



File Code: 1570-1

Date: July 14, 2005

Mr. Jim Bensman
Heartwood
585 Grove Avenue
Wood River, IL 62095-1615

RE: Appeal of the Record of Decision for the Sugar Run Final Environmental Impact Statement, Bradford Ranger District, Allegheny National Forest, Appeal 04-09-19-0025 A215

Dear Mr. Bensman:

On May 19, 2004, you filed a notice of appeal pursuant to 36 CFR 215.18. Forest Supervisor Kevin Elliott signed his Record of Decision for the Final Environmental Impact Statement on April 2, 2004, of the Sugar Run Project. The legal notice for the decision was published on April 16. My decision is based upon the appeal record and the recommendation of the Appeal Reviewing Officer (ARO) Jim Denoncour, Acting Forest Supervisor, Hoosier National Forest, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, Kevin Elliott, 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 Sugar Run Project will implement management activities, including conducting a series of vegetative treatments in an area encompassing approximately 11,810 acres managed under the Allegheny National Forest Land and Resource Management Plan.

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 (e.g., Desired Future Condition, Uneven-aged Management, Inadequate Range of Alternatives, Threatened and Endangered Species, and Herbicides and soils). 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 Forest Supervisor Kevin Elliott's Record of Decision and Final Environmental Impact Statement for the Sugar Run 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/ Donald L. Meyer
RANDY MOORE
Appeal Deciding Officer
Regional Forester

Enclosure

cc:
Allegheny NF:
Responsible Official, Kevin Elliott
NEPA Coordinator, Jim Apgar
Lois Demarco, Heather Whittier
Jim Kleissler



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Subject: 1570-1 Appeal of the Record of Decision for the Sugar Run Final Environmental Impact Statement, Bradford Ranger District, Allegheny National Forest, Appeal 04-09-19-0025 A215 (ARO)

To: Regional Forester, R-9

This letter constitutes my recommendation for the subject appeal filed by Heartwood and Jim Bensman for the Sugar Run Project on the Bradford Ranger District of the Allegheny National Forest (ANF). Forest Supervisor Kevin Elliott signed this Record of Decision on April 2, 2004 and the legal notice of the decision was published on April 16, 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 June 22, 2004, Jim Kleissler and Jim Bensman, representatives of Heartwood, participated via conference call in an informal disposition meeting on the appeal of the Sugar Run Project. Allegheny National Forest participants included Lois DeMarco, Ecosystem Staff Officer (acting for Forest Supervisor Kevin B. Elliott), Michael Hampton, Planning Staff Officer, Jim Apgar, Acting Forest NEPA Coordinator, Nancy Larson, Bradford Deputy District Ranger, and Heather Whittier, Project Team Leader and note taker. The call lasted for approximately one hour. Issues included in the appeal were discussed. The appeal was not resolved through informal disposition.

Appeal Issues

The Appellants raised 19 main issues in this appeal of the Sugar Run Project Decision. Some of the major issues had numerous sub-issues. Except for Issue M (Wilderness, Natural and Historic Areas), 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 A: Arbitrary and Capricious Record of Decision (ROD) [Organized as Item VI in the Appellants Appeal] (NOA, p. 11).

Sub-Issue A1: Desired Future Condition



The Appellants allege, “*Supervisor Elliott’s conclusion arbitrarily ignores the fact that Alternative 7 moves conditions within the Sugar Run Project Area away from the desired future condition for old growth outlined within the Forest Plan which would have been met under three of the five alternatives.*” (NOA, p. 11).

- “*Mr. Elliott arbitrarily ignores how changing vegetative conditions can have negative effects on achieving the DFC as required by the Plan.*” (NOA, p. 11).
- “*Mr. Elliott 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 raised the issue of old growth during the comment period for the Sugar Run Project FEIS (Project File, Book 9, E, pp. 8, 18; FEIS, Appendix H, pp. H20-21).

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. Two stands initially proposed for thinning were dropped from consideration based on analysis of their potential old-growth characteristics. (FEIS, pp. 139-141). The Responsible Official did consider the consistency with Forest Plan goals and objectives related to old growth and other vegetative conditions (FEIS p. 173). All alternatives reviewed specific stands based on age class including those greater than 111 years of age (Project Record, Book 6, pp. 17-1 and 17-2).

Specifically, the FEIS discusses the existing condition as having 563 acres of Management Area (MA) 3.0 lands in a potential old growth condition (FEIS, p. 172). This is approximately 6 percent of the MA 3.0 lands in the planning area. By the year 2023 there will be 4146 acres of potential old growth (FEIS, p. 172). This is approximately 42 percent of the MA 3.0 lands in the planning area. This exceeds the Forest Plan goal of five percent for that management area (Land and Resource Management Plan (LRMP), p. 4-85).

Management Area 6.1 currently has 109 acres in a potential old growth condition (FEIS, p. 172). That is approximately six percent of the planning area. By the year 2023 there will be 394 acres of potential old growth. This is approximately 20 percent of the MA 6.1 lands in the planning area. This exceeds the Forest Plan goal of 10 percent for this management area (LRMP, p. 4-113).

Also incorporated into the decision was consideration of age class goals. One of the purposes for the proposal was to “[p]rovide a variety of age or size class habitat ... from seedling to mature saw timber in a variety of timber types.” (ROD, p. 2; FEIS p. 3). Alternative 7 affords an increased opportunity for developing early successional habitat (ROD, p. 12). The FEIS also displays the difference between the Desired Future Condition and the existing condition (FEIS, p. 5).

The Appellants did not mention what negative effects result from achieving the Desired Future Condition. Neither do they address which standard, guideline, goal or objective is being affected. Without this information it is impossible for me to respond directly to their concerns on these topics.

I find the Responsible Official considered vegetative conditions, including old growth, when making his decision. The selection of Alternative 7 meets the old growth goals and objectives established by the Forest Plan. The decision was not arbitrary or capricious.

Sub-Issue A2: Uneven-Aged Management (NOA, p. 11)

The Appellants contend,

- (a) *“The decision [for even-aged management] is based on an incorrect legal standard.”* (NOA, p. 11).

Specifically, *“The Forest Service has selected even-aged management to increase the short-term economic yield of the forest. The Forest Services fails to identify the ‘long term net public benefits’ of even-aged logging [36 CFR 219.1].”* (NOA, p. 11).

Response: The Appellants raised the issue of even-aged management during the 45-day comment period, but not as specific or detailed as in these allegations.

The use of even-aged management techniques is appropriate because of the long-term benefits it provides. Contrary to the Appellants claim, the long-term benefits of even-aged versus uneven-aged management were carefully considered and documented repeatedly in the Project Record. The ROD identifies the “benefit of providing a large quantity of high-value forest products now and into the future.” (ROD, p. 12). The majority of proposed treatments were even-aged management, which “create a mosaic of age classes while effectively providing a variety of plant species, which will promote the establishment of horizontal and vertical diversity in the forest.” (ROD, p. 12). The ROD states, among the reasons for selecting Alternative 7, that implementation would “achieve a sustainable forest” and “provide an increased opportunity for developing early successional habitat in MA 3.0.” (ROD, p. 12). Additionally, after a comparison of alternatives including an alternative that relies primarily on uneven-aged management (ROD, p. 21), the conclusion was reached that, “Alternative 7 provides the highest net benefit out of the six alternatives while protecting and ensuring the continuation of the resource values.” (ROD, p. 12). The Forest Plan also provides more rationale for prescribing even-aged management in MA 3.0 (FEIS, Chapter 1, p. 3).

The Appellants also allege, *“The factors the Forest Service used for making the determination to use even-aged management are inadequate, as a matter of law, to determine if even-aged management is ‘optimum’ or ‘appropriate’.* (NOA, p. 12).

Response: Since the project proposes no clear-cutting, proving optimality is not required, rather only appropriateness (16 U.S.C. 1604 Section 6(g)(3)(F)). My review of the Project Record finds the Responsible Official did adequately determine the appropriateness of even-aged management. Specifically, "... site specific conditions in each stand were evaluated to determine various silvicultural treatment options."(FEIS, Appendix C, Vegetation Report, p. 17). "The determination to use even-aged management was made based on species composition, stand overstory condition, and presence or absence of seedling regeneration. This finding is consistent with the appropriateness of even-aged management as defined in the Forest Plan (USDA-FS, 1986a, pp. D-7 through D-11)". (FEIS Appendix C, Vegetation Report, pp. 17-18). From a broader perspective, the Forest has also shown the need for even-aged management as it relates to deer populations. Without even-aged management, over browsing of desired understory native plants would continue. "White tailed deer cause extensive damage by feeding on seedlings of tree species found on the ANF. Only even-aged methods that provide abundant sunlight enabling seedlings to quickly grow out of the reach of deer are practical." (FEIS, Appendix C, Vegetation Report, p. 16).

The Appellants as well claim, "*The ROD and Sugar Run EIS fail to establish how the selection of Alternative 7 guarantees [the requirements of] 16 USC, Section 1604(g)(F)(v) [Protection of soil, watershed, fish, wildlife, recreation, and esthetic resources].*" (NOA, p. 12).

Response: It should be noted Federal Code 16 USC, Section 1604 applies to Forest Planning. Nevertheless, the FEIS does address protection of soils, watershed, fish, wildlife, recreation, and esthetic resources. Specific mitigation measures (such as water body buffer zones) were developed to protect the physical environment in each of the areas cited. (FEIS, Appendix E, Mitigation Measures). Monitoring has supported the effectiveness of these mitigation measures for similar commercial timber harvesting activities. For example: "In the 1996 monitoring report (USDA-FS, 1997a), the Hunter Special Integrated Project Set was reviewed and on page 13, it states that the mitigation measures for seasonal logging restrictions appear to have been effective. The 1995 monitoring report (USDA-FS, 1995a) reviewed the Rock Run and Sheffield Junction Integrated Project Sets. On page 14, it says that the use of the mitigation measures in the Rock Run project appears to have been successful as there were no visible negative impacts to soils from logging activity, and slash was kept out of wet areas." (FEIS, Chapter 3B, p. 96).

All action alternatives require soil monitoring in treated stands following established protocols. "Monitoring would be pre, if feasible, and post harvest for soil quality indicators. (USDA-FS 2002). All monitoring data would be used to assess the need for adaptation of activities, to assess the effectiveness of soil conservation practices, and to assess the need for corrective action." (FEIS, Chapter 3B, p. 122) In addition, this project adheres to Forest Plan standards and guidelines that meet or exceed Pennsylvania Department of Environmental Protection's water quality standards and

Best Management Practices for addressing the control of non-point source pollution. (FEIS, Appendix D, p. D-48).

In summary, the Forest Service has complied with 36 CFR 219 and has documented the long-term benefits to the public of using even-aged management in the Sugar Run project area. The Responsible Official has used adequate information to show the appropriateness of even-aged management and provides for continued resource protection through mitigation and monitoring. I find no violation of law or regulation.

The Appellants further assert,

- (b) *“The rejection of uneven-aged management rests on the faulty premise that uneven-aged management is an uncertain management technique for Eastern Hardwood forests.”* (NOA, p. 12). *“The Forest Service did not provide any scientific data to support the conclusion that uneven-aged management is an ‘uncertain’ scientific technique.”* (NOA, p. 12). *“This ‘new research’ that Forest Supervisor relied on was not cited in either the ROD or the EIS.”* (NOA, p. 12). *“The conclusory, unsupported statements in the ROD ... do not meet the NEPA mandate that calls for an explanation of why the scientific technique was rejected.”* (NOA, p. 13).

Response: Contrary to the Appellants’ assertions, the Forest did provide abundant scientific data and research to support the conclusion that successful regeneration of desired vegetation types would be uncertain using uneven-aged management. For example, “Uncertainty also exists concerning the potential for successful seedling establishment and growth under an uneven-aged management system. There is no assurance that uneven-aged management can be used successfully where deer populations are high (Stout 1994, p.334).” “The choice of silvicultural systems in the Allegheny hardwoods would be wider were it not for the unusually high deer damage to regeneration on the ANF (Redding 1995, Tilghman 1989).” (FEIS Chapter 2, p. 50; Chapter 3C, p. 142). Other examples of published scientific research were cited to support this conclusion: Stout in Marquis 1994b, p. 330, Marquis and Johnson in Burns 1989, p. 11, (FEIS, Chapter 2, p. 50). The FEIS also cites actual data gathered from forest monitoring of uneven-aged management sites which field-verified research. “Local silvicultural guidelines specify stands having at least 35 basal area (BA) of shade tolerant species as potentially providing an adequate seed source for uneven-aged management (Marquis et al. 1992, p. 57), though local success with uneven-aged management on these sites has been very marginal (USDA-FS 1997a, pp. 16, 17, 76, 77 and USDA-FS 2002, p. 23)” (FEIS, Chapter 3C, p. 142).

The reasons for selection of Alternative 7, which predominately uses even-aged management prescriptions, are detailed in the ROD (p 12). A bibliography of research articles used and considered by the ID team is included in the Project Record. (Project Record, Book 6, pp. 11-18 to 11-20).

I find the Appellants' claims are not substantiated. The Responsible Official based his decision concerning even-aged management on scientific data as required.

- (c) *"The additional reasons cited for rejecting uneven-aged management are inadequate."* (NOA, p. 13). *"Supervisor Elliott's decision not to select Uneven-aged management fails to address the requirements on the NFMA for 'optimality' and 'appropriateness'."* (NOA, p. 13).

Response: For further discussion, refer to Sub-Issue A2 (a)

- (d) *"The Supervisor does not apply the requirements for even-aged management and Uneven-aged management equally."* (NOA, p. 13). *"...Supervisor Elliott, in his decision, pay no heed to the fact that Alternative 7 approves regeneration cuts where Forest Service experience says not to."* (NOA, p. 13).

Response: The ANF LRMP took a detailed look at the comparison of uneven-aged management versus even-aged management tradeoffs. Analysis considered even-aged and uneven-aged management as options on all acres except where use was restricted by law. (LRMP FEIS, Appendix B, pp. 9, 51, 63). The Responsible Official also used knowledge gained on reforestation success through past implementation of the Forest Plan. (FEIS, Appendix F). Furthermore, equal consideration was given to both even-age and uneven-age treatments. In fact, the Forest considered an alternative (4), which prescribed primarily singletree selection. (FEIS, Chapter 2, p. 29) (See discussion in Sub-Issue B1). The silviculture report discusses the effect of vegetation treatments by alternative (Project Record, Book 6, pp. 11-1 to 11-19). In addition, the site-specific conditions of each stand were evaluated to determine various silvicultural treatment options (FEIS, Chapter 3C, pp. 141-162; FEIS, Appendix C, Vegetation Report, p. 17).

The Forest Plan requires that uneven-aged management be used on sites with group III soils. (LRMP, p. 4-23). No even-aged treatments are proposed on group III soils in Alternative 7.

The Responsible Official did not ignore past experience when making this decision. (See Sub-Issue A2 (a)). In fact, the Interdisciplinary Team (IDT) used its past experience, documented by monitoring reports, to structure the regeneration cut recommendation in Alternative 7. This included mitigation measures by compartment and stand. (FEIS, Chapter 3B, p. 96 and Appendix E, Table E-17. pp. E-65 to E-76).

I find the Appellants' claims are inaccurate. The Responsible Official considered and applied the requirements for even-aged and uneven-aged management correctly.

- (e) *“Supervisor Elliott seriously de-emphasizes the many benefits associated with uneven-aged management while over-emphasizing its negative components in the ROD [Appellants cite numerous references of positive benefits].”* (NOA, p. 13).

Response: Contrary to the Appellants’ claims, the effects of uneven-aged management both beneficial and adverse are discussed for each alternative in the FEIS. The ROD presents only a summary of why all proposals other than the selected alternative were rejected. The vegetative benefits associated with uneven-aged management are discussed in the FEIS. (e.g., protection of riparian, wet soil, and visually sensitive areas) (FEIS, Chapter 3C, p. 144). Uneven-aged management is credited with development of trees of varying age and size class and favoring trees that are shade tolerant (hemlock, sugar maple and American Beech). (FEIS, Chapter 3C, p. 159).

However, most of the benefits are negated by the problems caused from deer browsing and diseases associated with beech and sweet birch. (FEIS, Chapter 3C, p. 167). As stated in the ROD, “White tailed deer cause extensive damage by feeding on seedlings of tree species found on the ANF. Only even-aged methods that provide abundant sunlight enabling seedlings to quickly grow out of the reach of deer are practical. The choice of silvicultural systems would be wider were it not for the unusually high deer browsing that occurs on the ANF (Redding 1995, Tilghman 1989). Shelterwood systems are an appropriate means of establishing seedlings and providing conditions that allow for rapid growth of seedlings. (Forest Plan p. D7-9).” (ROD, p. 23; FEIS, Chapter 3C, p. 142). Additionally, research shows that, “...there is no assurance that uneven-aged management can be used successfully where deer populations are high (Stout 1994, p. 334).” (FEIS, Chapter 3C, p. 142).

Documentation cited by the Appellants repeatedly refers to clearcutting as the alternative to uneven-aged management. As stated in the ROD, “There is no clearcutting proposed in the Sugar Run Project. However there are shelterwood removal projects.” (ROD, p.23).

I find the Appellants’ claims unsubstantiated. The EIS represented the positive aspects of uneven-aged management given the current Forest circumstances (deer damage and tree diseases).

- (f) *“Supervisor Elliott fails to address major deficiencies and problems associated with even-aged management practices.”* (NOA, p. 18). *“The problems associated with nutrient poor soils are underscored by the intensive need for fertilization....”* (NOA, p. 19). *“In addition, the appropriateness of even-aged cutting cannot be determined without considering how even-aged regeneration cuts increase the deer herd”* (NOA, p. 19).

Response: The need for fertilization is not a result of past even-aged regeneration cutting as the Appellants indicate. Fertilization is used to accelerate natural regeneration of seedlings making them less susceptible to deer browsing. Taller

seedlings are less vulnerable to damage from deer. By accelerating the height growth of seedlings, increased regeneration success can be achieved. (FEIS, Chapter 3C, p. 164).

The effects of even-aged regeneration on the deer population and distribution are considered extensively in this EIS. Research on the ANF (DeCalestra, 1997, Redding 1995) indicates the impact of deer on forest resources is a joint function of deer density (numbers) and available forage (FEIS, p.6). The activities proposed under the selected alternative include a combination of improved hunter access and increased maintenance of forage availability to keep deer populations and deer browsing at reduced levels (FEIS, pp. 49 and 263). Even-aged forest regeneration treatments are intended to maintain or increase the available deer forage in the project area and to reduce the impact of deer on the habitat by overwhelming the deer with food. By increasing both the deer forage and hunter distribution, deer browse pressure (the proportion of available forage consumed by the deer) is reduced (FEIS, p. 6). Research used in the analysis, directly supports this conclusion -- "However, increasing the amount of deer forage (such as by even-aged management) can reduce the impact of deer on habitat by overwhelming deer with food. Impact of deer on wildlife habitat can and has been reduced on the Allegheny National Forest by creating more forage with even-aged management and maintaining or reducing deer abundance by manipulating harvest regulations." (DeCalesta, David S. 1998, Affidavit of David S. DeCalesta regarding civil action No. 97-2187, Project Record, Book 10, Tab D)

The IDT also looked at the relationships between deer density and carrying capacity (low growing vegetation available to deer.) Carrying capacity was also related to seedling stands of the type that would result from even-aged management. Since deer numbers are determined by hunting and forage availability (DeCalesta 1997), the selected alternative included increased hunter access to increase deer harvest and control deer populations. (FEIS, pp. 6, 219-223, 259-263). Additionally, research on the ANF shows deer management practices initiated by the Pennsylvania Game Commission played the most significant role in deer population growth. This report concludes that deer population growth did not positively respond to increased levels of timber harvest (Redding, J. 1995. *History of Deer Population Trends and Forest Cutting on the ANF*, Project Record, Book 11, Tab R). Redding goes on to say, "The best short-term solution is to maintain high forage production through sustainable harvest levels while increasing hunting pressure to reduce density to 18 deer/square mile in the Allegheny region."

I find the Appellants' claims are without merit. The Forest did consider potential negative impacts of even-aged management and addressed in detail both the issue of fertilization and the effects of even-aged regeneration cuts on the deer population.

Sub-Issue A3: *"Supervisor Elliott's decision responds solely to short-term economic goals and objectives from the Forest Plan"* (NOA, p. 19).

Response: A review of the Project Record indicates many factors were considered in the selection of Alternative 7. Economics, as implied, was not the primary criteria. The project objective was to maintain a healthy forest by ensuring age class diversity within the landscape thus reducing the risk of insect and disease outbreaks. The FEIS states: “The majority of the Sugar Run project area is presently continuous, mature forest.” (FEIS, p. 133). Roughly 78% of the project contains stands that are 51 to 110 years old.” (FEIS, p. 133). “The proposed treatments within Alternative 7 create a mosaic of age classes while effectively providing a variety of plant species, which will promote the establishment of horizontal and vertical diversity within the forest. These are important factors in forest health.” (ROD, p. 12). The Interdisciplinary Team (IDT) considered past management activities, soils, animal damage and other environmental factors affecting the growth of vegetation. A review of current literature recommended the favoring of shade intolerant species (i.e., black cherry) when conditions similar to that found on the project area exist (i.e., soils with low base cation requirements) (FEIS, p. 127).

Furthermore, this project addresses direction found in the Forest Plan. The Forest Plan provides the framework and sets conditions for future decision making. Implementation of Alternative 7 provides an opportunity to move towards the Desired Future Condition for MA 3.0 including age and size class habitat diversity, a sustained yield of high-quality hardwood through even-aged management, and roaded recreation opportunities (ROD, p. 12).

Consideration was given to favoring shade tolerant species through uneven-aged management techniques. Alternative 4 relies primarily on uneven-aged management. The Responsible Official clearly states his reasons for not selecting this alternative on page 21 of the ROD. In summary, Alternative 4 results in a greater susceptibility of the forest to insect and disease outbreaks. In addition, predicted distributions of early successional habitats will not meet desired conditions for the next 20 years, and the uncertainty of regeneration success, among other concerns about uneven-aged management, is questionable.

I find the Responsible Official did not rely primarily on economics as a factor in selecting Alternative 7. Supporting literature, past management experience, and analysis in the FEIS clearly documents the reasons for the decision. Given the direction in the Forest Plan and the site-specific conditions in the project area, this decision is consistent with requirements of the NFMA.

Issue B: Appeal Claims – (Broad Range of) Alternatives to the Proposed Action [Organized as Item IX in the Appellants Appeal] (NOA, p. 27).

Sub-Issue B1: Failure to Consider a Broader Range of Alternatives within the Amendment and associated EIS [Organized as Item A in the Appellants Appeal] (NOA, p. 27).

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 Sugar Run EIS. Therefore, an inadequate*

range of alternatives was before the Deciding Officer when considering his decision on the Sugar Run Timber Sale.” (NOA, p. 27). “In fact, the Final EIS fails to consider the Court ordered uneven-aged alternative and instead substitutes a partially even-aged alternative.” (NOA, p. 27)

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 (Sugar Run 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 Sugar Run 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. 27-64) will not be addressed in this appeal of the Sugar Run Project.

The allegation the Sugar Run 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 FEIS 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 Sugar Run 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. 2; FEIS, pp. 4-9).

The Sugar Run FEIS analyzed in detail an uneven-aged management alternative. All stands were considered eligible for this technique where it was biologically feasible (the stand was sufficiently stocked with shade tolerant species) and where previous regeneration processes were not already initiated (ROD, p. 18). The Appellants contend that since the alternative contained even-aged management (about 15 percent of lands in the Project Area), it does not meet the requirements of a court order issued on October 15, 1997 for the Mortality II timber project.

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 Sugar Run Project, the Responsible Official did analyze the effects of uneven-aged management where it was biologically feasible. Of 1794 acres scheduled for harvest in Alternative 4, 1448 acres (81%) are analyzed using uneven-aged techniques (FEIS, Table 2-6, p. 39). Furthermore, even with the highest levels of even-aged management evaluated in the FEIS (Alternative 3), 72% of the Forested lands within the project area would not be harvested using even-aged management (FEIS, p. 51). The Responsible Official’s rationale for not selecting the uneven-aged alternative is found in the ROD (p. 21). (Also see response to Issue B2, “Inadequate Range of Alternatives within the Sugar Run EIS”). The claim the Forest did not meet the court ordered mandate to consider an even-aged alternative is incorrect.

Sub-Issue B2: Inadequate Range of Alternatives within the Sugar Run EIS [Organized as Item B in the Appellants Appeal] (NOA. P. 64).

The Appellants assert, “*Regardless of the adequacy of the Forest Plan Amendment for Threatened and Endangered Species on its influence over the outcome of the Sugar Run EIS, the Forest Service failed to consider a reasonable range of alternatives as required by the NFMA and the NEPA.*” (NOA, p. 64).

Response: Refer to Sub-Issue B1 for a discussion and overview of alternative development and analysis for the Sugar Run Project.

The Appellants further allege,

- (1) “*Failure to consider an alternative that would evaluate the potential benefits of zero-logging within the Sugar Run project area.*” (NOA, p. 64).

Response: During the 45-day comment period the Appellants requested the development of an alternative that was not connected to logging (Project Record, Book 9, E-8 p. 2). There were also several comments received during scoping that raised similar concerns (FEIS Appendix A, pp. A-6 to A-8).

Contrary to the Appellants claim, the Responsible Official did consider two alternatives in detail that did not harvest timber. The “No Action” Alternative (Alternative 2) did not implement any activities under this decision (FEIS, p. 28). Alternative 5 responded to suggestions of a “Zero Extraction/Restoration Alternative” that “would include no logging, no road building, no herbicide spraying and no stone pit expansion.” (FEIS, p. 30). In addition, one alternative was eliminated from detailed study because it was a variation of Alternative 5. This issue was also addressed in the response to comments received during the 45-day comment period (FEIS, Appendix H, p. 10).

The ROD (p. 17) provides a discussion on the reasons Alternative 2 was not selected, primarily because it does not respond to any of the needs or opportunities found within the Sugar Run project area. The FEIS also provides considerable documentation of the effects of Alternative 2. For example, vegetation changes are explained on pages 148-188. The ROD (pp. 18-19) also provides a discussion on the reasons Alternative 5 was not selected. This data is shown in table format (Table 3-37, p. 169, “Long-Term (>50 years) Changes in Vegetation – Alternatives 2 and 5”).

The Appellants also state, “*By refusing to incorporate actions such as road decommissioning in a no logging alternative the Forest Service arbitrarily weighs the availability of a reasonable alternative in such a manner that approval of logging is practically assured.*” (NOA, p. 64).

The FEIS does evaluate just such an alternative. Alternative 5 would not commercially harvest any trees but would have some activities related to non-commercial oak/conifer release and some reforestation. This alternative would also decommission 13.9 miles of road and improve 10.0 miles of road through storm proofing and/or resurfacing with limestone (FEIS pp. 30-31).

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. 64). “*Failure to consider an alternative that would amend the Plan to incorporate the Landscape Corridor was arbitrary and capricious.*” (NOA, p. 64).

Response: During the 45-day comment period the Appellants requested that, “All old growth opportunities should be evaluated independently of potential timber stands.” They did not suggest a specific alternative (Project Record, Book 9, E-8, p. 8). I also found no mention of the need for consideration of the Landscape Corridor either from the Appellants or from other organizations or individuals during the scoping period (Project Record, Book 8, Sections F-8, F-13, F-14, F-15, F-16, F-21, F-42).

Impacts to old growth were considered throughout the analysis. A discussion of the existing old growth conditions can be found on pages 139-141 and on page 212 of the FEIS. Projections for potential old growth in year 2023 show that the alternatives considered substantially exceed Forest Plan goals (FEIS, pp. 171-173) (Refer to Issue A1 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.

I find that old growth was adequately covered in the analysis for the Sugar Run Project. Selection of Alternative 7 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 logging along trails or road construction on trails.”* (NOA, p. 64).

Response: The Appellants did not suggest an alternative prohibiting logging or road construction along trails during the 45-day comment period. However, they did ask that impacts of the proposal on recreation be considered (Project Record, Book 9, E-8, pp. 16-17).

The North Country National Scenic Trail is within the project area. The impact of logging and road building on this trail was identified as a significant issue (EIS, p. 18). All alternatives, except Alternative 3, exclude timber harvest or road construction near the trail. The FEIS acknowledges that the North Country Trail Comprehensive Management Plan does not preclude harvest activities. The Plan states, “It is not the intent of this plan to completely isolate the user from land use practices surrounding the trail, but rather to allow the traveler to enjoy the mosaic of resources and land uses through which the trail passes while taking special advantage of the natural and scenic elements along the way. Thus, resource management activities such as timber cutting, even occasional clearcutting, are not out of harmony with management of the NCT.” (FEIS pp. 37-38).

The impacts to all other trails were considered in development of mitigation measures related to recreation (FEIS, Appendix E, pp. E-19 through E-20). Effects are discussed in detail (FEIS, pp. 302-309) including a summary of the effectiveness of the mitigation measures (FEIS, pp 308-309). Effects on the areas scenic quality were also evaluated (FEIS, p. 315).

I find the Responsible Official adequately considered the impacts of this project on recreation and trails. A separate alternative to analyze these effects is not needed.

- (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 the Forest Service proposes to increase fragmentation.”* (NOA, p. 65).

Response: Fragmentation was raised as an issue during initial project scoping (Project Record, Book 8, F-8 p. 5). The Appellants also raised the issue of fragmentation during the 45-day comment period, but did not request development of a specific alternative (Project Record, Book 9, E-5 and FEIS, Appendix H, p. 8-13, Comment 8-21).

I find fragmentation effects were extensively evaluated in the FEIS (p. 253-257). Contrary to the Appellants claim, the analysis concludes, “... there are no significant fragmentation-related effects to neotropical migratory songbirds or other wildlife species anticipated under any alternative.” (FEIS, p. 256). I see no need to consider a separate alternative on forest fragmentation.

Issue C: Appeal Claims – Process and Public Participation [Organized as Item X in the Appellants Appeal] (NOA, p. 65). **LRMP Amendment Claims** [Organized as Item A in the Appellants Appeal]

The Appellants claim, *“Because the Forest Service illegally avoided public comment and participation as part of the Forest Plan Amendment for Threatened and Endangered species it logically follows that any projects being implemented subject to said Forest Plan Amendment are thereby null and void. This is especially true for the Sugar Run Project which was developed without the legally required amount of public involvement.”* (NOA, p. 65).

Response: The ROD (p. 5) and the FEIS (p. 15) summarize public involvement efforts for the Sugar Run Project including but not limited to:

- Mailing of 464 scoping letters on July 24, 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 August 2, 2002.
- Publication of a news article in the Bradford Era on August 2, 2002 soliciting comments.
- A public tour of the project area on August 17, 2002.
- Publication of a “Notice of Availability for the DEIS on December 12, 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. A-1 to A-26) explains the classification of these

comments into issues. In addition, the IDT addressed comments during the comment period for the DEIS (FEIS, Appendix H).

I find the Responsible Official followed all legal mandates for ensuring public involvement in the Sugar Run Project and did not violate law, regulation, or policy. The Appellants presented no additional evidence that Amendment 11 to the Forest Plan (Threatened and Endangered Species) was done illegally by avoiding public comment and participation. Therefore, appeal issues related to Amendment 11 (NOA, pp. 65-85) will not be addressed in this appeal of the Sugar Run Project (See Sub-Issue B1).

Issue D: Appeal Claims – Purpose and Scope – LRMP Amendment Claims [Organized as Item XI in the Appellants Appeal]

Response: Although the Appellants' allegations are not specific to the Sugar Run Project, they appear to challenge its Purpose and Scope based on their belief that Amendment 11 was inadequate.

The Project Record clearly demonstrates the purpose of this project is to “implement Forest Plan direction in the Sugar Run Project area by addressing site-specific needs and opportunities to move the project area from the existing condition towards the Desired Future Condition (DFC).” (ROD, p. 2). The FEIS identified how the Sugar Run Project would respond to this purpose.

The IDT consulted members of the public and internal staff during the development of the EIS to determine the scope of issues to be addressed and to identify the significant issues to be analyzed in-depth in the EIS. Carrying forward only those issues that are germane to the proposed action focuses the scope of analysis. CEQ regulations (40 CFR 1500.4(g)) encourage agencies to reasonably narrow the scope of an EIS. Scoping is one way the agency ensures its NEPA documents are “analytic” rather than encyclopedic.” (40 CFR 1502.2(a)). The limitation of the scope of the proposal was a logical exercise of the agency’s discretion to define the necessary action (36CFR 219.12(b)).

I find the Responsible Official did not arbitrarily narrow the scope of this project. Rather the project’s scope was designed to implement Forest Plan direction appropriate for these management areas (MA 3.0 and MA 6.1). The Appellants present no additional evidence that Amendment 11 to the Forest Plan was done illegally. Therefore, appeal issues related to Amendment 11 (NOA, pp. 85-94) will not be addressed in this appeal of the Sugar Run Project (See Sub-Issue B1).

Issue E: Threatened and Endangered Species (NOA, p. 94).

Sub-Issue E1: “LRMP Amendment Claims” [Organized as Item A in the Appellants’ Appeal] (NOA, p. 94).

Response: The Appellants appear to challenge the analysis of Threatened and Endangered Species in Amendment 11 to the Forest Plan. This issue was addressed in a September 25,

2000 appeal (See Sub-Issue B1). The Appellants present no additional evidence that Amendment 11 to the Forest Plan was done illegally. Therefore, appeal issues related to Amendment 11 (NOA, pp. 94-100) will not be addressed in this appeal of the Sugar Run Project.

Sub-Issue E2: “Sugar Run Timber Sale Claims – Threatened, Endangered, Sensitive, and Rare Species” [Organized as Item B in the Appellants Appeal] (NOA, p. 94).

Response: While the Appellants did not specifically raise these issues (e.g., Indiana bat, Northern long-eared bat, and Northern water shrew) during the 45-day comment period, they did outline some general analysis needs for all TE&S species, species of concern and rare species (Project Record, Appendix H, Comment 8-48, p. H-20).

1) Indiana bat (*Myotis sodalis*)

The Appellants contend, “*The Forest Service fails to conduct an adequate assessment of how the Sugar Run Project will affect the Indiana bat habitat.*” (NOA, p.100).

- “*...This [analysis] fails to look at the other key factors such as distribution of roost trees and constitutes arbitrary and capricious decision-making.*” (NOA, p. 100).
- “*... The Forest Service bases their assumptions on relative density of trees and fails to assess how different tree species might affect canopy closure levels [i.e., ozone damage to black cherry].*” (NOA, p. 100).

Response: The Forest conducted multiple surveys for Indiana bat to assess the density and distribution of the species, within and nearby the Sugar Run Project (FEIS, Appendix D, pp. 13-14). A total of nine summer roosting/foraging sites and one fall swarming site were surveyed within the project area and an additional 4 sites were surveyed within two miles of the project area.

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, Appendix D of the FEIS, pp. 14-15 and Tables 6-8. The analysis of current Indiana bat habitat used appropriate scientific techniques (FEIS, Appendix D, pp. 12-16). Pages 8-10 of Appendix D 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, Appendix D, pp. 16-28). 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.

In response to the Appellants' concerns about ozone damage and potential impacts to the species due to canopy closure levels, the FEIS (p. 128) points out that recent forest health monitoring concludes that ozone damage is not a major concern for woody vegetation on the ANF.

The selected alternative also complies with the Biological Opinion (BO) from the U.S. Fish and Wildlife Service and recovery objectives for the Indiana bat. On March 8, 2004, the U.S. Fish and Wildlife Service concurred with the Forest Indiana bat effects analysis for the Sugar Run Project, (Project Record, Book 3, Tab F-15). This Biological Opinion concludes that implementation of the Forest Service proposed standards and guidelines (i.e. Terms and conditions of the programmatic BO and conservation measures proposed with the Sugar Run project) would not result in additional adverse effects to the Indiana bat beyond those that were previously disclosed and discussed in the service's programmatic BO.

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

2) Northern long-eared bat (*Myotis septentrionalis*)

"The Forest Service fails to conduct an adequate assessment of how the Sugar Run Project will affect the northern long-eared bat habitat." (NOA, p. 101).

Response: Surveys conducted on the Allegheny National Forest since 1998 indicate that long-eared bats are widespread (FEIS, Appendix D, p.41). The BA (Appendix D, pp. 40-44) contains an assessment of the status and habitat conditions for the Northern long-eared bat, as well as a detailed evaluation of anticipated effects on its habitat from the proposed actions, including necessary mitigation measures. I find the FEIS adequately assessed the impacts of this project on the northern long-eared bat, contrary to the Appellants' assertions.

3) Northern water shrew

"The Forest Service fails to conduct an adequate assessment of how the Sugar Run Project will affect the northern water shrew's habitat." (NOA, p. 101).

Response: The northern water shrew is a species with suitable unoccupied habitat within the project area (FEIS Appendix D, p. 38; FEIS, p 230). The BA (Appendix D, pp. 47-48) cites literature to describe the shrews preferred habitat, which primarily includes

grass/sedge marsh or shrub zones along ponds and streams, and points out that this species habitat will be protected by standards and guidelines that meet or exceed Department of Environmental Protection's (Pennsylvania) Best Management Practices for addressing the control of non-point source pollution. The BA also found that the proposed action would have No Adverse Impact on the Northern Water Shrew. I find the FEIS addressed the effects on the northern water shrew appropriately. The Appellants' claims are not substantiated.

Issue F: Appeal Claims – One Integrated Program [Organized as Item XIII in the Appellants Appeal] – **LRMP Amendment Claims** (NOA, p. 101).

Response: The Appellants “re-allege” their claims made previously to Forest Plan Amendment 11 concerning the legality of the Allegheny National Forest Conservation Program. This issue was addressed in a September 25, 2000 appeal (See Sub-Issue B1). The Appellants present no additional evidence that Amendment 11 to the Forest Plan was done illegally. Therefore, appeal issues related to Amendment 11 (NOA, pp. 101-111) will not be addressed in this appeal of the Sugar Run Project.

Issue G: Appeal Claims – Continued Implementation without Modification [Organized as Item XIV in the Appellants' Appeal] – **LRMP Amendment Claims** (NOA, p. 111).

Response: The Appellants again challenge the analysis in Forest Plan Amendment 11. This issue was addressed in a September 25, 2000 appeal (See Sub-Issue B1). The Appellants present no additional evidence that Amendment 11 to the Forest Plan was done illegally. Therefore, appeal issues related to Amendment 11 (NOA, pp. 111-112) will not be addressed in this appeal of the Sugar Run Project.

Issue H: Appeal Claims – Sensitive Species [Organized as Item XV in the Appellants' Appeal] – **LRMP Amendment Claims** (NOA, p. 112).

Response: The Appellants challenge the analysis in Forest Plan Amendment 11 concerning Sensitive species. This issue was addressed in a September 25, 2000 appeal (See Sub-Issue B1). The Appellants present no additional evidence that Amendment 11 to the Forest Plan was done illegally. Therefore, appeal issues related to Amendment 11 (NOA, p. 112) will not be addressed in this appeal of the Sugar Run Project.

Issue I: Appeal Claims – Inadequate Environmental Impact Statement (EIS) [Organized as Item XVI in the Appellants Appeal] (**NOA, p. 112**).

Sub-Issue I1: LRMP Amendment Claims [Organized as Item A in the Appellants' Appeal] (NOA, p. 112).

Response: The Appellants challenge the EIS for Forest Plan Amendment 11 as being inadequate. This issue was addressed in a September 25, 2000 appeal (See Sub-Issue B1). The Appellants present no additional evidence that Amendment 11 to the Forest Plan was done illegally. Therefore, appeal issues related to Amendment 11 (NOA, pp. 112-125) will not be addressed in this appeal of the Sugar Run Project.

Sub-Issue I2: Sugar Run Timber Sale – Inadequate EIS [Organized as Item B in the Appellants' Appeal]. (NOA, p. 125).

The Appellants assert,

1. Landscape Corridor *“The Sugar Run 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...;
 - 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 Sugar Run 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 Sugar Run 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. 125).

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 Sub-Issue B2 (2).

The Sugar Run FEIS addressed the old growth issue. Refer to Issue A1 for further discussion.

2. Herbicides The Appellants claim, *“...The Sugar Run Final EIS provides no real analysis of the effects of herbicides. It includes inaccurate comparisons and relies upon irrelevant studies and information. (NOA, p. 130). The Forest Service failure to supplement this EIS [Understory Vegetation EIS], and at a minimum to include the best available science in their analysis is arbitrary and capricious.”* (NOA, p. 130).

Response: There is no mention of herbicides within the Appellants comments during the 45-day comment period.

The Project Record contains 8 studies on herbicide use, 2 separate Environmental Impact Statements, and Monitoring Reports for 1988 and 2000 (Project Record, Book 6, Tab 21). Contrary to the Appellants' assertions, the Responsible Official did analyze the effects of herbicides (EIS, pp. 326-330). The analysis specifically states that forest representatives have kept current on recent research (EIS, p. 327). The EIS further discusses 3 specific areas of review related to this project as well as the Understory Vegetation Management EIS.

- “Public comments submitted on several projects ... 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 UDSA-1997c ... 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 assessment and an ecological health risk assessment”

Analysis showed, “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. 327). Numerous research reports are also referenced in the Project Record (Book 6, Tab 21).

Furthermore, the Decision includes 17 specific mitigation measures related to herbicides (ROD, p. 11 and FEIS, Appendix E, pp. E-2, E-7, E-8, E-11, E-17, and E-18). These mitigation measures are designed to reduce or avoid impacts related to soils, vegetation, wildlife, and public health/safety. The effectiveness of these measures is discussed in the FEIS (p. 330). The analysis also incorporates the mitigation measures included in the Understory Vegetative Management FEIS (FEIS, p. 330 and Project Record, Book 6, Tab 21).

I find the Responsible Official made a reasoned decision based on the best available science related to herbicides. The Appellants' claims are unfounded.

3. Soils

The Appellants further contend,

- a) **Calcium/Magnesium Components** - “*The EIS doesn't even mention the calcium and magnesium issues.*” (NOA, p. 131). “*...The EIS acknowledges that the ANF has received excessive doses of nitrogen through acidic deposition... , but there is no analysis on how this will effect soil health.* (NOA, p. 131).

- 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. 131).
- 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. 131).
- d) **Soil Disturbance** - *“The Sugar Run 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. 131). *“The Forest Service recognizes in the Sugar Run 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. 132)

Response: The Appellants did not raise the issues of calcium/magnesium components, carbon storage/sequestration, doom assumption or increased soil disturbance as the result of cut-to-length harvesters in the 45-day comment period. The Appellants did raise the issue of recent findings regarding alkaline chemicals (mainly calcium) from the Forest Service’s Hubbard Brook Experimental Forest in the White Mountain National Forest.

Appendix H of the FEIS (pp. 40-41) points out misinterpretations of the Hubbard Brook findings and implementation of research to further investigate this issue. The FEIS also provides a lengthy discussion of carbon storage and nitrate saturation in the response to these comments (FEIS, Appendix H-26--H-27).

Calcium and magnesium are further discussed in the FEIS (p. 75). Reference is made to the 25 distinct soil units found within the Sugar Run project mapped by Churchill 1987 (FEIS, Book 10), and points out that the project area and the ANF is typically deficient of calcium and magnesium due to the lack of limestone. In addition, there is a general analysis of soil nutrient cycling and carbon storage in the Environmental Consequences section of the FEIS (pp. 78-86) under Soil Quality. Here the effects of each alternative are assessed and compared to those effects resulting from the actions of the other alternatives. In general the analysis found that although the actual level of impact on soil nutrients is unknown, leaving branches, leaves, and coarse woody debris onsite mitigates effects. (FEIS, p. 82).

The wording of the 15% threshold on soil disturbance found in the LRMP would indicate a guideline that, contrary to the Appellant’s assertion, is not a mandatory requirement. The 15% threshold is a level of disturbance at which further consideration should be given to the issue. In this case, mitigation measures are proposed and included in the FEIS for the Sugar Run Project. Mitigation measures (FEIS, Appendix E) have been used in the past and monitoring of their effectiveness has shown them to be successful (FEIS, pp. 95-96).

Although the selection of Alternative 7 would result in some soil disturbance and accelerated erosion, implementation of mitigation measures would minimize the amount of erosion moving offsite (ROD, p. 13). The FEIS also extensively addresses soil compaction in its cumulative effects discussion (FEIS, pp. 88-95). 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. I find Forest Supervisor Elliott was supplied with sufficient soils information to make a reasoned decision.

Issue J: Appeal Claims – NFMA Consistency Provision [Organized as Item XVII in the Appellants' Appeal] – **LRMP Appeal Claims (NOA, p. 132)**

Response: The Appellants challenge Forest Plan Amendment 11 as not meeting consistency provisions of NFMA. This issue was addressed in a September 25, 2000 appeal. The Appellants present no additional evidence that Amendment 11 to the Forest Plan was done illegally. Therefore, appeal issues related to Amendment 11 (NOA, pp. 132 - 136) will not be addressed in this appeal of the Sugar Run Project.

Issue K: Violations of the Forest Rangeland and Renewable Resources Planning Act [Organized as Item XVIII in the Appellants' Appeal]

Propagation of the Black Cherry Weed Species [Organized as Item A in the Appellants Appeal]. (NOA, p. 136). The Appellants contend, "...*These maintenance techniques to produce the Desired Future condition ..., composed primarily of even-aged logging practices, perpetuates an unnatural even-aged forest condition specifically to produce lucrative sawtimber is illegal under the Forest and Rangeland Renewable Resources Planning Act of 1974*" (NOA, p. 136).

Response: 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 Sugar Run Project harvesting system was not selected because it would result in the greatest dollar return (See Sub-Issue A3). The Record of Decision for the Sugar Run FEIS (pp. 12 and 13) states eleven specific reasons for the selection of Alternative 7. 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. 12).

Furthermore, the Sugar Run 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 (providing a land condition with vegetation predominantly made up of mature or overmature hardwood forests). This FEIS documents that selection of Alternative 7 will move the project area closer to the desired conditions as described in the Forest Plan. The Project Record (Book 6, Tab 11) contains further information related to the selection of even-aged management.

In summary, the FEIS and associated ROD fully disclose the fact that in MA 3.0 lands the objective is to manage for species that are not tolerant of shade (e.g., black cherry, red maple and yellow poplar). Of the forested acres on MA 3.0 lands, 32 percent are comprised of this Allegheny hardwood type. Nevertheless, other factors were considered in the selection of Alternative 7. I find no violation of the Forest Rangeland and Renewable Resources Planning Act

Issue L: Violations of the Multiple-Use Sustained Yield Act (MUSYA) [Organized as Item XIX in the Appellants Appeal]

The Appellants claim, “*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. 138).

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

The Allegheny National Forest LRMP places an emphasis on high quality Allegheny hardwood and oak sawtimber through even-aged management in MA 3.0 (LRMP p. 4-82). This management does not preclude using the same area of land for other land uses, such as old growth, wildlife habitat, and recreation. This emphasis is carried into the purpose and need for the Sugar Run Project (Project Record, Book 1, Tab A; FEIS, p. 3; and Project Record Book 1, Tab B-1; ROD, p. 2). The purpose and need emphasizes; improvements in plant diversity, improvements in wildlife habitat, maintenance and improvements in oak and Allegheny hardwood forest types, providing wood, improvements in recreational hiking experience, reducing impacts to water quality, and protection of prehistoric sites. The EIS also considers old growth as part of its analysis (FEIS, p. 141).

The Forest Supervisor considered all relevant laws (including the Multiple Use Sustained Yield Act of 1960), and determined that the project and its necessary mitigation measures meets all applicable laws, regulations and land policies (Book 1, Tab B-1; ROD, p. 24). Therefore, I conclude this projects emphasis on 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.

The Appellants further assert, (NOA, p. 138).

The Sugar Run EIS fails to consider an alternative that implements direction provided for in management plans for state and federal threatened and endangered species [i.e., yellow-bellied flycatcher].” [Organized as Item A in the Appellants Appeal]. (NOA, p. 138).

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

Ensuring habitat for threatened and endangered species is certainly an important priority, but not the only goal the Allegheny National Forest is required to pursue. 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 (FEIS, Appendix D, pp. D6-D37; FEIS pp. 266-268), Regionally Sensitive Species (FEIS, Appendix D, pp. D38-D62; FEIS pp. 266-268), as well as State and Forest Species of Special Concern (FEIS p. 268). As a result, implementation of Forest-wide standards and guidelines and site-specific mitigation measures outlined in Appendix E (FEIS) 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 Forest Plan direction in MA 3.0.

Issue M: Failure to Consider Impacts to Proposed Wilderness, Natural, and Historic Areas
[Organized as Item II in the Appellants Appeal]

The Appellants claim, “*The failure to consider the Sugar Run Wilderness, Sugar Run Natural Area, and Colosmos Historic Area in the development of alternatives for the Sugar Run FEIS violates the NEPA which mandates that a reasonable range of alternatives be developed using the best available scientific information*” (NOA, p. 138). “*The failure to consider the Sugar Run Wilderness, Sugar Run natural Area, and Colosmos Historic Area when considering direct and indirect effects of the proposed timber sale (as well as part, present, and future cumulative effects) violates the National Environmental Policy Act*” (NOA, p. 138).

Response: The Allegheny National Forest Land and Resource Management Plan (Forest Plan) gives direction on how the lands in question should be managed. The primary purpose of MA 3.0 (LRMP, p. 4-82) is to provide a sustained yield of high-quality hardwood and oak saw timber through even-aged management while providing a setting for all types of developed and dispersed recreation in a motorized environment. MA 6.1 places emphasis on maintaining or enhancing scenic quality while providing for a variety of dispersed recreation activities in a semi-primitive motorized setting. (LRMP, p. 4-110). The Forest Plan does not direct management in this area for Wilderness, Natural or Historic Areas. The Appellants are referring to recommendations for new area considerations (Copies of documents were included with this appeal). Decisions to recommend new land allocations are made during the development or revision of a Forest Plan (CFR 219.17, 219.18, 219.25). I find the Responsible Official violated no law, regulation or policy by not considering these proposals at this site-specific level of analysis.

RECOMMENDATION:

After reviewing the Project Record for the Sugar Run Project, and considering each issue raised by the Appellants, I recommend Forest Supervisor Kevin Elliott's Record of Decision of April 2, 2004 be affirmed.

/S/ JAMES E. DENONCOUR
JAMES E. DENONCOUR
Appeal Reviewing Officer
Acting Forest Supervisor
Hoosier National Forest

cc:
Allegheny NF:
Responsible Official, Kevin Elliott
NEPA Coordinator, Jim Apgar
Lois Demarco, Heather Whittier
Appellants, Jim Bensman and Heartwood
Jim Kleissler