



United States  
Department of  
Agriculture

Forest  
Service

Hiawatha National Forest  
Supervisor's Office

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File Code: 1570-1

Date: March 1, 2002

**CERTIFIED RECEIPT REQUESTED**

Mr. Tim Flynn  
Sierra Club  
P.O. Box 308  
Harbor Springs, MI 49740

RE: Appeal of the Decision Notice and Finding of No Significant Impact for the Lake Superior Highlands Project Environmental Assessment, St. Ignace and Sault Ste. Marie Ranger Districts, Hiawatha National Forest, Appeal 04-09-10-0015 A215

Dear Appellants:

Pursuant to 36 CFR 215.18, I have reviewed the appeal record for District Ranger Stevan J. Christiansen's Decision Notice and Finding of No Significant Impact for the Lake Superior Highlands Project Environmental Assessment signed on December 3, 2003. I have also considered the recommendation of the Appeal Reviewing Officer (ARO) Harv Skjerven, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Stevan J. Christiansen, and the issues raised in your appeal filed on January 20, 2004. The Appeal Reviewing Officer's recommendation is enclosed with this decision for your information.

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.

After careful review of the Project File and the appeal, I concur with the Appeal Reviewing Officer's analysis and findings regarding your specific appeal issues. To avoid repetition, I adopt his rationale as my own and refer you to the enclosed Appeal Reviewing Officer recommendation for further detail.



DECISION

It is my decision to affirm District Ranger Stevan J. Christiansen's Decision Notice for the Lake Superior Highlands Project Environmental Assessment, Hiawatha National Forest. Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Thomas A. Schmidt  
THOMAS A SCHMIDT  
Appeal Deciding Officer

Enclosure

cc:  
Responsible Official, Stevan J. Christiansen  
NEPA Coordinator, Steve Bateman  
Hiawatha NF, Lyn Hyslop  
ARO, Joel H. Skjerven  
Regional Office, Patricia R. Rowell



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**File Code:** 1570-1

**Date:** February 23, 2004

**Route To:**

**Subject:** Appeal of the Decision Notice and Finding of No Significant Impact for the Lake Superior Highlands Project Environmental Assessment, St. Ignace and Sault Ste. Marie Ranger Districts, Hiawatha NF, Appeal 04-09-10-0015 A215 (Appellants Carol Ward and Sierra Club)

**To:** Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Sierra Club and Carol Ward, Tim Flynn, representative, for the Decision Notice and Finding of No Significant Impact for the Lake Superior Highlands Project (LSHP) Environmental Assessment on the St. Ignace and Sault Ste. Marie Ranger District, Hiawatha National Forest. District Ranger Stevan J. Christiansen was the Responsible Official for this decision. His Decision Notice was signed on December 3, 2003.

My review was conducted pursuant to 36 CFR 215, amended June 4, 2003. 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 Hiawatha National Forest. My review recommendation is based upon review of the project file and appeal record, including but not limited to the scoping letter, public comments, Decision Notice (DN) and Finding of No Significant Impact (FONSI).

The Appellants raised five issues in this appeal of the Lake Superior Highlands Project decision. These appeal points will be addressed in the order in which they were presented in the appeal and have been subdivided to address specific points.

**Issue 1. Failure to Analyze a Range of Alternatives In Regard to Old Growth Design.** *The selected alternative and Alternative 3 respond to old growth in the exact same way. There is no basis to compare whether the selected alternative is the best allocation of resources, whether it adequately represents the natural communities of the LTA, nor whether it is in fact the most favorable designated old growth system. This violates NEPA and the Forest's old growth agreement of 1995.*

**Response:** NEPA requires federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts of alternative uses of available resources (42 U.S.C. 4332). The Council on Environmental Quality (CEQ) regulations implementing NEPA discuss alternative development. Agencies are to rigorously explore and objectively evaluate all reasonable alternatives, and briefly discuss the reasons for eliminating alternatives from detailed study (40 C.F.R. 1502.14(a)). While regulations require that a range of alternatives be analyzed, the no action alternative is the only alternative specifically required as an option to the proposed action (40 C.F.R. 1502.14(d)).



There is no set number of alternatives required in order to reflect a reasonable range. Agencies have discretion to determine appropriate alternatives based upon the purpose of the proposal. 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), aff'd 61 F.3d 900 (4<sup>th</sup> Cir. 1995) (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), aff'd 28 F.3d 753 (8<sup>th</sup> Cir. 1994) (NEPA does not require an agency to consider alternatives that do not meet the purpose of the proposed action).

The alternatives are developed by the Interdisciplinary Team to address the purpose and need for the project and to address major issues identified through internal and external comments (scoping / public involvement). The Environmental Assessment (EA) (sections 1.2 and 1.3) discusses the purpose and need for the project. The purpose of this project is “to move toward the Desired Future Condition” as described in the Forest Plan. Needs identified in the EA (section 1.3) include declining forest vegetation, need for products at mills, declining old growth characteristics, inadequate access to Avery Lake, and gravel shortage. Major issues identified (EA, section 1.7.2) were associated with the harvesting of timber, road activities, riparian vegetation health, and gravel operations. The EA describes the rationale for development of the range of alternatives and then describes each alternative in detail (section 2). Alternative 2 (proposed action) harvests mature and high risk stands, and thins overstocked stands to improve stand health and vigor. Stands with little or no old growth characteristics would be removed and stands with old growth characteristics would be added to the system. Alternative 3 includes similar silvicultural treatments, but would thin 744 less acres than Alternative 2. Both Alternatives 2 and 3 would change old growth designation to stands that are older and exhibit greater species diversity. In addition to the three alternatives analyzed, the EA (section 2) discusses “alternatives considered but not analyzed.” Two additional action alternatives were considered but were not further analyzed for a variety of reasons, including the fact they did not meet the project's Purpose and Need.

The Appellants contend that the Forest Service did not analyze a full range of alternatives. Although Alternatives 2 and 3 address old growth the same way, there are differences between these alternatives as set forth above. Upon review of the project file, I find the range of alternatives developed for the Lake Superior Highlands Project Environmental Assessment to be adequate to address the Purpose and Need for the project.

#### **Issue 1(a). Response to Comments on Alternatives is in Error.**

***The Appellants claim, “The line officer stated that more alternatives were not developed because there were not relevant issues demanding these alternatives that were raised in scoping.” The Appellants further claim there were relevant issues raised during scoping and comments on the EA that would have led the Forest towards a far greater “range”. One example is a larger more functional old growth system that moves toward a larger scale analysis and management at a landscape or watershed level.”***

**Response:** Three comments related to old growth were received during the scoping process, ranging from a desire for less old growth to a request for more old growth (Project File B.2.1, comments B-84, 98 and 116). These comments, as well as the issue of old growth stand selection raised during the 30-day notice and comment period were adequately addressed in the Lake Superior Highlands Project Environmental Assessment, response to comments, comment #13 (page 11). It explains that Compartment 19 Stand 4 (C19 S4) was deleted from old growth because it is pole timber with little species diversity. It was originally designated as old growth because it was next to the North Country Trail (NCT). However, the trail was re-routed and this stand is no longer adjacent to the NCT. Compartment 19 Stand 10 is the same as C19 S4, except it is also linear and next to private property. Also, the stands in C19 were deleted in order to add acreages to old growth in C62, 99, and 100. The acreages added to old growth in these compartments better represent old growth characteristics than the acreages that were dropped from old growth including the stands in C19. The example given in the appeal (a larger more functional old growth system) was not brought up as an issue during scoping, nor was it brought up during the 30-day notice and comment period on the LSHP EA.

Information regarding old growth as it relates to issue development and alternative development can be found in the project file #B.2.46, response from Carol Ward, Project File #C.1.1, Project Initiation Letter (3/24/00), Lake Superior Highlands Project EA, Appendix H, Issues 9-14 and 18, DN and FONSI for Lake Superior Highland Project EA, Response to Cornett comment #2.

My review of the Project Record indicates the Appellants' claims are unfounded. The Responsible Official considered all relevant issues in the development of alternatives.

**Issue 1(b). The DN Fails to Meet Purpose and Need with Regards to Old Growth Design Changes.**

**The Appellants state, “*The Purpose and Need is to encourage older forests for species dependent on this condition. The selected alternative was never analyzed for needs of species dependent on old growth conditions.*”**

**Response:** Section 3.6 of the EA both addresses and evaluates the effects to old growth by alternative. Implementation of Alternative 1 would result in no change to the present pattern of designated old growth within the project area. Spatially, the designated old growth is found in 25 patches, and average patch size is approximately 41.6 acres. Three patches are greater than 100 acres. Alternatives 2 and 3 have identical old growth proposals. Spatially these alternatives would place the designated old growth in 13 patches, and average patch size is approximately 79.5 acres. Four patches would be greater than 100 acres. Hence, the action alternatives provide larger contiguous stands of old growth habitat, which meet the purpose and need of this proposal. The Decision Notice p.9, describes how the selected alternative best meets the purpose and need by providing stands that exhibit old growth characteristics and provide habitat for species dependent on these characteristics, i.e. older average age and larger size.

Information regarding old growth as it relates to issue development and alternative development can be found in the EA Section 3.6.2, Tables 3-12 through 3-15, p. 3-40, and the DN and FONSI for Lake Superior Highlands Section III-C-c. The effects on old growth habitat are addressed in

the EA, (pp. 3-38 to 3-42). It concludes by noting that both action alternatives would meet the objectives (purpose and need) by removing stands with little to no old growth characteristics from old growth designation, and adding stands with old growth characteristics to the system. (EA, Page 3-41). By assessing the effects on old growth habitat, the effects on old growth species are assessed as well.

After reviewing the project file and comparing the purpose and need to the Decision Notice, I find the Responsible Official adequately analyzed old growth conditions, contrary to the Appellants' claim.

#### **Issue 1(c). Lack of Adequate Survey for Current Old Growth Areas.**

**The Appellants contend, “Many stands within the project boundary meet the definition of old growth as developed by the Forest. Yet the DN selects areas meeting the Forest’s old growth definition of harvest and therefore selects stands that are ecologically critical areas. Yet the DN states that there are not ecologically critical areas. This part of the DN is in error. The Forest also violated its Plan because the Plan makes clear that projects should be looking for old growth conditions during analysis.”**

**Response:** Many examples of forest stands that meet the definition for old growth the Appellants are referring to have not been shared with the Forest Service in relation to the Lake Superior Highlands Project. The best information available at the time regarding old growth as it relates to surveys and the need for change to the old growth system can be found in the Project File, #D3.2.4, stand by stand discussion of additions and deletions to the old growth system for Lake Superior Highlands EA; Lake Superior Highlands EA, Section 3.6.

Based upon my review of the project record and Forest Plan, I find that there is no violation of the Forest Plan, and that the Responsible Official is in fact seeking to improve old growth conditions through this proposal.

#### **Issue 1(d). Alternative Old Growth Designs were Available, but Unnecessarily Precluded.**

**The Appellants assert, “Alternative old growth designs were available, but unnecessarily precluded. The decision maker used the fact that the Forest had met the minimum standard to preclude additional acres from consideration in design of the old growth system. This limited the scope of alternatives considered in violation of the Forest Plan and NEPA.”**

**Response:** Alternative old growth designs (designating additional old growth) were not developed for this project because the Forest exceeds its goals of designated old growth on suited lands. Since 1991 when the Forest Old Growth Team developed a landscape level prototype of old growth for the Forest, the inventory of designated old growth on suited lands has increased from 51,988 acres (M&E Ten Year Summary) to 58,141 acres in 2000 (EA Table 3-16). In addition, the Forest also maintains 256,861 acres of old growth on unsuited lands (i.e. wilderness, riparian areas, etc.) (M&E Ten Year Summary).

Information obtained since development of the 1991 prototype showed that stands containing larger average diameter trees, in larger contiguous areas (EA Tables 3-14 and 3-15) were available in the project area. For these reasons, the Responsible Official elected to substitute stands designated as old growth within the project area, while reducing the total amount of designated old growth by a miniscule (6 acres) amount.

Information regarding old growth as it relates to minimum requirements can be found in the Hiawatha National Forest Land and Resource Management Plan, Forest-wide standards and guidelines IV-47; Project File, #D.3.2.4, Initial Old Growth Analysis, 12/14/00, prepared by M. Sjogren.

For these reasons, I find that the Responsible Official did not limit the range of alternatives by precluding additional old growth acres. The issues identified and analyzed in regards to silvicultural treatments drove the range of alternatives.

After reviewing the project file for the Lake Superior Highlands Project and considering each issue raised by the Appellants, I recommend that District Ranger Stevan J. Christiansen's Decision Notice signed on December 3, 2003, be affirmed.

/s/ Joel H. Skjerven  
JOEL H. SKJERVEN  
Appeal Reviewing Officer

cc: Thomas J Eiseman, Patricia R Rowell, Stevan J Christiansen, Lyn Hyslop (Regional Office)