespread Herbicide Applications That Present Unacceptable Risks & Unknown Potential Impacts To Forest Users And Natural Resources In The AA

The EA proposes to use massive amounts of herbicides, including glyphosate, to cultivate only certain tree species for commercial timber harvesting, and to kill other native trees, shrubs and invasive species. Recent studies show that poisonous herbicides like glyphosate persist much longer in the environment than previously thought, and are much more likely to cause cancer. And in many cases, mechanical methods work just as well, without the risk.

The International Agency for Research on Cancer (IARC) is the cancer evaluation arm of the World Health Organization. In March 2015, the IARC convened a meeting of 17 scientific experts from 11 countries to assess whether certain pesticides, including glyphosate, caused cancer in humans. The outcome of that meeting is that glyphosate "probably" causes cancer in people, and IARC's decision to classify glyphosate as "probably" carcinogenic to people was made unanimously, after reviewing hundreds of scientific studies. In addition, the Natural Resources Defense Council has filed two lawsuits and a petition with EPA to restrict the use of glyphosate-containing herbicides, because of their devastating impact on Monarch butterflies. Until a contemporary review is conducted of glyphosate's toxicity, we are opposed to and question its use on public lands.

8. The EA Fails to Disclose A Complete Economic Analysis

We are concerned that the Southside Project will cost more than it produces in revenue, at the expense of forest health and biological diversity. The reasons we oppose the Southside Project in terms of a loss of biological diversity are covered in other sections of these comments. In regard to cost/benefit in tax payer's dollars, the EA states that the dollar income from timber sales will be \$427,275, but the costs for surveying, research and analysis, timber sale administration, site prep, tree planting, pre-harvest and post-harvest, NNIS treatment and road-building are not disclosed. Adding insult to injury, the proposed Southside Project in economic benefit alone would amount to a below cost timber sale.

REQUEST FOR RELIEF

Objectors request that the Reviewing Officer invalidate the Southside Project DN & FONSI, remand the Southside Project Environmental Assessment, and abandon the project as currently

proposed. Next steps could include instructions to reconsider the environmental impacts of the Project, and develop a modified alternative that avoids the most controversial aspects of the project while describing the advantages of that alternative for conservation values, in accordance with applicable legal and regulatory standards. We also request an objection resolution meeting that would include citizens and interested parties that have objected to the Southside Project as currently proposed.

Objector signature:



Nicole Hayler
Chattooga Conservancy

Date: August 27, 2018