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File Code: 1570-1

Date: August 31, 2004

James Kleissler  
Forest Watch Director  
Allegheny Defense Project  
P. O. Box 245  
Clarion, PA 16214

**RE: Appeal of the Decision for the Spring Creek Project Final Environmental Impact Statement, Allegheny National Forest, Appeal 04-09-19-0029 A215**

Dear Mr. Kleissler:

On July 29, 2004, you filed a notice of appeal pursuant to 36 CFR 215.18. District Ranger Leon F. Blashock signed his Record of Decision and Final Environmental Impact Statement on June 2, 2004, for the Spring Creek Project. The legal notice for this decision was published on June 10, 2004. My decision is based upon the appeal record and the recommendation of the Appeal Reviewing Officer (ARO) Bruce Prud'homme, District Ranger, Ontonagon Ranger District, Ottawa National Forest, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, Leon Blashock, and the issues raised in your appeal. The Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

**FOREST ACTION BEING APPEALED**

The Spring Creek Project, encompassing approximately 39,692 acres of National Forest land, consists of various management activities including, but not limited to, timber harvest (shelterwood, clearcut and overstory removal), thinning, salvage of windthrow, wildlife habitat improvement (restore/improve aquatic and terrestrial habitat), and recreation development (e.g., trail trailheads and dispersed campsite construction), within Management Areas 1.0, 3.0, 6.1 and 6.3.

**APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer found no evidence that the Responsible Official's decision violated law, regulation or policy. He found that the decision responded to comments raised during the analysis process and comment period and adequately assessed the environmental effects of the selected action. In addition, he found that the issues raised in your appeal were addressed, where appropriate, in the decision documentation. Based on his review, the Appeal Reviewing Officer recommended that the decision be affirmed.

**DECISION**

After review, I concur with the Appeal Reviewing Officer's analysis and findings regarding your specific appeal issues on the alleged inadequacy of the FEIS and Record of Decision (e.g.,



Arbitrary and Capricious Record of Decision, Oil and Gas Developments, Alternative Selection and Development, Process and Public Participation, Purpose and Scope, Threatened and Endangered Species, One Integrated Program, and Violations of the Forest Rangeland and Renewable Resource Planning Act and the Multiple-Use Sustained Yield Act).

To avoid repetition, I adopt his rationale as my own and refer you to the enclosed Appeal Reviewing Officer recommendation for further detail.

It is my decision to affirm District Ranger Leon F. Blashock's Record of Decision for the Spring Creek Project on the Allegheny National Forest.

Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

*/s/ Kevin B. Elliott*

KEVIN B. ELLIOTT  
Appeal Deciding Officer  
Forest Supervisor

Enclosure

cc: Bruce Prud'homme  
Jim Apgar  
Patricia Rowell



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**File Code:** 1570-1

**Date:** August 27, 2004

**Subject:** Appeal of the Record of Decision and Final Environmental Impact Statement for the Spring Creek Project, Marienville Ranger District, Allegheny National Forest, Appeal 04-09-19-0029 A215

**To:** Forest Supervisor, Allegheny National Forest

This letter constitutes my recommendation for the subject appeal filed by the Allegheny Defense Project, Heartwood, Jim Bensman, Ryan Talbott and Rachel Martin for the Spring Creek Project on the Marienville Ranger District of the Allegheny National Forest (ANF). District Ranger Leon F. Blashock signed this Record of Decision on June 2, 2004. The legal notice of the decision was published on June 10, 2004.

My review was conducted pursuant to 36 CFR 215 – “Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities.” To ensure the analysis and decision are in compliance with applicable laws, regulations, policies and orders, I have reviewed and considered each of the points raised by the Appellants and the decision documentation submitted by the Allegheny National Forest. My recommendation is based upon review of the Project Record including but not limited to the scoping letter, public comments, Record of Decision (ROD), and the Final Environmental Impact Statement (FEIS).

On August 13, 2004, Jim Kleissler and Ryan Talbott, representatives of the Allegheny Defense Project and Jim Bensman, representative of Heartwood, participated via conference call in an informal disposition meeting on the appeal of the Spring Creek Project. Allegheny National Forest participants included Leon Blashock, Marienville District Ranger, Jim Apgar, NEPA (National Environmental Policy Act) Coordinator, Kevin Treese, Marienville District Planning Team Leader, and John Weyant, Project Team Leader. Issues in the appeal were discussed. The appeal was not resolved.

At several places within the appeal (i.e., p. 31) the Appellants incorporate by reference literature submitted in earlier appeals or in appeals outside of Region 9 (i.e., Region 8, Daniel Boone National Forest). These references are not readily available for review. We are under no obligation and cannot consider this material as part of the Appeal Record. All relevant information must be attached to the appeal in question.

### **Appeal Issues**

The Appellants raised 33 main issues in this appeal of the Spring Creek Project Decision. Some of the major issues had numerous sub-issues. The appeal points are answered in the order



received from the Appellants. Issues were grouped where appropriate. Consequently, the numbering system used in this response does not correspond directly with the Appellants.

**Issue I: Arbitrary and Capricious Record of Decision (ROD)** [Organized as Item V in the Appellants' Appeal] (NOA, p. 11)

**Sub-Issue A: Desired Future Condition** (NOA, p. 10)

1. **Purpose and Need** - The Appellants claim, "*District Ranger Blashock's conclusion arbitrarily ignores the fact that the selection of Alternative 3 does not meet the old-growth requirements for Management Area (MA) 3.0 to the extent that two of the other available alternatives do.*" (NOA, p. 10). "*Additionally, it is not addressed that future actions will likely decrease the amount of old-growth, rendering the percentage given in the FEIS meaningless. District Ranger Blashock's failure to address this within the Record of Decision was arbitrary and capricious.*" (NOA, p. 11).

**Response:** Appellants raised the issue of "Old Growth" during the comment period for the Spring Creek Project in the FEIS (Appendix I, p. 14; Comment 1-49; p. 70, Comment 14-40).

My review of the Project Record finds the Appellants' assertion is not substantiated. The FEIS discusses the conditions available in the planning area for old growth and shows an adaptation of the proposal based upon identification of suitable old growth conditions. The Desired Future Condition (DFC) of MA 3.0 is a minimum of 5 percent (ROD, p. 3, Table 1; Summary: Final Environmental Impact Statement, p.17, Table 2; FEIS, p. 195, Table 62). All alternatives considered met more than the minimum of 5 percent. Table 2 of the Summary shows expected old growth in MA 3.0 in 10 years to have only one percent difference between the alternatives (8 percent vs. 9 percent). Table 62 of the FEIS shows expected old growth in 20 years to be from 24 to 27 percent, which is far above the minimum DFC. The Forest is not required to select the alternative providing the maximum amount of old growth, rather to move toward the Desired Future Condition. Alternative 3 more than satisfies the minimum DFC for old growth.

I find the Responsible Official considered vegetative conditions, including old growth, when making his decision. The selection of Alternative 3 meets the old growth goals and objectives established by the Forest Plan. The decision was not arbitrary or capricious.

The Appellants further claim, "*Mr. Blashock pays no heed to how vegetative management might affect the need to achieve other Forest Plan Standards, Guidelines, Goals and Objectives.*" (NOA, p. 11).

**Response:** The Appellants did not specifically refer to Forest Plan standards, guidelines, goals, and objectives during the comment period for the Spring Creek EIS. They do, however, request the Forest consider alternatives not connected to logging (FEIS,

Appendix I, p. 4, Comment 1-7; p. 6, Comment 1-15; p. 58-59, Comment 14-9). They further ask the Forest to address neotropical migrants and biodiversity in general (FEIS Appendix I, p. 7, Comment 1-23, p.8, Comment 1-25), impacts to soil and water (FEIS Appendix I, p. 22, Comment 1-69; p.64, Comment 14-24), and other subjects such as ecology, wilderness, and large woody debris. It should be noted the Appellants were not specific in this appeal as to what standards, guidelines, goals, and objectives need to be achieved or are not considered.

Project proposals are developed around stated goals and objectives found in the Forest Land and Resource Management Plan (LRMP). At the beginning of proposal development existing conditions of all the resources in an analysis area are evaluated and compared/contrasted against the DFC as presented in the LRMP. The purpose and need of the analysis area is then identified to move conditions of the area in the direction to better meet the LRMP goals and objectives. Standards and Guides (S&G's) are the project implementation measures that stipulate how work is to be done on the ground in a manner to minimize or eliminate negative environmental consequences of treatment prescriptions. As such, S&G's ensure that the purpose and need will be accomplished to achieve net environmental benefits. The Spring Creek Analysis identifies 19 "needs for action" that "... meet the purpose of implementing Forest Plan direction." (Summary, pp. 5-8; ROD, pp. 4-8; and FEIS, pp. 6-10). Chapter 3 of the FEIS discloses the effects of implementing alternatives on these resources identified as having need for action. In addition to the S&G's stated in the LRMP, FEIS Appendix D lists mitigation measures to be implemented in all action alternatives to further ensure environmental consequences will be minimized.

I find the claim by the Appellants that, "*Mr. Blashock pays no heed to how vegetative management might affect the need to achieve other Forest Plan Standard, Guidelines, Goals and Objectives.*", is incorrect and has no basis.

The Appellants conclude by stating, "*The ROD arbitrarily establishes a 9% Desired Condition for the 0-10 year age class in MA 3.0 despite there being no administrative requirement to reach that percentage under the current Forest Plan.*" (NOA, p. 11).

**Response:** In comments to the Draft EIS Appellants state that an analysis is needed on seral stage (FEIS Appendix I, p. 11, Comment 1-39; p.13, Comment 1-45). They do not, however, offer suggestions to seral stage distributions.

While the LRMP does not specify a DFC for minimum percent seral stage in 0-10 year age class, the determination of 9 percent in that seral stage is explained in the project analysis. The FEIS states, "The Forest Plan does not directly state the Desired Future Condition for the 0-10 year age class as a percentage of any given land area. In MA 3.0, the 9% DFC for 0-10 age class is derived from the Forest Plan estimated amount of final harvest cutting in MA 3.0 over the first decade of plan implementation (29,200 acres). This represents 9% of the total MA 3.0 on the Forest." (FEIS, Table 1, Footnote 1, p. 5).

I find the responsible official did not arbitrarily establish a 9% Desired Condition for the 0-10 year age class in MA 3.

2. Purpose and Need - The Appellants claim, “*The ROD arbitrarily included portions of the July 21, 2003 windstorm into the FEIS. The public had no ability to comment on this addition prior to the ROD. It is not appropriate nor in accordance with law to incorporate these acres into the Spring Creek Project this far through the NEPA process.*” (NOA, p. 11).

**Response:** The Appellants provided comments on the inclusion of the windstorm areas during the 45-day comment period (FEIS - Appendix I, p. 66, Comment 14-27).

My review of the record indicates that the public had ample opportunity to comment on the issue of the salvage of wind-thrown trees from the July 21, 2003 windstorm. The salvage of downed trees from wind damage was part of the scope of this analysis since the original scoping letter was issued on April 10, 2002. The original scoping letter contemplated about 474-stand acres that included salvage of individual windthrow trees.

The July 21, 2003 windstorm occurred between the scoping (April 10, 2002) and the issuance of the DEIS (January, 2004). The event occurred while the specialists were working on the analysis. This was a change in the existing condition of the watershed. The alternatives presented in the DEIS responded to the new watershed condition and included salvage operations in stands impacted by the windstorm. The salvage of downed trees from portions of the July 21, 2003 windstorm was included in the DEIS (pp. 6-8, 13, 20-21, 22-23, 103, 151-152, 169-171, 349, Appendix B, pp. 6, 31-34, 56, 111-112, Appendix B, Table 8 (pp. 10-26), Table 10 (pp. 36-37) and Table 12 (pp. 40-55). The acres anticipated in the DEIS did not change between the DEIS and the FEIS. While the conditions within the watershed did change between the scoping letter and the DEIS, the information was included in the DEIS and there was ample opportunity for comment. In addition, the FEIS also extensively references to the windstorm. These areas were clearly not incorporated into the ROD without being part of the analysis from DEIS through the FEIS.

I find that salvage of trees from the July 21, 2003 windstorm was adequately covered in the analysis for the Spring Creek Project.

The Appellants further assert, “*The exclusion of the ATV Trailhead and FR 395 CE’s is a violation of NEPA. These CE’s are located within the Spring Creek watershed but were not included in the FEIS, but other CE’s were. There is no consistency here.*” (NOA, p. 11).

**Response:** The Appellants apparently overlooked the inclusion of these projects in the FEIS (pp. 13). They are listed on this page along with other previous NEPA decisions (since 1986) in this watershed. The cumulative effects analysis also included all past

(since 1986) and present projects in the watershed (p.70). I find these projects were included in the analysis and adequately reviewed.

3. Mountain Brook Lamprey – The Appellants assert, “*The Mountain brook lamprey is a Forest Sensitive Species and is also a State Threatened Species.*” “...[T]he Forest Service simply states that their analysis was based on the assumption that the lamprey was present; therefore, according to the Forest Service, there is no need for additional analysis. This is a conclusory statement and does not represent an in depth, meaningful analysis.” (NOA, p. 11).

**Response:** The Appellants made a general comment (FEIS, Appendix I, Comment 14-152, p. 118) about the mountain brook lamprey during the 45-day comment period, but did not bring up any concerns related to the finding of suitable occupied habitat or about the analysis used in the DEIS/BE that assumed the lamprey was present.

A survey of Spring Creek conducted on 5/12/04 and 5/13/04 did document the occurrence of the mountain brook lamprey (Project Record, Book 14, Tab 36, email correspondence). This was the first documented occurrence in Spring Creek since 1963 (ROD, p. 14) even though it is highly probable that this species had been collected between 1963 and 2004, but not properly identified (Project Record, Book 14, Tab 36, email correspondence).

However, the recent documentation of this species in Spring Creek does not change the analysis found in the FEIS (p. 284) and BE (pp. 58-61) since analysis was based on the assumption that “due to the historical occurrence of the mountain brook lamprey, Spring Creek provides suitable, occupied habitat.” (BE, p. 59). Some minor changes were made to the BE (Project Record, Book 16, Tab 13, last page) to reflect this new survey information.

The BE (p. 59) states, “Any activity that alters water quality conditions or physically disturbs stream channels within the SCPA [Spring Creek Project Area] would have a negative direct effect and may have an adverse indirect effect on this species.” However, this project was determined to have “no adverse direct, indirect, or cumulative impacts to the mountain brook lamprey” (BE, p. 61) based on following Forest Plan standards and guidelines and the implementation of the mitigation measures found in the BE on pages 60-61.

After a review of the Project Record, I find the FEIS analysis for the mountain brook lamprey was adequate. The recent discovery of **this species in Spring Creek did not require any changes in analysis or the determination of effects.**

4. Even-age vs. Uneven-age Management – The Appellants claim, “*The decision is based on an incorrect legal standard*” (NOA, p. 11). “*The ROD states that initiating and completing the proposed logging activities will increase early successional habitat in MA 1.0 and 3.0. This reason is claimed to be responsive to the Need for Action items*

*#2,3,4,8 and Issue 2 and the need to improve habitat components that are important in meeting seasonal life requirements for many wildlife species. (ROD-21).’ This is a clear overstatement.” (NOA, p. 11). “There is no threat to early-successional species.... Yet there is a growing threat to wildlife species dependent on old growth forest, an issues clearly not properly addressed by the Forest Service.” (NOA, p. 12).*

**Response:** The Appellants raised the issue of early successional habitat and wildlife species dependant on old growth forest during the comment period to the DEIS in several comment points.

The LRMP identifies emphasis on early successional habitat as a primary purpose in MA’s 1.0 and 3.0 (FEIS, p. 3). Forest Land Management Plan DFC’s for this habitat type and old growth in percent of area are presented in the FEIS, p. 3, and FEIS pp. 4-5, Table 1. The LRMP was developed in compliance with the National Forest Management Act (NFMA), a federal legal mandate, which requires setting Forest-wide goals and objectives for forest resources. See response to Issue I-A-1.

The decision is in compliance with the LRMP, and the content of the LRMP meets legal requirements of NFMA. Therefore, I find the decision is not based on an incorrect legal standard.

The Appellants further claim, *“The Forest Service has no grounds for claiming the deer herd is the cause of regeneration problems....”* (NOA, p. 12).

The Appellants raised the deer herd issue as it relates to regeneration problems during the comment period for the DEIS.

The Spring Creek analysis describes the existing issue with deer and forest regeneration. For example, the FEIS states:

“Deer densities were low when the stands were in the stand initiation stage and increased dramatically to 40-60 animals per square mile during the pole-timber/small sawtimber stages. Even today, deer browsing reduces seedling diversity. Our ability to successfully develop tree seedlings is limited in areas with higher deer densities where browsing impacts are high. Managers for the ANF and the Pennsylvania Game Commission have agreed to continue to bring the deer herd population down, striving to reach a goal of about 20 deer per square mile, forest wide (USDA-FS, 2002b).”

“Deer browsing has had a major impact on the regeneration and development of forest understories and wildlife habitat (Hough 1963; Tilghman 1989; Jones et al. 1993; deCalesta, 1994, 1998; Whitney 1994; Horsley et al. 2003). Many of the second-growth species are dependent upon advanced regeneration. Because of extensive browsing by deer, this



advanced regeneration is usually absent on the ANF. Other plant species (hay-scented and New York fern, grasses and sedges, beech root suckers, and striped maple) fill the growing space vacated by browsed seedlings, cast dense shade at the forest floor level, and interfere with the establishment and survival of natural regeneration. In recent years, however, some of the SCPA is starting to show signs of recovery with the development of shrubs and wildflowers, though deer still have a considerable influence on understory vegetation throughout the SCPA.” (FEIS p. 153).

I find the Appellants’ statement that the Forest Service has no grounds for claiming the deer herd is the cause of regeneration problems is not substantiated.

The Appellants also claim, “...[I]t is clearly disingenuous to claim that younger forest stands that result from logging will be ‘resilient to adverse biological and physical disturbances.’” (NOA, p. 13).

**Response:** The Appellants failed to bring up the issue of younger forest stands resiliency to adverse biological and/or physical disturbances during the 45-day comment period.

The Spring Creek analysis states, with scientific citation:

“Maintaining structural-age class and community composition diversity at the landscape level helps reduce the risks of insect and disease outbreaks (Nyland 1996, p. 466).” And,

“Recent local research conducted across the Northern tier of Pennsylvania and the Southern tier of New York indicates unglaciated upper slope sites and the plateau top are sensitive sites where sugar maple and other high base cation-demanding species (such as white ash and basswood) may be more vulnerable to stress events such as insect defoliation (Horsley et al. 1999, pp 60-62). Landowners and managers should consider management activities that favor species with lower base cation requirements (Horsley et al. 1999, p. 62; Horsley et al. 2000, pp. 1365-1367). Recent local research results indicate that black cherry and American beech are two of these species (Horsley et al. 2002, p. 41; Long et al. 1997, pp. 1563, 1564, and 1566; Long et al. 1999 pp. 56 and 57).” (FEIS, p. 154).

I find the Appellants’ assertion to be unsubstantiated.

The Appellants also assert, “*Considering the combined impacts of defoliating insects and ozone on black cherry, it is clearly not sensible to specifically manage for this species; but this is exactly what the Forest Service is doing, in violation of the National Forest Management Act.*” (NOA, p. 14). “...[T]here is no mention ...on even-age

*management about the impacts of elm spanworm and cherry scallophshell moth on black cherry [within the ROD].” (NOA, p. 14).*

**Response:** The Appellants raised the issue of ozone effects on black cherry, sensitivity of black cherry to ozone, and the relation between insects and the need for timber sales during the comment period for the DEIS. They also mention that when weakened by ozone, other stresses can do more harm to trees. They did not mention anything about elm spanworm or cherry scallophshell moth.

The FEIS does discuss even-aged management of black cherry and effects of ozone and insects on black cherry. It states:

“Clearcuts and shelterwood removal cuts result in even-aged stands of hardwood forests. Tree species that are shade intolerant (black cherry, white ash, and yellow poplar) grow well under these conditions. Soil drainage, animal damage, and other environmental factors also influence which trees will eventually occupy the site, and they affect the vertical vegetation diversity as well (USDA-FS 1986a, p. 4-21). Site nutrient capability also plays a role. Nutrient demanding species, like sugar maple and white ash, are more vulnerable to drought and defoliation stress on sites with low nutrient capital, like unglaciated plateau sites in the SCPA. Recent local research conducted across the Northern tier of Pennsylvania and the Southern tier of New York indicates unglaciated upper slope sites and the plateau top are sensitive sites where sugar maple and other high base cation-demanding species (such as white ash and basswood) may be more vulnerable to stress events such as insect defoliation (Horsley et al. 1999, pp 60-62). Landowners and managers should consider management activities that favor species with lower base cation requirements (Horsley et al. 1999, p. 62; Horsley et al. 2000, pp. 1365-1367). Recent local research results indicate that black cherry and American beech are two of these species (Horsley et al. 2002, p. 41; Long et al. 1997, pp. 1563, 1564, and 1566; Long et al. 1999 pp. 56 and 57).” (FEIS, p. 154).

The FEIS discusses ozone effects on black cherry. It states:

“The Forest Service Forest Health Monitoring program uses ozone bioindicator plants to monitor changes in air quality, and to evaluate the relationship between ozone air quality and the indicators of forest condition. Black cherry and blackberry are two species abundant on the ANF that are sensitive to ozone damage. These two species were used as bioindicators of ground-level ozone damage. Analysis of ozone foliar damage survey data collected on the ANF in 1998 and 1999 indicated only a very small portion of black cherry trees showed any signs of foliar injury while over 40 percent of blackberry plants suffered some amount of foliar injury. However, most of the blackberry injury noted affected only 7 percent to 25 percent of the leaf area of each plant. Taken together, these

results suggest that ozone pollution is not having substantial effects on the forest of the Allegheny Plateau (Morin et al. 2001).” (FEIS, p. 155).

The FEIS also discusses insect and disease effects to black cherry, citing research findings on the Forest. The FEIS states:

“When selecting tree species to favor on these sites, managers should also consider the potential for tree decline/mortality from insect/disease threats. Recent monitoring data shows that crown dieback, tree damage, and percent dead basal area are similar Forest-wide for black cherry and American beech (Morin et al. 2001, pp. 20-23). However, the size class of the trees that died is significantly different between the species; most of the beech basal area that died is larger than 20 inches in diameter, whereas most of the black cherry that died is in the 5-10 inch diameter class. The large tree mortality for beech most likely has resulted from beech bark disease, which tends to kill large trees. On the other hand, the black cherry mortality is in the smaller size classes, as would be expected to occur during self-thinning of a shade-intolerant species during the normal stand development process (Morin et al. 2001, pp. 23, 24).” (FEIS, p. 157).

The Appellants do not say how the Forest is violating NFMA through management of black cherry. I find the Responsible Official did consider even-aged management, ozone, and insects relative to management of black cherry. The Appellants’ claims, therefore, are unsubstantiated.

The Appellants conclude by stating, “*The Forest Service fails to identify the ‘long term net public benefits’ of even-aged logging.*” (NOA, p. 15).

**Response:** The Appellants mention net public benefits in their comments to the DEIS, but not specifically as it relates to even-aged logging.

Alternatives considered in detail were designed to satisfy needs for action specific to numerous resources in order to move the analysis area into the DFC as described in the LRMP (see ROD, pp. 4-8). The Responsible Official identifies the selected alternative, which utilizes even-aged management in suitable stands, as returning the 2<sup>nd</sup> highest net benefit in cash flow while protecting other resource values (ROD, p. 22). Economic analysis determined provision of future economic benefits for timber and non-timber resources, which is displayed in FEIS, p. 345; p. 346, Table 94; and p.347, Table 95.

I find the Appellants’ claim of failure to identify long-term net public benefits of even-aged logging to be unsubstantiated. Refer to Issue VIII-A-10 for further discussion.

5. Environmentally Preferred Alternative – The Appellants contend, “*It is not accurate to claim that these proposals will ‘result in the perpetuation of a sustainable forest that is healthy and diverse.’*” (NOA, p. 15). “*The ROD fails to explain how this [project] benefits the citizens of this nation.*” (NOA, p. 16). “*The ROD fails to explain how, if providing an acceptable quantity of high-valued forest products in fact does improve the economic well being of the local and regional area.*” (NOA, p. 16).

**Response:** The Appellants raised the issues of healthy natural forests (FEIS, Appendix I, Comment 1-80, pp. 26), healthy productive forests (FEIS, Appendix I, Comment 14-9, pp. 58-59, Comment 14-13, p. 60, and Comment 14-14, p.61) sustainable use of biodiversity (FEIS, Appendix I, Comment 14-75, p.87), and economic benefits (FEIS, Appendix I, Comment 14-76, p. 87) during the comment period of the DEIS.

The Responsible Official discusses forest sustainability in the FEIS, and the means to ensure success of the proposed alternative to achieve a healthy forest in the project area. For instance, the FEIS states:

“Individually named reforestation treatment activities proposed under each action alternative have similar implications. In a healthy, sustainable forest ecosystem, tree seedlings, herbaceous vegetation, and shrubs develop naturally whenever suitable light conditions are created on the forest floor. When overstory trees die, young tree seedlings replace them, thus helping to ensure that a forested condition is maintained on the site. Since we know that tree seedlings do not usually develop on their own on the ANF (Horsley et al. in Marquis 1994a, pp. 207-215), the following types of understory treatments will be implemented in varying amounts (depending on site conditions) to promote the development of desired tree seedlings, herbaceous vegetation, and shrubs. The amounts of these proposed treatments are displayed by alternative in Table 57, and are dependent on the amount of even-aged and uneven-aged regeneration proposed.” (FEIS, p. 187).

“Forest sustainability is assured when regeneration harvests occur in combination with reforestation treatments. Successful regeneration treatments, whether even-aged or uneven-aged, are dependent on several factors: increasing the amount of light by removing overstory vegetation through a shelterwood seed cut, or individual tree selection; removing mid-story shade through site preparation; reducing deer browsing impacts through area and individual tree fencing; fertilizing areas to enhance seedling growth; and release to maintain desired species composition in young stands. Initial identification of the need for reforestation treatments is based on existing site-specific stand conditions. Stands are monitored throughout the regeneration process to determine if seedlings are developing as planned and whether or not all treatments that are proposed are needed. Appendix B, “Vegetation Report” provides a detailed discussion of the anticipated vegetative effects each of these types of

treatments. Appendix D lists specific mitigation measures.” (FEIS, p. 187; See Table 57, FEIS, p. 187).

The Responsible Official disclosed long term benefits to citizens of the nation, and the economic well being of the local and regional economy. See response to Issue I-A-4 and Issue VIII-A-10 for further discussion.

I find the Appellants’ claims to be unsubstantiated.

**Issue II: Oil and Gas Development** [Organized as Item VI in the Appellants’ Appeal] (NOA, p. 17)

The Appellants contend, “*The Spring Creek FEIS does not adequately or accurately address the issue of oil and gas development.*” (NOA, p. 17).

- “*The Spring Creek project area has approximately 1,900 wells. This is a significant contributor to habitat fragmentation that the Forest Service arrogantly brushes off.*” (NOA, p. 17).
- “*The Forest Service continues to blatantly lie to the American public about their role in controlling oil and gas development in the Allegheny.*” (NOA, p. 17).
- “*The failure to include road density figures from oil and gas developments within the Spring Creek Project Area is arbitrary and capricious.*” (NOA, p. 18).

**Response:** The Appellants provided general concerns concerning oil and gas development during the 45-day comment period. Nevertheless, they did not specifically address road densities (FEIS, Appendix I, Comment 14-24, 14-43).

Contrary to the Appellants’ claims the FEIS does consider oil and gas development and its potential impacts within the Spring Creek Project Area. My review of the Project Record finds numerous discussions not only concerning road density, but individual resource analysis of effects.

The FEIS (p. 133) clearly shows that the Forest considered road development on private and state lands while also including those associated with oil and gas development (FEIS, Table 16, p. 134). A detailed analysis (Project Record, Book 9, Tab 15, “Roads Analysis Report – Spring Creek Analysis Area – 2002”) was done using two methodologies. The first followed the conventional approach of using miles of road and dividing by the number of square miles in the project or management area. This method is the primary means of determining compliance with Forest Plan Standards and Guidelines. The Forest Plan established guidelines based on Forest Service system road densities. It did not set standards that included private roads.

The second methodology, used as part of the “Spring Creek Roads Analysis Report” relied on GIS (Geographic Information Systems) technology segmenting the land into 30 meter by 30-meter pixels. This analysis produced a map that displayed road density variation across the entire analysis area. This “...newer method is useful to identify or highlight areas where road

density or the effects of high road density may be a concern. (Ibid, p. 14). This method was a key component of the “Roads Analysis Report ...”, an important document that outlined the merits and risks associated with the road system within the Spring Creek watershed (Project Record, Book 9, Tab 15, “Roads Analysis Report – Executive Summary”, p. 1). It provides the basic data to address many of the roads issues and questions (Project Record, Book 9, Tab 15, “Roads Analysis Report – Spring Creek Analysis Area – 2002”, pp 29-113).

Further, the Forest considered the potential for future road development associated with oil and gas development in its cumulative effects analysis (FEIS, p. 141). Data suggest that 50 new wells and 4.7 miles of associated new road construction will occur over the next decade. A breakdown of this new road development by Management Area is unknown at this time due to a lack of site-specific proposals.

The FEIS also displays the effects of fragmentation. Fragmentation models were used that considered all land and water areas within the Forest proclamation boundary (FEIS, p. 231). Consequently, the effects of past oil and gas development were considered in identifying fragmented areas. The model identified several small-forested core areas within areas of intensive oil and gas development. However, travel corridors for species movement remain intact. “In addition, much of the SCPA will continue to be unaffected by intensive oil and gas activity and will provide suitable, if not optimum habitat conditions for potentially affected species, specifically large animals.” (FEIS, p. 268).

Likewise, the effects to soil and water resources as a result of oil and gas development are also considered (FEIS, pp. 87-93, pp. 126-130). Effects of stone pits are discussed where the Responsible Official anticipated likely impacts (i.e., FEIS, PP. 146-147, 81-87, 196-197, 215).

The Appellants also disagree with the Responsible Officials statement within the FEIS explaining private property mineral rights and the Forest Service role in the management of this activity. As the FEIS explains (p. 144), approximately 93 percent of the mineral rights are in private ownership on the Allegheny National Forest. The Pennsylvania Department of Environmental Protection is the regulatory authority that issues new permits and ensures the protection of water quality. The Allegheny Land and Resource Management Plan (LRMP) recognizes the importance of oil and gas development by establishing a goal to “[e]ncourage the development and extraction of oil, gas, and mineral resources by integration with National Forest management.” (LRMP, p. 4-3). The Plan further states that adverse impacts will be mitigated “... by working cooperatively with developers and state and federal regulatory agencies.” The purchase of mineral rights, as the Appellants would like, is possible but only if three criteria are met; 1) Conflicts between surface values and mineral activities cannot be mutually resolved, 2) The public benefits from the surface values exceed the cost of acquiring subsurface rights, and 3) The cost is consistent with budget priorities (LRMP, p. 4-51). The authority to make that determination rests with the Forest.

In the case of the privately held rights, the Forest Service works cooperatively with the owners to ensure they have access to their mineral rights while protecting the surface resources. This management objective stems from court interpretations (FEIS, p. 144). When new project proposals are reviewed and show that National Forest values are protected or the potential for

adverse effects can be mitigated, the Forest Service does not object to the State issuing permits. As the Responsible Official explains in his response to the 45-day comments (FEIS, Appendix I, p. 71, Comment 14-43), the mere presence of a well affecting the items listed in Section 205 of the Pennsylvania Oil and Gas Act (e.g., publicly owned parks, forests, habitats for rare and endangered species) is not a sole reason for denying a permit. Rather the Act states, “consider the impact of the proposed well on public resources...” (1984, Pennsylvania Oil and Gas Act, Section 205(c)).

In summary, after reviewing the Project Record, I find the Responsible Official adequately considered oil and gas operations in this NEPA analysis for the Spring Creek Project. The Responsible Official addressed road densities, explained mineral rights and addressed effects where appropriate. Claims made by the Appellants about administration of the oil, gas and mineral program (NOA, p. 88) are not germane to this decision. I find no violation in law, regulation or policy.

**Issue III: Final EIS** [Organized as Item VII in the Appellants’ Appeal] (NOA, p. 18)

**Issue A: Alternatives Considered but Eliminated from Further Consideration** (NOA, p. 18)

The Appellants contend,

1. No Herbicide - “...[I]t receives no serious consideration despite the fact that it is a reasonable alternative.” (NOA, p. 19).
2. Uneven-age – “The Forest Service cannot base its decision on this alternative based on its feasibility to regenerate Allegheny hardwoods.” (NOA, p. 19).
3. Zero cut/Restoration – “The decision to exclude this alternative was arbitrary and capricious.” (NOA, p. 19).

**Response:** These alternatives were discussed and eliminated from further consideration during the analysis process. The reasons for not considering these alternatives are fully explained in the Project Record. The Appellants simply disagree with the decision not to further explore these alternatives.

The Appellants did not raise the issue of a no herbicide alternative during scoping or in the 45-day comment period (FEIS, Appendix I – Page 69, Comment 14-37 and 14-38). The No Herbicide alternative was eliminated from further consideration because it would not accomplish the type stand regeneration needed to meet the Forest Plan desired condition for these management units. The purpose of this project is to implement Forest Plan direction in the Spring Creek Project Area by addressing site-specific needs and opportunities to move existing conditions of the project area towards the Desired Future Condition in the Forest Plan. The Purpose and Need for the Spring Creek Project Area (FEIS, pp 2-10) identified needs for native plant restoration, improvements in plant age-class and species diversity, and the improvement of wildlife habitat conditions. These needs would not be met without

establishing the proper mix of vegetation through reforestation efforts. The conclusion, based on research and experience, (FEIS, pp. 35) that adequate regeneration cannot be achieved without the use of herbicides is clearly displayed.

The Appellants did surface the issue of an Uneven-age alternative during the 45-day comment period (FEIS, Appendix I – Page 34, Comment 1-104). The Uneven-age alternative was included in areas where this type of silvicultural treatment would be effective at moving areas toward the desired condition outlined in the Forest Plan (FEIS, pp. 35). In addition, Appendix E of the FEIS provides an extensive review of site-specific silvicultural work on the Allegheny National Forest and the shortcomings of uneven-aged management in certain areas. Uneven-aged management was considered as part of Alternatives 2-4, in areas that were suitable for this silvicultural treatment. This issue was fully disclosed in the project documents.

The Appellants requested consideration of a Zero cut/restoration alternative during the 45-day comment period (FEIS, Appendix I – Page 57, Comment # 14-4). The Zero cut/restoration alternative was eliminated from further study because it did not meet the purpose and need (FEIS, pp. 2-10). In my review of the Project Record, I found all of the components of this alternative were considered in the analysis. The No-Action alternative examined the effects of not managing vegetation within the watershed. The other action alternatives (2-4) included Wildlife habitat, erosion control, and recreation facility development. Considering the range of alternatives analyzed, further development of this issue was not necessary.

In summary, these topics were fully vetted in the analysis documentation and the Appellants' claims have no merit. I find the Responsible Official made a reasoned decision based on the best available science related to herbicides and uneven-aged management. The alternatives considered in detail adequately addressed the scenarios that would be considered under a zero cut/restoration alternative. The Appellants do not agree with the decisions made by the Responsible Official, but these claims are not a violation of law, regulation or policy.

**Issue B: Failure of FEIS** (NOA, p. 19)

1. Selecting for Financial Returns - The Appellants claim, “*The Forest Service attempts to convey to the public that they are not basing decisions based on financial returns.*” (NOA, p. 19). “*This is not in compliance with 40 CFR Section 1502.14(a).*” (NOA, p. 19).

**Response:** Refer to Issue IV-A for a discussion and overview of alternative development and analysis for the Spring Creek Project. This issue was raised by the Appellants during the 45-day comment period on the DEIS. It was answered thoroughly in the FEIS (Appendix I, p. 71, Comment 14-41).

Further review of the Project Record indicates many factors were considered in choosing the selected alternative (Alternative 3 with Alternative 2 recreation activities).



Economics, as implied, was not the primary criteria. The project was designed to move the Spring Creek Project Area toward the desired future condition outlined in the Forest Plan (FEIS, “Purpose and Need”, pp. 2-10).

Vegetation management was one resource activity proposed in the project. The project also included wildlife habitat improvement, transportation activities, recreation activities, and watershed improvements (FEIS, “Formulation of Alternatives”, pp. 22-25). In addition, the section on economics reviews the cost of other proposed resource management projects. The ROD (pp. 21-23) clearly provides the multi-purposed rationale for the decision.

The Spring Creek Project harvesting systems were not selected solely because they would result in the greatest dollar return. The ROD (pp. 12 and 13) states seventeen specific reasons for the choosing the selected alternative. These include; developing early successional habitat, maintaining a sustainable healthy forest, protecting/ensuring the continuation of resource values, reduction of deer impacts on vegetation, and improvements to water quality. Even-aged management is prescribed only to those stands with characteristics that have proven successful for forest regeneration (ROD, p. 22).

The “Alternatives considered in Detail”, along with those eliminated from detailed consideration are thoroughly discussed in the FEIS (pp. 19-35). A good summary of the alternatives is provided in the ROD (pp. 27-32).

I find the Responsible Official did not rely primarily on economics (timber harvest) as his reasons for alternative selection. Supporting literature, past management experience, and analysis in the FEIS clearly documents the multiple resource-based reasons for the decision. In addition, I find the alternatives were rigorously explored and objectively evaluated. There is also adequate documentation in the FEIS and ROD to clearly understand why certain alternatives were eliminated from further consideration. I find this decision is consistent with requirements of the 40 CRF Section 1502.14(a).

2. Roads – The Appellants claim, “*The FEIS fails to consider roads that are not under Forest Service jurisdiction when calculating road densities.*” (NOA, p. 19). “*The failure to include these roads in the FEIS when considering land stewardship values in the Spring Creek Watershed is arbitrary and capricious.*” (NOA, p. 19).

**Response:** The Appellants’ assertion is unfounded. The Project Record clearly shows that roads not under Forest Service jurisdiction were considered in the analysis of road densities for the Spring Creek Project. Two methodologies were used. One relies on average densities across the area based only on Forest Service Roads. It was this method that was used to originally develop standards and guidelines in the Forest Plan. The “Roads Analysis Report” documents a much more detailed process that looks at densities including private, oil and gas and Forest Service roads (Project Record, Book 9, Tab 15, “Roads Analysis Report – Spring Creek Analysis Area – 2002”, pp. 13-16). The “Roads

Analysis Report” provides basic data to address roads issues and questions (Ibid, pp. 29-113). Refer to Issue II (“Oil and Gas Development”) for further discussion.

3. Uneven-aged Management - The Appellants assert, “*The Forest Service did not provide any scientific data to support the conclusion that uneven-aged management is an ‘uncertain’ scientific technique.*” (NOA, p. 20).
  - a). “*The additional reasons cited for rejecting uneven-aged management are inadequate.*” (NOA, p. 20).
    - “*Mr. Blashock fails to address the uncertainty associated with even-aged regeneration practices – especially salvage oriented practices.*” (NOA, p. 21).
    - Mr. Blashock violates 16 USC 1604 Section 6(g)(3)(E) because he selected a harvest system that only gave the “*greatest dollar return or the greatest unit output of timber.*” (NOA, p. 21).
    - “*The ROD and Spring Creek Final EIS fail to even address forest health problems associated with ozone.*” (NOA, p. 21).
    - “*...[T]here is no requirement to provide the distributions of early successional habitat the Forest Service desires.*” (NOA, p. 23). “*...[E]ven –aged management does not provide an effective nor reliable means for moving the Allegheny National Forest towards the desired future condition.*” (NOA, p. 23).

**Response:** The Appellants raised the issues of: uneven-aged management during the comment period to the DEIS (FEIS, Appendix I, Comments 1-104 and 1-105, p. 34); highest dollar return (FEIS, Appendix I, Comment 14-41, p. 71); ozone (FEIS, Comment 14-14, p. 60, and Comments 14-17 and 14-20, pp. 62-63, Comment 14-44, p. 72, and Comment 14-52, p. 75); early successional habitat (FEIS, Appendix I, Comment 1-19, p.6, Comment 120, p. 7, Comment 1-54, p. 16, and Comment 14-30, p. 67); and, the uncertainty of even-aged regeneration during the comment period of the DEIS (FEIS, Appendix I, Comment 14.12, p. 60).

The LRMP establishes even-aged management as the featured silvicultural system in MA’s 1.0 and 3.0 (FEIS, p. 171). Furthermore, the LRMP emphasizes producing early successional habitat for those associated wildlife species within those management areas (FEIS, pp. 171-172). For discussion on the suitability and reliability of even-aged regeneration practices, see response to Issue III-B-3-d.

The feasibility of successful regeneration by uneven-aged management in the analysis area was considered. The FEIS discusses the conditions necessary for successful uneven-aged management, with scientific citations, and the presence/absence of those conditions (FEIS, pp.172-173). Furthermore, the LRMP discusses the major differences in tree species, forest structure, and wildlife from selecting even-aged management and uneven-aged management (FEIS, Appendix E, p.1). Appendix E also discusses how project analysis evaluates the applicability of these two management techniques, and the lessons learned during forest monitoring and

evaluation. There is discussion on historical factors that affected how the current forest composition developed, and just what forest composition is favored by those factors (FEIS, pp.151-158). The analysis also includes discussion, with local research citations, addressing likely successful regeneration practices in the analysis area, specific to species (FEIS, p. 154).

The Responsible Official gave 17 reasons why he chooses the selected alternative (ROD, pp. 21-23). Reason 8 states that this alternative gave the second highest net benefit in cash flow. Reason 9 states that the alternative provides a high volume output in board feet. This output is not the highest output of timber volume of the alternatives considered (ROD, Table 6, p. 25).

The analysis did address forest health problems associated with ozone (See response to Issue I-A-4).

The FEIS addresses distributions of early successional habitat and the reliability of even-aged management for moving the Allegheny National Forest towards the DFC (See previous discussion in this response and Issue I-A-4).

I find adequate scientific data and rationale concerning even-aged and uneven-aged management, reasons for the selected harvest system, consideration of ozone, distribution of early successional habitat, and the means for moving toward DFC. The Appellants' claims are unfounded.

- b). *"The District Ranger does not apply the requirements for even-aged management and Uneven-aged management equally."* (NOA, p. 24).
- *"...District Ranger Blashock, in his decision, pays no heed to the fact that Alternative 3 approves regeneration cuts where Forest Service experience says not to [examples of compartments/stands showing interfering plant stocking]."* (NOA, p. 24).
  - *"The EIS fails to discuss...low [regeneration] success rate[s]."* (NOA, p. 24).
  - *"...[T]he U.S. Forest Service refuse to consider striped maple in its consideration of whether or not there is adequate stocking for uneven-aged applications."* (NOA, p. 25).

**Response:** The Appellants raised the issues of even-aged and uneven aged management during the comment period to the DEIS (FEIS, Appendix I, Comments 1-104 and 1-105, p. 34, Comment 14-12, p. 60, Comment 14-14, p. 61, Comment 14-17, p. 62, Comment 14-61, pp. 81-82, Comment 14-105, p. 100, and Comment 14-106, p. 102).

Alternative 4 extensively considered uneven-aged management as a management technique. The FEIS Summary states:

“This main focus of this alternative is to achieve silvicultural harvest objectives through uneven-aged treatments where they are biologically feasible in stands now prescribed for even-age management in the SCPA (Alternative 2). Those stands included in this alternative meet the biological criteria for UEAM. The criteria used for biological feasibility include looking at each stand for: 1) Potential seed source for shade tolerant regeneration (35 BA of hemlock, beech, and sugar maple), and 2) adequately established, shade tolerant regeneration.” (Summary, FEIS, p. 15).

Consideration was also given to silvicultural treatments for each alternative. The silvicultural prescriptions found in the Project Record were based on stand information on condition, objective, and alternatives. For example:

“It also provides definitions of harvest activities and reforestation treatments, discusses environmental consequences, and provides a summary of the acres treated by type of activity for each management area and each alternative considered in the SCPA. Finally, Table 12 lists the individual silvicultural treatments that are proposed in each stand for each alternative.” (FEIS, Appendix B, p. 27).

“In all cases, a certified silviculturist approved the stand prescriptions (proposed vegetation treatments) that were developed based on the stand data and on-site field observations. Choosing the appropriate harvest method for the regeneration of a particular stand is influenced by the silvicultural requirements of the species on site, existing stand conditions, long term management objectives as described in the Forest Plan and professional experience. Once project implementation begins, there may be a need to change some of the proposed treatments in order to properly respond to changed biological conditions on a particular site.” (FEIS, Appendix B, p. 27).

The Appellants raised the issue of regeneration success rates during the comment period of the DEIS. The Deciding Official responded to the comments by referencing discussion in the DEIS and the Forest Monitoring Reports (Appendix I, Comments 14-12 and 14-13, p. 60). Also, see discussion under response to Issue III-B-3-a.

The Appellants failed to bring up striped maple as an issue during the comment period to the DEIS. Previous discussion on silvicultural treatments in this response addresses this appeal point, since information on species occurrence and condition is taken into consideration when prescribing silvicultural treatments.

I find the Appellants' claims to be unfounded.

- c). *“District Ranger Blashock seriously de-emphasizes the many benefits associated with uneven-aged management while over-emphasizing its negative components in the ROD.”* (NOA, p. 25). *“Even-aged management involves a long-term deficiency in visual and wildlife qualities even if successful. District Ranger Blashock does not address these trade-offs in any meaningful way.”* (NOA, p. 26).

**Response:** The Appellants raised the issue of even-aged and uneven aged management during the comment period to the DEIS (FEIS, Appendix I, Comments 1-104 and 1-105, p. 34, Comment 14-12, p. 60, Comment 14-14, p. 61, Comment 14-17, p. 62, Comment 14-61, pp. 81-82, Comment 14-105, p. 100, and Comment 14-106, p. 102).

The Spring Creek analysis compares alternatives by resource area (such as soils, hydrology, air, wildlife, aquatics, etc.) (FEIS, pp. 51-67), and discusses effects of alternatives by resource area (FEIS, Ch. 3, pp. 68-356). Additionally, Alternative 4 was designed around uneven-aged management where feasible (see Response to Issue III-B-3-b); and comparisons of the alternatives to issues developed from scoping are displayed in the Summary (Summary, Table 6, pp. 27).

Alternatives were analyzed for effects in the Spring Creek Analysis Area (FEIS, pp. 309-310; FEIS, Table 85, p. 310). Analysis shows that Visual Quality Objectives were met in all action alternatives where they were met in the No Action Alternative.

Likewise, effects of alternatives to wildlife were discussed (FEIS, pp.245-287; ROD, p. 25). See response to Issue VII.

I find the Appellants’ claims to be unsubstantiated.

- d). *“District Ranger Blashock fails to address major deficiencies and problems associated with even-aged management practices.”* (NOA, p. 30).

- *“The problems associated with nutrient poor soils are underscored by the intensive need for fertilization of sites that have undergone even-aged regeneration cuts.”* (NOA, p. 31).
- *“The appropriateness of even-aged cutting cannot be determined without considering how even-aged regeneration cuts increase the deer herd....”* (NOA, p. 31).

**Response:** The Appellants did not raise regeneration as related to soil fertility as an issue during the comment period of the DEIS. They do, however, raise the issue of deer and even-aged regeneration cuts (FEIS, Appendix, Comment 14-25, p. 65, and Comment 14-61, p. 81-82).

The Appellants imply that there is a need to fertilize sites that have undergone even-aged regeneration cuts on nutrient poor soils. However, fertilization is not used to

regenerate forests, rather it is one management tool among others used to reduce effects of deer browsing on regeneration by accelerating growth (FEIS, Appendix B, pp. 63-64; Project Record, Book 12, Tab 28).

Further, the Responsible Official did consider nutrient poor soils and the regeneration practices and species suitable to those sites. For example, again:

“Clearcuts and shelterwood removal cuts result in even-aged stands of hardwood forests. Tree species that are shade intolerant (black cherry, white ash, and yellow poplar) grow well under these conditions. Soil drainage, animal damage, and other environmental factors also influence which trees will eventually occupy the site, and they affect the vertical vegetation diversity as well (USDA-FS 1986a, p. 4-21). Site nutrient capability also plays a role. Nutrient demanding species, like sugar maple and white ash, are more vulnerable to drought and defoliation stress on sites with low nutrient capital, like unglaciated plateau sites in the SCPA. Recent local research conducted across the Northern tier of Pennsylvania and the Southern tier of New York indicates unglaciated upper slope sites and the plateau top are sensitive sites where sugar maple and other high base cation-demanding species (such as white ash and basswood) may be more vulnerable to stress events such as insect defoliation (Horsley et al. 1999, pp 60-62). Landowners and managers should consider management activities that favor species with lower base cation requirements (Horsley et al. 1999, p. 62; Horsley et al. 2000, pp. 1365-1367). Recent local research results indicate that black cherry and American beech are two of these species (Horsley et al. 2002, p. 41; Long et al. 1997, pp. 1563, 1564, and 1566; Long et al. 1999 pp. 56 and 57). Their growth and health seems unaffected by lower local base cation availability on many sites. Ash and maple decline have occurred in the SCPA on unglaciated upper slope sites and the plateau top.” (FEIS, p. 154).

The Appellants raised deer and even-aged cutting as an issue in the comments to the DEIS. In response, the Forest mentioned possible effects to the deer herd and other vegetation (FEIS, Appendix I, Comment 14-25, p. 65). This response also points out the relatively small percentage of the project analysis area (5%) proposed for regeneration cutting, and where in the FEIS to find discussion on effects to forested habitat distribution and wildlife species mobility. Other responses discuss the occurrence of deer on the Forest and the effects of deer browsing on herbaceous vegetation (FEIS, Appendix I, Comment 14-61, p. 82). The SCPA analysis discusses, with scientific citations, deer browsing impacts to regeneration (FEIS, p. 153). Refer to Issue I-A-4.

I find these claims by the Appellants unsubstantiated.

4. Economic Goals/Objectives – The Appellants contend, “*District Ranger Blashock’s decision responds solely to short-term economic goals and objectives from the Forest Plan.*” (NOA, p. 31). [Organized as Item 3 in the Appellants’ Appeal]

**Response:** The Appellants raised this issue during the 45-day comment period. Refer to Issue III-B-1 for a discussion and overview of alternative development and analysis for the Spring Creek Project. Refer to Issue III-B-3-a for a discussion of uneven aged management.

#### **Issue IV: Appeal Claims – (Broad Range of) Alternatives to the Proposed Action**

[Organized as Item X in the Appellants’ Appeal] (NOA, p. 39)

##### **Sub-Issue A: Failure to Consider a Broader Range of Alternatives within the EIS** (NOA, p. 39)

The Appellants contend, “*Because the Forest Service refused to consider zero-logging, uneven-aged, landscape corridor and other alternatives within the broader Amendment and EIS for the Forest Plan, they illegally increased the likelihood for selecting a pro-clearcutting range of alternatives within their Spring Creek EIS. Therefore, an inadequate range of alternatives was before the Deciding Officer when considering his decision on the Spring Creek Timber Sale.*” (NOA, p. 39). “*In fact, the Final EIS fails to consider the Court ordered uneven-aged alternative and instead substitutes a partially even-aged alternative.*” (NOA, p. 39).

**Response:** On July 28, 2000, the Allegheny National Forest Supervisor signed a decision on Amendment 11 to the Allegheny National Forest Land and Resource Management Plan to address threatened and endangered species. On September 25, 2000 the Appellants (and others) subsequently filed an appeal to that decision. A review by the Regional Forester found the Forest was diligent in complying with NEPA, NFMA and ESA (Endangered Species Act) in completion of its Plan Amendment. The Record of Decision for Plan Amendment 11 was affirmed.

Claims in this current appeal (Spring Creek Project), addressing the threatened and endangered species amendment, are nearly identical to the September 25 appeal. The Appellants provide no additional evidence that Forest Plan Amendment 11 violates law, regulation, or policy. Neither do they provide any evidence the Spring Creek Project Decision was inappropriately constrained by decisions already made by Amendment 11 (i.e., inadequate range of alternatives). Therefore, appeal issues related to Amendment 11 (NOA, pp. 39-63) will not be addressed in this appeal of the Spring Creek Project.

The allegation the Spring Creek Project failed to consider alternatives beyond those dominated by even-aged logging methodologies is not substantiated. NEPA does not prescribe any particular range of alternatives, but gives federal agencies discretion to determine appropriate alternatives based upon the purpose and need of the proposal. NEPA “does not require an agency to examine every conceivable alternative to a project involving the environment, but only those that are reasonable.” (40 CFR 1502.14, 1508.25(b)). An EIS

need only set forth alternatives sufficient to permit a reasoned choice. There is no requirement to consider alternatives that are impractical or infeasible. NEPA regulations simply require that a range of alternatives be analyzed (40 CFR 1502.14, 1508.25(b)). In reviewing Forest Service decisions similar to this project, courts have found that the range of alternatives may be limited to those alternatives that meet the purpose of the proposed action (See, e.g. *Krichbaum v. Kelley*, 844 F. Supp. 1107, 1109 (W.D. Va. 1994), affirmed, 61 F.3d 900 (4th Cir. 1995). A Forest need not consider a “no logging” alternative that does not meet Forest Plan goals: *Sierra Club v. Robertson*, 810 F. Supp. 1021, 1029 (W.D. Ark. 1992), affirmed, 28 F.3d 753 (8th Cir. 1994) (NEPA does not require an agency to consider alternatives that do not achieve the purpose of the proposed action)).

NFMA (16 U.S.C. 1604, 36 CFR 219) requires development of long-range land and resource management plans. The ANF LRMP was initially approved in 1986. It has since been amended eleven times. NFMA further requires that site-specific projects be consistent with the approved Forest Plan (16 U.S.C. 1604(i), 36 CFR 219.10(e)).

The purpose of this project is to implement Forest Plan direction in the Spring Creek Project area by addressing site-specific needs and opportunities to move existing conditions of the project area towards the Desired Future Condition in the Forest Plan (ROD, p. 1; FEIS, pp. 2-10).

The Spring Creek FEIS analyzed in detail an uneven-aged management alternative (Alternative 4). All stands were considered eligible for this technique where it was biologically feasible (the stand was sufficiently stocked with shade tolerant species) and in visually sensitive areas, riparian and those areas containing wet, Group III soils. The Appellants contend that this alternative contained even-aged management so it does not meet the requirements of a court order issued on October 15, 1997 for the Mortality II timber project. The Record clearly shows that Alternative 4 does not contain even-aged management techniques (FEIS, Table 44, p. 170). In addition, the Responsible Official also considered an uneven-aged alternative whereby all sites proposed for even-age management were also considered for uneven-age management. “The ID team felt that it was important to consider widespread use of uneven-age management.” (FEIS, p. 36). “The Forest documented tradeoffs between even-age and uneven-age management. (FEIS, Appendix E). The Deciding Officer determined that continued analysis “...was not reasonable due to the extremely high cost [of reforestation] and because research and monitoring indicate that the treatments on stands that ... [are not biologically feasible] would most likely result in regeneration failure.” (FEIS, p. 36). Consequently, this alternative was considered but eliminated from detailed study.

In the Mortality II case, no consideration was given for any uneven-aged management. The Forest evaluated only two alternatives, the proposed action and the “no-action”. Judge Standish (Western District of Pennsylvania) concluded that an analysis of uneven-aged management was necessary. He did not dictate the design of the alternative, rather he instructed the Forest to consider the optimality and appropriateness requirements set forth in 16 U.S.C. Section 1604(g)(3)(f). In the case of Spring Creek Project, the Responsible Official did analyze the effects of uneven-aged management. The Responsible Official’s rationale for not selecting the uneven-aged alternative is found in the ROD (p. 31). The



claim the Forest did not meet the court ordered mandate to consider an even-aged alternative is incorrect. For further discussion see Issue I-A-4 and Issue III-B-3.

**Sub-Issue B: Inadequate Range of Alternatives within the Spring Creek EIS** (NOA, p. 63)

The Appellants contend,

1. *“Failure to consider an alternative that would evaluate the potential benefits of zero-logging within the Spring Creek Project Area.”* (NOA, p. 63).

**Response:** Refer to Issue III-A-3 for a discussion and overview of alternative development and analysis specific to the zero logging issue for the Spring Creek Project.

During the 45-day comment period the Appellants requested the development of an alternative that was not connected to logging (FEIS, Appendix I, Comment 14-4, pp. 57-58 and Comment 14-22, p. 82). There were also several comments received during scoping that raised similar concerns (FEIS Appendix A, p. 16).

Contrary to the Appellants’ claim, the Responsible Official did consider an alternative in detail that did not harvest timber. The “No Action” Alternative (Alternative 1) did not implement any activities under this decision (FEIS, p. 25). In addition, a no logging or zero logging/restoration alternative was eliminated from detailed study because it failed to fulfill the projects purpose and need (FEIS, pp. 2-10).

The ROD (pp. 27-32) provides a discussion on the reasons Alternative 1 was not selected, primarily because it does not respond to any of the needs or opportunities found within the Spring Creek Project Area. The FEIS also provides considerable documentation of the effects of Alternative 1. For example, vegetation changes are summarized on pages 189-193.

I find the Responsible Official did consider alternatives that did not involve logging. I also find he adequately documented the rationale for their non-selection.

2. *“Failure to consider an alternative that would evaluate areas for designation as old growth.”* (NOA, p. 63). *“The failure of the Forest Service to consider an alternative that would [incorporate] the Landscape Corridor within the Spring Creek watershed was arbitrary and capricious.”* (NOA, p. 63).

**Response:** During the 45-day comment period the Appellants requested that, “All old growth opportunities should be evaluated independently of potential timber stands.” (FEIS, Appendix I, Comment 1-49). They did not suggest a specific alternative.

Impacts to old growth were considered throughout the analysis. A discussion of the existing old growth conditions can be found on pages 166-169 and on page 195 of the FEIS. Projections for potential old growth in year 2023 show the alternatives considered

substantially exceed Forest Plan goals (FEIS, pp. 40-42, and p. 195) (Refer to Issue I-A-1 for further discussion).

The Landscape Corridor Concept was addressed in the Appellants' appeal to Amendment 11 of the Allegheny National Forest Plan. At that time, the Appeal Deciding Officer concurred with the Forest and found, given the broad nature of the forest landscape corridor concept and focused purpose of Amendment 11, this issue would be better addressed during Plan revision. (Allegheny TES Forest Plan Amendment, Appeal 00-09-0043 A217.) The Appellants provide no new information warranting a review of that decision. However, it's important to recognize that the Responsible Official did realize the value of the Landscape Corridor concept. The project, as proposed, was designed to protect those values across the managed landscape. "All alternatives maintain options for providing these values across the landscape as conceptually envisioned." (FEIS, p. 225).

I find that old growth was adequately covered in the analysis for the Spring Creek Project Area. Selection of Alternative 3 (with Alternative 2 recreation activities) does not delay attainment of the goals established by the Forest Plan. A separate alternative to analyze old growth is not warranted.

3. *"Failure to consider an alternative that would prohibit even-aged logging on poorly drained soils."* (NOA, p. 64). *"There are numerous compartments and stands where the Forest Service is planning to implement even-aged logging techniques where there are Group III soils present."* (NOA, p. 65).

**Response:** Refer to Issue IV-B-1 for a discussion and overview of alternative development and analysis specific to the zero logging issue for the Spring Creek Project.

I could not find any reference to the issue of working in wet soils by the Appellants during the 45-day comment period.

The ROD discussed Group III soils and consistency with the Forest Plan:

"Silvicultural treatments on Group III soils and riparian areas were re-evaluated between Spring Creek DEIS and the FEIS to determine if proposals were considered within Forest Plan direction (See Appendix B – Vegetation Report (pp. 111-117) and the Soil Scientist specialist report located in the project file, which describes and documents the methodology and analysis used for reducing and eliminating even-aged management on these sensitive soils). As a result of the analysis, approximately 231 acres of silvicultural harvest treatment and 129 acres of associated reforestation treatments will no longer be considered as a part of this decision. This amounts to approximately 5.3 % less of the total silvicultural harvest treatments in Alternative 3 presented in the DEIS. **No even-aged management will occur on Group III soils as a result of this analysis and review** [emphasis added]. This reduction of numbers from

the level presented in the FEIS – Alternative 3, Chapter 2 has been reflected in the treatment tables within this ROD.” (ROD, p. 13).

I find the Appellants’ claim has no merit. A specific alternative to address this issue would not add value to the analysis.

The Appellants further contend, “*The Forest Service has failed to meet* [16 USC Section 1604(g)(F)9v).] [protection of soil, watershed, fish...] (NOA, p. 64)

**Response:** I find the Appellants’ claim unfounded. The Project Record is clear that soil, watershed, fish, wildlife, recreation, and esthetic resources are protected. The Responsible Official determined that management activities in the selected alternative are compatible with multiple use objectives and consistent with standards and guidelines of the Forest Plan (ROD, pp. 22, 32-33). The FEIS contains a detailed effects analysis (FEIS, pp. 68-356) and where appropriate adopted specific mitigation measures to protect these resources (FEIS, Appendix D). Pennsylvania Best Management practices will be followed during project layout and implementation (FEIS, Summary, p. 30). Refer to Issue IV-B-3.

The Appellants also state, “...[T]he Forest Service is arbitrarily ignoring the failure of shelterwood cuts to develop adequate stocking.” (NOA, p. 64).

**Response:** Refer to Issue III-B-3-b for a discussion and overview of uneven-aged management for the Spring Creek Project. In addition, the Allegheny National Forest does have monitoring information to document the success of regeneration following timber harvest. This information is included in the response to comments in the FEIS (Appendix I, Comment 14-13, p. 60). The Responsible Official concludes that regeneration for even-aged management has been successful. However, data does indicate that “...success has been less than satisfactory ...” for selection cutting. I find the Appellants’ claim is not substantiated.

4. “*Failure to consider an alternative that reduces forest fragmentation.*” (NOA, p. 64). “*Habitat fragmentation is a serious issue for the Allegheny National Forest ... Yet there is no detailed analysis of the development and no analysis of the cumulative effects of this development in conjunction with the proposed actions of the Spring Creek project.*” (NOA, p. 65).

**Response:** Fragmentation was raised as an issue during initial project scoping and was included in the analysis as an issue used to formulate alternatives (FEIS, p. 14). The Appellants also raised the issue of fragmentation during the 45-day comment period (FEIS, Appendix I, pp. 7-13, Comments 1-21, 1-25, 1-30, 1-31, 1-36, 1-39, 1-40, 1-42, 1-45, 1-47, 1-50, 1-59, 14-10, 14-19, 14-23, 14-36).

I find fragmentation effects were extensively evaluated in the FEIS (pp. 231-234, 261-265) and adequately analyzed. The fragmentation effects on core habitat areas from harvest units and road placement was modeled using a neighborhood analysis model in a Geographic Information System (GIS). Contrary to the Appellants' claim, the analysis concludes, "...there are no significant fragmentation-related effects to neotropical migratory songbirds or other wildlife species anticipated." (FEIS, p. 262). I see no need to consider a separate alternative on forest fragmentation.

**Issue V: Appeal Claims – Process and Public Participation** [Organized as Item XI in the Appellants' Appeal] (NOA, p. 65).

**Sub-Issue A: Spring Creek Project Specific Appeal Claims on Public Participation** (NOA, p. 65).

The Appellants assert,

1. *The Forest Service has misled the public and opposed public involvement. "The failure to allow additional public commenting in light of updated information such as the Mountain brook lamprey and incorporation of July 2003 windthrow was arbitrary and capricious."* (NOA, p. 65).

**Response:** Refer to Issue I-A-2 for a discussion and overview of the mountain brook lamprey for the Spring Creek Project. Refer to Issue I-A-3 for a discussion and overview of the July 21, 2003 windstorm.

The mountain brook lamprey analysis was predicated on presence of the species and was adequate to document the potential effects to the species. Extensive protection for the habitat of this species is included in the DEIS (Appendix C, p. 60-61). The public had ample opportunity to comment on potential management impacts to the mountain brook lamprey. The habitat protection mitigation identified in the DEIS was carried through to the FEIS (Appendix C, p. 58-61, and 88). The Responsible Official determined it was not necessary to amend the analysis based on the discovery of the species in May of 2004 (ROD, p. 140). Additional opportunity for public comment would not change the analysis or the decision.

The public had ample opportunity to comment on proposals related to the July 21, 2003 windstorm because project proposals were incorporated into the DEIS. The Appellants claim there was a need for additional public comment on these issues is unfounded.

2. Incorporation by Reference - *"While the Forest Service met their obligation to cite the incorporated material they failed to provide that all of the incorporated material was "reasonably available for inspection by potentially interested persons within the time allowed for comment."* (NOA, p. 66).

**Response:** All of the material in the Project Record was available to the public upon request. I find the 45-day comment period allowed adequate time for review of the record and any supplemental information.

3. Tiering [Organized as item 2 in the Appellants' Appeal] - "...[T]he *Vegetation Management Electric Utility Right-of-Way EIS* can not be tiered to by the *Spring Creek EIS* because it covers a totally unrelated program." (NOA, p. 67).

**Response:** The Appellants did not bring up this issue during the 45-day comment period. I agree that "tiering" the "Vegetation Management Electric Utility Right-of-Way EIS" was not the appropriate way to include this document in the FEIS. However, this document does contain additional information on herbicides important to assessing the "Understory Vegetative Management EIS". It's important for the Forest to use the best scientific information available. The "Vegetation Management Electric Utility Right-of-Way EIS" should have been "incorporated by reference" instead of being a "tiered" document. This reference to "tiering" does not change the review or relevance of the scientific basis of analysis used in making the decision.

4. Failure to Host Public Hearings [Organized as Item 3 in the Appellants' Appeal] – "...[T]he *Forest Service* has done less than is legally required to reach out to the public in search of input." (NOA, p. 67).

**Response:** The Appellants did not bring up this issue during the 45-day comment period. The ROD (pp. 9-10) and the FEIS (pp. 13-14, and Appendix A, pp. 1-26) summarize and document public involvement efforts for the Spring Creek Project including but not limited to:

- Mailing of over 700 scoping letters on April 10, 2002 to adjacent landowners, individuals and organizations who had previously expressed interest in the project or similar projects.
- Publication of a "Notice of Intent" to prepare an Environmental Impact Statement in the Federal Register on April 19, 2002.
- News releases sent to the Derrick (Oil City, PA) and the Ridgway Record (Ridgway, PA) on April 12, 2002 describing the project and soliciting comments.
- A public tour of the project area was held on September 21, 2002. The tour was reported in an article in the Ridgway Record in their September 23, 2002 paper issue.
- Publication of a "Notice of Availability for the DEIS on January 23, 2003 beginning the official 45-day comment period.

The IDT received comments during the initial phases of scoping and formulated issues using this information. Appendix A of the FEIS (pp. 1 to 26) explains the classification of these comments into issues. In addition, the IDT addressed comments during the comment period for the DEIS (FEIS, Appendix I).

I find the Responsible Official followed all legal mandates for ensuring public involvement in the Spring Creek Project and did not violate law, regulation, or policy.

5. Failure of the U.S. Forest Service to Extend the Public Comment Period [Organized as Item 4 in the Appellants' Appeal] - *"The Forest Service failed to extend the public comment period despite new information in the project area such as the documentation of the Mountain brook lamprey and incorporation of the July 2003 windstorm. The public has had little or no chance to review these new developments."* (NOA, p. 68).

**Response:** Refer to Issue V-A-1 for a discussion and overview of the July 21, 2003 windstorm and the mountain brook lamprey for the Spring Creek Project.

**Issue VI: Appeal Claims – Purpose and Scope** [Organized as Item XII in the Appellants' Appeal] (NOA, p. 68)

**Sub-Issue A: Spring Creek Timber Sale – Purpose and Scope** (NOA, p. 68). *"The Forest Service arbitrarily narrowed the scope of the Spring Creek EIS to exclude consideration of opportunities for recreation, old growth, and wildlife habitat advancement."* (NOA, p. 69).

**Response:** The Appellants raised this issue during the 45-day comment period (FEIS, Appendix I, pp. 99-100, Comment # 14-103). Refer to Issue I-A-1 and Issue IV-B.

The EIS analyzed several alternatives in detail, including the proposed action that contained management options for the enhancement of recreation, maintenance of Forest Plan objectives for old growth, and wildlife habitat advancement. Recreation activities included trail construction/designation, trailhead construction, and camping restrictions. All of the alternatives embrace an increase in old growth over the next 20 years (FEIS, p. 195) and all of the alternatives would exceed the 5% old growth minimum identified in the Forest Plan. Wildlife habitat improvement activities include burning, planting native trees, fencing, and other techniques.

The analysis incorporated many opportunities for resource improvement. The Appellants claim that the scope was arbitrarily narrowed is unfounded.

**Issue VII: Appeal Claims – Threatened and Endangered Species** [Organized as Item XIII in the Appellants' Appeal] (NOA, p. 69)

**Sub-Issue A: Spring Creek Timber Sale Claims – Threatened, Endangered, Sensitive, and Rare Species** (NOA, p. 69)

The Appellants allege,

1. **Reptiles**

- a) Timber rattlesnake - *“The Forest Service failed to seriously consider impacts to its habitat.”* (NOA, p. 69).
- *“The Forest Service is developing management strategies without including the public”.* (NOA, p. 70). *Appellants would like to know when the Forest Service amended the Forest Plan to make this determination [protecting areas by restricting public access].* (NOA, p. 69).
  - *“The Timber Rattlesnake is a state threatened species. The Forest Service needs to develop a management plan for the Timber Rattlesnake.* (NOA, p. 69).
  - *“...[T]he determination that Spring Creek ‘may impact individuals’ is wrong.”* *“The factual evidence suggest that ... local populations may be affected and not just individuals.”* (NOA, p. 70).
  - *“A decision that compromises local populations of Timber rattlesnakes by allowing logging during September and October would be arbitrary and capricious and violation of NFMA requirements.”* (NOA, p. 70).
  - *“The proposed mitigation for Timber rattlesnakes is insufficient [because it] fails to restrict logging within the buffer area [and it] fails to identify the buffer size.”* (NOA, p. 71).

**Response:** The Appellants provided comments on the Timber Rattlesnake during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 14-169, pp. 122-123).

A Conservation Assessment is currently being prepared for the timber rattlesnake (FEIS, Appendix I, Comment 14-105). It is not yet complete so this project used life history and distribution of habitat (BE, p. 53) information to analyze the impacts of this project.

This decision did not adopt new Forest-wide standards or management strategies as the Appellants allude; it used existing standards and guidelines (Forest Plan, pp. 4-38 and 4-40) dealing with avoiding possible denning sites and restricting access when necessary. The Forest applied this guideline using a 100-foot buffer on known and potential denning sites (BE, p. 55).

Contrary to the Appellants’ statement, *“The proposed mitigation for Timber rattlesnakes is insufficient [because it] fails to restrict logging within the buffer area [and it] fails to identify the buffer size.”* (NOA, p. 71), the FEIS does, in fact, restrict harvest and identify a buffer size of 100 feet (BE, p. 55) to protect known and possible denning sites.

The BE states that the “primary causes of timber rattlesnake population decline are the destruction of den sites and removal of timber rattlesnakes from winter dens by humans” and that “timber rattlesnakes may be crushed by falling trees or equipment by timber harvesting” (BE, p. 54). However, the BE also states the tendency of these snakes to seek shelter in subterranean burrows or in rocky areas when disturbed. Further, no treatment near known den sites and employing a 100 foot buffer around all remaining

rock outcrops or potential den sites would result in discountable and insignificant direct impacts from timber harvest (BE, p. 55).

As to the seasonal restriction the Appellants eluded too, I was unable to locate any reference within the FEIS. The Appellants also contend that the timber rattlesnake is a “[S]tate threatened species”. We find no mention of this on the list of official endangered and threatened species maintained by the Pennsylvania Department of Natural Resources. However, the Allegheny National Forest lists the timber rattlesnake as a Management Indicator Species and a Forest Species of Concern (BE, p. 53).

After review of the Project Record, I find the FEIS adequately addressed the impacts of this project on the timber rattlesnake, contrary to the Appellants’ assertions.

2. **Birds** (NOA, p. 71)

a). **Bald Eagle** – *“The Forest Service has failed to meet the needs of the Bald Eagle....”* (NOA, p. 71).

**Response:** The Appellants provided comments on the Bald Eagle during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 14-125, p. 109).

The Appellants did not provide specifics as to how the Forest Service failed to meet the needs of the bald eagle. The BA includes a detailed description of life history, habitat distribution, and effects of the proposals from all alternatives (BA, pp. 30-35). Determinations for the eagle and mitigations if an eagle nest or roost site is found within the project area are documented on pages 34-35, 40 of the BA, and Appendix D pages 11-12. The Spring Creek project complies with the Terms and Conditions of the Biological Opinion (Project Record, Book 16, Tab 10, United States Fish and Wildlife Service [USFWS] Concurrence letter). The USFWS stated in a letter dated June 2, 2004, “...we determined that the implementation of projects predicated upon the Forest Plan is not likely to jeopardize the continued existence of the bald eagle....”

I find the FEIS adequately addressed the impacts of this project on the bald eagle, contrary to the Appellants’ assertion.

b). **Yellow-bellied flycatcher** - *“The Forest Service has failed to meet the needs of the Yellow-bellied flycatcher....”* (NOA, p. 71).

**Response:** The Appellants provided comments on the yellow-bellied flycatcher during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 14-172, pp. 123-124).



I was not able to find any other discussion (“*as discussed elsewhere in this appeal*”) in the NOA relating to the yellow-bellied flycatcher. No specifics as to how the Forest Service failed to meet the needs of the yellow-bellied flycatcher were given. The BA includes a detailed description of life history, habitat distribution, and effects of the proposals from all alternatives (BA, pp. 61-63). Determinations for the yellow-bellied flycatcher (“... no direct, indirect, or cumulative impacts to this species...”) are documented on pages 63-64 of the BA and page 284 of the FEIS.

I find the FEIS adequately addressed impacts to the yellow-bellied flycatcher.

c). Cerulean warbler – “*The Forest Service arbitrarily fails to consider effects to the Cerulean Warbler within the Spring Creek Final EIS ....*” (NOA, p. 71).

**Response:** The Appellants provided comments on the Cerulean warbler during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 14-133, pp. 111-112).

The Cerulean warbler is not on the ANF sensitive species list. Risk assessments, which looked at species vulnerability, were based on Forest and Regional occurrence, population status and trends, availability/distribution of suitable habitat, and susceptibility to impacts. These assessments were conducted at the Regional level for this species, as well as other State-listed species (FEIS, Appendix I, Comment 14-133, pp.111-112). This species did not meet the criteria to be included on this list and thus not included in the BA/BE. Although not analyzed in the BA/BE, anticipated effects to other wildlife habitat and species are included in the FEIS (pp. 245-288).

After review of the Project Record, I find the level of analysis for the Cerulean warbler is adequate.

d). Great Blue Heron (NOA, p. 71)

**Response:** The Appellants did not comment on the Great Blue Heron during the 45-day comment period. In addition, there was no issue raised with the great blue heron within the appeal, only a heading. This species was addressed in the FEIS (p. 237).

3. Mammals (NOA, p. 72)

a). Indiana bat – “*The Forest Service fails to conduct an adequate assessment of how the Spring Creek Project will affect the Indiana bat habitat.*” (NOA, p. 72).

- “*The Forest Service arbitrarily concludes that if there is adequate distribution of canopy closure levels, that there is adequate distribution of habitat.*” This fails to look at the other key factors such as distribution of roost trees and constitutes arbitrary and capricious decision-making. (NOA, p. 72).

- *“Additionally, The Forest Service bases their assumptions on relative density of trees and fails to assess how different tree species might affect canopy closure levels [e.g., ozone damage].”* (NOA, p. 72).

**Response:** The Appellants provided comments on the Indiana bat during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 1-83, pp. 27-28 and Comment 14-146, p. 116).

The Forest conducted surveys at 27 sites for Indiana bat to assess the density and distribution of the species within the Spring Creek Project Area (FEIS pp. 283-284, BA pp. 4-30; Project Record, Book 14, Tab 21, 22, 23, 31).

Contrary to the Appellants’ claims, the project area was evaluated to determine the amount, and distribution of Indiana Bat habitat and present condition of maternity roost and foraging habitat using the Habitat Suitability Index (HSI) model developed by Romme et. al. (1995). The analysis of habitat suitability can be found in the Biological Assessment (Table 4, p. 16). Pages 6-9 of the BA discuss roosting preferences of the Indiana bat, including the role of solar exposure (i.e. canopy closure), spatial distribution and size of potential roost trees.

The FEIS also contains an analysis of direct, indirect and cumulative effects of all project alternatives on Indiana bat habitat. This discussion clearly defines the bounds and period of analysis for cumulative effects and includes reasonably foreseeable future changes to the habitat (FEIS pp. 283-284, BA, pp. 16-30). The analysis for regeneration treatments (which would remove the majority of the canopy favorable to Indiana bat) clearly indicates that enough trees would be retained to provide suitable roosting and foraging habitat for the species. Other proposed treatments would be less detrimental to canopy removal and would ensure suitable to optimal habitat conditions. Mitigation measures in the form of Forest Plan standards and guidelines require the retention of at least five to ten snags per acre and at least three den trees per acre on all sites receiving a timber harvest treatment (FEIS, Appendix D, pp. 12-13).

In response to the Appellants’ concerns about ozone damage and potential impacts to the species due to canopy closure levels, the FEIS (p. 169) points out that recent forest health monitoring concludes that ozone damage is not a major concern for woody vegetation on the ANF.

On June 2, 2004, the U.S. Fish and Wildlife Service concurred with the Forest Indiana bat effects analysis for the Spring Creek Project (Project Record, Book 16, Tab 10). The BO stated, “After reviewing the size and scope of the project, the environmental baseline, the overall status of the Indiana bat, the effects of the action, and the cumulative effects, it is the Service’s biological opinion that the proposed action is not likely to jeopardize the existence of the Indiana bat.”

After review of the Project Record, I find the FEIS adequately addressed the issue of Indiana bat habitat and the impacts from the Spring Creek Project. The claims made by the Appellants are unfounded.

- b). Northern long-eared bat – *“The Forest Service fails to conduct an adequate assessment of how the Spring Creek Project will affect the northern long-eared bat.”* (NOA, p. 72).

**Response:** The Appellants provided comments on the northern long-eared bat during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 1-83, pp. 27-28 and Comment 14-155, p. 119).

The Appellants did not provide specifics as to how the Forest Service failed to meet the needs of the northern long-eared bat. Surveys conducted on the Allegheny National Forest since 1998 indicate that long-eared bats are widespread (FEIS p. 285, BE pp. 50-53, Project Record, Book 14, Tab 21, 22, 23, Project Record, Book 14). The life history, habitat distribution and anticipated effects to the long-eared bat from proposed activities are analyzed and a determination of effects (“... may impact individuals but is not likely to cause a trend to federal listing or a loss of viability...”) is included in the BE (pp. 50-53) and FEIS (p. 285).

I find the FEIS adequately addressed the northern long-eared bat. The claim made by the Appellants is unfounded.

- c). Northern water shrew – *“The Forest Service fails to conduct an adequate assessment of how the Spring Creek Project will affect the northern water shrew’s habitat.”* (NOA, p. 72).

**Response:** The Appellants provided comments on the northern water shrew during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 14-158, p. 119).

The Appellants did not provide specifics as to how the Forest Service failed to meet the needs of the northern water shrew. The life history, habitat distribution and anticipated effects to the northern water shrew from proposed activities are analyzed and a determination of effects (“... no activities proposed under any alternative that would cause a trend toward federal listing...”) are included in the BE (pp. 64-65) and FEIS (p. 285).

I find the FEIS adequately addressed the northern water shrew. The claim made by the Appellants is unfounded.

4. **Invertebrates** (NOA, p. 72)

a) -- 1) – “*The Forest Service fails to conduct an adequate assessment of how the Spring Creek Project will affect the [clubshell mussel, northern riffleshell mussel, green faced clubtail, long-solid mussel, harpoon clubtail, rapids clubtail, mustached clubtail, midland clubtail, ski-tailed emerald, uhler’s sundragon, main snaketail and zebra clubtail] habitat.*” (NOA, p. 72-74).

**Response:** The Appellants provided comments on the invertebrates listed above during the 45-day comment period. The Forest Service responses are found in the FEIS, Appendix I (Comment 14-135, p. 112, Comment 14-143, p. 115, Comment 14-144, p. 116, Comment 14-149, p. 117, Comment 14-150, p. 117, Comment 14-151, p. 117, Comment 14-154, p. 118, Comment 14-157, p. 119, Comment 14-160, p. 120, Comment 14-163, p. 121 Comment 14-170, p. 123, Comment 14-173, p. 124).

The Appellants did not provide specifics as to how the Forest Service failed to meet the habitat needs of the above listed invertebrates. Life history, habitat distribution and anticipated effects to these species from proposed activities are analyzed and a determination of effects is included in the BE (pp. 64-71 and 83-87) and FEIS (pp. 285-286). Habitat is not available within the SCPA for many of the species (e.g., northern riffleshell, longsolid mussel, clubshell, mustached clubtail, midland clubtail, green-faced clubtail and rapids clubtail). For the remaining species of concern, mitigation measures included in Appendix D meet or exceed those established by the State of Pennsylvania. “As a result there are no activities proposed under any alternative that would cause a trend toward federal listing....” (FEIS, p. 285-286).

I find the FEIS adequately addressed these invertebrates for the Spring Creek Project. The Appellants’ claims are unfounded.

5. **Plants** (NOA, p. 74)

a) “*The Forest Service has acted arbitrary and capricious by failing to address a potential finding of the threatened orchid known as the Small whorled pogonia.*” (NOA, p. 74).

**Response:** The Appellants provided comments on the small whorled pogonia during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 14-164, p. 121).

There have been no confirmed findings of the small whorled pogonia on over 227,000 acres of surveyed land on the ANF (BA, p. 37). However, the Spring Creek project area was considered suitable, unoccupied habitat for analysis purposes (BA, p. 37). It was determined there would be no impact to the small whorled pogonia based on two criteria: 1) The Forest Plan provides for protection of unique plant communities, and 2) The species has not been found in the project area. On June 2, 2004, the U.S. Fish and Wildlife Service concurred with the small whorled pogonia effects analysis for the Spring

Creek Project, (Project Record, Book 16, Tab 10) by stating, “Considering the results of these surveys, we concur with the Forest Service’s ‘no effect’ determination.”

I find the FEIS adequately addressed the issue of the small whorled pogonia. The claim made by the Appellants is unfounded.

6. **Fishes** (NOA, p. 74)

a) -- g) – “*The Forest Service fails to conduct an adequate assessment of how the Spring Creek Project will affect the [spotted darter, tippecanoe darter, longhead darter, mountain brook lamprey, gravel chub, channel darter and gilt darter] habitat.*” (NOA, p. 74-75).

**Response:** The Appellants provided comments on the fish species listed above during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 14-134, p. 112, Comment 14-141, p. 114, Comment 14-142, p. 115, Comment 14-148, p. 117, Comment 14-152, p. 118, Comment 14-166, p. 121, Comment 14-168, p. 122).

The Appellants did not provide specifics as to how the Forest Service failed to meet the habitat needs of the above listed fish species. Life history, habitat distribution and anticipated effects to these fish species from proposed activities are analyzed and a determination of effects is included in the BE (pp. 79-82 and 86-87) and FEIS (pp. 244-245, 284). No suitable habitat occurs within the project area for the spotted darter, tippecanoe darter or the gravel chub. “Mitigation measures implemented during timber harvesting, reforestation, wildlife habitat improvements, and road activities would result in no adverse direct, indirect, or cumulative impacts to longhead darter, channel darter and gilt darter under any alternative.” (FEIS, p. 82). Refer to Issue I-A-3 for a discussion on the mountain brook lamprey.

I find the FEIS adequately addressed these fish species for the Spring Creek project. The claims made by the Appellants are unfounded.

**Issue VIII: Appeal Claims – One Integrated Program** [Organized as Item XIV in the Appellants’ Appeal] (NOA, p. 75)

**Sub-Issue A: Spring Creek Timber Sale – Inadequate EIS** (NOA, p. 75)

The Appellants assert,

1. Landscape Corridor “*The Spring Creek EIS violates the NEPA, the NFMA, the Multiple Use –Sustained Yield Act, and ESA by:*

- a. *Failing to adopt new areas for incorporation within a Landscape Corridor on the Allegheny National Forest;*
- b. *Committing large areas of forest to logging which threatens their viability as old growth habitat in the future;*

- c. *Failing to assess the impacts of proposed logging activities that occur within the previously proposed ... Landscape Corridor;*
- d. *Failing to assess areas within the Spring Creek Project Area for their suitability as potential old growth;*
- e. *Failing to amend the Forest Plan to incorporate forest-wide guidelines to ensure that site-specific project such as the Spring Creek Timber Sale do not compromise designation and/or protection of the Landscape Corridor by failing to address it; and*
- f. *Approving logging, herbicide spray, and road construction in areas before they have been assessed for their value as potential old growth corridor habitat.”* (NOA, p. 75-76).

**Response:** The disposition of the Landscape Corridor was established through the appeal process for the LRMP on Threatened and Endangered Species (Amendment 11) and is addressed in Issue IV-B-2.

The Spring Creek FEIS addressed the old growth issue. Refer to Issue I-A-1 for further discussion.

2. Meeting Forest Plan Requirements for MA 3.0: *“Within the Spring Creek EIS..., the Forest Supervisor had 4 alternatives to choose from. All four alternatives complied with a mandatory requirement that a minimum of 5% of Management Area 3.0 lands be maintained in old growth habitat....” “In a classic case of arbitrary and capricious decision making, District Ranger Blashock [chooses] an alternative that provides the least amount of old growth.”* (NOA, p. 81).

**Response:** The Appellants raised this issue during the 45-day comment period (FEIS, Appendix I, p. 70, Comment # 14-40). The decision to implement the selected alternative was based on many factors, not simply the amount of old growth provided.

Impacts to old growth were considered throughout the analysis. A discussion of the existing old growth conditions can be found on pages 166-169 and on page 195 of the FEIS. Projections for potential old growth in year 2023 show that the alternatives considered substantially exceed Forest Plan goals (FEIS, pp. 40-42, and p. 195).

The rationale for the selection of Alternative 3 (with the Alternative 2 recreation activities) is clearly displayed in the ROD (pp. 21-29). The amount of old growth (111+ year old trees) anticipated after ten years is the same in Alternatives 2 and 3 (8%). Alternatives 1 and 4 both anticipate 9% old growth. All alternatives are predicted to exceed the Forest Plan minimum of 5%. I find the Responsible Officials decision was not arbitrary and capricious. Refer to Issue I-A-1 and Issue III-B-1 for further discussion.

3. Herbicides: *The Spring Creek Final EIS provides no real analysis of the effects of herbicides. It includes inaccurate comparisons and relies upon irrelevant studies and information.*” (NOA, p. 84).
- *“There has been a wealth of new research on this herbicide [sulfameturon methyl and glyphosate] which indicates a need to supplement the out-dated, inadequate EIS completed for the Allegheny in 1991.”* (NOA, p. 82).
  - *“In their assessment of herbicides the Forest Service relies on a lot of incomplete information.”* (NOA, p. 83). *“...[T]he Spring Creek EIS provides no new information on these herbicides [sulfometuron methyl or Oust].* (NOA, p. 83).
  - *“The Spring Creek EIS points to herbicide monitoring in 1998 and 1999. These studies, however, are meaningless for several reasons; 1) They studied applications in power line right-of-ways, not forestry applications,... 2) These buffer widths are in exceedance of those normally used on the ANF as outlined in the Forest Plan, and 3) The 1998 study rested only for glyphosatae and imazapyr, not sulfometuron methyl....”* (NOA, p. 84).
  - *“No laboratory or field studies have been performed in the Allegheny or anywhere else to determine if these half-life and persistence times change when these two herbicides are used together.”* (NOA, p. 84).

**Response:** Although the Appellants mentioned their concerns about the continued use of herbicides, the specific issues raised in this appeal were not cited during the 45-day comment period.

My review of the Project Record indicates, contrary to the Appellants’ assertions, ample documentation that the Responsible Official has kept current with new information on the effects of herbicides (EIS, pp. 350-353). The EIS discusses 3 specific areas of review related to this project as well as the “Understory Vegetation Management EIS” completed in 1991.

- ✓ “Public comments submitted on several projects [e.g., IPS Appeal points relating to herbicide use, Comments on County Line-Fourmile Project]... have included references to specific literature the commenter believed represented new information that could potentially change the environmental consequences, human health risks, or wildlife risks discussed....”
- ✓ “Analysis and literature review completed when preparing the [“Environmental Impact Statement for Vegetation Management on Electric Utility Rights-of-way”] included a review of current literature and an assessment of potential risks from proposed use of glyphosate to control tall growing vegetation on power line rights-of-way.” And,
- ✓ “Since 1991, USDA-FS has completed an updated review and risk analysis for both glyphosate ... and sulfometuron methyl .... These SERA documents

include both a human health risk and an ecological health risk assessment.”

Analysis indicated, “None of these assessments have presented any information that would prompt the need to change the assessment of potential impacts or risks already discussed in [the ‘Understory Vegetative Management Final Environmental Impact Statement’ and Record of Decision]. All of this information was considered in the site-specific analysis completed for this project.” (FEIS, p. 351).

Furthermore, the decision includes numerous mitigation measures (e.g., directional spraying, buffer strips) designed to reduce the potential for impacts from herbicides. The Responsible Official concludes that “[m]itigation measures (Appendix D, FEIS) will ensure that no significant adverse effects will result from the herbicide applications proposed under Alternative 3.” (ROD, p. 27). The analysis also incorporates the mitigation measures included in the “Understory Vegetative Management FEIS” (FEIS, p. 330 and Project Record, Book 6, Tab 21). The width of buffer strips follows standard operating practices for the herbicide program as defined in the “Understory Vegetative Management Final Environmental Impact Statement” and the Forest Plan (LRMP, p. 4-25) (FEIS, p. 352 and Appendix D, p. 1). I find no reference to the quote made by the Appellants that “these buffer widths are in exceedance of those normally used on the ...” Forest.

The effectiveness of these measures is discussed in detail within the FEIS (p. 351-353). The Forest does not solely rely on monitoring studies done in 1998 and 1989 to measure the potential spread of herbicides to water supplies. Additional buffer strip effectiveness was tested during the field season of 2002. The area, a 15-acre timber stand, was treated with Accord (glyphosate) and Oust (sulfometuron-methyl) following typical forestry application procedures. During 17 days of monitoring, “no detectable amounts of glyphosate, AMPA, or sulfometuron methyl were found in the water samples....” (FEIS, pp. 105, 353 and Project Record, Book 15, Tab 71, p. 1-7). It’s important to note “[n]o areas proposed for herbicide treatment are within municipal watersheds used to provide potable water supplies for human consumption.” (FEIS, p. 353). “The risk is negligible for herbicides to contaminate ground water or surface water that is used as a public water supply.” (FEIS, p. 353).

I find the Responsible Official made a reasoned decision based on the best available science related to herbicides. The decision to use herbicides is not arbitrary and capricious. The Appellants’ claims are unfounded.

4. Soils (NOA, p. 85)

- (a) **Calcium/Magnesium Components** - “*The EIS doesn’t even mention the calcium and magnesium issues.*” (NOA, p. 85).

**Response:** The Appellants provided comments on this issue during the 45-day comment period. The Responsible Official provided a lengthy response (FEIS, Appendix I, pp.21-22, Comment 1-68).



This issue was mentioned in the FEIS contrary to the Appellants' assertion. Calcium and magnesium are discussed in the FEIS on page 155 in relation to sugar maple decline and again on page 157. In addition, there is a general analysis of soil nutrient cycling and carbon storage in the Environmental Consequences section of the FEIS (pp. 78-88) under "Soil Quality". In this section the effects of each alternative are assessed and compared to those effects resulting from the actions of the other alternatives.

The FEIS also addresses the concerns about increased nitrogen on page 179 by stating, "The rapid uptake by these trees limits the actual increase of nitrogen and associated nutrients in the soil, making leaching of these nutrients very limited. The initial response of these species indicates that soils around the ANF are not saturated by nitrogen." Contrary to the Appellants' claim, I was not able to locate on page 63 of the FEIS or at B-5 the statement, "Lastly, the EIS acknowledges that the ANF has received excessive doses of nitrogen through acidic deposition."

After review of the Project Record, I find the Appellants' claim is unfounded.

- (b) **Carbon Storage and Sequestration** - *"The Forest Service arbitrarily applies the timber industry's false argument that a combination of clearcut and second growth forests is optimal for forests to serve as carbon sinks to combat global warming. This is bad information and fails to reflect the factual circumstances."* (NOA, p. 85).

**Response:** The Appellants provided comments on this issue during the 45-day comment period. The Responsible Official provided a response (FEIS, Appendix I, pp.21-22, Comment 1-68).

I found no mention in the FEIS of the Appellants' claim that clearcut and second growth forest are optimal to combat global warming. The FEIS (p. 79) discusses carbon storage stating, "In general, a mixture of older trees with high current carbon storage and younger trees with rapid carbon accumulation rates would provide the best opportunities for carbon storage in trees (Hoover et al. 2000)". However, there was no mention of global warming.

There is also a general analysis of soil nutrient cycling and carbon storage in the Environmental Consequences section of the FEIS (pp. 78-88) under "Soil Quality". Here the effects of each alternative are assessed.

After review of the Project Record, I find the Appellants' claim is unfounded.

- (c) **Doom Assumption** - *“The soils discussion assumes that the Forest Service’s absurd position that the forest will die without replacing itself (unless logged) is accurate and bases its analysis on this false assumption.”* (NOA, p. 85).

**Response:** I found no mention of this issue from the Appellants during the 45-day comment period. I also could not find any mention of the “Doom Assumption” or the *“Forest Service’s absurd position that the forest will die without replacing itself...”* in the FEIS soils section (pp.72-100). In fact, the WEPP soils model assumed that untreated land was mature forest (FEIS, p. 76) and not dying or dead. After reviewing the Project Record, I found no validity to the Appellants’ claim.

- (d) **Soil Disturbance** - *“The Spring Creek Final EIS and ROD fail to include any discussion of the increasing use of Cut To Length harvesters which would result in an increased area of soil disturbance on-site.”* (NOA, p. 85). *“The Forest Service recognizes in the East Side [Spring Creek] EIS that the most recent year of monitoring (1998) results showed a 19.4% disturbance area. This is a violation of the Forest Plan but is merely mentioned in passing.”* (NOA, p. 85).

**Response:** The Appellants did not comment about Cut To Length harvesters or the 15% Forest Guideline during the 45-day comment period.

The wording of the 15% threshold on soil disturbance found in the LRMP would indicate a guideline that, contrary to the Appellants’ assertion, is not a mandatory requirement. The 15% threshold is a level of disturbance at which further consideration should be given to the issue.

On August 7, 2001 a set of interim guidelines for soils (Project Record, Book 10, Tab 18) were developed for the ANF to address concerns raised in the Fiscal Year (FY) 1999 Monitoring and Evaluation Report regarding impacts to soils in timber harvest units. These new guidelines were “based upon re-analysis of soils monitoring data and are necessary to improve compliance with Forest Plan standards and guidelines related to acceptable levels of impacts to soils as a result of timber harvest.” (Project Record, Book 10, Tab 18). The Spring Creek Project incorporated these new mitigation measures into its design, which should improve effectiveness.

Mitigation measures are proposed and included in the FEIS for the Spring Creek Project. Mitigation measures (FEIS, Appendix D) have been used in the past and monitoring of their effectiveness has shown them to be successful (FEIS, pp. 93-95).

Contrary to the Appellants’ claim the FEIS does discuss the cumulative impacts of multiple types of disturbance and multiple entries into a stand. For example, the FEIS (p. 89) states, “Proposed vegetation management activities are occurring

on some stands that have received treatment in the past 20 years...It is recommended that proposed vegetation activities utilize the current skid trail and road system...". The FEIS also states that heavy equipment used to apply fertilizers and herbicide "can also have minor cumulative impacts on soil compaction." (FEIS, p. 75).

Although the selection of Alternative 3 would result in some soil disturbance and accelerated erosion, implementation of mitigation measures (FEIS, pp.93-95) would minimize the amount of erosion moving offsite (FEIS, p. 81-82). The FEIS also addresses soil compaction in its cumulative effects discussion (FEIS, pp. 87-88). While there are more soils topics the FEIS could address, the ANF used best available science, including the WEPP soil erosion model, to evaluate soils issues. Effects were disclosed in the FEIS. The soils specialist report (Project Record, Book 10, Tab 20) also provides further information on soil compaction and erosion.

I find that District Ranger Blashock was supplied with sufficient soils information to make a reasoned decision.

- (e) **Even-aged logging on Group 3 Soils** – *"The decision to use even-age logging on Group III soils is arbitrary and capricious and fails to meet the requirements of the NFMA and the NEPA ...."* (NOA, P. 86).

**Response:** Refer to Appeal Issue IV-B-3 for further discussion.

- (f) **Lack of Analysis** - *"Most of the Environmental Consequences section describes the effects of soil disturbing activities but fails to analyze those effects."* (NOA, p. 86).

**Response:** I found no comments from the Appellants about the inadequacy of the soils environmental consequences section of the EIS during the 45-day comment period.

The Appellants make a non-specific allegation. It's unclear as to how the analysis should have been different. The FEIS included a detailed discussion of direct, indirect and cumulative effects on soil quality, landslides, wetlands, and riparian areas (FEIS pp. 74-93). The soils specialist report also included additional information on analysis of effects for soils (Project Record, Book 10, Tab 20). The Project Record details the analysis carried out for the FEIS (Project Record, Book 10, Tabs 1-17).

After review of the Project Record, I conclude the FEIS contained an adequate analysis of effects on soil resources.

- (g) **Inadequate Discussion of Mitigation Measure Effectiveness** - *“The discussion on mitigation measures for soils is clearly inadequate.”* (NOA, p. 86).

**Response:** The Appellants did not comment on mitigation measure effectiveness during the 45-day comment period.

The soils section of the FEIS contains a discussion on the effectiveness of mitigation measures (pp. 93-95). Effectiveness relies upon previous monitoring efforts, experience and knowledge of resource specialists, or local research (FEIS, p. 71). In addition, the Allegheny National Forest Monitoring and Evaluation reports from FY 1987 to FY 2000 have monitoring results for many of these activities. These reports evaluate past project implementation to determine how well standards and guidelines have been applied, as well as the value of mitigation measures. New mitigation measures were incorporated in 2001 (Project Record, Book 10, Tab 18). This new information has yet to be incorporated in the Annual Monitoring and Evaluation Reports. Effectiveness of these new mitigation measures was based upon professional knowledge of the Forest soil scientist. Refer to Issue VIII-A-4-d for further discussion relating to soil disturbance.

After review of the Project Record, I find the FEIS has an adequate discussion of mitigation effectiveness based on previous monitoring and professional knowledge.

5. Watersheds (NOA, p. 87)

- a) **Inadequate Analysis of the Effects of Herbicides on Watersheds** - *“The discussion is lacking. It relies upon outdated and unrelated monitoring.”* (NOA, p. 87).

**Response:** The FEIS (p. 105) details an evaluation of water quality and herbicide effects on the ANF in 2002. Field research concluded, “No detectable amounts of herbicide (measured as glyphosate, aminomethyl phosphoric acid, and sulfometuron methyl) were found in the water samples collected.” (FEIS, p. 105). Refer to Issue VIII- A-3 for further discussion on herbicide information and monitoring.

After review of the Project Record, I find the Appellants’ assertions unfounded.

- b) **Inadequate Analysis of the Impacts of Logging on Watersheds** - *“The analysis on the impacts of logging on sediment release into watersheds is particularly lacking.”* (NOA, p. 87).

**Response:** The Appellants raised the issue of sediment release during the 45-day comment period for the DEIS (FEIS, Appendix I, Comment 1-69, p. 22, Comment 1-76, p. 24, Comment 14-38, p. 69, Comment 14-70, p. 86, Comment 14-90, p. 92,

Comment 14-103, p. 100, Comment 14-105, p. 101, Comment 14-128, p. 110, Comment 14-135, p. 112, Comment 14-147, p. 117, Comment 14-166, p. 121, Comment 14-168, p. 122, and Comment 14-176, p. 125)

The Appellants make a general claim without specific information as to what is “lacking” in the analysis. Sediment related to logging was specifically addressed in the SCPA, including direct effects, indirect effects, and cumulative effects. A discussion also follows dealing with road development (ROD, pp. 23-24; Summary, pp. 29-30; FEIS, Table 10, p. 48; FEIS, Table 13, pp. 99-100; FEIS, pp. 75-78, 114-119, and 126-128; Water Resources Specialist Report, Project Record Book 11, Tab 2; FEIS, Appendix F, Table 7, pp.45-46). Further, the FEIS talks about sediment and sediment sources as they relate to the current watershed condition (FEIS, p. 105).

I find the analysis on sediment release to be adequate.

- c) **Inadequate Effects Analysis for Road Run-Off** - *“The analysis ... “does not address how sediment release from roads combined with existing natural and unnatural sources would affect watersheds.”* (NOA, p. 87).

**Response:** Refer to Issue VIII-A-5-b (Above).

- d) **No Analysis Relating to Nitrogen Fixation of Waters** - *“The Spring Creek EIS does no analysis to look into this problem.”* (NOA, p. 87).

**Response:** There is no mention of nitrogen fixation of water within the Appellants’ comments during the 45-day comment period.

There is, however, a discussion of the nitrogen cycle in the FEIS on pages 78-79. It states, “The rapid uptake by these trees limits the actual increase of nitrogen and associated nutrients in the soil, making leaching of these nutrients very limited. The initial response of these species indicates that soils around the ANF are not saturated by nitrogen”. In addition, the Forest evaluated the effects of fertilization on water quality (Project Record, Book 11, Tab 2, p. 6) and documented these findings in the 1993 Monitoring and Evaluation report. Fertilizer was applied on a harvest unit adjacent to a stream with a vegetation buffer. Results show, “there appears to be no detectable change in water nitrate-nitrogen and total phosphorous levels due to application of fertilizer on the ANF when streams are buffered from the potential effect.” (FEIS, p. 106).

After review of the Project Record, I find the discussion on nitrogen cycling adequate.

- e) **Inadequate Cumulative Effects Analysis** - *“The...analysis is particularly poor. It downplays or ignores likely activities on private lands, on other Forest Service lands, or on state lands that fall within the Clarion River watershed but outside of the project area...”* (NOA, p. 87). *“The time-frame is particularly short for this analysis.”* (NOA, p. 87).

**Response:** The Appellants provided general comments about cumulative effects during the 45-day comment period. (FEIS, Appendix I, Comment 1-69, p. 22).

My review indicates that the FEIS did include parts of the Clarion River watershed and associated lands (public and private) within the cumulative effects boundary (FEIS, p. 70). The FEIS states, “Cumulative Watershed Effects (CWE) will be analyzed at the outlet of Spring Creek into the Clarion River, and at the outlets of the 6th field Subwatersheds potentially impacted by proposed activities to the transportation system. These Subwatersheds include East Branch Millstone Creek and West Branch Millstone Creek” which are a part of the Clarion River 5<sup>th</sup> Field watershed (FEIS, p.101). The boundary reflects the best area to observe impacts. Extending beyond this location would mask or dilute effects “...to the point that ties with potential site disturbance would not be apparent.” (FEIS. p. 101).

The time frame for cumulative effects analysis was considered to be 37 years. (1986-2023). It represents the reasonable and foreseeable future.

After review of the Project Record, I find the FEIS had an adequate cumulative effects analysis. The claims made by the Appellants are not substantiated.

- f) **Inadequate Assessment of Mitigation Measures and Their Effectiveness** – *“The FS makes several assumptions throughout the watersheds analysis that are not backed up.”* (NOA, p. 88).

**Response:** The Appellants did not raise this issue during the 45-day comment period.

The Appellants did not provide any specifics about what “assumptions” they feel are not supported within the FEIS. Mitigation measures and their effectiveness for watersheds are addressed (FEIS, pp. 93-95). Effectiveness relies upon previous monitoring efforts, experience and knowledge of resource specialists, or local research (FEIS, p. 71). Refer to Issue VIII-A-4-d for further discussion relating to soil disturbance.

I find the FEIS has an adequate discussion of mitigation effectiveness based on previous monitoring and professional knowledge.

6. Transportation “*The Forest Service does not consider the numerous roads on FS land that are used by private oil and gas operators.*” (NOA, p. 88).

**Response:** Refer to Issue II for response.

7. Oil, Gas, and Minerals (NOA, p. 88)

- a) **Failure to obtain Mineral Rights** - “*The Forest Service has obtained NO mineral rights since the Forest Plan was adopted in 1986.*” (NOA, p. 88).
- b) **Failure to Protect Surface from Mineral Extraction** - “*The Forest Service fails to disclose the fact that they provide free stone to oil and gas developers. They also failed to disclose that they administer a permitting process for wells. The Forest Service consistently fails to comment on specific oil and gas permits before the D.E.P. and has refused to ask the D.E.P. to take stronger action when operators have violated laws.*” (NOA, p. 88).
- c) **Inadequate Cumulative Effects Analysis** - “*The cumulative effects analysis fails to contemplate what the effects of 8,000 abandoned wells would be.*” (NOA, p. 88). “*...[T]here is little discussion anywhere in the watershed section about the effects of road pit construction and use on sedimentation into watersheds.*” (NOA, p. 89).

**Response:** Refer to Issue II for response.

8. Vegetation (NOA, p. 89)

- a) **Forest Plan Does Not Adequately Address Conflicting Issues Between Deer and Even-aged Cutting** - “*Even-aged logging regimes and high deer populations have proven to be in conflict. The Spring Creek EIS fails to address this problem.*” (NOA, p. 89).

**Response:** Refer to Issue I-A-4 and III-B-3-d for further discussion relating to deer and even-aged cutting.

- b) **Inadequate Considerations of Species Diversity**- “*The Forest Service’s discussions fails to recognize let alone analyze species diversity as it relates to herbaceous plant species.*” (NOA, p. 89).

**Response:** The Appellants provided comments on species diversity during the 45-day comment period. The Forest Service response is found in the FEIS, Appendix I (Comment 1-21, p. 7, Comment 1-25, p. 8, Comment 1-34, p. 10-11).

The FEIS does, in fact, examine in great detail herbaceous plant species and the impacts of this project. Effects on herbaceous understory plants as a result of

proposed activities in the Spring Creek project are discussed in the FEIS (pp. 186-188, 195-196, 198-199, 207, 247-251, 255-256, 260-261, 267, and 274-277); Appendix B (pp. 62-65), and Appendix C (pp. 20-21 and 73-79). Effects on wildlife resulting from changes in understory conditions are described on pages 245-288 of the FEIS. Tables 8 and 14 of Appendix B (pp. 7-26 and 66-109) display present condition data and stand-by-stand outcomes anticipated under each alternative, including outcomes for understory vegetation.

I find the FEIS did have an adequate discussion of herbaceous plant species, contrary to the Appellants' claims.

- c) **The EIS fails to Adequately Assess Impacts of Logging on Survival of the American Beech** - *"The Forest Service...never addresses for example how herbicides would effect [American beech]...[or] how the age of the beech tree might affect its survival."* (NOA, p. 90).

**Response:** The Appellants did not raise this issue during the 45-day comment period.

My review indicates the FEIS does discuss the impacts of logging on the American beech. The FEIS (p. 155) details the impacts of disease on beech and the resulting mitigation to retain disease free or lightly infected beech trees in harvest units. The genetic diversity of beech trees and the retention of disease free clumps are discussed on page 160. The feasibility of using uneven-aged management in areas with a beech understory is explained on pages 172-174. Pages 175-193 of the FEIS display the effects of different management prescriptions on the overstory and understory, which may contain beech.

The statement made by the Appellants, *"The Forest Service concludes that beech will not be affected by logging because its offshoots are genetically identical"* is not accurate. The FEIS states (p. 174), *"If a genetically resistant beech tree is cut, the resulting beech stump sprouts and root suckers will also be resistant because they are genetically identical to the original stem. Efforts will be made to retain potentially resistant beech trees in the SCPA, which currently falls primarily within the beech bark disease complex advancing front."* (See Mitigation Measures for shelterwood removals, FEIS, P.178).

I find the FEIS does an adequate job of assessing the impacts on American beech.

- d) **Despite the emphasis on black cherry the EIS fails to discuss the effects of ozone on black cherry health** – The Forest Service *"...fails to acknowledge the role of ozone in tree health."* (NOA, p. 90).

**Response:** Refer to Issue I-A-4 for further discussion.



- e) **Inadequate Effects Analysis in Terms of Vegetation** - *“The ‘analysis’ for vegetation is inadequate. For one, it doesn’t actually analyze how a proposed cutting will effect vegetation. There is no discussion on species diversity nor is there any consideration to how proposed cuttings will effect distributions of live and dead trees or nurse logs. There is no analysis, for example, of how a removal cut would affect species composition....”* (NOA, p. 90).

**Response:** The Appellants provided comments on this issue during the 45-day comment period. The Forest Service responses are found in the FEIS, Appendix I (Comment 14-11, pp. 59-60, Comment 14-12, p. 60, Comment 14-25, p. 65, Comment 14-27, p. 66, Comment 14-29, p. 67).

The Spring Creek FEIS contains information regarding the effects of the project on vegetation contrary to the Appellants’ claims. The ROD (p. 15-16) has a description of vegetative treatments authorized for this project. The FEIS has 25 pages (p. 175-200) analyzing the direct and indirect effects of individual vegetation treatments. This section includes discussion of changes in vegetation age-class and species composition (p. 193-194) and changes in species diversity and distribution (p. 195-197). In addition, Appendix B of the FEIS (pp. 55-65) includes information of the general effects of silvicultural treatments. The FEIS also discusses habitat structure including dead and down woody material on pages 226-227. Pages 256 to 258 of the FEIS analyze the effects of the vegetative treatments on standing dead and coarse woody debris.

I find the claims made by the Appellants are unfounded.

- f) **Inadequate Analysis on the Optimality of Clearcutting** – *“The conclusion drawn in the EIS is that clearcutting provides the optimal response because it presents for the most rapid development of seedlings in the face of high deer pressures. This does not present optimality.”* (NOA, p. 90).

**Response:** The Appellants did not raise this issue during the 45-day comment period.

The Project Record shows that only 76 acres (1.8%) of the 4,085 acres proposed for vegetative treatments will be clearcut. This harvest method only “will be done within the SCPA to address areas that were affected by pest or disease outbreaks, drought, or wind damage” (ROD, p. 15). Appendix D of the FEIS discusses the rationale used in determining the silvicultural methods for the use of even-aged management for the regeneration of species and forest types found on the ANF. The ROD (p. 33) contains the determination of optimality for clearcutting. The Responsible Official determined, “...that site-specific conditions present in the stands where shelterwood systems and clearcutting are proposed are consistent with the condition described in the Forest Plan (pp. D7-9) **and** that predictable outcomes for successful regeneration are reasonable.” (ROD, p. 33).

Clearcutting provides abundant sunlight to existing seedlings providing conditions that allow for the rapid growth, which is needed due to the high deer browsing. “Clear-cutting is the optimum method for maintaining aspen due to its intolerance for shade and its physiological requirements for suckering. Both seedling and root suckers are intolerant of shade; those that fall below the canopy stop growing and die within a few years (Forest Plan, p. D-6)” (ROD, p. 33). Refer to Issue III-B-3-d and Issue I-A-4 for further discussion of even-aged management and deer.

I find that District Ranger Blashock followed the intent of the NFMA and did appropriately analyze the optimality of clearcutting for this project.

- g) **The EIS Fails to Acknowledge the Role that Structural Composition Plays in Regeneration** - “EIS ... fails to take into consideration the broad database of knowledge that shows that Uneven-aged stand complexity ... is a well documented predecessor to greater seedling regeneration diversity.” (NOA, p. 90).

**Response:** Refer to Issue I-A-4, Issue III-B-2 and Issue III-B-3-a.

- h) **The EIS Arbitrarily Concludes That There are No Toxic Effects from Herbicides Without Support from the Literature** (NOA, p. 90)

**Response:** Refer to Issue VIII-A-3 for further discussion.

9. Wildlife (NOA, p. 90) “The EIS includes an inadequate assessment of the impacts of the Spring Creek [P]roject on the fragmentation of wildlife habitat.” (NOA, p. 91).

**Response:** The Appellants raised the issue of fragmentation during the 45-day comment period (e.g., FEIS, Appendix I, Comments 1-21, 25, 29, 30, 36, 40, 42, 45, 47, 50, 59 and Comments 14-19, 23, 36)

The Appellants did not provide specifics on how the FEIS is inadequate in its assessment of fragmentation. The effects of fragmentation on wildlife habitat are discussed in detail in the FEIS (pp. 231-233, 261-264, 276). Refer to Issue IV-B-4 for further discussion on fragmentation.

10. Socio-Economic (NOA, p. 91) “The Spring Creek Timber Sale EIS does not meet statutes and regulations for social-economic analysis.” (NOA, p. 91) This results in violations of the Multiple Use and Sustained Yield Act, Forest and Rangeland Renewable Resources Planning Act and their implementing regulations, National Environmental Policy Act and their implementing regulations, Global Climate Change Prevention Act, Administrative Procedures Act, the Forest Service’s Economic and

Social Analysis Handbook, the Timber Sale Preparation Handbook and Forest Service Manual. (NOA, p. 92-96).

- *“The Forest Service has failed to incorporate all natural resource benefits into timber sale planning decisions at the National, Forest and site-specific level.”* (NOA, p. 91).
- *“[T]he Forest Service failed to incorporate information about economic value of unlogged forests.”* (NOA, p. 91).
- *“The Forest Service has failed to incorporate externalized costs into timber sale planning decisions at the National, Forest, and site-specific level.”* (NOA, p. 92).

**Response:** The Appellants raised the issue of economics during the 45-day comment period (FEIS, Appendix I).

The Appellants believe our laws; regulations and policies were violated by failing to consider natural resource benefits and externalized costs into the Spring Creek Decision. My review of this same referenced material clearly shows different requirements. The Multiple Use Sustained Yield Act (MUSYA) does not dictate any specific economic analysis technique. In fact, the definition of “multiple use” implies an entirely different meaning. Multiple use management need not result in the “combination of uses that will give the greatest dollar return or greatest unit output.” (16 USC, Section 531). Appellants misinterpret the requirements of MUSYA which simply requires the agency to give “due consideration to the relative values of the various resources in particular areas.” MUSYA’s mandate gives considerable discretion to the agency with regard to the type, amount, and degree of analysis needed to support its management actions.

Resource Planning Act (RPA) and the National Forest Management Act (NFMA) requirements concern the development of the RPA Program and Forest Plans and do not pertain to site-specific decision-making. The Appellants’ allegations primarily concern development of the RPA Program and Forest Plan. RPA 1600 (d)(1) addresses allocations of land to different management area prescriptions, which are a Forest Plan-level decision, not a decision at the project level. Since this project does not allocate land to different management areas, this issue is outside the scope of this project. This project is consistent with management area (MA) guidelines for MAs 1.0, 3.0, 6.1 and 6.3 in accordance with the Allegheny LRMP (pp. 4-60, 4-82, 4-110, and 4-138).

National Forest Management Act (NFMA) and its regulations set forth no particular requirements for economic analysis at the site-specific level. Likewise, the National Environmental Policy Act (NEPA) does not require disclosure of socio-economic impacts beyond those associated with the proposed action. Law does not require a quantitative, monetary analysis of non-commodity resources as the Appellants allude. In any event, to the extent that NEPA requires a type of economic analysis, the Forest Service included one in the FEIS (pp. 344-348). The Spring Creek analysis also

considered other benefits and costs, many of which are not priced in the market place and thus not represented in dollar comparisons. These benefits/costs are evaluated qualitatively in Chapter 3 of the EA (e.g. recreation, scenery, water quality). Likewise, many of the “externalized costs” mentioned by the Appellants (NOA, p. 93) are also found in the FEIS to the Forest Plan. The Forest Plan allocated different management prescriptions to portions of the Forest based in part on economic considerations. The Appellants argument lacks any specific proof or evidence that the project EA is deficient under NEPA. Based on my review, I conclude the EA and Project Record comply with NEPA and its regulations with regard to disclosure of potential socio-economic impacts.

With respect to the Appellants’ accusation this project violates Forest Service Manuals (FSM) and Handbooks (FSH), the FSM provides non-binding guidance as to the scope of economic analysis required in project decision-making: “The responsible line officer determines the scope, appropriate level, and complexity of economic and social analysis needed.” (FSM 1970.6). The Responsible Official clearly has considerable discretion in determining the appropriate level and type of economic analysis required for the project decision. The Appellants appear to confuse the financial efficiency analysis discussed in the FSH 2409.18, 13, and a quantitative monetary analysis. The Handbook does not require the agency to quantify, in monetary terms, all of the costs and benefits associated with non-commodity impacts at the project level. My review of the Record indicates that the Forest adequately analyzed the economic implications of the project consistent with the requirements of the FSM and FSH.

The Global Climate Change Prevention Act amended RPA to require the Secretary of Agriculture to consider potential effects of global climate change on the condition of renewable resources on the forests and rangelands of the United States, and to analyze opportunities to mitigate the build-up of atmospheric carbon dioxide and reduce the risk of global climate change. The statute does not require the Secretary to consider global climate change in a quantitative, monetary analysis in every site-specific decision as the Appellants desire, but instead gives the Secretary the discretion to consider this issue as appropriate. The agency analyzed the global climate change issue in the 1990 RPA program.

Likewise, the Appellants’ allegation in no way demonstrates the project decision is arbitrary and capricious and in violation of the Administrative Procedures Act.

The economic analysis for the Spring Creek Project considered the economic effects of implementing site-specific activities to meet Forest Plan DFC’s [Desired Future Conditions]. It was not within the scope of analysis to re-evaluate Forest Plan level alternatives and their associated economic effects. I find the Responsible Official did the appropriate level of economic analysis for this project. After a review of the Project Record, I find no evidence the Responsible Official violated any law, regulation, or policy as asserted.

11. Cumulative Effects Analysis (NOA, p. 96) *“The Spring Creek Final EIS fails to conduct a cumulative effects analysis.”* (NOA, p. 96). *“Nowhere within the Spring Creek Final EIS is there an assessment of how all the proposed actions will cumulatively effect the ecological system within the project area.”* (NOA, p. 96).

**Response:** The Appellants raised this issue during the 45-day comment period (FEIS, Appendix I, p. 13, Comment # 1-45).

Cumulative effects are discussed by resource area within the FEIS (See Table 1, below). Nothing in law or regulation requires this be addressed at one location within the environmental document as the Appellants allude.

<b>Document</b>	<b>Subject Area</b>	<b>Pages</b>
FEIS**	General Overview	69-71
FEIS	Soils, Soil Quality	87-95
FEIS	Hydrology	107, 124-131
FEIS	Transportation	141-144
FEIS	Oil, Gas, and Minerals	146-147
FEIS	Air Quality	150
FEIS	Vegetation	201-207
FEIS	Noxious Weeds	219-220
FEIS	Wildlife	245, 268-287
FEIS	Aquatics	290-296
FEIS	Heritage	302-305
FEIS	Scenic Resources	313-316
FEIS	Recreation	340-344
FEIS	Economics	347-348
FEIS	Human Health and Safety	354-356
Record of Decision	Summary	23-27
Spring Creek Ecosystem Analysis at the Watershed Scale. (2003)		
Spring Creek Roads Analysis Report (2002)		
* A partial list of cumulative effects analysis, does not include DEIS.		
** Final Environmental Impact Statement Spring Creek Project		

I find the cumulative effects analysis was adequate for the Responsible Official to make a reasoned decision.

**Issue IX: Appeal Claims – Forest Rangeland and Renewable Resource Planning Act**  
 [Organized as item XV in the Appellants’ Appeal]

Propagation of the Black Cherry Weed Species – The Appellants claim, *“The Spring Creek timber sale project is designed specifically to perpetuate this desired future makeup of unnaturally high levels of commercially lucrative black cherry trees and other naturally rare, but commercially valuable hardwood trees such as red oak.”* (NOA, p. 97).

**Response:** Refer to Issue I-A-4 and Issue III-B-1.

The Appellants provided comments on this issue during the 45-day comment period (FEIS, Appendix I, p. 125, Comment 14-176).

The Forest and Rangeland Renewable Resources Planning Act of 1974 states that the Forest Service, among other requirements, shall insure that timber will be harvested from National Forest System lands only where the harvesting system is not selected primarily because it will give the greatest dollar return.

The Spring Creek Project harvesting systems were not selected solely because they would result in the greatest dollar return. The ROD (pp. 12 and 13) states seventeen specific reasons for the selection of Alternative 3 (with Alternative 2 recreation activities). These include; developing early successional habitat, maintaining a sustainable healthy forest, protecting/ensuring the continuation of resource values, reduction of deer impacts on vegetation, and improvements to water quality. Even-aged management is prescribed only to those stands with characteristics that have proven successful for forest regeneration (ROD, p. 22).

Furthermore, the Spring Creek Project is consistent with direction provided in the Forest Plan and responds to issues raised during the public comment process. More specifically, the Forest Plan directs that the primary harvest technique for MA 3.0 should be even-aged management. Uneven-aged management is an option to be considered for inclusions such as riparian areas, wet soils, or visually sensitive areas (LRMP, p. 4-87). In addition, page 4-82 of the Forest Plan lists the desired conditions for MA 3.0 (providing a forest setting which is a mosaic of predominantly hardwood stands and associated understories that supply habitat for game and non-game wildlife species). Page 4-110 (LRMP) lists the desired conditions for MA 6.1 (provide a land condition with vegetation predominantly made up of mature or overmature hardwood forests). MA 1.0 places emphasis on habitat management for ruffed grouse and other wildlife species associated with early successional stages of forest habitat while providing high quality wood fiber production (LRMP, p. 4-60). MA 6.3 directs management for wildlife species requiring riparian habitat while providing recreational benefits (LRMP, p. 4-138). This FEIS documents that selection of Alternative 3 will move the project area closer to these desired conditions as described in the Forest Plan. The FEIS (Appendix E) contains further information related to the selection of even-aged management.

In summary, the FEIS and associated ROD fully disclose the rationale for management of species not tolerant of shade (i.e., black cherry). Nevertheless, other factors were considered in the choosing the selected alternative. I find no violation of the Forest Rangeland and Renewable Resources Planning Act.

I also find the Deciding Official considered other relevant laws, including the Multiple Use Sustained Yield Act of 1960 (ROD, p. 34). The Allegheny National Forest LRMP places emphasis on multiple use. This project implements the Forest Plan at the site-specific level. This emphasis was carried into the purpose and need for the Spring Creek Project. The "Purpose and Need" identified 19 project objectives. Many were associated with non-timber amenities (e.g., wildlife habitat, recreation, visuals,). Therefore, I conclude this projects management of a

hardwood species such as black cherry does not violate the Multiple-use Sustained Yield Act, nor does it constitute a prioritization over other forest uses.

**Issue X: Violations of the Multiple-Use Sustained Yield Act (MUSYA)** [Organized as Item XIX in the Appellants' Appeal] – The Appellants contend, “*The emphasis on black cherry tree farming violates the MUSYA for its blatant prioritization over other uses such as old growth, wildlife habitat, recreation, wilderness fishing, and for the following reasons as well.*” (NOA, p. 98).

**Response:** Refer to Issue IX.

The Appellants further claim,

A/B. Failure to execute the provisions of management plans for threatened and endangered species (NOA, p. 98). “*The Spring Creek EIS fails to consider an alternative that implements direction provided for in management plans for state and federal threatened and endangered species.*” (NOA, p. 98). “*The failure of the Forest Service to execute an alternative that implements protections for these species directly reflects the Forest Supervisor’s failure to execute the requirements of 36 CFR Section 219.10(a)(2).*” (NOA, p. 100).

**Response:** The Appellants raised this issue during the 45-day comment period (FEIS, Appendix I, pp. 124, Comment # 14-174).

Ensuring habitat for threatened and endangered species is an important priority, but not the only goal in management of our National Forests. NEPA gives federal agencies discretion to determine appropriate alternatives based upon the purpose and need of the proposal.

Regardless, the Forest did consider habitat requirements and effects to federally listed species, regionally sensitive species and State and Forest Species of Special Concern. (FEIS, Appendix C and FEIS pp. 243-287). As a result, implementation of Forest-wide standards and guidelines and site-specific mitigation measures outlined in the FEIS (Appendix D) were included in each of the proposed action alternatives.

The FEIS and the Biological Assessment addressed threatened and endangered species and made accommodation for them, but an alternative, as suggested by the Appellants would not specifically address the purpose and need for the project and would add no value to the analysis. Refer to Issue VII-A-1. I find no violation in law, policy or regulation.

**RECOMMENDATION:**

After reviewing the Project Record for the Spring Creek Project, and considering each issue raised by the Appellants, I recommend District Ranger Leon F. Blashock's Record of Decision of June 2, 2004 be affirmed.

/s/ Bruce Prud'homme  
BRUCE PRUD'HOMME  
Appeal Reviewing Officer  
District Ranger

cc:  
NEPA Coordinator Allegheny NF, Jim Apgar  
RO, Patricia Rowell