United States Department of Agriculture | **Forest Service** | **Ottawa National Forest Supervisor's Office** | **E6248 US2**
Ironwood, MI 49938
(906) 932-1330
(906) 932-0122 (FAX)
(906) 932-0301 (TTY)

File Code: 1570-1
Date: June 17, 2004

Mr. Mark Donham
Heartwood
Box 308, RR1
Brookport, IL 62910

Re: Appeal of the Record of Decision for the Baltimore Vegetative Management Project and Final Environmental Impact Statement, Ontonagon and Bergland Ranger Districts, Ottawa National Forest, Appeal 04-09-07-0021 A215

Dear Mr. Donham:

On May 3, 2004, you filed a notice of appeal pursuant to 36 CFR 215.18. District Ranger Bruce Prud'homme signed his Record of Decision for the Baltimore Vegetative Management Project Final Environmental Impact Statement on March 16, 2004. The legal notice for the decision was published on March 19. My decision is based upon the appeal record and the recommendation of the Appeal Reviewing Officer (ARO) District Ranger Chris Worth, Chequamegon-Nicolet National Forest, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Bruce Prud'homme, 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 Baltimore Project includes vegetative management on approximately 5,525 acres producing an estimated 52.2 million board feet of timber products. Other aspects of the project include hardening and improving dispersed recreation parking and camping sites under the Ottawa 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.

DECISION
After review, I concur with the Appeal Reviewing Officer's analysis and findings regarding your specific appeal issues (e.g., Wild and Scenic Rivers, Aspen Management, Mitigation Measures, ATV and ORV Use, Optimality and Appropriateness, Threatening Viability of Goshawk and Red-Shouldered Hawk, Forest Fragmentation, American Bittern, Ottawa Plan and Carbon Sequestration). 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 Bruce Prud'homme's Record of Decision for the Baltimore Vegetative Management Project Final Environmental Impact Statement on the Ottawa National Forest.

This project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR 215.9(b)).

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

Sincerely,

/s/ Robert Lueckel
ROBERT LUECKEL
Forest Supervisor

Enclosure

cc:
Responsible Official,
District Ranger Bruce Prudhomme
ARO, Chris Worth
RO, Patricia Rowell

United States Department of Agriculture | **Forest Service** | **Chequamegon-Nicolet National Forests**
Washburn Ranger District
P.O. Box 578
Washburn, WI 54891
715-373-2667 Voice & TTY
715-373-2878 FAX

File Code: 1570-1 **Date:** June 17, 2004
Route To:

Subject: Appeal of the Record of Decision for the Baltimore Vegetative Management Project Final Environmental Impact Statement, Ontonagon and Bergland Ranger Districts, Ottawa National Forest, Appeal 04-09-07-0021 A215 (ARO)

To: Robert Lueckel, Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Heartwood, Mark Donham, representative; Northwoods Wilderness Recovery, Douglas R. Cornett, representative; Steven C. Garske, individual; Al Warren, individual; and Henry Peters, individual for the Baltimore Vegetative Management Project on the Ontonagon & Bergland Ranger Districts of the Ottawa National Forest. District Ranger Bruce Prud'homme signed this Record of Decision on March 16, 2004 and the legal notice of the decision was published on March 19, 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 Ottawa 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 May 11, 2004, John Strasser, acting on behalf of the Responsible Official, Bruce Prud'homme, confirmed in a telephone conversation with Mark Donham, acting as Lead Appellant, that the Appellants did not wish to meet for an Informal Disposition meeting but would rather continue with the appeal.

Appeal Issues

The Appellants raised 11 main issues in this appeal of the Baltimore Vegetative Management Project Decision. These appeal points will be addressed in the order they were presented in the appeal.

Issue 1: ***"Such Massive Logging in a Wild and Scenic River Watershed Violates WSRA; EIS is Inadequate in Analyzing Cumulative Impacts and is not Hard Look"*** (NOA, p. 4).

The Appellants further allege:

- "*The LRMP* [Land and Resource Management Plan] *expired in 2001, and the standards and guidelines for Wild and Scenic Rivers were implemented 6 years before the Michigan Wild and Scenic Rivers Act became law in 1992. No management plans are in place for*

any Ottawa Wild and Scenic River segment, despite the fact that plans were to be in place in 1995." (NOA, p. 4).

- "*…The cumulative impacts analysis … fails to adequately consider the impacts of extreme increased sedimentation and fragmentation in the watershed … with other recently completed or ongoing sales such as the West Hide II sale, … Choate sale, …, and the Slate sale."* (NOA, p. 4).

- "*…There is inadequate support in the record of the effectiveness of mitigation measures to protect the river from significant cumulative sedimentation from the several logging projects in the same vicinity and in the same watershed."* (NOA, p. 5).

- *"The Baltimore EIS does not meet the 'enhance and protect' standard* [WSRA] *and it violates NEPA and NFMA for not substantively having guidelines to protect the stream and not considering all the potential impacts."* (NOA, p. 5).

- *"…There is no indication on the record that the agency cooperated with the EPA or any other agency for the purpose of eliminating or diminishing pollution into the Ontonagon River."* (NOA, p. 5).

Response: Management Plans/Standards and Guidelines: The project area contains portions of Management Areas (MA's) 8.1 (Designated Wild and Scenic Rivers – West Branch Ontonagon River and Middle Branch Ontonagon) and 9.2 (Wild and Scenic Study Rivers – South Branch Ontonagon). Contrary to the Appellants' claims, these MA's do have standards and guidelines that provide for the protection and management of the designated river corridors (EIS, pp. 3-95 to 3-96). The Ottawa Forest Plan was amended to incorporate these standards and guides on May 28, 1994, two years after the passage of the Michigan Wild and Scenic Rivers Act. These standards and guidelines are consistent with the direction in that Act (LRMP, p. IV-187 and IV-202).

Furthermore, the Selected Action (Alternative 3 with modifications) contains no harvest activity within any of the designated Wild and Scenic Rivers or Study River corridors (ROD, p. 21). The only activity proposed within the ¼ mile designation consists of road decommissioning and stream improvement crossings. This work will be beneficial by reducing erosion and sedimentation (ROD, pp. 21-22; Project Record, Volume C, Tab C-175, "Aquatics Specialist Report").

Cumulative Effects: The Appellants express a concern about an inadequate cumulative effects analysis. They claim the Responsible Official did not evaluate the impacts (e.g., sedimentation and fragmentation) to the designated Wild and Scenic Rivers for all vegetative management projects (past, present, future) within the watershed. I cannot concur with this assertion. My review of the Project Record indicates the Interdisciplinary Team (IDT) completed an extensive analysis on vegetation (EIS, pp. 3-21 to 3-22), wildlife (EIS, pp. 3-37 to 3-39), soils (EIS, pp. 3-60 to 3-62), aquatics (EIS, pp. 3-69 to 3-75) and more specifically to the quality, free-flowing condition and Outstandingly Remarkable Values of the Wild and Scenic Rivers (Project Record, Volume C, Tab C-175, pp. 22-24, "Aquatics Specialist Report").

Most notability, the analysis area for cumulative effects on Wild and Scenic River values encompassed over 85,000 acres and included six 6th order subwatersheds. This analysis boundary was chosen because it would best reflect potential impacts. The analysis also included a look at private lands (corporate, private, and state). This review indicated there would be no unreasonable diminishment of water quality, free-flowing condition or changes in Wild and Scenic River values. Further, sediment contribution to some streams would be reduced due to road decommissioning and improved stream crossings. Similarly, the same effects would occur due to a reduction in road miles through wetlands. (Project Record, Volume C, Tab C-175, pp. 22-24, "Aquatics Specialist Report").

Some of the same claims made by the Appellants during the 45-day comment period were also carried forward in this appeal. The Responsible Official notes (Appendix I, "Response to Public Comments on the EIS", Comment 66 and 72) that the Choate sale does not contain over 3,000 acres of clearcuts, rather only 820 acres. He also states the sale is not located within the same 6th level watershed. The response further details the rationale for the cumulative effects analysis area based on research by E. S. Verry (Project Record, Volume C, Tab C-175, pp. 25+-, "Aquatics Specialist Report") and corrects the Appellants' assertion that many sales are within the analysis area and were not considered in the evaluation.

Mitigation: As mentioned previously, the project analysis is tiered to the Ottawa National Forest LRMP (1986), which contains standards and guidelines for the protection of wetlands, Wild and Scenic Rivers and other resources. The ROD outlines design criteria to mitigate potential impacts (ROD, Appendix 2, pp. 2-1 to 2-10). This includes Best Management Practices (BMPs) recommended by the Michigan's Department of Natural Resources and standard and special Forest Service timber sale contract provisions. Since potential impacts to the study and designated river segments occur throughout the project area, the mitigation measures outlined for all activities apply directly to the tributaries of those river segments that are outside the corridors.

Chapter 3 of the EIS provides site-specific analysis of project effects. Specifically, the affects of road development and soil erosion are discussed on pages 3-57 to 3-60 (EIS). These effects projections are based on scientific literature, studies or proven management practices, as well as professional knowledge and experience of the specialists involved (ROD, Appendix 2, p. I-37, Comment 65). In addition, the EIS states (p. 3-57) that the practices, standards, and guidelines for this project were employed successfully on past projects to reduce or eliminate potential adverse effects of timber harvest activities. This is detailed further in the Project Record (Project Record, Volume B, Tab B-63). Equally important, the EIS details a monitoring program that will assess the effectiveness of planned mitigation (EIS, p., 2-20).

Cooperation: The intent of the Wild and Scenic Rivers Act Section 1(b) is to protect the water quality of rivers. The Act specifies that river-administering agencies cooperate with EPA and state water pollution agencies to eliminate or diminish water pollution (Section 12(c)). The EPA administers activities primarily under the Clean Water Act (CWA) and Safe Drinking Water Act for Wild and Scenic Rivers. The water quality standard requires compliance with the Clean Water Act or non-degradation of existing quality, whichever is more protective. Implementation of the CWA programs for Wild and Scenic River administration are delegated to state agencies and tribal governments, in this case to the Michigan Department of Environmental Quality

(MDEQ). The primary implementation mechanism is the State Section 319 (CWA) non-point source management program for those entities engaged in agricultural and forestry practices. In this case, the MDEQ has developed Best Management Practices that are being implemented as designed for the Baltimore Project. Interagency cooperation occurs at this programmatic level. Notwithstanding these facts, EPA did contribute comments on this project during the scoping period (Project Record, Volume A, Tab A-88) and reviewed the Draft EIS (Project Record, Volume A, Tab A-144).

I agree with the conclusion by the Responsible Official that this project "…will not result in any unreasonable diminishment of water quality, free-flowing conditions, or the Outstandingly Remarkable Values for which these rivers were designated or are being studied." (ROD, p. 22). It's clear from the record, that in accord with the requirements of Section 7, the project will not invade or diminish the scenic or recreational, and fish and wildlife values of the West Branch, Middle Branch or the South Branch of the Ontonagon Rivers. In addition, the cumulative effects and mitigation measures of the proposed actions are adequately displayed in the EIS, ROD, and Project Record, as required by NEPA. I find no violation of law, regulation or policy as claimed by the Appellants.

<u>Issue 2</u>: *"Excessive Logging of Aspen Keeps Early Successional Forest Cover at Levels Far Higher Than Natural Processes Allow"* (NOA, p. 6).

The Appellants claim, *"The management of Aspen in the Ottawa National Forest and upper Great Lakes National Forests keeps levels of young Aspen far higher than natural processes allow."* (NOA, p. 6). *"…The Baltimore EIS makes no regional assessment in its cumulative impacts analysis of this on a regional level."* (NOA, p. 6). *"Failure to do so is a violation of NEPA."* (NOA, p. 6).

Response: The Appellants did not surface this concern during the 45-day comment period.

The Selected Action is consistent with Forest Plan direction. Its implementation will help achieve Forest-wide goals and objectives for maintaining "a moderate to high acreage of aspen type and thermal cover in areas of the Forest with the greatest potential for improving habitat for deer and grouse, and increasing wildlife-based recreation (LRMP, IV-3 and IV-5). It also follows specific management area direction for MA 1.1 that "emphasizes early successional community types within a roaded natural motorized recreation environment (LRMP, IV-103). The Selected Action best addresses two of the major issues in the development of this project: aspen management and a balance of softwood species (conversion of some stands to pine and other species) (EIS, pp. 2-2 to 2-3). By treating some existing aspen stands for conversion, other Forest objectives can be met, including species diversity and maintaining visual quality objectives.

The Baltimore project area contains the largest portion of contiguous aspen on the Forest. Nearly half of this aspen is between 60 and 70 years old (EIS, p. 3-2). These aspen stands are in declining health (Fifteen Year Review, Ottawa National Forest, FY 2001 Monitoring and Evaluation Report, Revised June 2003, p. 67). Without active forest management aspen will

decrease as a forest-type and those wildlife populations associated with this habitat will decline correspondingly (Ibid, p. 29). "Aspen regeneration provides niches for over 20 species of mammals, from the white-tailed deer to the deer mouse. Aspen regeneration is used by over 30 species of birds…. It is an important vegetative component to be maintained…." (Ibid, p. 65).

In their analysis, the IDT took into account the historic levels of aspen. Survey records date back to the 1800's (Project Record, Volume, C, Tab C-2). Individual stand maps were reviewed from 1947 surveys (Project Record, Volume C, Tab C-1). This area did have historically high concentrations of aspen. Nevertheless, the Responsible Official recognized that the Forest Plan, to meet goals including the social value of aspen as upland game habitat, directs maintenance of a larger percentage of aspen than in the past (ROD, p. 11). In addition, the Forest adequately analyzed the impacts of this action cumulatively including impacts to vegetation (EIS, p. 3-22), wildlife (EIS, p. 3-37), soils (EIS, p. 3-60), aquatics (EIS, p. 3-73), rare and non-native plants (EIS, p. 3-83), and recreation/visuals (EIS, p. 3-90 and 3-92). Specifically, the EIS uses a technique called "open area analysis" (assessment of open land after logging) to measure cumulative effects to aquatic resources. Results indicated no changed flow characteristics to stream channels and fish habitat from the Selected Action (EIS, p. 3-71).

The Appellants do not portray an entirely accurate picture of aspen in the Great Lakes States or on the Ottawa National Forest. Findings from the Great Lakes Assessment (GLA), the same document they reference in the appeal, conclude that aspen and aspen-birch forest types are steadily decreasing. "Over a 58-year period in Michigan (1935 to 1993), aspen-birch acreage has declined by 37%" (ROD, p. 11). The GLA report also points out that intensive management will be required to maintain the aspen ecosystem.

Out of approximately 1 million acres of National Forest land on the Ottawa, only 20% is classified as aspen-paper birch (Fifteen Year Review, Ottawa National Forest, FY 2001 Monitoring and Evaluation Report, Revised June 2003, p. 50). Of the aspen forest-wide that is over 60 years of age (of most concern in this project), "only about 60% is on sites within management areas where active timber harvesting may occur. The remaining acreage will succeed naturally to late successional types." (Ibid, p. 28). Finally, the degree of aspen management applied to date is below Forest Plan projections (Ibid, p. 102). The goal of this project is to have aspen distributed more evenly over all age classes, with fewer trees greater than 70 years of age (EIS, Appendix I, "Response to Public Comments on the EIS, Comment 48, p. I-26).

My review of the Project Record shows the Forest adequately evaluated the impacts of planned aspen management. The Responsible Official properly addressed the issue, contrary to Appellants' claims. No regional assessment across the entire Great Lakes Region is necessary. I find no violation of NEPA.

Issue 3: ***"The Mitigation Measures and Mitigation Monitoring do not comply with NEPA"*** (NOA, p. 6).

The Appellants contend,

- *"36 CFR 219.27 … requires that all management prescriptions shall conserve soils and water resources and not allow significant or permanent impairment of the productivity of the land."* (NOA, p. 6). *"The documentation in the EIS as to how the agency is going to comply with these section is totally inadequate."* (NOA, p. 7).

- *"There is no reference to any studies, reports, or past monitoring that indicates that simply utilizing the Michigan BMP's will stop degradation of the watersheds"* (NOA, p. 7).

- *"…The EIS is lax in its assessment of the impacts of this logging on soils and on the long term productivity of the soil, and has no credible monitoring plan to insure that the mitigation works and that impacts are truly being mitigated."* (NOA, p. 7).

- *"…The EA* [EIS] *doesn't indicate how many of the skid trails will be across such soils* [soils with severe erosion hazards]*."* (NOA, p. 7). *"There is no requirement in the protective measures to keep a certain percent of the ground covered by litter on skid trails.* (NOA, p. 7).

- *"While the EIS does acknowledge some impacts from compaction,* … [it] *does not address some of the key compaction impacts* [e.g., compaction and disturbance or removal of surface organic horizons]*."* (NOA, p. 7-8).

- *"One of the assertions* [in the EIS] *is that the compaction won't last long. However, again, that is an unreferenced, conclusory assertion."* (NOA, p. 8).

- *"Another factor that is not covered sufficiently in the EIS is the impact of the roadwork on soils.* (NOA, p. 8). *The EIS brushes off the cumulative impacts…."* (NOA, p. 8).

- *"It is important to document the importance of mychorrihizal associates to the long term productivity of the forest, something that the EIS completely fails to do."* (NOA, p. 9).

- *"…This massive project will increase significantly the risk for flooding in the project area.* (NOA, p. 9). *Yet this is not considered in the EIS and there is no mitigation to counter it."* (NOA, p. 9).

- *"…The Baltimore project will permanently adversely affect the long term productivity of the land and contribute to increased flooding."* (NOA, p. 9). *"There is not a credible monitoring plan to insure that these work."* (NOA, p. 9). *"There is no information in the EIS as to where these activities* [impacts of heavy machinery and tree removal] *will occur."* (NOA, p. 9).

Response: 36 CFR 219.27: The language attributed to 36 CFR 219.27 appears to be misstated. My review shows the discussion relates to special designations, specifically Congressionally designated areas and wilderness review areas. There are no citations in CFR 219 that include the language referenced by the Appellants.

It should be noted the Aquatic Specialist Report (8/01/03, Project Record, Tab C-175) does include specific analysis of "proximity risk" within the Affected Environment. This includes describing the proximity of roads to streams. In addition, the EIS (Appendix C) and the ROD (Appendix 2) contain specific design criteria that buffer riparian areas in individual compartments and stands.

BMPs and Monitoring: Sections 3.5 and 3.6 of the EIS adequately disclose the potential effects of the proposed activities on soils and aquatic resources. The design criteria (mitigations) that apply to all alternatives include:

- Forest Plan standards and guidelines:
  - Provide direction on soil erosion control when operating in LTAs 19 and 20, and for enhancing soil productivity when opportunities occur.
- State of Michigan Best Management Practices (BMPs) ("Water Quality Management Practices on Forest Land", 1994)
  - This manual describes "practices which are known to be effective in controlling erosion and minimizing impacts on the quality of surface and ground water on forest land."
- Project specific guidelines for riparian areas and limitations within certain ELTPs (EIS, Appendix C; and ROD, Appendix 2)
  - Harvesting restrictions adjacent to riparian zones, and operating restrictions in LTA 20 and those ELTPs in LTA 19 that have highly erodable or otherwise sensitive soils.

With regard to highly erodable soils, the ROD employs a policy of avoidance. For example, the ROD specifically states (Table 2-2, Appendix 2), within LTA 19, "Some ELTPs are not suitable for timber management, such as wetlands, and these will be avoided during any sale preparation and harvest activities to protect the soil and site resources." The design criteria also avoid sites with slopes in excess of 35%, and consider sites with slopes between 25-35% on a case-by-case basis. In addition, harvest operations are not permitted between March 15 and July 16, and between September 15 and December 15, to protect soil resources.

The EIS provides reference to "personal observations" and "demonstrated effectiveness" and "well-established results" (EIS, pp. 3-57, 58) to support the use of Forest Plan standards and guidelines, BMPs, and site-specific design criteria for protection of soils. The EIS cites sale inspection reports and post harvest regeneration surveys from past management activities (EIS, pages 3-57, 58; Project Record, Tab B-63) as evidence that planned mitigations have proven effective.

The EIS also notes there are tools available to the timber sale administrator to rectify any damage that may occur to soils during sale operations. (EIS, pp. 3-57--3-58).

The monitoring activities cited on page 2-20 of the EIS include measures for checking on the effectiveness of erosion control structures and seeding during regeneration surveys; and includes "ongoing monitoring of implementation of BMPs and design criteria" during project implementation to "avoid and minimize soil and water impacts and retain soil productivity."

This ongoing monitoring includes a 2003 ocular review of 11 timber sale payment units across the National Forest that determined "ninety percent of all units monitored were considered to be 'undisturbed' with small percentages having low to moderate soil disturbance" as documented in the FY 2002-2003 Monitoring and Evaluation Report.

With regard to the quality of monitoring activities, the Ottawa National Forest performed an internal review of timber sale administration in May 2002 (Project Record, B-50.1) that specifically noted "tracking of design criteria from the EA to timber sale contract through the timber sale report is excellent."

Soil Erosion and Soil Productivity: The effects analysis for soil erosion and productivity, adequately and appropriately incorporates research, empirical evidence, site conditions, and design criteria. The Soils Specialist Report identifies the resource concerns and methodology for conducting the effects analysis (Project Record, Tab C-165, pp. 1-6). The design criteria address resource concerns by establishing limitations and mitigations to reduce or eliminate soil erosion and loss of soil productivity (EIS, pp. 2-16 to 2-18; ROD, Appendix 2, pp. 2-1 to 2-3). The EIS cites empirical evidence of the effectiveness of these design criteria; and adequately discloses that soil erosion and loss of soil productivity will still occur as a result of the action alternatives, but not at significant levels (EIS, Section 3.5). Further, decommissioning roads in the project area will help to lessen soil erosion and loss of productivity in the long-term (EIS, Section 3.5).

Although the EIS does not cite "The Effects of Forest Management on Erosion and Soil Productivity", as suggested by the Appellants, the Soils Specialist Report (Project Record, C-165) cites a number of other credible research reports that arrive at similar conclusions. Examples include *Foth, 1978* (soil factors affecting erosion) and *Pritchett and Fisher, 1987* (effects of organic cover loss and compaction, nutrient cycling, and abiotic and biotic influences on site productivity).

With regard to soil erosion, the design criteria require that no timber management take place on LTA 20 or on the highly erodable soils. This includes skid trails. The design criteria also restrict harvest operations seasonally to avoid wet or unstable soil conditions and protect soil resources (ROD, Appendix 2). With regard to soil productivity, the EIS requires slash from clearcut sites be scattered to retain nutrients, and that empirical evidence shows that stands previously clearcut are "growing and regenerating in a productive manner" (EIS, p. 3-59).

Soil Compaction: The effects analysis for soil compaction, adequately and appropriately incorporates research, empirical evidence, site conditions, and design criteria. The Soils Specialist Report identifies the resource concerns and methodology for conducting the effects analysis (Project Record, Tab C-165, pp. 1-6). The design criteria address resource concerns by establishing mitigations to reduce soil compaction (EIS, pp. 2-16 to 2-18; ROD, Appendix 2, pp. 2-1 to 2-3). The EIS cites empirical evidence of the effectiveness of these design criteria; and adequately discloses that soil compaction will still occur as a result of the action alternatives, but not at significant levels (EIS, Section 3.5). Further, decommissioning roads in the project area will help to lessen soil compaction in the long-term (EIS, Section 3.5).

Although the EIS does not cite the literature suggested by the Appellants, the Soils Specialist Report (Project Record, Tab C-165) cites a number of other credible research reports that arrive at similar conclusions. For example, *Moehring and Rawls, 1970* (soil factors affecting compaction). The Soils Specialist Report also addresses rutting due to heavy equipment, and defines excessive rutting.

Cumulative Impacts of Roads on Soils: The Project Record and the EIS provide adequate analysis of the effects of forest roads on soil resources. The Aquatics Specialist Report provides extensive analysis on the effects of roads on surface and subsurface hydrology, and measures effects of roads based on proximity to streams, road condition, and surfacing (Project Record, Tab C-175). The Soils Specialist Report provides methodology and analysis on effects of roads on soil erosion, compaction, rutting and productivity.

The EIS also adequately addresses cumulative impacts of roads on soils by considering historic impacts of timber harvest and road building, the use of road and trail design standards intended to reduce erosion, recent road reconstruction activities by Michigan DOT, the comparative impacts of ATVs and passenger vehicles or truck traffic, and potential activities on adjacent private lands (EIS, Sections 3.5, 3.6).

Mychorrizal Associations: The Soils Specialist Report and the EIS address soil nutrients in general. The Appellants did not raise the issue of mychorrizal associations during the scoping or 45-day comment period, so the effects analysis did not specifically address this aspect of soil nutrients. The Soils Specialist Report cites several studies related to site productivity and the importance of retaining biomass on-site following timber harvest (Project Record, Tab C-165, p. 4). Based on the research utilized in the Soils Specialist Report, and empirical evidence of continued productivity of previously clearcut sites (EIS, page 3-59), the Responsible Official was able to reasonably conclude that adequate nutrients – including mychorrizae fungus and phosphorus – are being retained in soils following timber harvest.

Flooding: Analysis indicates, contrary to the Appellant's assertions, "present harvesting and management activities, as compared to historical activities, indicate a trend of reduced impacts to water resources, including erosion and resulting sedimentation" (Project Record, Tab C-175, p. 21). An "open area" assessment also concludes that no significant runoff from the watershed will occur under the Selected Action (EIS, pp. 3-71 and 3-72).

Additional Points: The Appellants assert that the EIS fails to consider the effects on nutrient loss to soils from burning of slash after timber harvest. No burning is proposed in the Selected Action.

The Appellants further suggest a number of references in this appeal to support assertions related to soil erosion, compaction and productivity. The Appellants had the opportunity to suggest these references during scoping and the 45-day comment period, but did not do so.

In Summary, contrary to the Appellants' assertions the Project Record, the EIS and the ROD have established design criteria and monitoring measures that have proven effective in protecting soils and aquatic resources, and have adequately analyzed potential direct, indirect and

cumulative effects of the selected alternative to the soils and aquatic resources within the project and analysis areas.

<u>Issue 4</u>: *"The Impact Analysis for Facilitating an Increase in ATV and ORV Use is Inadequate"* (NOA, p. 9).

The Appellants assert,

- *"…The Forest Service fails to assess the ever-expanding system of roads open to ATV's, ORV's and snowmobiles, across the Ottawa, but closed to other vehicles."* (NOA, p. 10).

- *"The current agency ORV regulations at 36 CRF 295 require that all designations of trails or areas for ATVs go thru a specific analysis and environmental assessment process. There has to be a monitoring plan also…." The EIS is not adequate to meet these requirements."* (NOA, p. 10).

- *"The agency cannot rely on an assumption of off road vehicles staying on trails and impacts being limited to travel corridors without such an enforcement plan. Yet this isn't even mentioned in the final cumulative impacts analysis…."* (NOA, p. 10).

Response: The Appellants did not surface this concern during the 45-day comment period.

The Ottawa National Forest LRMP provides guidance for managing ATVs and ORVs (LRMP, p. IV 29). Specifically, MA 1.1 defines as the desired future condition a "roaded environment that provides for four-wheel drive, snowmobiling, and other motorized recreation opportunities (Ibid, IV-104). In the Baltimore project area, with the exception of main collector roads, both open and closed system roads are open to ATVs use (EIS, p. 3-48). The Selected Action includes improvements such as road maintenance, installation of culverts and stream crossings to improve drainage and insure soil and water are protected. In addition, the project proposes road decommissioning on approximately 27 miles involving treatment of existing and potential soil erosion problems (EIS, p. 2-6).

Appellants contend the Baltimore Project will construct over 30 miles of new road. The project only proposes construction of 1.4 miles of new road. Sixteen miles (16) is scheduled for road reconstruction (improvements or realignment to existing roads) (EIS, p. 3-49). The EIS concludes that impacts associated with ATV/ORV use will be minimal or at best beneficial due to efforts at reducing potential erosion problems and the combined efforts at road decommissioning. More specifically, the analysis for wildlife states, "Nothing in the action alternatives is designed to alter long-term use of ATVs and snowmobiles, so no cumulative effect changes are expected (EIS, p. 3-45). The soils discussion concludes the overall erosion potential would be lessened (EIS, pp. 3-57 to 3-62). Similarly, the cumulative effects on fisheries, aquatic, and riparian environments will be greatly reduced (EIS, p. 3-75).

In addition, mitigation measures and standards are outlined in the EIS in accordance with NFMA [36 CFR 219.12(k)] and NEPA [40 CFR 1505.2(c)]. The LRMP allows for closing roads to ATV and ORV (to prevent resource damage) as well as other mitigation methods if needed

(Project Record, Fifteen year Review, Ottawa national Forest, FY 2001 Monitoring & Evaluation Report, Revised June 2003, Comment 59, p. I-32). Contrary to the Appellants' allegation, "All known roads on Forest System lands within the project area were inventoried and [there] needs identified" (Ibid, Comment 57, p. I-32)

The Selected Action does not expand ATV/ORV opportunities as implied. No ATV trails have been designated or additional areas opened for use. The Forest continues to manage ATV/ORV use under a policy that an area is "open unless posted closed." (Ibid, p. 83). Consequently, the regulations at 36 CFR 295 are not applicable. The Forest does monitor ATV/ORV use and has found there is an increase in this recreational activity. However, a 1997 Upper Peninsula Off-Road Vehicle Committee Report found "… minimal impacts to the natural resources of the region." (Ibid, p. 84).

The Appellants provide no specific references to the statement "numerous studies indicate increasing ORV use in an area without a concomitant increase in law enforcement will result in significant adverse impacts to wildlife, user conflicts, and water quality". The Responsible Official recognized the role law enforcement plays in preventing resource damage by stating that law enforcement personnel would "…deal with violations of passenger vehicle use on these closed roads as well as other resource damage concerns such as road rutting, tree skinning, or crossing wet areas on National Forest System lands" (Ibid, Comment 59, p. I-33).

In summary, I find no violation in law, regulation or policy. Mitigation and monitoring will identify the need for closing roads to ATV and ORV use, should the need arise.

<u>Issue 5</u>: *"The Optimality and Appropriateness Analysis are not Sufficiently Detailed"* (NOA, p. 10). *"NFMA requires that the Forest Service determine that clearcutting is the optimum method for reaching the goals for the particular project. It also requires that any other even-aged logging be determined to be the appropriate method for reaching the goals of a particular project. . . However, in both the optimality and appropriateness analysis, they* [Forest Service] *rely on only the plan level general optimality and appropriateness guidelines. There are no specific findings at all in the EIS . . ."* (NOA, p. 10).

Response: This issue was not raised by the Appellants during 45-day comment period. The Appellants now call attention to the National Forest Management Act which requires a determination that even-aged management is appropriate for the forest types found within the Baltimore project area; and, that clearcutting is the optimum method for reaching the goals for a particular project [16 USC 1604(g)(3)(f)(i)].

The ROD (pp. 20-21) notes that even-aged management (clearcutting and shelterwood harvest) is the appropriate silvicultural system for the forest types within the project area (predominantly aspen and/or mixed aspen-conifer forests). The total acreage clearcut under the Selected Action would be approximately 3,660 acres. About 209 acres would be harvested utilizing the shelterwood method. Using the clearcut method to regenerate aspen is consistent with the harvest cutting methods described on pages C-5 through C-7 of the LRMP. As noted in the Forest Plan, this regeneration method is optimal for the "establishment and development of shade

intolerant species, such as aspen" (LRMP, Appendix C, p. C-5). The evaluation of the effects found in Chapter 3 of the EIS (pp. 3-1 to 3-22), in concert with the analysis contained within the Baltimore Project Record were used to make the optimality determination.

Upon reviewing the Baltimore Project Record, I note that 44 percent of MA 1.1 occurring within the project area is comprised of aspen greater than 60 years of age, with growing susceptibility to forest insect pests and disease (EIS, pp. 3-1 to 3-2; Project Record, Volume C, Book 2, Tab C-64 - Letter from State and Private Forestry – Northeastern Area Entomologist, Steve Katovich, to Carol Young, Forester. 2003). Katovich, referring to a June 2003 field tour of the Baltimore Project area observed, "a number of existing, mature trees are showing significant crown decline symptoms;" and, estimated that "in many of the older stands, 5 to 10 percent of the trees had died within the last year." The EIS and related Project Record contain ample evidence that the Interdisciplinary Team and the Responsible Official adequately explored the site-specific resource conditions that warrant the application of even-aged management and regeneration silvicultural systems.

The EIS addresses the project as a whole and its cumulative relationship to the Forest. The optimality and appropriateness analyses flow from the desired conditions of the Forest Plan, to the site-specific analysis of effects. The specifics of which stands would be treated by which method under the Selected Action are illustrated in Appendix B, pages B-6 through B-13. The recommended treatment for these aspen stands is outlined in the Vegetation Report (Project File, Volume C, Book 2, Tab C-100, pp. 11 through 13). Contrary to the Appellants' claims, this provides ample site-specific information at the project and Forest level to evaluate the optimality and appropriateness of the silvicultural systems and harvest methods.

I find the EIS, ROD and accompanying Project Record adequately address the optimality and appropriateness issue.

<u>Issue 6</u>: "Cumulative Effects of Over-cutting Aspen and northern Hardwoods is Threatening Viability of Goshawk and Other Species" (NOA, p. 10).

The Appellants claim,

- "*The EA does not describe the existing environment in any detail, and in that regard is inadequate.*" (NOA. P.11).

- *"Considering the species is already regionally sensitive, this widespread adverse habitat modification cannot be said to be in compliance with 36 CFR 219.19."* (NOA, p. 11).

- *"…The EA does not focus on the habitat* [alterations] [e]*ffects on the Goshawk, and as previously stated, does not give a hard look at the species."* (NOA, p. 11).

- *"The EA fails to reference the work of Beier and Drennam." Failure to consider the implication of this peer-reviewed scientific article is hardly considered a 'hard look' at science and impacts, as mandated by NEPA."* (NOA, p. 12).

- *"…The EA does not mention the serious predation problems which are currently the biggest threat to the species."* (NOA, p. 12). *"Fisher predation is directly attributable to the severe mammalian predation of Goshawk nests in Michigan, and not mentioned at all in the EIS as either a direct or indirect effect."* (NOA, p. 12).

- *"…The EIS is devoid of any* [cumulative effects] *analysis…."* [Only mentions past sales over the last 15 years, fails to go into details of the impacts, no maps of past cuttings] (NOA, p. 12).

- *"…The agency is not utilizing accurate, up-to-date information in its action on the Northern Goshawk, … This constitutes a violation of NEPA and NFMA."* (NOA, p. 12).

- *"Without the required in-the-field monitoring of the MIS Goshawk, how can the agency even estimate the effects on the Sharp Shinned and Cooper's Hawk?"* (NOA, p.13).

- *"The* [Goshawk] *guidelines were not included in the final forest plan, and were never subject to public scrutiny. NFMA guidelines require that such forest plan amendments be subject to public comment and NEPA analysis."* (NOA, p. 13).

Response: The Appellants expressed a concern for the northern goshawk during the 45-day comment period. Their comments addressed the issue of habitat at a cumulative scale, the effects of fragmentation on this habitat and lack of studies. They did not mention other specific issues now raised in this appeal.

Existing Environment: Contrary to the Appellants' claims, the existing environment and alterations proposed by the selected alternative were addressed in considerable detail. The EIS (pp. 3-1 – 3-22) describes the existing vegetative conditions within the analysis area. This is further detailed in the Wildlife Resources section of the EIS (pp. 3-39 – 3-45) the Wildlife Report (Project Record, Volume C, Book 3, Tab C-122, p. 121) and the Biological Evaluation (Project Record, Volume C, Book 3, Tab C-118, p. 12). Maps depicting early seral, mature closed canopy, and mature open canopy conditions are found within the Wildlife Resource Report (Project Record, Volume C, Book 3, Tab C-122, pp. 56-58).

Habitat Modification/Habitat Alteration: Specific habitat needs for the northern goshawk, including effects of implementing this project, are discussed at length in the Biological Evaluation (Project Record, Volume C, Book 3, Tab C-118, pp. 12 – 18) and summarized in the EIS (p. 3-35). The Biological Evaluation (BE) displays the levels of each proposed activity, the effects of those activities on foraging and nesting habitat for the northern goshawk and the cumulative effects of treatment to habitat availability.

Considering this analysis and the conclusion statement of "No alternative would threaten the viability of any wildlife species population, and at the cumulative effects scale they would have little effect on population trends" (EIS, p. 3-46), the Appellants' assertion that *"…The EA does not focus on the habitat alternation's affects on the Goshawk, and as previously stated, does not give a hard look at the species"* is incorrect.

Predation: The Wildlife report discusses predation as it relates to fragmentation and predation levels, not considering any given species but rather the processes by which predation increases (Project Record, Volume C, Book 3, Tab C-122, p. 50-52). The 2001 Monitoring and Evaluation Report (Revised June 2003) (pp. 32-34) also talks about nest predation (by great horned owls and fisher) as one variable effecting goshawk populations. (The Conservation Assessment for Red-shouldered hawk (Buteo lineatus) also contains measures for nest predation for the northern goshawk. (Project Record, Volume C, Book 3, Tab C-122, p. 178, Reference – 'Conservation Assessment for Red-shouldered Hawk)).

Cumulative Effects: The contention by the Appellants of an inadequate cumulative effects analysis is unfounded. The project analysis for wildlife clearly establishes a cumulative effects boundary ("large enough to encompass entire home ranges for most species …" (EIS pp. 3-37 to 3-39), recognizes past, present and reasonably foreseeable activities, and describes the likely impacts of these actions (EIS pp. 3-39 to 3-43 and Project Record, Volume C, Book 3, Tab C-122, p. 124). Furthermore, the project analysis for vegetation considers effects by age and composition. This information is summarized in the EIS (p. 3-22). In addition, the Biological Evaluation (BE) (Project Record, Volume C, Book 3, Tab C-118, pp., 13,15,16, and 18) specifically addresses cumulative effects to the northern goshawk for each alternative. The BE describes conditions at the turn of the century as a result of past logging practices and includes a quantitative discussion of acres harvested over the last 15 years. Clearly, the impacts of this proposed action were evaluated in detail and the determination of "May impact individuals of a species, but not likely to cause a trend to federal listing or a loss of viability" (Project Record, Volume C, Book 3, Tab C-118, p., 77) for northern goshawk is supported by the Project Record.

Information: The Appellants allege that conclusions on goshawk were based on inadequate science because of the failure to reference specific research papers. My review of the Project Record, specifically the Wildlife Report (Project Record, Volume C, Book 3, Tab C-122) indicates an adequate analysis for goshawk. Conclusions in the document were based on identification of habitat needs, an examination of alternatives and their effects and where appropriate, incorporation of mitigation measures (EA, p. 2-16). In addition, there are at least 12 documents listed in the bibliography and used in this analysis (Project Record, Volume C, Book 3, Tab C-122, pp. 152-183) that reference northern goshawk habitat and behavior. Research by Beier and Drennam was reviewed but relates to the American southwest.

In field: The allegation of no "in-field" goshawk monitoring is incorrect. Goshawk populations are monitored on a regular basis using standard road survey routes. In addition, portions of the project area were surveyed for active nests (Project Record, Volume C, Book 13, Tab C-433, p. 93). The number of goshawk responses and survey routes Forest-wide is further detailed on page 33 of the 2001 Monitoring and Evaluation Report (Revised June 2003). Therefore, the Appellants claim that impacts to the sharp shinned and Cooper's hawks cannot be evaluated is also unfounded.

NFMA: Presumably the Appellants are referring to the 1995 Ottawa National Forest Biologists Consensus Guidelines for Northern Goshawk Management (see USDA Forest Service, Conservation Assessment for the Red-Shouldered Hawk in the North Central States, pp. 44-46, 2002.). In answer to the Appellants' concerns over the Project Design Criteria for goshawk

(DEIS, p 2-16), this measure was based upon the habitat needs for the species, as well as the collective recommendations of the Forests' wildlife biologists. The Responsible Official has the prerogative to pick or choose from this collection of recommended measures, as he/she feels may be appropriate to the decisions to-be-made; to respond to the significant issues and/or resource concerns associated with the project; and, to address the results of the effects analysis. These measures are not explicit, programmatic direction, as the Appellants imply. The biologists' guidelines continue to undergo review and updating on the Forest, as new scientific information becomes available. I note the Appellants do not question the usefulness or adequacy of these criteria, nor do they provide any evidence that the Ottawa considers them as standards to be adhered to with project-level, environmental analyses.

Overall, I find the Appellants' claims unsubstantiated. The project does not adversely affect the viability of goshawk or other species. The Decision Notice is consistent with agency requirements.

Issue 7: *"The Project Will Adversely Affect the Red-Shouldered Hawk and Threaten its Viability"* (NOA, p. 13).

The Appellants assert,

- Bryant's findings are *"not discussed at all in the EIS. How does the agency explain this glaring omission?"* (NOA, p. 13).

- *"Clearly the EA is grossly inadequate to withstand the overwhelming scientific evidence of an adverse impact, and does not comply with the procedural requirements of NFMA."* (NOA, p. 14). *"The sloppy, conclusory assertions that there would be no significant impact on Red-shouldered Hawk is not supported by any evidence…"* (NOA, p. 14).

- *"The agency's … "failure to collect and maintain baseline data also constitutes a violation of the Forest Plan and of the ROD for the Forest Plan, thus a violation of NFMA."* (NOA, p. 14).

Response: The red-shouldered hawk is identified as a Regional Forester Sensitive Species, as well as a State of Michigan "Threatened" Species (Project Record, Volume C, Book 3, Tab C-118, Biological Evaluation, p. 6). The species has not been documented as occurring within the project area, although field surveys were conducted as recently as spring 2003 (Ibid, p.20). Surveys were also conducted in June and July 2001 to locate northern goshawk and red-shouldered hawk (Project Record, Volume C, Book 3, Tab C-114), with neither raptor encountered by field sampling. Page 19 of the Biological Evaluation (BE) also indicates this woodland raptor is not an abundant bird in Michigan's Upper Peninsula, and the species has been declining throughout the state since the early 1900s, with most breeding birds found in the northern portion of the Lower Peninsula.

In addition, Forest-wide surveys were undertaken during the summers of 2000 and 2001, using taped bird calls, resulting in only two responses obtained (FY 2001 Monitoring & Evaluation Report (revised June 2003), p. 20). No nest sites were located. According to Postuplasky

(1980), who located three nests in the Upper Peninsula, nesting habitat included northern hardwoods with closed canopies with a relatively open understory. Postuplasky also noted that small ponds and/or streams were typically found within 0.3 to one mile away from nesting sites (2001 Monitoring & Evaluation Report, pp. 19-20), indicating an association to forested lowland/wetland habitat. Water is the critical element of red-shouldered hawk habitat (Project Record, Volume C, Book 3, Tab C-122, p. 178, Reference – 'Conservation Assessment for Red-shouldered Hawk).

"Habitat for the Red-shouldered Hawk appears to be limited … on the Ottawa." (2001 Monitoring & Evaluation Report, pp. 19-20). The Ottawa does not have extensive flood plain forests adjacent to major rivers. Some of the best habitat on the Ottawa is protected either in existing Wilderness, or in the Wild/Scenic/Recreational River corridors. (Ibid). It's believed the Ottawa National Forest may be at the northern extent of the red-shouldered hawk's range; and, with very limited documentation of the hawk's presence on the Ottawa, it is difficult for wildlife biologists to draw explicit conclusions about population status and trend (Ibid). Nevertheless, contrary to the Appellants' claims, the Forest does monitor and maintain base line information on the red-shouldered hawk as these surveys indicate. The Forest also considered Bryant's research in reaching its conclusions (Project Record, Volume C, Book 3, Tab C-122, p. 178, Reference – 'Conservation Assessment for Red-shouldered Hawk).

Though red-shouldered hawk may inhabit the area as a transient in order to feed and rest, no birds have been found in the vicinity of the Baltimore Project area. Additionally, nest sites have been observed only in the Sylvania Wilderness, a considerable distance south of the project area (Ibid, p. 36). There is limited evidence of the presence of red-shouldered hawk; the identified habitat within the project area is of relatively marginal quality; and, the Forest is located at the northern extreme of the species' range. Therefore, it is improbable that red-shouldered hawk would reside or nest within or adjacent to the project area. I find the BE's conclusion that there would be no adverse effects leading to a Federal listing or loss of viability to be reasonable. If a nest is located, the Forest incorporates protection measures (BE, p. 22).

In his consideration of the Selected Action, the Responsible Official recognized the wildlife tradeoffs associated with his decision to maintain and/or enhance moderate-to-high levels of early successional habitat within the project area (Record of Decision, pp. 13-14).

<u>Issue 8</u>: *"The Effects of Forest Fragmentation on Forest Interior Birds is Inadequately Addressed"* (NOA, p. 14).

The Appellants contend,

- *"Although the proposed action will significantly increase forest fragmentation …, the forest brushes off the impacts of this project on interior forest birds."* (NOA, p., 15).

- *"Assertions in the EIS of no significant adverse effects, including cumulative effects, on MIS, sensitive, and other species, is not supported by credible scientific information, and therefore does not comply with NEPA or NFMA."* (NOA, p. 15).

- *"…The EIS is devoid of any site-specific information about where these birds* [neotropical] *have territories, and what impacts will be if those territories are displaced and made unsuitable."* (NOA, p. 15). *"While the agency makes conclusions … there is no reference supporting these assertions, and there is no analysis of what happens if another territory is occupied."* (NOA, p. 15).

- *"Cumulative effects analysis in regard to forest fragmentation is completely inadequate and inaccurate." The EIS fails to show what areas of contiguous forest blocks will remain after logging, what forest areas will become isolated from mature forest blocks, and what bird populations are before and after logging."* (NOA, p. 15).

Response: **<u>Effects of Fragmentation</u>: The Wildlife Report adequately identifies concerns and measures related to forest fragmentation, providing an extensive discussion on habitat fragmentation (Project Record, C-122, pp. 50-78). This includes a discussion about the differences between urban, agricultural and forest fragmentation; differences in natural and human-generated edge; role of roads and skid trails as corridors for predators; potential for increased parasitism and/or predation associated with edge and corridors; and the distribution of open/early-seral habitat, open-canopy mid or late-seral forest and closed-canopy mid or late-seral forest as a means of describing habitat fragmentation.**

The Wildlife Report (Project Record, C-122, pp. 50-51) discloses that "almost all species are affected to some degree by changes in habitat patterns on the landscape" and that changes to stands adjacent to a clearcut are more pronounced than stands adjacent to natural openings (such as bogs). The report also notes that "some studies have shown increased nest predation and/or parasitism near openings created by logging, while others have shown no such increase." One example noted by the report is that the presence of adjacent agricultural or developed land may increase the potential for brown-headed cowbirds, but that the presence of these birds "has not been a large problem on the Forest." Specifically, the Michigan DNR "had attempted trapping brown-headed cowbirds in the Baraga Plains areas but discontinued it after not capturing many birds." Another example is that "roads and skid trails can increase access to interior stands by some mammalian predators, and can act as foraging corridors for avian predators."

<u>Effects Analysis for Interior Forest Bird Species and Their Territories</u>: The Wildlife Report discloses that, within the Project Area, fragmentation is highest in MA 1.1, "since that is the only MA with active vegetation management." MAs 8.1, 9.2 and 9.3 are also within the Project Area, but these are managed to protect the Wild and Scenic River Corridors. (Project Record, C-122, p. 53).

The Appellants assert that the EIS is devoid of any site-specific information about where certain birds have territories and what the impacts will be on those territories. The Ottawa National Forest has conducted field surveys for Threatened, Endangered and Sensitive bird species within the Project Area. Included were Connecticut warbler surveys during June and July of 2001, and in May and June of 2003 (Project Record, Tabs C-112, C-114, and C-115). One Connecticut warbler was found in 2003, none were encountered in 2001. [Note that the 2001 survey was conducted in 9 compartments over 8 days between June 29 and July 19. The survey did not identify any Connecticut warblers, but it did identify 38 species of birds (including 2 raptors).

The most common sighting was the red-eyed vireo. (Project Record, Tab C-115)]. The Biological Evaluation (BE) conducted analysis of the direct, indirect and cumulative effects of the alternatives on the Connecticut warbler, and made the following observations (Project Record, Tab C-118, pp. 24-27):

- "Not all stands were surveyed and not all surveys were in stands proposed for treatment, but a sample of all potentially suitable habitat types proposed for treatment in the project area were surveyed."

- "The interiors of large, closed-canopy northern hardwoods stands are not likely to provide suitable habitat for Connecticut warblers."

- "Therefore, it is likely that the net cumulative effect of implementing Alternative 3 would be beneficial at the Project Area scale." (Alternative 3 is the selected alternative.)

On page 69 of the BE, the Risk Assessment for Connecticut Warbler states, "the overall risk to this species due to this project is low." The BE makes the determination on page 76 that Alternative 3 "May impact Individuals But Not Likely to Cause a Trend to Federal Listing or Loss of Viability."

With regard to interior forest bird species, the Appellants mention hearing and seeing the wood thrush, scarlet tanager, red-eyed vireo, and ovenbird within the Project Area (as well as the Connecticut warbler, and other forest birds). The Ottawa National Forest Land and Resource Management Plan identifies Management Indicator Species (MIS), and guilds of other species associated with these MIS. The National Forest is required to "monitor population trends and determine relationships to habitat changes for MIS" (Ottawa LRMP, page IV-37), and make correlations to the guild species.

The Wildlife Report notes that surveys have identified the presence of ovenbird and red-eyed-vireo in the Project Area (Project Record, Tab C-122, p. 9). The species identified by the Appellants are associated with the specific MIS. A table describing the association of guild species to MIS is included on pages 6-9 of the Wildlife Report; and a table summarizing cumulative effects to MIS (and guild species) is included on pages 133-139 of the Wildlife Report. The latter table is also found on pages 3-34 to 3-37 of the EIS. This information is summarized below for the specific species mentioned by the Appellants.

- Ovenbird is associated with MIS goshawk. The guild is poletimber to mature-sized northern hardwood forest. The Wildlife Report notes "short term negative effects to individuals in the Project Area from harvest activity in the action alternatives. Should not affect Forest trend. No measurable effect from Alternative 1." (Project Record, Tab C-122, p. 133).

- Veery and wood thrush are associated with MIS barred owl. The guild is mature and old growth hardwoods, red pine, upland spruce, hemlock, and swamp conifer. The Wildlife Report notes "short term negative effects to individuals in the Project Area from harvest

activity in the action alternatives. Should not affect Forest trend. No measurable effect from Alternative 1." (Project Record, Tab C-122, p. 133).

- Red-eyed vireo is associated with MIS ruffed grouse. The guild is aspen habitat and a variety of aspen age classes. The Wildlife Report notes, "Alternative 2, 3 and 4 would have minor positive effects on Forest trend from aspen treatment. Alternative 1 would have minor negative effects to Forest trend from no aspen treatment." (Project Record, Tab C-122, p. 134).

- Scarlet tanager is associated with MIS white-tail deer. The guild is "generalist" habitat, edge habitat, disturbed area. The Wildlife Report notes Alternative 2, 3 and 4 would have minor positive effects on Forest trend from aspen treatment. Alternative 1 would have minor negative effects to Forest trend from no aspen treatment." (Project Record, Tab C-122, p. 134).

Cumulative Effects Analysis: The EIS adequately describes the cumulative effects analysis area for wildlife and wildlife habitat, and provides sound logic for selecting this area. The EIS states, "cumulative effects analysis considered all activities, but only those with the potential to impact wildlife species or their habitat are discussed" (EIS, p. 3-39). One of the factors analyzed in detail in the Wildlife Report, and summarized in the EIS, is forest fragmentation.

The EIS adequately describes and analyze past actions related to forest fragmentation. The EIS states that past forest management "has increased fragmentation, but has not made enough habitats unsuitable for mature forest species to affect their viability (i.e. species such as barred owl, Blackburnian warbler, and black bears have stable or increasing population trends)" (EIS, p. 3-39).

Both the Wildlife Report and the EIS approach cumulative effects analysis of present and foreseeable future actions by describing planned and anticipated changes in the landscape. These changes are described in terms of habitat in early seral, mature open canopy and mature closed canopy stages (EIS, pp. 3-42, 3-45, 3-46; Project Record, Tab C-122, pp. 141-151). This description is consistent with the approach used in describing forest fragmentation in the affected environment (EIS, p. 3-30; Project Record, Tab C-122, pp. 50-53) and in the direct and indirect effects analysis (EIS, pp. 3-33, 3-34; Project Record, Tab C-122, pp. 53-78).

For direct and indirect effects, the Wildlife Report provides detailed descriptions of changes in the landscape for each alternative. Each alternative description includes 4 maps displaying these changes within the Project Area, including a map displaying early seral habitat, a map displaying mature open canopy habitat, a map displaying mature closed canopy habitat, and a map displaying temporary openings greater than 40 acres (Project Record, Tab C-122, pp. 53-78)
For cumulative effects, the Wildlife Report provides a detailed description of the existing condition, and includes individual maps displaying the cumulative effects area (CEA); classified old growth within the CEA; and early seral habitat, mature open canopy habitat, and mature closed canopy habitat within the CEA (Project Record, Tab C-122, pp. 140-148). The EIS uses one map to display this existing distribution of habitats within the CEA, and also includes a map displaying forest types within the CEA (EIS, pp. 3-38, 3-41, 3-43). Both documents also include

analysis of the effects of roads as wildlife corridors. And the EIS includes analysis of activities on private lands within the CEA.

For analysis of cumulative effects resulting from the alternatives, the Wildlife Report describes the actions that would alter landscape patterns (timber harvest and changes in road density), and analyzes the effects of these actions by quantitatively describing the change in habitat types that will result (Project Record, Tab C-122, pp. 148-151). The EIS summarizes this analysis, and includes foreseeable future actions on private lands (EIS, pp. 3-45, 3-46).

The EIS and the Project Record clearly establish a logic and methodology for identifying, displaying and analyzing forest fragmentation as a function of habitat type and edge; they clearly describe those actions proposed in the alternatives that affect forest fragmentation; and they adequately analyze direct, indirect and cumulative effects of the alternatives as quantitative changes in habitat types, edge and corridors.

Additional Points: The Appellant suggests a number of references in this appeal point to support assertions related to forest fragmentation. The Appellant had the opportunity to suggest these references during scoping and the 45-day comment period, but did not do so.

Issue 9: ***"The EIS's Failure to Mention the American Bittern is a Violation of NEPA and NFMA"*** (NOA, p. 15).

The Appellants claim,

- *"…The agency doesn't even mention the Bittern in the EIS."* (NOA, p. 15). *"There is absolutely no indication that the Ottawa monitored for Bitterns in the Baltimore area, as required by the NFMA."* (NOA, p. 15).

- *"This analysis does not comply with NFMA regulation or NEPA regulations in that the findings are not based upon the best science available, and it cannot guarantee that there is a viable population of Bitterns in the Ottawa."* (NOA, p. 15).

Response: The Appellants did not specifically mention the American bittern during the 45-day comment period for the EIS.

The American bittern is a MIS for the Ottawa National Forest. It was analyzed in the Baltimore Project EIS (EIS, Table 3.3.2, p. 36). This table lists species associated with a particular guild, the trend of the guild on the ONF, and effects on habitat from implementing the EIS. The American bittern falls within the guild of species associated with wetland communities and states that there are "No measurable effects to the forest trend (stable to increasing) from any alternative…." In addition, MIS for which habitat occurs in the project area, their habitat requirements, Forest Plan habitat objectives for each species, and the potential for each alternative evaluated in the Baltimore EIS to impact that habitat is located in Vol. C, Book 3, Tab C-122, including the American Bittern found on pages 107-110.

Monitoring for the American bittern is conducted on the Forest through four (4) methods: U.S. Fish and Wildlife Service Breeding Bird Counts (BBC), in association with grouse surveys, incidental observations, and via three (3) permanent survey transects (established in 2002), which traverse the Forest. Although the American Bittern may appear to be declining across its range as depicted by BBC data, all means, including Breeding Bird Census and Breeding Bird Survey data from the Forest, indicate stable local populations within the project area (2001 M&E Report, Revised June 2003, pp. 26-28).

Based upon my review of the record, the Forest has an active monitoring program for this species and other MIS. Riparian design criteria will be implemented for activities adjacent to these wetlands (DEIS, Appendix. C, pp. C4-5) to prevent negative impacts. I conclude the 2001 M&E Report, Revised June 2003, shows adequate monitoring and asserts the use of best science available. I find the Appellants' assertions unwarranted.

<u>Issue 10</u>: *"To Undertake the Baltimore Project When the Ottawa Plan is Expiring and the FEIS Outdated is Not in Compliance with Applicable Laws and is Arbitrary and Capricious"* (NOA, p. 16)**.**

The Appellants contend,

- *"The Ottawa National Forest land and resource management plan expired last year. Thus, there is no legally adequate RPA Program or land and resource management plan to which the Baltimore project can be tiered.* (NOA, p. 16). *Until the Forest Service develops a new RPA Program and does an updated assessment, and new LRMP for the Ottawa National Forest implementation of individual actions, including the Baltimore EIS project must be suspended."* (NOA, p. 16).

- *"Continued implementation of the 1986 Ottawa National Forest LRMP not only violates the RPA and the NFMA, but violates the National Environmental Policy Act ('NEPA'). This is because the Ottawa National Forest has failed to correct, update, revise, amend, or supplement the Final Environmental Impact Statement (FEIS) prepared for the LRMP, and continues to tier project decisions to this FEIS despite the fact that it is woefully outdated, inaccurate, and obsolete."* (NOA, p. 17).

Response: In brief, the National Forest Management Act (NFMA) states: Forest Plans shall "be revised from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every 15 years…" 16 U.S.C 1605(f)(5)(A). The current Ottawa National Forest Plan was approved in 1986.

The Appellants argue the Baltimore Project Decision should be suspended and not implemented until the Forest Plan revision is complete. Taken to its logical conclusion, the Appellants' argument would halt resource management and protection activities on the Forest pending update and completion of the planning document. There is no express requirement in NFMA or its regulations to halt or suspend management activities if a Forest cannot meet the 15-year revision target in the statute.

In addition, the President on November 10, 2003 signed the Department of the Interior and Related Agencies FY04 Appropriations Act, H.R. 2691, P.L. 108-108. Section 320 of the Appropriations Act states as follows:

> "Prior to October 1, 2004, the Secretary of Agriculture shall not be considered in violation of subparagraph 6(f) (5) (A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604 (f) (5) (A) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 et seq.) or any other law: Provided, That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis."

The Appellants provide no credible evidence the standards and guidelines and other information used in the development of the Baltimore Vegetative Management Project fails to protect forest resources. The 1986 National Forest Land and Resource Management Plan (Forest Plan), 1986 Final Environmental Impact Statement (FEIS), the 2001 Ottawa National Forest Monitoring and Evaluation (M&E) Report (Revised, June 2003) and use of Michigan Forestry Best Management Practices (BMP's) demonstrate the standards and guidelines used in project development are effective in providing resource protection and mitigate potential adverse environmental effects. The Appellants present no evidence the existing plan direction used in the development of this project was inadequate. The Baltimore project is tiered to the Ottawa National Forest Plan, FEIS, and Record of Decision approved in 1986, as amended, but does not rely solely on these documents for the Baltimore effects analysis.

The Ottawa National Forest has recognized and responded to requirements as set forth in Forest Service Handbooks, NEPA, NFMA, and the Forest Rangeland Renewable Resources Planning Act. Specifically, the Forest has amended the Ottawa Forest Plan six times since approved in 1986.

It's clear the Forest Plan is viable and does not expire as Appellants contend. The schedule for Forest Plan revision in no way affects the applicability of the existing Forest Plan. I find the Forest is acting in good faith to expeditiously revise the current Forest Plan.

Issue 11: ***"Baltimore EIS does not address carbon sequestration and the impact of carbon emissions on global climate change"*** (NOA, p. 18).

Response: The Appellants claim the impact from logging National Forests on carbon sequestration is not considered in the Baltimore Project. The Global Climate Change Prevention Act (GCCPA) amended the Resources Planning Act (RPA) to require the Secretary of Agriculture to consider the potential effects of global climate change on the condition of the renewable resources on the forests and rangelands of the United States, and to analyze opportunities to mitigate the buildup of atmospheric carbon dioxide and reduce the risk of global climate change. However, 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. There is no legal requirement in the GCCPA to analyze global climate change in the site-specific project EIS.

Furthermore the Appellants did not surface this concern during the 45-day comment period or at any other time during scoping for the Baltimore Project. Neither did they furnish copies of the literature referenced in the appeal (i.e., "Carbon Sequestration in Wood and Paper Products"). I find the Responsible Official violated no law, regulation or policy in the development of this EIS.

RECOMMENDATION:

After reviewing the Project Record for the Baltimore Project, and considering each issue raised by the Appellants, I recommend District Ranger Bruce Prud'homme's Record of Decision of March 16, 2004 be affirmed.

/s/ Chris Worth
CHRIS WORTH
Appeal Reviewing Officer
District Ranger,
Chequamegon-Nicolet
National Forest

cc:
Responsible Official,
District Ranger, Bruce Prud'homme
NEPA Coordinator, Karen Dunlap
RO, Patricia Rowell