

**Attachment 2: Issues Reviewed and Affirmed**

**Allegheny NF Revised LRMP Appeal Decision**

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## Attachment 2: Issues Reviewed and Affirmed

### National Environmental Policy Act (NEPA)

#### Range of Alternatives

*Appellant contends the Allegheny National Forest (ANF) failed to have at least one alternative that includes a comprehensive program to steadily acquire mineral rights to substantiate one of its goals (Record of Decision (ROD), p. 33) (Notice of Appeal (NOA) #0007, pp. 51 and 56).*

The ANF states that the "...[1986] Plan already adequately allowed the ANF to acquire mineral rights and the difficulty was in the ability to acquire these rights due to limitations of funding and willing sellers, not plan direction" (Appendix B, Analysis of the Management Situation (AMS), p. B-5). In addition, the ANF added a goal to "Acquire surface and subsurface ownership rights from willing sellers within the ANF proclaimed boundary where it benefits long term management of the ANF" (ROD, pp. 32-33). Limited acquisition of mineral rights may be pursued in specific areas where needed to achieve surface management objectives of the Revised Plan (RLRMP, p. 1-3). I find that the FEIS and RLRMP comply with NEPA (40 CFR 1502.14) and NFMA (36 CFR 219.12 (f)).

*Appellant contends there should have been an alternative that considered off setting the impact of oil and gas development (OGD) on the ANF (e.g., if there is a potential for recreation areas to be closed due to OGD, relocating the areas within the ANF needs to be considered) (NOA #0007, pp. 52-53).*

The ANF defines their process for formulating a range of alternatives with three areas identified as having the greatest need for change: recreation and special areas, habitat diversity, and forest vegetation management (FEIS Appendix B, AMS, p. B-6). Alternatives were crafted to meet the purpose and need for the Revised Plan (ROD, p. 10). The Regional Forester "chose Alternative "Cm" because ... it maintains the ANF's ability to provide diverse, high-quality outdoor recreation opportunities (ROD, p. 16). This decision will allow all of the different recreational pursuits currently enjoyed on the ANF to continue, but additional emphasis is placed on expanding semi-primitive recreation opportunities. Considering off setting the impact of OGD is an option for all alternatives considered. In fact, relocating a recreation area would serve as a mitigation measure. I find the FEIS and RLRMP comply with NEPA (40 CFR 1502.14) and NFMA (36 CFR 219.12 (f)).

*Appellants contend that the range of alternatives considered is not broad to account for existing and foreseeable oil, gas and mineral (OGM) activity. OGD is estimated to double in the number of wells and acreage by 2020; the ANF underestimates the potential for future OGD (NOA #0007, pp. 29-30 & 61; NOA #0008, pp. 9-10; NOA #0010, pp. 22-24 (includes [\*\*\*])); NOA #0013 pp.14-15).*

The ANF defines their process for formulating a range of alternatives. Three areas were identified as having the greatest need for change: recreation and special areas, habitat diversity, and forest vegetation management (FEIS Appendix B, AMS, p. B-6). Alternatives were developed to meet

the purpose and need for the Revised Plan (ROD, p. 10). Management of OGD is described in Elements Common to all Alternatives (FEIS Summary, p. 6). The ANF has incorporated the OGD process, even though a separate alternative was not developed nor required (ROD, pp. 1-12, 1-13; RLRMP, pp. 8-10; FEIS Summary p. 35 and Table 14, p. 36; FEIS, pp. 3-399 to 3-419; FEIS Appendix A, pp. A-20, A-71 to A-73, A-208 to A-215). The ANF's rationale for projecting future OGD is described in the Final Environmental Impact Statement (FEIS) in Section 2.8 "Estimation of Future Oil and Gas Development" (FEIS Summary, p. 11; FEIS, p. 2-59; FEIS Appendix F, Table F-5). However, actual future production will ultimately be determined by the market. I find the FEIS and RLRMP comply with NEPA (40 CFR 1502.14) and NFMA (36 CFR 219.12 (f)).

*Appellant contends that nowhere in the Revised Plan are there alternatives for how the ANF could be managed with a goal of increasing economic stability in the communities and school districts located within the ANF boundary. "The [Revised] Plan says that worries about economic/community stability are outside its scope which we disagree" (NOA #0017 pp. 4). Appellants variously contend the ANF did not develop an alternative that would maximize net public benefits; e.g. oil and gas development (NOA #0007 p. 31; NOA #0010 p. 10 (includes [\*\*\*])).*

The Regional Forester states that his decision emphasized those benefits that are most important to the various groups involved in the revision process and provides for contribution to the ecological, social, and economic sustainability of Pennsylvania (PA) over the long term (ROD, p. 3). In his rationale for choosing Alternative "Cm", he emphasizes that it "maximizes net public benefits" (ROD, pp. 15 to 32). Further the FEIS includes a detailed description of the present net value (PNV) analysis (ROD, p. 37; FEIS Appendix B, pp. B-81 to B-96). The ANF has incorporated economic analysis throughout the planning process, even though a separate alternative was not developed nor required (ROD, pp. 1-12, 1-13; RLRMP, pp. 8-10; FEIS Summary p. 35 and Table 14, p. 36; FEIS, pp. 3-399 to 3-419; FEIS Appendix A, pp. A-20, A-71 to A-73, A-208 to A-215). I find the FEIS and RLRMP comply with NEPA (40 CFR 1502.14) and NFMA (36 CFR 219.12 (f)).

*Appellant contends that the wilderness decisions were based on legal and factual errors and a failure to consider reasonable alternatives is a violation of NEPA and National Forest Management Act (NFMA), 40 Code of Federal Regulations (CFR) 1502.12, 36 CFR 219.12 (f) and 219.21 (NOA #0007, p. 123).*

The process of identifying and examining areas for potential wilderness designations is thoroughly described in the Appendix C of the FEIS. The ANF systematically inventoried all areas that met the qualifications for wilderness, using criteria established nationally by Forest Service Handbook (FSH) 1909.12 Chapter 70 and the Eastern Region (R9) guidelines (FEIS Appendix C, p. C-4). The ANF analyzed alternatives ranging from no new additional wilderness to four additional wilderness study areas. A discussion of the applicability of mining and leasing laws on preservation of wilderness character is detailed in the FEIS (Appendix C, p. C-33). I find the disclosure of effects comparing Alternatives "Cm" and D provide an adequate analysis and ANF is in compliance with NEPA, NFMA, 40 CFR 1502.12, 36 CFR 219.12 (f) and 219.21.

## Environmental Consequences

*Appellant contends the FEIS is deficient in addressing the impacts from air pollution generally, and acid rain specifically (NOA #0007, p. 104).*

The effects of air pollution, and the impacts of acid deposition in particular, on forest resources are adequately disclosed throughout the FEIS (e.g., 3.2.4 Air Resources, pp. 3-52 to 3-63; 3.2.2 Soil Resources, pp. 3-8 to 3-9, 3-19 to 3-20; 3.2.3 Water Resources, pp. 3-27, 3-51; 3.3.1 Forest Vegetation, pp. 3-88, 3-100 to 3-102; FEIS Appendix A, PI#62, p. A-42). Because air pollution and atmospheric deposition negatively impact forest resources, the Revised Plan contains a *2500 Watershed and Air Goal* which states: “Cooperate with regulatory agencies to reduce adverse effects of air pollution and atmospheric deposition on forest ecosystems” (RLRMP, p. 14). Further, the Revised Plan includes research questions (e.g., RLRMP Table 16, p. 52, Soil Resource Area research question asks, “To what extent is soil acidification affecting the physical, chemical, and biological processes and functions?”) and monitoring questions (e.g., RLRMP Table 15, p. 50, Vegetation Resource Area monitoring questions asks, “What are significant changes in forest health? What threats to forest health are present?”), that should provide the ANF with new information pertinent to resource impacts from acid deposition. I find the FEIS adequately discloses the impacts of air pollution and acid deposition, and complies with NEPA (40 CFR 1502.16).

*Appellant contends the ANF arbitrarily excludes on-site, forest air quality impacts from OGD (NOA #0007, p. 158).*

As a preliminary matter, the appellant is not clear whether their concerns apply only to air quality impacts from private OGD. Further, because no explanation is provided by the appellant, I interpret the appellant’s use of the term “on-site” to mean site specific. An evaluation of site-specific forest air quality impacts from private OGD is outside the scope of the Revised Plan and associated analysis in the FEIS. Further, the Revised Plan provides broad programmatic direction and does not approve project level activities. Should oil and gas leasing occur on parcels with federally owned oil and gas estates, site-specific analysis in compliance with NEPA and other federal law and regulation is required prior to approving ground-disturbing activities (ROD, p. 42; FEIS, pp. 3 to 4). Regarding the matter of the disclosure of on-site forest air quality impacts from private OGD, I find that the ANF complies with NEPA (40 CFR 1502.16).

*Appellant contends that the 50 kilometers (km) air assessment area buffer appears “strictly for convenience” and largely ignores any of the large pollutant sources within and near the ANF, despite reducing the assessment area by 75 percent. Appellant contends this decision is arbitrary and capricious (NOA #0007, pp. 163 and 164).*

The air effects analysis is “limited to pollution emitted from within lands administered by the ANF as a result of management activities . . .” (FEIS, p. 3-55). The air quality cumulative effects analysis area (50 km) from the ANF boundary describes “. . . the effects of emissions from the ANF on regional air quality” (FEIS, p. 3-55 and Figure 3-2, p. 3-56; see also Draft Environmental Impact Statement (DEIS), Figure 3-2, p. 3-48).

The ANF provides reasonable rationale to support the 50 km assessment area distance (FEIS, p. 3-55; see also DEIS, p. 3-4). The direct, indirect, and cumulative effects of air pollution from ANF management activities on regional pollution are adequately disclosed for a programmatic document (FEIS, pp. 3-58 to 3-63). Additionally, the analysis demonstrates the ANF considered and incorporated current air quality monitoring data in the evaluation of impacts (e.g., FEIS, p. 3-52 to 3-54, 3-58; Appeal Record (AR) File Code 830.4, AMS for Air Quality Assessment Report, p. 4 to 6).

Documents in the Appeal Record (AR) describe the 200 km air assessment analysis area (AR File Code 830.4, AMS for Air Quality Assessment Report, p. 4 and 5; Planning Record (PR) File Code 914, Allegheny Air Assessment Package, p. 3, 30), which was chosen for “. . . convenience and because most, but not all, large pollutant sources affecting the Forest are within 200 km of a Forest’s boundary” (PR File Code 914, Allegheny Air Assessment Package, p. 30). Findings from the record are presented in the Air Quality Affected Environment Section of the FEIS (pp. 3-52 to 3-55). Impacts from major air pollutant sources within 200 km of the ANF boundary and the effects of these pollutants on ANF resources as well as effects to regional air quality, (FEIS, pp. 3-52 to 3-55; see also AR File Code 830.4, AMS for Air Quality Assessment Report, pp. 4 to 5; PR File Code 914, Allegheny Air Assessment Package, pp. 3, 30) are disclosed. The use of the 50 km Air Assessment Analysis Area is adequately supported in the FEIS, and I find that the decision is not arbitrary and capricious. Further, the FEIS includes an evaluation of impacts from large pollutant sources affecting the Forest within 200 km of the ANF boundary. I find the FEIS complies with NEPA (40 CFR 1502.16).

*Appellant contends the Forest Service “failed to carry out an adequate analysis of the ANF’s air emissions, their impacts to forest and human health and the proper management requirements based on air pollution in the ANF region (NOA #0007, p. 173).*

The Air Resources Affected Environment Section and effects analysis discussion (FEIS, pp. 3-52 to 3-57; pp. 3-57 to 3-63) adequately discloses and evaluates the impacts of criteria pollutants, including sulfur dioxide, nitrogen oxides, ozone, particulate matter, and carbon monoxide, on air quality and human and forest health in the ANF region. However, as discussed in greater detail in the decision letter to the Regional Forester, the disclosure of cumulative effects of OGD on ANF air quality, as well as impacts to regional air quality, do not fully comply with NEPA regulations at 40 CFR parts 1502.16 and 1508.7. Pollutants associated with OGD activities may combine with effects associated with implementing the Revised Plan and impact air quality. Subsequently, these combined effects may affect human and/or forest health.

The impacts of annual emissions from ANF management activities are compared to emissions in the context of the regional pollution load (FEIS, pp. 3-57 and 3-60). The analysis concludes annual emissions from prescribed fire, timber harvest activities, and all terrain vehicle/off highway motorcycle (ATV/OHM) use “are well below the regional pollution contribution threshold of 5 percent in all alternatives and therefore are not a major concern” (FEIS, p. Summary-33; see also FEIS, p. 3-62). Current management

[activities] of the ANF has minimal negative effects on air quality compared to the air pollution sources in the region; however, “. . . it is important to realize that these small sources of air pollutants can have cumulative effects with large sources and other small sources. These effects could lead to forest or human health problems if not limited in scope and amount” (AR File Code 830.4, AMS for the Air Quality Assessment Report, p. 7). The Revised Plan includes management direction in the form of a Forest-wide goal to address adverse effects of air pollution and atmospheric deposition on forest ecosystems (RLRMP, p. 14). I find the ANF properly evaluated the impacts of ANF air emissions on forest and human health; and the FEIS complies with NEPA (40 CFR 1502.16).

*Appellant contends the Region 9 "Allegheny Air Assessment Package" (2002) should have been disclosed in the DEIS and FEIS. It was not and the public commented on a DEIS lacking the critical information it needed to make informed comments (NOA #0007, p. 164).*

The air resource analysis (DEIS, pp. 3-44 to 3-54; FEIS, pp. 3-52 to 3-63) incorporates findings from the Allegheny Air Assessment Package and is included in the Planning Record (PR File Code 914, pp. 1-44). Consistent with NEPA (40 CFR 1502.24), discussions and analyses in the Air Resources Section of both DEIS and FEIS includes numerous references to sources of air quality data and scientific information (e.g., DEIS, pp. 3-47, 3-51; FEIS, pp. 3-52 to 3-53). Additionally, information contained in the Air Assessment Package (e.g., PR File Code 914, pp. 12, 14, 16, and 32) is presented in the AMS for Air Quality Assessment Report in the Appeal Record (AR File Code 830.4, e.g., pp. 4, 5, 6 to 7). This report is one of several detailed reports prepared as part of the official planning record for the Revised Plan. Information contained in these reports contributes to the development of a plan and the EIS (ROD, p. 4; see also FEIS Appendix B, pp. B-1 to B-98). The Air Resources Section of the FEIS incorporates by reference (NEPA 40 CFR 1502.21) air quality information from the AMS (e.g., FEIS, p. 3-52 and 3-53). I find the material contained in the Air Assessment Package is appropriately incorporated in the official planning documents and the air resources analyses are adequately supported. The ANF complies with NEPA (40 CFR 1502.16).

*Appellants contend the FEIS fails to adequately analyze how management activities (e.g., logging and OGD) will affect climate change. Further, the Forest Service offers “no plan for or detailed analysis of its future effects. This violates NEPA and NFMA 40 C.F.R. 1502.14 and 1502.16, 36 C.F.R. 219.12, 36 C.F.R. § 219.27(a) (12) (NOA #0007, pp. 111-117, and 158).*

The uncertainty related to climate change is acknowledged by the Regional Forester and is discussed in the FEIS (pp. 3-83 to 3-84). He states, “Because there is currently no reliable way of predicting future climate change or its effects, the Plan provides for maintaining a diversity of plant and animal communities that will enhance the resiliency of the forest to respond to these changing conditions. . . . The Plan provides flexibility to use a variety of treatments and an adaptive management approach in order to appropriately respond if and when problems occur” (ROD, p. 24). The Revised Plan provides ample management direction, in the form of Forest-wide goals (e.g., 2070

Biological Diversity, p. 13; 2400 Vegetation, p. 14; 2500 Watershed and Air, p. 14; 2600 Wildlife, Fish, and Sensitive Plant Habitat, pp. 14 to 15); objectives (e.g., 2400 Vegetation, p. 19; 2600 Wildlife, Fish, and Sensitive Plant Habitat, p. 20), design criteria (e.g., 2400 Vegetation, guidelines, pp. 64 to 65; Rotation Age standards, p. 67; 2600 Wildlife, Fish, and Sensitive plant Habitat, Habitat Diversity guidelines, pp. 80 to 81), and management area (MA) direction (e.g., MA 2.2, pp. 109 to 112). This direction provides a framework for maintaining a diversity of plant and animal communities and strives to enhance the resiliency of the ANF to respond to changing conditions. I find the FEIS complies NEPA (36 C.F.R. 219.12 and 36 C.F.R. § 219.27(a) (12)) and NFMA (40 C.F.R 1502.14 and 1502.16).

### **Change Between DEIS and FEIS**

*Appellant contends the revised planning documents reduce the amount of proposed wilderness by more than 1000 acres and remote recreation areas by more than 11,000 acres in comparison to the DEIS, without the opportunity for public comment on such a significant change. Appellant contends that a supplemented DEIS and renewed opportunity for public comment is required because of the reduction of remote recreation by 11,954 acres in Alternative “modified” C (NOA #0007, pp. 121-122).*

The Regional Forester explains his rationale for dropping Tracy Ridge and recommending Minister Valley for wilderness study (ROD, p. 18). He further discusses the reduction in proposed wilderness acreage in “Changes to the Revised Plan between the DEIS and FEIS” (ROD, pp. 34 to 35). These changes were incorporated into Alternative “Cm” and analyzed for potential effects in the FEIS and were found to be well within the ranges projected in the DEIS. Opportunities for public comment and responses on the DEIS are described in “Response to Comments” (FEIS Appendix A, PI# 296 to PI#314, pp. A-172 to A-179). I find the Revised Plan and FEIS comply with NEPA (40 CFR 1503.4 and 1502.9).

### **Cumulative Impacts**

*Appellant contends the ANF fails to analyze the cumulative impacts from major and minor sources of criteria pollutants and greenhouse gases throughout the ANF region (NOA #0007, pp. 158 to 168).*

National Ambient Air Quality Standards (NAAQS) are established for pollutants considered harmful to public health and the environment. NAAQS are established for six principal pollutants, which are called “criteria” pollutants; these pollutants include carbon monoxide, nitrogen dioxide, lead, ozone, particulate matter PM-10 and PM-25, and sulfur dioxide (AR File Code 830.4, AMS for Air Quality Assessment Report, p. 3). The analysis explains, “Current air pollution impacts occurring on the ANF are the cumulative result of numerous sources. Pollution from sources such as automobiles, off-road construction equipment, wildland fires, factories, oil refineries, and power plants all contribute to the regional pollution load” (FEIS, p. 3-57). The effects, including cumulative effects from criteria pollutants and the sources of these pollutants, are adequately disclosed (FEIS, pp. 3-52 to 3-63; AR File Code 830.4, AMS for Air Quality Assessment Report, pp. 4, 5). Additionally, the FEIS discloses the impacts of ozone and ground-level ozone on human and forest health (e.g., FEIS, pp. 2-23, 3-54, 3-55, 3-57,

and 3-100). Regulating the impacts of greenhouse gases are beyond the control of the ANF because these pollutants are influenced by factors occurring outside the Forest boundary. Further, the State of Pennsylvania is the regulatory authority for air quality. While the ANF does not regulate air quality, it demonstrates commitment to air quality issues by including a Forest-wide Goal to cooperate with regulatory authorities to reduce adverse effects of air pollution and atmospheric deposition on forest ecosystems (RLRMP, p. 14). I find that the cumulative impacts of criteria pollutants and sources of criteria pollutants are adequately disclosed and analyzed; and the ANF complies with NEPA (40 CFR 1508.7).

## **National Forest Management Act (NFMA)**

(1982 Planning Regulations found at 36 CFR Part 219)

### **Public Participation**

*Appellants contend the ANF failed to obtain input from OGM owners, and as a result, assumptions in the ROD are fatally flawed (NOA #0010, pp. 9-11 (includes [##]<sup>1</sup> and [\*\*\*]<sup>2</sup>); NOA #0013, p. 2; NOA #0017, pp. 5-6).*

The ANF included private OGM owners extensively in their public outreach, which included press and media releases, mass mailings, and through contact with elected officials (FEIS Appendix A, pp. A-5 to A-12). ANF line officers and staff met and discussed forest plan revision with OGM operators at a meeting hosted by Pennsylvania Oil and Gas Association (POGAM) on July 21, 2006 (AR File Code 550, 2006\_07\_21\_POGAM mtg.) The Appeal Record documents minimal participation of OGM owners at public meetings or in providing written or oral comments (AR File Codes 300 and 500). The ANF states "...the industry was not a participant to any extent in public workshops or comments" (FEIS Appendix A, Oil and Gas Management, p. A-4). I find the ANF provided adequate opportunity for OGM owners to participate and has complied with NFMA (36 CFR 219.6 (1982)).

*Appellant objects to the Revised Plan under Forest Plan Goals, Section 5400, to oil and gas rights by spending federal money because that portion of the Revised Plan was not discussed during the planning process, it should be removed for that reason (NOA #0017, pp. 6 and 7).*

The ANF discussed acquisition of private oil and gas rights in the Preliminary Plan (PLRMP) under 5400 Land Ownership, Forest-wide design criteria (PLRMP, p. III-41). In September 2003, many interested publics felt the Forest Plan should be changed to reflect a more aggressive strategy for acquiring oil and gas rights on the ANF in the Appeal Record. However, the 1986 Plan adequately allowed them to acquire mineral

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<sup>1</sup> The symbol [##] represents Pennsylvania Oil and Gas Association (POGAM) (NOA #0006), which incorporates 63 non-unique appeals (NOAs #0019 through #0083).

<sup>2</sup> The symbol [\*\*\*] represents NOA #0017 (Mead Township & Kane Area School District) who incorporate all portions of POGAM (NOA #0006) and Arthur J. Stewart (NOA #0010) by reference in addition to their specific appeal points relative to oil and gas.

rights (AR File Code 720, Analysis of the Need for Change in Forest Plan Revision Allegheny National Forest, September, 2003, Doc#10012003\_Final\_NFC pp. 15 to 16). As a result, acquisition of mineral rights was not addressed in forest plan revision as an issue (NOI, p. 12; Federal Register (FR) September 25, 2003). I find the RLRMP complies with 36 CFR 219.6 (1982).

*Appellants contend that local county governments were denied early input into the Revised Plan and does not comply with planning requirements, such as 36 CFR 219.10 (Sustainability); the process did not allow for meaningful involvement of local government officials concerning the development of land use programs (NOA #0008, pp. 1-6; NOA #0010, pp. 2-13 (includes [\*\*\*]); NOA #0015 pp. 2-6, NOA #0017, pp. 1-5).*

**First, I must clarify your reference to 36 CFR 219.10 regarding suitability.**

“Sustainability” is defined in the current planning regulations. The 1982 planning regulations at 36 CFR 219.10 (1982) is titled “Forest planning-general procedure”.

I find nothing in the Appeal Record supporting the contention that local county governments were denied opportunity to participate in the planning process. Public involvement began in 1997 until the process halted and resumed in 2003 (DEIS, p. 105). The record documents meetings with the public at large, which included local government participation. In addition, government to government consultation began one year prior to the recommendation of the preferred alternative in the DEIS (FEIS Appendix A, Section 2.3.4, p. A-9). Considerations of these comments are detailed in Sections 3.0 and 4.0 of the FEIS (Appendix A, pp. A-13, A-277 to A-340). Section 4.0 contains a full reproduction of comment letters received from government entities. All county comprehensive Plans were reviewed and areas of potential conflict have been noted (FEIS Section 3.5.5, p. 3-447; FEIS Appendix A, PIs #23 to #24, pp. A-23 to A-24). 36 CFR 219.14 includes direction for the transition process for plan revision (70 FR 1055, January 5, 2005, as amended at 71 FR 10838, March 3, 2006). The ANF Revised Plan follows direction under the 1982 Planning Regulations found in 36 CFR 219.6 Public Participation. 36 CFR 219.6(k) states “Forest Planning activities should be coordinated to the extent practicable with owners of lands that are intermingled with or dependent for access upon, [NFS] lands”. I find the ANF has complied with NEPA.

*Appellant contends the public participation process was flawed; including inadequate numbers and locations of public meetings to releasing requested documents to the public (NOA #0007, pp. 6-12).*

The first effort for Forest Plan revision began with a public listening session held in September and three public workshops held in October in 1997. Information from these efforts carried through to the Forest Plan revision process in 2003. Public participation activities are well described and documented (DEIS Appendix A, pp. A-15 to A17; DEIS Appendix E, p. E-17). The public’s feedback helped identify areas to consider additional emphasis in both developing and evaluating alternatives in the Analysis of the Need for Change (AR File Code 720, Analysis of the Need for Change in Forest Plan Revision Allegheny National Forest, September, 2003, Doc#10012003\_Final\_NFC, p. 6). Approximately 2000 public comments were received in response to public scoping in

1996 and 2003 which were reviewed and considered. The resulting major revision issues are displayed in the Summary of the AMS (DEIS Appendix B, pp. B-1 to B-3). The Regional Forester outlines the many opportunities provided by the ANF for public involvement (ROD, pp. 2 to 3, 8). The Appeal Record documents the opportunities provided for extensive public participation (FEIS Appendix A, pp. A-5 to A-7; AR File Code 350 in its entirety). I find no evidence in the Appeal Record that the ANF provided inadequate numbers and locations of public meetings. I find the ANF has complied with 36 CFR 219.6 (1982).

The Appeal Record contains correspondence between the appellant and the ANF requesting planning documents and an opportunity to review the project file (AR File Code 550 in its entirety). The ANF provided to the appellant copies of the Preliminary Plan and the DEIS, including two volumes of appendix material and made available a CD-ROM package containing numerous maps. The ANF informed the appellant that much of the requested material was available in public libraries. In a letter to the appellant, dated August 7, 2006, the ANF stated they would provide copies of specific documents requested that have been published by the Forest Service (AR File 550, 2006\_08\_07\_AD\_P Resp.doc). In a subsequent August 18, 2006 letter, the ANF asked the appellant to identify additional specific materials needed to review as the information related to the plan revision is voluminous and, at that time, no such single consolidated file existed (AR File 550, 2006\_08\_18\_AD\_P Response.doc). I find the ANF has complied with 36 CFR 219.6 (1982).

#### **Management Direction**

*Appellant contends there is no specific plan in place to explain where the ANF is going to attempt to purchase subsurface mineral rights in support of the goal listed in the ROD (NOA #0007, pp. 51 and 56).*

Though the ANF does not generally seek to acquire subsurface rights, it has the goal to “acquire surface and subsurface ownership rights...where it benefits the long-term management of the ANF” (ROD, pp. 32-33; RLRMP, pp. 15 and 49; FEIS Appendix A, PI# 94, p. A-60; FEIS Appendix B, AMS, p. B-5). The Regional Forester discusses his objective to acquire subsurface rights in those areas recommended for wilderness study and acknowledges that the ability to acquire these rights will depend on available funding and the identification of willing sellers (ROD, pp. 17 and 33). The Revised Plan also added a goal for collaboration with county and local governments on this issue (RLRMP, p. 15). Changes have been made between DEIS and FEIS to highlight goals and objectives for subsurface acquisition in all alternatives (RLRMP, p. 21; FEIS Appendix A, PI #52, p. A-34; PI #94, p. A-60 and PI #408, p. A-212). I find the Revised Plan complies with 36 CFR 219.11(b) (1982).

#### **Standards and Guidelines (Design Criteria)**

*Appellant contends that timber and forest-wide Design Criteria are not adequate to protect forest resources, specifically not placing seasonal restrictions for logging on sensitive soils (NOA #0007, pp. 99-100).*

The ANF response to comment provides a clear explanation about Revised Plan management direction to protect sensitive soils. Specifically, the response to this comment explains: “Between draft and final LRMP, an additional guideline was added in section 2500 Watershed giving more protection to sensitive soils. These soils are protected by the guidelines in the LRMP as well as by regional direction (FSH 2509.18 – Soil Management). The current protection not only allows for seasonal logging restrictions to be used but also limits logging on these soils during unexpected wet periods that may occur outside of the restrictions. By saying ‘equipment operation will only occur when soils are capable of supporting equipment without incurring detrimental compaction, puddling, or rutting in excess of regional standards’ the soils must be considered year round as a potential restriction to equipment operation” (FEIS Appendix A, PI#71, p. A-45).

The Revised Plan contains extensive programmatic management direction for protecting, maintaining and enhancing soil, found in the form of Forest-wide goals (e.g., 2500 Watershed and Air Goals, Item 1, p. 14), design criteria (e.g., Vegetation, Silvicultural/Harvest Systems, Guideline 2, p. 65; 2500 Watershed and Air, Soil, Guideline 3, p. 73; 2500 Watershed and Air, Riparian Corridor, Wetlands, including springs, seeps, and vernal pools, pp. 77 to 78), and monitoring requirements (e.g., Table 15, Soils, p. 50). The design criteria incorporate seasonal restrictions as needed, and are adequate to protect sensitive soils. I find the Revised Plan management direction is adequate to protect sensitive soils; and complies with 36 CFR 219.11(c) (1982).

*Appellant contends the ANF has failed to establish Revised Plan standards and guidelines requiring it to comment on permits increasing regional and local air pollution sources and their impacts on ANF air quality, forest health and human health in the ANF region (NOA #0007, pp. 169-170).*

Air quality levels are defined by the Environmental Protection Agency’s (EPA) National Ambient Air Quality Standards (AAQS). Criteria pollutants are detected and measured on a regional scale by State and Federal Agencies. If regional standards are exceeded, State and Federal Agencies will determine the needed changes in the regional emissions (FEIS Appendix A, p. A-42). NFMA (1982 Planning Regulations) does not require the Forest Service to comment on regional air quality permits. “The Plan does not preclude the ANF from reviewing and commenting on region air quality permits” (FEIS Appendix A, PI #62, p. A-42); in fact the Revised Plan provides direction in the form of a goal to “Cooperate with regulatory agencies to reduce adverse effects of and atmospheric deposition on forest ecosystems” (RLRMP, 2500 Watershed and Air Goal, p. 14; FEIS Appendix A, PI #62, p. A-42). The ANF’s commitment to air quality is also evident in the Forest-wide design criteria (Guideline) for air. For project-activities, the guideline states “Management activities, including permitted activities, which would degrade air quality below National and Pennsylvania [AAQS], should be prohibited” (RLRMP, p. 79). I find the air resource management direction contained in the Revised Plan is adequate with complies with 36 CFR 219.11(c) (1982).

## Vegetation Management Practices

*Appellant contends that all alternatives, including the preferred, treat the ANF as a tree farm first, with a clear emphasis on producing and regenerating Allegheny hardwoods and black cherry in particular. In addition, timber and management area direction in Management Area (MA) 3.0 is managing for a black cherry monoculture in violation of 16 U.S.C. 1604(g)(3)(b) and 36 CFR 219.27(b)(3) by putting the primary management emphasis on the highest dollar return (NOA #0007, pp. 98-111, 101-102).*

I find no evidence that the ANF intends to manage solely for the Allegheny hardwood forest type/black cherry. All alternatives were based on different management themes and not on predetermined outputs (ROD, p.10). The selected alternative for the Revised Plan (Alternative “Cm”) is designed to retain and regenerate all appropriate forest types, not just Allegheny hardwood forest type and black cherry tree species (ROD, pp. 10 to 12). The ANF is in a unique ecological situation due to the extensive deforestation that took place prior to the transfer of these lands into federal ownership (ROD, p.15). The Regional Forester discusses his rationale for selecting Alternative “Cm” (ROD, pp. 22 to 24). The ANF’s analysis clearly shows a reduction in the acres of Allegheny hardwoods over the long term under the selected alternative with more diversity in forest types and age classes overall (FEIS, pp. 2-53 to 2-58).

The appellant objects to the vegetation management design criteria for MA 3.0 citing this section of the Revised Plan as specifically violating NFMA diversity requirements (16 U.S.C. 1604(g)(3)(b)) and 36 CFR 219.27(b)(3). Under these requirements, selecting silvicultural methods primarily for the greatest dollar return or the greatest output of timber is prohibited. I disagree with the appellant on these points. There is no evidence that the ANF contemplates creating a black cherry monoculture in MA 3.0, or intends to use even-age management techniques there solely because of potential financial returns.

The FEIS discloses the predicted changes in forest composition by alternative (FEIS Table 2.3, p. 2-54; Summary p. 13). The predicted changes in forest species composition, age class diversity, and habitat diversity indicate increased diversity over time as a result of implementing the Revised Plan strategy. The FEIS discusses at length the rationale for silvicultural and reforestation practices to be used (FEIS, pp. 3-119 to 3-135, 3-145 to 3-147, 3-155 to 3-160). It discloses the expected vegetation changes where forest management practices will not occur under the Revised Plan (FEIS, pp.3-164 to 3-166). Even-age management is allowed in the Revised Plan where it is biologically appropriate and necessary to meet Revised Plan objectives (FEIS, p. 3-132; RLRMP Table 21, p. 66). I find the Revised Plan complies with 16 U.S.C. 1604(g) (3) (b) and 36 CFR 219.27(b) (3).

*The appellant contends the Revised Plan lacks the mandatory restocking requirement required by NFMA (NOA # 0007, pp. 100-101).*

The Revised Plan provides direction requiring compliance with the five year restocking requirements described in 36 CFR 219.27(c) (3). The direction is supplied as a forest-

wide standard (RLRMP, pp. 68-69). The Revised Plan (RLRMP Appendix A, Table A-1, pp. A-5 to A-7) provides citations to the scientific literature for the selection and use of specific prescriptions for each forest type, including regeneration guidelines and stocking standards. I find the ANF adequately addresses the mandatory restocking requirement and the Revised Plan complies with 36 CFR 219.27(c) (3) (1982).

*The appellant contends that the ANF did not disclose all information on nitrogen fertilization and other problems associated with its desire to manage for “a few even aged species” which makes “nutrients unavailable to the tree species that require them.” (NOA # 0007, pp. 174-175)*

The ANF discloses its reasons for using nitrogen fertilization to assist regeneration of black cherry. The ANF acknowledges and describes the new research that suggests that fertilization may be accelerating the loss of certain soil nutrients that are important to other tree species, such as sugar maple. The Revised Plan discusses fertilization under reforestation practices (RLRMP Appendix A, p. A-31). The ANF acknowledges that nitrogen deposition from acid rain may be part of the problem (FEIS, pp. 3-12, 3-15 to 3-16, 3-123). The Regional Forester acknowledges the uncertainty surrounding fertilization as a reforestation practice in the Record of Decision (ROD, p.23). Some limitations have been placed on this practice in the Desired Condition section of the Revised Plan (RLRMP, p. 71; FEIS Appendix A, PI # 163, pp. A-97 to A-98, PI # 168, pp. A-101 to A-102, PI # 190, pp. A-111 to A-112) in response to the concern about soil depletion along with requirements for additional research. I find the ANF complies with law, regulation and policy.

#### **Allowable Sale Quantity (ASQ)**

Direction found at 36 CFR 219.16 (1982)

*Appellants variously contend that the annual ASQ of 54.1 [million board feet] MMBF is too low. They specifically point to the 1995 analysis of the Timber Harvest Program Capability conducted by the agency as evidence that a higher ASQ is possible and warranted in the Revised Plan (NOA # 0008, pp. 5-6; NOA #0010, pp. 30-31; NOA #0015, pp. 9-11).*

Several factors can affect the ASQ, most commonly changes in the number of acres considered suitable for production and changes in management objectives for the landscape that emerge over time. As explained by the ANF (FEIS Appendix A, PI #122, pp. A-73 to A-74), both of these factors played a role in determining the ASQ. The ANF documents that the number of suitable acres was reduced from the 1986 Plan due to improved mapping and identification of some areas where reforestation could not be assured with existing technology (FEIS, pp. 3-391 to 3-392). The FEIS discusses the 1995 study (FEIS, pp. 3-389 to 3-391) stating that the higher ASQ referenced by the appellants was a long-term estimate based on the assumption that adequate numbers of tree seedlings would establish themselves in harvest units over time. The lower ASQ was supported by the 1995 study as a reasonable harvest level. The deciding official explains that the ASQ is based on full implementation of Revised Plan goals for wildlife habitat

and age class diversity (ROD, p. 27). I find the calculation of ASQ for the ANF complies with 36 CFR 219.16 (1982).

### **Fish and Wildlife Resources**

*Appellant contends the “Forest Service’s ‘analysis’ regarding the species they did identify as having viability concern was far too cursory and is usually not tied to any more specific analysis or proposed management plan provision for specific monitoring requirements” (NOA #0007, p. 87).*

There is no specific procedure required by law, regulation, or policy for conducting a species viability evaluation (SVE), either for comparing the effects of Land and Resource Management Plan (LRMP) alternatives or for providing for species viability within an LRMP. The process used must comply with the viability direction of the NFMA 1982 planning regulations (36 CFR 219.19), use the best available information, and be scientifically sound. The SVE and decision process are deliberate and incorporate current scientific information on species and habitat and the review of external and internal experts (RLRMP Appendix D, pp. D-1 to D-4; FEIS Summary pp. 25 to 27; FEIS pp. 3-205 to 3-211, 3-253 to 3-260, 3-280 to 3-289; FEIS Appendix E, pp. E-1 to E-60; AR File Code 924.1, BE Final, 2007-0131\_be\_final pp. 1-297; AR File Code 924.1, BE Final, 2007-0131\_appendix\_c\_be, pp. 322-327; AR File Code 1215, E 6 REs LFs – Species carried through the viability process, 2000+ pp.) The Revised Plan monitoring requirements for wildlife viability and diversity (RLRMP, pp. 37 to 51), as well as the conservation measures and monitoring identified in the Biological Evaluation (AR File Code 924.1, BE Final, 2007-0131\_appendix\_c\_be, pp. 322-327), comply with NFMA (36 CFR 219.19 and 219.12(k)). Specific monitoring protocols and techniques are not presented in the Revised Plan, but will be included in the monitoring guide that will be completed at a later date (RLRMP, p. 37; FEIS, Appendix A, Public Interest #438, p. A-225; ROD, p. 43). I find that the analyses and monitoring requirements for wildlife viability and diversity are in compliance with 36 CFR 219.19 (1982).

*Appellant contends the plan revision documents fail to satisfy the viability and monitoring requirements for wildlife diversity (NOA# 0007, p. 82).*

The ANF is required to manage fish and wildlife “to maintain viable populations of existing native and desired non-native vertebrate species in the planning area” (NFMA 1982 planning regulations at 36 CFR 219.19). The record demonstrates the ANF’s Species Viability Evaluation (SVE) and decision process is deliberate. It incorporates current scientific information on species and habitat as well as review of external and internal experts (RLRMP Appendix D, pp. D-1 to D-4; FEIS, pp. Summary-25 to 27, 3-205 to 3-211, 3-253 to 3-260, 3-280 to 3-289; FEIS Appendix E, pp. E-1 to E-60; AR File Code 924.1, Biological Evaluation Final, 2007-0131\_be\_final, pp. 1-297; AR File Code 924.1, BE Final, 2007-0131\_appendix\_c\_be, pp. 322-327; AR File Code 1215, E 6 REs LFs – Species carried through the viability process, 2000+ pp.) The Revised Plan monitoring requirements for wildlife viability and diversity (RLRMP, pp. 37-51) as well as the conservation measures and monitoring identified in the Biological Evaluation (BE) (AR File Code 924.1, BE Final, 2007-0131\_appendix\_c\_be, pp. 322 to 327), comply with

NFMA (36 CFR 219.19 and 219.12(k)). The viability evaluation conducted by the ANF is adequate and complies with NFMA.

*Appellant contends the viability analysis for the Cerulean Warbler and Northern Goshawk is flawed; based on vague and unreliable science (NOA #0007, pp. 88-90, 92).*

Cerulean warbler habitat (RLRMP, pp. 11, 20, 46; FEIS, pp. 2-16, 2-22, 2-24, 3-187, 3-195, 3-198 to 3-201, 3-233 to 3-239, 3-270 to 3-272; AR File Code 1215 E 6.3 Birds, Cerulean Warbler Long Form pp. 1-36) and Northern Goshawk information (RLRMP, pp. 11, 20, 46; FEIS, pp. Summary-27, 2-22, 2-24, 3-179, 3-194 to 3-198, 3-206, 3-230 to 3-233, and 3-281 to 3-282; AR File Code 924.1, BE Final, 2007-0131\_be\_final, pp. 133 to 154; AR File Code 1215, E 4.3 2006 Goshawk road density evaluation, 12 pp.; AR File Code 1215 E 6.3 Birds, Northern Goshawk Long Form, p. 1-36; AR File Code 1215, E 6.3 Birds, Northern Goshawk Risk Evaluation, 6 pp.) is well-supported in the administrative record. The SVE incorporates current scientific information on species, description of ecological context, evaluation criteria, habitats, and monitoring (RLRMP Appendix D, pp. D-1 to D-4; FEIS, pp. Summary-25 to 27, 3-205 to 3-211, 3-253 to 3-260, 3-280 to 3-289; FEIS Appendix E, pp. E-1 to E-60; AR File Code 924.1, BE Final, 2007-0131\_be\_final, p. 1-297; AR File Code 924.1, BE Final, 2007-0131\_appendix\_c\_be, pp. 322 to 327; AR File Code 1215, E 6 REs LFs – Species carried through the viability process, 2000+ pp.). The review and recommendations of external and internal experts (FEIS Appendix E, pp. E-13 to E-15; AR File Code 922.4, Document 2003-0703\_cer\_warbler\_email\_stoleson, 5 pp.; AR File Code 924.1, BE Final, 2007-0131\_be\_final, pp. 8 to 9) are also incorporated into the viability evaluation. Historical range and population information is provided by expert sources including the United States Fish and Wildlife Service (USFWS), Pennsylvania Natural Heritage Program, and Naturereserve (FEIS Appendix E, pp. E-1 to E-60; AR File Code 924.1, BE Final, 2007-0131\_be\_final, pp. 1-297; AR File Code 924.1, BE Final, 2007-0131\_appendix\_c\_be, pp. 322 to 327). Both birds are selected as MIS and will be monitored annually (RLRMP, pp. 39 to 41, 45 to 46, 51; see also AR File Code 924.1, BE Final, 2007-0131\_appendix\_c\_be, pp. 322 to 327).

Additionally, the effects of management activities, such as roads and OGD, on wildlife species will be monitored (RLRMP, pp. 40, 41, 48). The effects analysis indicates all alternatives are likely to maintain viability of the cerulean warbler (FEIS, p. 3-239, 3-272) and the Northern goshawk (FEIS, pp. 3-230, 3-270; see also AR File Code 924.1, BE Final, 2007-0131\_be\_final, p. 154). The scientific analyses and reviews of the Cerulean warbler and Northern goshawk are adequate for a programmatic Forest Plan and comply with NFMA (36 CFR 219 (a) (1982)) and NEPA (40 CFR 1508.7).

#### **Management Indicator Species (MIS)**

*Appellant contends the Forest Service attempts to base their population data for their MIS on habitat monitoring rather than individual population counts which violates the 1982 Planning Regulations (RLRMP, p. 304) (NOA #0007, p. 85).*

The ANF selected five MIS that represent different landscape-scale habitat types (FEIS, pp. Summary-23 to 25). The ANF followed a well-documented process for selection of MIS and stated the reasons for selection of each (ROD, p. 28; FEIS, pp. Summary-23 to 25, 2-22 to 2-23, 3-194 to 3-204, 3-230 to 3-247, 3-268 to 3-278; AR 922.4, Amount and Trends in habitat for MIS, 500+ pp.). The final selection of MIS “. . . is expected to reflect the effects of the Revised Plan on ecological communities of management interest. . . emphasis has been placed on species that are closely associated with habitats of interest and species that can produce meaningful data about the effects of forest management activities on a few major communities of interest” (FEIS, p. 3-194).

The minimum legally required monitoring items from the 1982 NFMA planning regulations are presented in Table 13 from the Revised Plan (pp. 39 to 41). NFMA regulations require that population trends of MIS be monitored and relationships to habitat changes determined (36 CFR 219.19(a) (6)). Monitoring requirements for each of the five MIS include monitoring the relationship between trends in habitat and populations (e.g. RLRMP, Cerulean warbler, p. 40 and Mourning warbler, p. 41); this complies with NFMA. The ANF Revised Plan monitoring requirements for MIS are adequate, and comply with NFMA 1982 planning regulations (36 CFR 219.19 (a) (6)).

*Appellant contends that choosing the mourning warbler as a new MIS as a means to "document" the "benefits" to wildlife from logging operations is arbitrary and contrary to the MIS regulation which require MIS species be representative of other early successional species (NOA #0007, p. 96).*

The NFMA 1982 Planning Regulations require that the reasons for selection of a species as a MIS be stated (36 CFR 219.19(a) (1)), and that population trends of MIS be monitored and relationships to habitat changes determined (36 CFR 219.19(a) (6)). There is no requirement to select any particular species or guild of species as management indicators. The selection of, and analysis of effects on, MIS are discussed in the FEIS (ROD, p. 28; FEIS, pp. Summary-23 to 25, 2-22 to 2-23, 3-194 to 3-204, 3-230 to 3-247, 3-268 to 3-278). The ANF selected MIS that represent different landscape-scale habitat types (FEIS, pp. Summary-23 to 25). The ANF followed a well-documented process for selection of MIS and stated the reasons for selection of each (ROD, p. 28; FEIS, pp. 23 to 25, 2-22 to 23, 3-194 to 204, 3-230 to 247, 3-268 to 278; AR 922.4 Amount and Trends in habitat for MIS, 500+ pp.).

The reasons for the selection of the Mourning warbler are adequately documented (ROD, p. 35; FEIS, p. 2-22, 3-184 to 3-185, 3-195, 3-202 to 3-203, 3-244 to 3-246, and 3-277 to 3-278). Revised Plan monitoring requirements for the Mourning warbler and other MIS (RLRMP, pp. 39, 41, 45 to 46, and 51) are adequate and comply with 36 CFR 219.19 (a)(6) (and also 36 CFR 219.12(k)). The ANF's MIS selection process and monitoring requirements found in the Revised Plan are adequate and in compliance with NFMA.

#### **Recreation Resource**

*Appellants contend that the increasing trend in snowmobiling use identified by PA Wilds was not considered in decisions affecting that use (NOA #0007, p. 156; NOA #0011, pp. 8 and 9; NOA #0018, pp. 8 and 9).*

The ANF performed a thorough analysis of past trends in recreation use and predicted snowmobiling visitation into the future. Data from the National Survey on Recreation and the Environment was used to identify trends in participation in various outdoor recreation activities. Data from both the 1994-1995 and 2000-2001 surveys indicate growth has occurred in all but three activities, none of which are snowmobiling (FEIS, p. 3-309). The FEIS also identified the top ten activities with the most growth in order of priority (FEIS, p. 3-310).

The ANF provided future use predictions, using 2001 National Visitor Use Monitoring data as a baseline. They based visitation predictions on the current primary user base. This analysis predicts a slight to moderate increase in recreation visitation for all activities on the ANF of 1.2 percent in the next 25 years (FEIS, p. 3-310). The ANF provided future use predictions by activity, including snowmobile use, for each alternative. Projections from the northern region of the U.S. as identified in Projections of Outdoor Recreation Participation to 2050 by Bowker, English and Cordell 1999, were used to project rates of increase for snowmobiling (FEIS Appendix B, p. B-94). The ANF has determined the existing 366 miles of snowmobile trail is adequate to meet the demand for snowmobile use on the Forest, especially given that the State also provides approximately 2,600 miles of snowmobile trail (FEIS, p. 1-19). I find the ANF followed a thorough process in analyzing the predicted trends in snowmobile use and complies with 36 CFR 219.21 (1982).

*Appellants variously contend that snowmobiles should be treated differently from other motor vehicle use because they travel over snow and their impacts are less (NOA #0007, pp. 149-151; NOA #0011, pp. 3-4; NOA #0018, pp. 3-4).*

The ANF specifically addressed snowmobile opportunities by including several specific objectives to enhance those opportunities (RLRMP, p. 18). The Revised Plan identified seven management areas suitable for snowmobiles, two of which are not deemed suitable for all terrain vehicles/off highway motorcycles (ATV/OHM) (RLRMP, pp. 30 to 32). Snowmobiles are not restricted to operating within Intensive Use Areas, whereas ATV/OHMs are restricted (RLRMP, p. 32). The ANF differentiates between trails managed for snowmobiles and ATV/OHM (FEIS, Table 3-78, Table 3-79, p. 3-304). Although not a commitment to construct, the ANF estimates that 36 miles of snowmobile connector trails will be built by the end of the second decade (FEIS Appendix B, Tables B-43 and B-44, p. B-58). In addition, the FEIS identifies impacts specifically related to snowmobile use including that it will produce emissions of volatile organic compounds, particulate matter, nitrogen oxides, and carbon monoxides and usage is expected to remain constant between alternatives (FEIS, p. 3-58). I find the ANF adequately addresses the difference between over snow travel and other motor vehicle use and complies with 36 CFR 219.21 (1982).

### **Species Diversity**

*Appellant contends that 25 percent of ANF wildlife habitat quality is declining. Increased OGD is a major impact to Threatened and Endangered Species (TES), and the*

*“Forest Service is not taking the necessary and long overdue steps to protect old growth in Pennsylvania, in violation of 36 C.F.R. § 219.27(g)” (NOA #0007, pp. 63-65).*

Management (36 CFR 219.27) and diversity (36 CFR 219.26) requirements for forest plans are outlined in NFMA 1982 Planning Regulations. Management prescriptions “where appropriate and to the extent practicable shall preserve and enhance the diversity of plant and animal communities . . .” (36 CFR 219.27(g)). All of the alternatives analyzed, including the selected alternative (Alternative “Cm”), incorporate a landscape approach to providing future late structural forest on the ANF and add a new Management Area, MA 2.2, which would be managed to provide an older, structurally complex forest in a connected pattern across the landscape (FEIS, p. 3-140). A primary objective for this management area is “to maintain connectivity between existing remnant old growth and other core areas managed for late structural conditions on the ANF” (FEIS, p. 3-140). Management within MA 2.2 will emphasize “species with viability concerns, remote and interior species with high sensitivity to disturbance, and protection of unique micro and macro habitats (e.g. rock/boulder outcroppings, seasonal nesting and cover habitat)” (RLRMP, pp. 26, 109 to 112). Alternative “Cm”, emphasizes “. . . even-aged management but also retain[s] larger areas of uneven aged management to provide for older continuous forest conditions and increased areas with no active vegetation management” (FEIS, p. Summary-16; see also FEIS, p. 3-140; RLRMP, MA 3.0, pp. 113 to 115; MA 6.1, p. 128 ).

The Revised Plan provides ample management direction in the form of forest-wide goals (e.g., RLRMP, 2400 Vegetation, goals 1, 3, and 4, p. 14, and 2600 Wildlife, Fish, and Sensitive Plant Habitat, goal 1, p. 14), objectives (e.g., 2600 Wildlife, Fish and Sensitive Plant Habitat, Species with Viability Concerns, p. 20), design criteria (e.g., 2600 Wildlife, Fish and Sensitive Plant Habitat, guideline for old growth areas to promote habitat and species diversity, p. 80), and management area direction (e.g., MA 2.2, p. 26, design criteria, pp. 111 to 112) that promotes and retains old growth habitat, and provides for habitat diversity for plant and animal species, including species with viability concerns. This direction complies with NFMA management and diversity requirements. The monitoring strategy includes requirements to provide for habitat and species diversity (RLRMP, pp. 39 to 51). For example, strategic monitoring for the “Wildlife, Fish and Sensitive Plant Habitat” resource area (RLRMP, Table 15, p. 51) asks the question: “What is the amount and distribution of high quality remote and interior habitat across the landscape? How much late structural/old growth habitat is provided?” During forest plan implementation, TES and their habitat will also be monitored (RLRMP, pp. 47 and 51). I find the ANF Revised Plan contains adequate programmatic management direction that provides for habitat and species diversity; and complies with NFMA (36 CFR 219.27(g)(1982)).

### **Migratory Bird Treaty Act (MBTA)**

*Appellant contends the FEIS and Revised Plan violate the [MTBA] by not even discussing whether there should be restrictions on certain types of management activities ... during the nesting season, and if not, why not (NOA #0007, pp. 96-97).*

The FEIS discloses impacts from management activities on several Neo-Tropical Migratory Bird (NTMB) species, which include both coarse and fine filter assessments depending on the species (FEIS, pp. 3-208, 3-257; see also AR File Code 924.1, BE Final, 2007-0131\_be\_final, pp. 133 to 166, 293, 297). The Revised Plan includes forest-wide management direction (e.g., 2600 Wildlife, Fish, and Sensitive Plant Habitat, goals p. 14, and guidelines, pp. 80 to 82, 84 to 88; FEIS, pp. 3-191 to 3-194, 3-218, 3-226 to 3-230, 3-265 to 3-268) that protects and provides nesting sites for several NTMB species, and identifies seasonal management restrictions during nesting seasons (FEIS, pp. 81 to 82, 84 to 87). Monitoring requirements (e.g., FEIS, p. 40, Cerulean warbler and p. 47, bald eagle) are based in part, on breeding bird (AR File Code 922, 1996 ANF Breeding Bird Surveys 69 pp.; AR File Code 922, Sauer & Droege Breeding Bird Trends, 17 pp.) and songbird surveys composed of several years of data (AR File Code 175.7, 2001 Monitoring Report, pp. 58 to 61; AR File Code 924.1, USDA-FS 1996c Fish Wildlife Monitoring pp. 15 to 17). Further, select migratory birds are evaluated in the MIS habitat analysis (FEIS, pp. Summary-23 to 25, 2-22 to 2-23, 3-194 to 3-204, 3-230 to 3-247, 3-268 to 3-278) and the SVE (FEIS, pp. Summary-24 to 28, 3-205 to 3-211, 3-253 to 3-260, 3-280 to 3-289, FEIS Appendix E, pp E-1 to E-60). I find the ANF Revised Plan complies with the MTBA and Executive Order 13186.

### **36 CFR Parts 217 vs. Part 219**

*Appellant contends there is confusion regarding whether [36 CFR] Part 217 or Part 219 applies and requests instructions be reissued to clarify if Part 217 applies, or if instead Part 219 applies, by virtue of the exception stated in the 2007 Revised Plan (RLRMP, p.5). Appellant objects to the ambiguity created and requests that appeal instructions be reissued; the appeal period re-commence under the governing regulations; and any perceived inconsistencies be disregarded (NOA #0012, pp. 1-2).*

This plan revision process was conducted in accordance with the 1982 Planning Regulations at 36 CFR 219 which were in place prior to November 9, 2000 (Executive Summary, p. 1; ROD, p.4; RLRMP, pp. 4 to 5). Future amendments and revisions to this Revised Plan will fall under regulation at 36 CFR Part 219, pending the outcome of current litigation (*Citizens for Better Forestry v. USDA*). The Regional Forester clearly describes the procedure for filing a Notice of Appeal under 36 CFR Part 217 (ROD, p. 44). I find the ANF adequately described the process concerning both 36 CFR Parts 217 and 219.

### **2005 Planning Rule**

**36 CFR Part 219 as amended at 71 FR 10838, March 3, 2006**

*Appellant contends that the Revised Plan is invalid because the ANF continued to rely upon the 2005 Planning Regulations 36 CFR Part 219 (as amended) enjoined by Citizens for Better Forestry v. USDA, 481 F.Supp.2d 1059 (N.D. Ca. 2007). They contend it must be redone to be consistent with the 1982 Planning Regulations and want the 1986 Plan reinstated in the interim. They specifically contend: 1) monitoring Management Indicator Species (MIS), and 2) the objection process may be used in lieu of the previous*

*appeal process to resolve Plan revisions and amendments (RLRMP pp. 3-4), are illegal and no longer in effect. Further, the Revised Plan monitoring section is illegally vague and fails to meet the NFMA standards or the 1982 Planning Regulations (NOA #0007, pp. 13-16, 81-83, 84).*

Regulations at 36 CFR 219.14(e) (as amended at 71 FR 10838, March 3, 2006) allow Forest Plan revisions initiated prior to January 5, 2005, to use provisions of the planning regulations in effect before November 9, 2000. Further, “the Responsible Official may elect to use either the administrative appeal and review procedures at 36 CFR 217” or the objection procedures of this subpart (ROD, pp. 4, 37). The ANF addresses this throughout the draft (DEIS, pp. 1-4, 2-2; PLRMP, p. 4) and final documents (FEIS at p. Summary-1; FEIS, pp.1-4, 2-4; RLRMP, pp. 4 to 5; FEIS Appendix A, PI #5 p. A-15).

I find the ANF has not relied upon the 2005 Planning Regulations (36 CFR 219, as amended), with the exception of MIS monitoring. Monitoring of MIS may be based on the consideration of habitat for those species unless the Forest Plan specifically requires population monitoring. Site specific monitoring for these species in a proposed project or activity area is not required...but may be an element in the Forest Plan at the discretion of the responsible official (36 CFR 219.14(f) (1982)); (FEIS Appendix A, PI#437, pp. A-224 to A-225; RLRMP, Table 13, MIS Minimum Legally Required Monitoring Items, pp. 39 to 41; ROD, p. 43). I find the ANF has complied with NFMA and the 1982 Planning Regulations.

## **Agency Policy**

### **Wilderness Evaluation**

*Appellant contends the ANF is comparing wilderness values to semi-primitive Recreation Opportunity Spectrum (ROS) and takes issue with the ANF’s use of the “R9 Guidelines for Completing Roadless Area Inventories” (NOA #0007, p. 127).*

The concern about the roadless inventory process, particularly the “core area” concept in the R9 Guidelines results in an “arbitrary” interpretation of wilderness statues and roadless area criteria, was raised during public comment on the ANF. In response to comments, the ANF describes how the wilderness analysis (FEIS Appendix C) was changed to help further clarify how core area and criteria were applied (FEIS Appendix A, PI #284, pp. A-167 to A-168). Table C-3 (FEIS Appendix C, p. C-10) displays results of a supplemental analysis based on multiple factors, or criteria that further identified why some areas were eliminated. No areas were eliminated base on core area alone. The R9 guidelines state that the 2,500 acre semi-primitive “core” size is not an absolute minimum or acreage requirement (AR File Code 1213 C - Rdless Area Inv – Wilde Eval).

The criterion for the placement of an area on the inventory of potential wilderness, per direction in FSH 1909.12, includes meeting the statutory definition of wilderness found in the Wilderness Act of 1964. That definition includes: “...has outstanding opportunities for solitude or a primitive and unconfined type of recreation.” In his

guidance paper issued August 13, 1997, “Criteria for Completing Roadless Area Inventories During Forest Plan Revision,” the Regional Forester issued supplemental guidance to Forest Service Handbook (FSH) direction for the consideration of solitude, or primitive and unconfined recreation, to ensure consistency in the inventory process (AR File Code 1213 C). The ANF documented the use of this guidance in the FEIS (Appendix C, pp. C-5 and C-24).

The ANF established core areas by using the ROS protocols (measuring one-half mile from improved roads, significant mineral activity, railroads, and several other factors) to calculate the maximum core area size available for semi-primitive unconfined recreation. Tables C-9 through C-12 (FEIS Appendix C, pp. C-25 to C-28) identifies core area size for solitude, or a primitive and unconfined type of recreation, and includes an integrated evaluation of all 7.11.b criteria. I find the ANF appropriately used this information to guide their analysis and is compliance with direction found at FSH 1909.12 and the **Plan Handbook**, WO Amendment 1909.12-92-1 Effective 8/3/92.

*Appellant contends that the ANF’s working definition of wilderness values is “does the ownership pattern allow the FS to perpetuate wilderness values (7.11b-3) and “is the location conducive to wilderness values” (7.11 b-4). Appellant objects to the attempts to quantify the idea of “solitude” that led to applying a 2,500 acre “core area” concept that resulted in an ill-reasoned and arbitrary interpretation of wilderness statutes (NOA #0007, pp. 124-125).*

The ANF follows policy found in FSH 1909.12, Sections 7.11.b.3 and 7.11.b.4, in determining those roadless areas manageable in their natural condition and conducive to perpetuating wilderness values (FEIS Appendix C, Tables C-9 to C-12, pp. C-25 to C-28). Consistent with this policy, the analysis includes an assessment of the amount and pattern of federal ownership, the relationship of the area to sources of noise, air, and water pollution, as well as unsightly conditions that would have an effect on the wilderness experience. The ANF explains that the core area concept of “outstanding opportunities for solitude” is a way to screen out oddly shaped, narrow or gerrymandered configurations that may meet the minimum acreage requirement, but could never be managed to provide the degree of solitude characteristic of wilderness (FEIS Appendix C, p. C-24). I find the ANF’s interpretation of wilderness statutes is appropriate and consistent with FSH 1909.12.

*Appellant contends the ANF failed to use the new guidelines on wilderness evaluation; therefore the entire plan should be re-evaluated using them (NOA #0007, pp. 119-120).*

The ANF did not use the new guidelines on wilderness evaluation, nor were they required to. The Regional Forester states the Revised Plan was developed in accordance with NFMA and the 1982 Planning Regulations (36 CFR 219.14(e)) (ROD, p. 4). The ANF states the criteria used to inventory roadless areas for potential designation as wilderness follows direction found in FSH 1909.12 and the Plan Handbook, WO Amendment 1909.12-92-1 Effective 8/3/92 (FEIS Appendix C, p. C-2). They specify that Sections 7.11, 7.11a and 7.11b of FSH 1909.12 apply to national forests in the Eastern Region

(R9) of the Forest Service. Further they state that the R9 guidelines for Completing Roadless Area inventories during Forest Plan Revision (August 1997) provide further clarification of the FSH 1909.12 for application to R9 (AR File 1213 C). New guidelines for wilderness evaluation were published in January 2007; however, these were not in effect during the time of the wilderness evaluation. Forest Service Manual (FSM) 1920.3.6a directs the Forest Service to “Make changes in preparation and documentation requirements when a land management plan is revised, unless otherwise specifically directed in a directive. However, do not interrupt or redirect preparation and documentation activities begun prior to issuance of a new planning directive (such as study of wilderness and wild and scenic river suitability)”. I find the ANF has complied with FSH 1909.12 and the Plan Handbook, WO Amendment 1909.12-92-1 Effective 8/3/92

*Appellant contends that the roadless area analysis is flawed and at odds with the goal of creating more wilderness (NOA #0007, p. 124).*

The FEIS discloses the primary purpose of the roadless area inventory and wilderness evaluation is to determine which areas on the ANF have the best potential for inclusion in the National Wilderness Preservation System (FEIS Appendix C, p. C-2). The ANF reviewed all National Forest System (NFS) lands that could potentially qualify as wilderness, including RARE II roadless areas, Roadless Area Conservation Rule roadless areas and additional areas requested by the Allegheny Defense Project (NOA #0007). The criteria used follows direction found in FSH 1909.12 (Amendment 1909.12-92-1 Effective 08/3/92). Refer to FSM 1920.3.6a stated in previous response. R9 Guidelines were used for completing Roadless Area Inventories during plan revision which provided further clarification for application to the Eastern Region (AR File Code 1213 C). I find the ANF has complied with applicable law, regulation and policy.

*Appellant contends the ANF has changed the definition of “improved” roads that has led to the arbitrary exclusion of areas from the roadless inventory for having too high a road density to be considered roadless (NOA #0007, p. 130).*

The use of definitions of "improved road" was not arbitrary. The ANF used existing forest standards and descriptions to quantify use and determine whether a low standard road should be considered "improved". The ANF then used R9 guidance and FSM 1909.12 (AR File Code 1213 C) to determine whether or not to exclude potential areas for having too high a road density (FEIS Appendix C, pp. C-13 to C-21). I find the ANF has complied with applicable law, regulation and policy.

*Appellant contends that R9 guidelines go beyond FSH criteria and is especially concerned with exclusion of areas from roadless inventory simply because of the mere presence of a utility corridor, specifically the roadless decision for Area 1-8, Hickory Creek (NOA #0007, pp. 130-132).*

Area 1-8, Hickory Creek Addition was analyzed initially as a potential 1,823 acre addition to the 9,337 acre Hickory Creek Wilderness Area. It was eliminated as an

expansion consideration due to the presence of a well-defined and maintained utility corridor. The FEIS discloses that R9 guidelines prohibit expansion of wilderness areas across utility corridors. The ANF applied the R9 guidelines and did not eliminate the Area simply because of the presence of the utility corridor separating it from the larger Hickory Creek Wilderness Area.

The ANF goes on to further consider the Hickory Creek Addition acres as a stand alone area, noting that it was bounded by the utility corridor on the southwest and State Highway 3005 on all other sides. Tables C-12 and C-13 (FEIS Appendix C, pp. C-28 to C-29) document the reasons the evaluation resulted in eliminating the area from further consideration. These include: evidence of past harvest, research plots and roads, and presence of an additional utility corridor. The area was found to be narrow in areas, less than one to two miles wide. Due to size, it would be difficult to maintain as wilderness with reasonable certainty that human influence would not preclude a wilderness experience or value. I find the ANF has complied with all laws, policy and regulation.

*Appellant contends that automatic elimination of areas less than 2,000 acres, to the extent that it was based on the mistaken “core area” concept, is arbitrary. Further, appellant contends that the ANF inappropriately eliminated areas identified at Step 3 due to the R9 “core area” concept (NOA #0007, p.131).*

The ANF’s response to comments explains the “core area” concept was used to screen out configurations that could not be managed to provide the degree of solitude characteristic of wilderness. No areas were eliminated based solely on “core area” (FEIS Appendix A, PI#284, pp. A-168 to A-169). Table C-4 (FEIS Appendix C, p. C-11) displays the reasons for specific area removal from further consideration for areas less than 2,000 acres. Both the DEIS and FEIS disclose that the 6,742 acre Allegheny Front received further consideration as potential wilderness even though its “core solitude” area was 1,500 acres.

The ANF documents in the FEIS in Step 3 (FEIS Appendix C, Table C-9 to Table C-12, pp. C-25 through C-28) several aspects that were considered for meeting the criteria for inventory of wilderness values. Information provided in these tables indicates whether the areas meet the inventory criteria and if they should receive further evaluation for potential wilderness area designation. Five areas were eliminated in the third step of the process where acreage was a factor, but also based on either active OGD or other development factors (FEIS Appendix C, Table C-13, p. C-29). Areas included in Step 3 must meet **all** criteria listed in the FSH. However, special attention has been given to section 7.11.b that specifically addresses criteria for roadless areas in the East. I find the ANF has complied with law, regulation and policy.

*Appellant lists, by site, contentions that the particular site listed was removed inappropriately (NOA #0007, pp. 132-143). The following displays specific site contentions and ANF responses.*

**Area I-8:** *Appellant contends that presence of a utility corridor was the reason for eliminating this area. The ANF discusses four additional reasons in the analysis for*

removal of Area 1-8 from wilderness consideration (FEIS Appendix C, pp. C-12 to C-13). I find the ANF has complied with law, regulation and policy.

*Area 3-8: Appellant contends these areas were eliminated due to size and only a portion of the acres have the attributes for which it was eliminated for.* The ANF discloses the reasons that several areas, including Area 3-8, were eliminated. Specifically, these areas were not self-contained ecosystems nor were they contiguous to existing wilderness, primitive areas, Administration-endorsed wilderness, or roadless areas in other Federal ownership (FEIS Appendix C, p. C-10). I find the ANF has complied with law, regulation and policy.

*Area 3-13: Appellant contends that area size should not have been restricted by a gated road and it is adjacent to a substantial roadless area in Allegheny State Park.* The ANF lists reasons that several areas, including Area 3-13, were eliminated from wilderness consideration. These areas were not self-contained ecosystems nor were they contiguous to existing wilderness, primitive areas, Administration-endorsed wilderness, or roadless areas in other Federal ownership. The area does not have an attainable NFS lands ownership pattern (FEIS Appendix C, p. C-10). I find the ANF has complied with law, regulation and policy.

*Area 1-2: Appellant contends this area could easily have been reconfigured.* The ANF calculates this area to be 14,916 acres including 19.19 miles of improved road. The road density is calculated at 1.29 with 187 active wells served by 53.75 miles of well road. Because of high road density, this area does not meet criteria 7.11.b.5 (FEIS Appendix C, Table C-6, p. C-15). I find the ANF has complied with law, regulation and policy.

*Area 1-3: Appellant contends this area needs to be reconfigured.* The ANF measures this area at 14,446 acres including 13.63 miles of improved road. The road density is calculated at .94 with 65 active wells served by 27.45 miles of well road. Because of high road density, this area does not meet criteria 7.11.b.5 (FEIS Appendix C, Table C-6, p. C-15). I find the ANF has complied with law, regulation and policy.

*Area 1-6: Appellant contends this area could be easily reconfigured into two roadless areas for the purposes of this inventory.* The ANF calculates this area at 12,334 acres including 12.01 miles of improved road. The road density is calculated at .97 with 5 active wells served by 4.36 miles of well road. Because of high road density, this area does not meet criteria 7.11.b.5 (FEIS Appendix C, Table C-6, p. C-15). I find the ANF has complied with law, regulation and policy.

*Area 1-15: Appellant contends that this area could be reconfigured into a sizable roadless area meeting 7.11b requirements if the acres where OGD exists were dropped from the area.* The ANF measures this area at 8,470 acres including 8.15 miles of improved road. The road density is calculated at .96 with 149 active wells accessed by 45.73 miles of well road. Because of high road density, this area does not meet criteria

7.11.b.5 (FEIS Appendix C, Table C-6, p. C-15). I find the ANF has complied with law, regulation and policy.

*Area 1-17: Appellant contends that this area could be reconfigured with a substantial core area that is largely roadless.* The ANF determined this area meets the 7.11b5 criteria for road density. However, it does not meet criteria 7.11b.1 or 7.11.b.2 for land regaining a natural, untrammled appearance, or improvements existing in the area being affected by the forces of nature rather than humans and are disappearing or muted (FEIS Appendix C, Table C-6, p. C-15). I find the ANF has complied with law, regulation and policy.

*Area 1-23: Appellant contends that the FEIS dismissed this area citing OGD as the only reason.* The ANF determined this area does not meet criteria 7.11b.1 or 7.11.b.2 for land regaining a natural, untrammled appearance, or improvements existing in the area being affected by the forces of nature rather than humans and are disappearing or muted (FEIS Appendix C, Table C-6, p. C-15). I find the ANF has complied with law, regulation and policy.

*Area 1-25: Appellant contends that this area is already largely roadless habitat and the ANF is arbitrarily using the R9 guidelines instead of the actual 7.11b criteria in relation to utility lines and that exclusion of oil and gas activity could provide a practical reconfiguration.* The ANF determined this area does not criteria 7.11b.1 or 7.11.b.2 for land regaining a natural, untrammled appearance, or improvements existing in the area being affected by the forces of nature rather than humans and are disappearing or muted (FEIS Appendix C, Table C-6, p. C-15). I find the ANF was not arbitrary and appropriately followed law, regulation and policy.

*Area 1-27: Appellant contends that this area could have been reconfigured to preserve the core of the roadless area and that the presence of a utility line should not be used to dismiss the area.* The ANF describes this area as containing minor OGD and several utility corridors that divide it into four pieces (FEIS Appendix C, p. C-17). Reconfiguration was considered, however flat topography within the area limited the possibility for well-defined, manageable boundaries. The shape and the location next to private land and OGD would not be conducive to the perpetuation of wilderness values. Overall, this area does not meet criteria 7.11b.1, b.2 or b.4 (FEIS Appendix C, p. C-17). I find the ANF has complied with law, regulation and policy.

*Area 1-28: Appellant contends that this area was eliminated for reasons of utilities and an ATV trail.* In the FEIS, the ANF describes that the area does not meet 7.11.b.a, 7.11.b.2, or 7.11.b.4 criteria for untrammled appearance, affected by the forces of nature rather than humans, and conditions that would have an effect on the wilderness experience (FEIS Appendix C, p. C-17). FSH 1909.12 .72.2 states the determination of availability is conditioned by the value of and need for the wilderness resource compared to the value of and need for other resources. The ANF does not discuss the value and need for the ATV trail system, because that would be covered in the third step and this area was eliminated in Step 2. However in their response to comments section, the ANF

discusses how the alternatives address providing a balance of both non-motorized recreation and ATV recreation opportunities (ROD, pp. 19 to 22; FEIS Appendix A, PI #339, pp. A-186 to A-187). I find the ANF has complied with law, regulation and policy.

**Area 1-33:** *Appellant contends that this area could have been reconfigured by limiting oil and gas impacts by eliminating the narrow piece on the eastern end, and that the utility line is muted overall.* The FEIS states that reconfiguration was considered, however the placement and extent of improved roads and utility corridors limited possibilities. If reconfigured it would result in a gerrymandered boundary. Overall this area does not meet 7.11.b.1, b.2 or b.4 criteria (FEIS Appendix C, Table C-6, p. C-15). I find the ANF has complied with law, regulation and policy.

**Area 1-35:** *Appellant contends that there are factors that make this area conducive to the perpetuation of wilderness values.* The FEIS describes this area as less than one-half mile wide, containing 2.23 miles of improved road and a utility corridor that divides it in half. It is also surrounded by private land on three sides. The location would not be conducive to the perpetuation of wilderness values due to its shape and it is adjacent to private development and associated facilities. If reconfigured it would result in a gerrymandered boundary. Overall this area does not meet 7.11.b.1, b.2 or b.4 criteria (FEIS Appendix C, Table C-6, p. C-15). I find the ANF has complied with law, regulation and policy.

**Area 2-4:** *Appellant contends that this area was dismissed because the Forest Service included closed roads on the road inventory for the area. Counting only improved roads or eliminating the section east of [Forest Road] FR 202 would allow this area to meet the criteria.* The FEIS states this area contains more than four miles of maintenance level 3, 4 and 5 improved roads and due to the improved roads and OGM development, the area was eliminated. It could not be reconfigured due to the extent of development. If reconfigured it would result in a gerrymandered boundary and that overall it does not meet 7.11.b.1, b.2 or b.4 criteria. I find the ANF has complied with law, regulation and policy.

**Area 2-6:** *Appellant contends that the inclusion of other roads is arbitrary and undermines the validity of the analysis for this area.* The FEIS states this area is narrow, elongated, less than one-half mile wide and borders extensive private lands to the north and southwest. The location would not be conducive to the perpetuation of wilderness values due to its shape and adjacency to private development and associated activities. Due to OGD and the present of utility corridors, the area was eliminated (FEIS Appendix C, Table C-7, p. C-16). I find the ANF has complied with law, regulation and policy.

**Area 2-27:** *Appellant contends that there is a mapping error showing FR 377 as an improved road when it is in fact a closed road, and that the oil and gas activity in this area is minimal and not grounds for dismissal of the entire area from the roadless inventory.* The FEIS states that due to the number of improved roads and OGD the area was eliminated. Reconfiguration would result in a gerrymandered boundary. The shape, size and the location next to private lands would not be conducive to the perpetuation of

wilderness values. Overall this area does not meet 7.11.b.1, 7.11.b.2, or 7.11.b.4. I find the ANF has complied with law, regulation and policy.

**Area 3-2:** *Appellant contends this area was dismissed because of a utility corridor at the southernmost edge but the area should have been reconfigured.* The FEIS explains that this area contains a utility corridor and private lands that divide the land into two smaller pieces. The reduction in size limits reconfiguration possibilities resulting in a gerrymandered, ill-defined boundary. The shape and the location next to private lands would not be conducive to the perpetuation of wilderness values. Overall, this area does not meet 7.11.b.1, b.2.or b.4 (FEIS Appendix C, pp. C-16 to C-17). I find the ANF has complied with law, regulation and policy.

**Area 3-5:** *Appellant contends this area was dismissed because of oil and gas activity and utility corridors, but that these are minimal and could easily be reconfigured.* The FEIS states this area contains a utility corridor, private lands and OGD. It also borders extensive private lands and reconfiguration would result in a gerrymandered boundary. The shape, size and the location next to private lands would not be conducive to the perpetuation of wilderness values. Overall this area does not meet 7.1.b.1, b.2 or b.4 (FEIS Appendix C, Table C-7, p. C-16). I find the ANF has complied with law, regulation and policy.

**Area 1-7:** *Appellant contends this area was erroneously dismissed from the inventory by changing the status of the improved roads after reconfiguration.* The FEIS discloses which roads were included as improved for Area 1-7. Roads identified as improved are listed in a chart on Page C-21 (FEIS Appendix C). These roads met the definition of improved road used in Step 1 (maintenance levels 3, 4, and 5). In areas under further analysis (reconfigured), roads were considered to be improved if drivable by a four-wheeled, standard vehicle and maintained to legally allow public use by any type of vehicle. The FEIS states that “roads selected within the reconfigured areas were considered to be improved if they:” met the four factors that are listed on page C-21 (FEIS Appendix C, pp. C-20 to C-21). I find the ANF has complied with law, regulation and policy.

**Area 1-19:** *Appellant contends same as above regarding improved roads, and that the area exclusion of any utility lines should not have been excluded because the line is “muted” and these are permitted under 7.11b.* The ANF discloses in the FEIS (Appendix C, p. C-21) that there are 7.6 miles of improved road within Area 1-19. This exceeds the road density criteria of 71.b.5. I find the ANF has complied with law, regulation and policy.

**Area 1-21:** *Appellant contends that FR 212 was given improved road status only after the area was reconfigured. Appellant states this road has been closed to vehicle traffic for 20 years.* The FEIS states that FR 212 and non-system (NS) 30010 were included because they met the four criteria for which roads were selected within the reconfigured areas (FEIS Appendix C, p. C-21). I find the ANF has complied with law, regulation and policy.

**Area 1-9:** *Appellant contends this area was excluded from the roadless inventory based on the core area requirement.* In Step 2, the Morrison Area 1-9 was initially 10,651 acres, bound by improved roads and the Allegheny Reservoir. The reconfigured boundary reduced the potential inventoried roadless area from 10,651 acres to 2,483 acres. The ANF documented the evaluation of Area 1-9's remaining 2,483 acres in the FEIS (Appendix C, p. C-22 and Table C-9, p. C-25). The FEIS (Appendix C, Tables C-9 through C-12, pp. C-25 to C-28) identifies the core area size for solitude or a primitive and unconfined type of recreation and includes an integrated evaluation of all 7.11.b criteria.

The ANF established core areas by measuring one-half mile from improved roads, significant mineral activity, railroads, the Allegheny Reservoir, utility corridors, highly developed recreation facilities, high standard trails and private dwellings. FEIS Appendix C (Table C-9, p.25) shows this analysis step for Morrison (Area 1-9). The boundary of the area followed roads, ridgelines and the Allegheny Reservoir. Only 980 acres of core solitude was determined within the reconfigured 2,483 acres. The area is not regaining a natural untrammelled appearance, but is currently being drilled and roaded for OGM extraction. Further, improvements in the area are not disappearing or muted as there is significant mineral activity. One hundred percent of the subsurface ownership is private and there is a current drilling proposal for 30 to 100 wells with access roads. FEIS Appendix C (Table C-13, p. 29) discloses supplemental reasons for eliminating Area 1-9. I find the ANF has complied with law, regulation and policy.

**Area 1-20:** *Appellant contends this area was eliminated because of arbitrary implementation of the core area concept and that the reason it did not meet the core area requirement is because the Forest Service allowed OGD to infringe on this national resource.* The FEIS (FEIS Appendix C, p. C-22) states that the Allegheny Reservoir reconfigured boundary was placed along the utility corridor, reducing the potential inventoried roadless area from 5,418 acres to 5,277 acres. The ANF states that the boundary is not well defined and gerrymandered to the west along private land. One hundred percent of the mineral estate is in private ownership, and while no current mineral activity is occurring, OGD is proposed in the area. The area is surrounded by private land with OGD to the west and motorized recreation on the Allegheny Reservoir to the east. The area's long linear shape and narrow southern end increases vulnerability from outside influences. Table C-13 (FEIS Appendix C, p. C-29) discloses that the area does not meet 7.11.b.3 or b.4. I find the ANF has complied with law, regulation and policy.

**Area 1-24:** *Appellant contends this area was eliminated arbitrarily because it contains utility corridors.* Area 1-24, Clarion River, is a RARE II inventoried area of 3,215 acres. The ANF expanded its size to 6,234 acres for this analysis (FEIS Appendix C, pp. C-8 and C-12) in order to determine the maximum extent of the area which may qualify as roadless. Area 1-24 was not eliminated in Step 2, though the utility corridor was noted; but it was reconfigured (FEIS Appendix C, pp.C-21 to C-23). It contains several small private in holdings, a utility corridor to the west and a large private in holding to the east. This constricted the area to a narrow strip of land through which private access to the in holding occurs. The boundary location would help avoid conflict

with access rights to the private land, which could result in non-conforming demands on the area if it were to become wilderness. This reduced the potential inventoried roadless area from 6,234 acres to 3,439 acres. Step 3 determined the area does not meet criteria for further inventory, with 100 percent of the mineral estate in private ownership, influences by active railroad and Clarion River to the south and state highway and private land to the north and east. The FEIS Appendix C (Table C-13, p. C-29) lists supplemental reasons for eliminating the area. I find the ANF was not arbitrary in its decision and has complied with law, regulation and policy.

*Area 2-17: Appellant contends this area was excluded based upon the application of the “core area” concept.* Area 2-17, Cornplanter, is a RARE II inventoried area of 3,012 acres to which the ANF expanded its size to 3,215 acres (FEIS Appendix C, pp. C-9, C-12) to determine the maximum extent of area which may qualify as roadless. Area 2-17 was not eliminated in Step 2, though the utility corridor was noted. It was reconfigured to 2,918 acres to eliminate the Camp Olmstead access road to avoid conflict with access rights to the private land (FEIS Appendix C, pp. C-21 to C-23). Area 2-17 was eliminated in Step 3 with the following reasons (FEIS Appendix C, Table C-11, p. C-27): The east boundary is not well defined and the Camp Olmstead road to the south, do not meet the criteria of the boundary and shape following natural or relatively permanent features. One hundred percent of the mineral estate is in private ownership, and the area is surrounded by road based or water based motorized uses. Table C-13 (FEIS Appendix C, p. C-29) lists supplemental reasons for eliminating the area as: Long linear shape, less than two miles wide across entire area, extensive private land and other development surrounding the area, and the boundary not well defined; therefore it does not meet the criteria found in 7.11.b.3 or b.4. I find the ANF has complied with law, regulation and policy.

*Area 3-1: Appellant contends the area meets the requirements for inventoried roadless areas, particularly in relation to special features and island habitat, but that the proposed reconfiguration reduces the area to 1,263 acres which the Forest Service contends is not enough for consideration.* Area 3-1, Hearts Content, was a 200 acre RARE II inventoried area. The ANF expanded its size to 2,423 acres for this analysis to determine the maximum extent of the area which may qualify as roadless (FEIS Appendix C, pp. C-10 to C-12). Area 3-1 was reconfigured in Step 2 to 1,263 acres (FEIS Appendix C, p. C-23) and contains a utility corridor to the north and a State Game Lands access road to the south. Area 3-1 was eliminated in Step 3 (FEIS Appendix C, Table C-11, p. C-27) due to its odd, long linear L-shape and the development scale of the area exceeds wilderness character. One hundred percent of the mineral estate is in private ownership. It is not conducive to wilderness values because of Hearts Content recreation site, development on and access needed to State Game Lands. Table C-13 (FEIS Appendix C, p. C-29) lists supplemental reasons for eliminating the area as not meeting criterion 7.11.b.1, b.2, b.3, and b.4.

In all cases listed above, I find that the ANF appropriately evaluated individual sites and has thoroughly documented this in FEIS Appendix C and is in compliance with law, regulation and policy.

## **Administrative Procedure Act (APA)**

Title 5 USC Chapter 5 Sections 511- 599

*Appellants contend that areas to recommend for wilderness study deserve a much more rigorous and fact-based decision-making process. What the [FS] actually did was simply arbitrarily in violation of the APA and NFMA (NOA #0007, p. 123; NOA #0016, p. 3).*

Appellants infer that the ANF shifted designations rather than deal with impacts of OGD; and that perhaps Tracy Ridge was excluded because of potential future oil and gas drilling. Wilderness evaluations of Tracy Ridge, Chestnut Ridge and Minister Valley all note that even though most of the subsurface mineral rights are privately owned, wilderness designation would not prohibit private OGD. If these areas were developed, the ANF's goal would be to mitigate impacts on wilderness values (FEIS Appendix C, pp. C-40 to C-41, C-45, and C-62). The Regional Forester states lack of subsurface rights, fragmented land ownership and networks of existing roads limit the ANF's ability to manage additional land as wilderness. However, "despite these concerns" he recommends areas for wilderness study 'largely' due to strong public interest and support (ROD, pp. 17 to 18). I find the analysis undertaken by the ANF is based on a sound analysis as described and it is not arbitrary. The RLRMP complies with APA and NFMA.

### **Fact**

*Appellant contends that the FEIS road mileage figure of 1,250 miles underestimates mileage constructed because it is based on the 2003 Road Analysis (NOA #0007, p. 167).*

It appears that the estimated 1,250 miles referenced in the FEIS is referring to OGD private roads. "The ANF is unique in that there is a system of OGD roads in addition to the State, Township and Forest Service roads. There is an estimated 1,200 miles of OGD roads on the ANF. This number is our best estimate, as of March 15, 2003. The OGD roads are not open for public use; however, many OGD operators do not gate their roads. Although [FS] roads are usually marked at the entrance with a road number, it is often difficult for the public to determine the difference between a [FS] road and an OGD road" (Forestwide Roads Analysis Plan (FWRAP), p.20). Since this estimate, an additional 50 miles was added to the estimate of OGD miles (FEIS Appendix F, p. F-5).

The difference is reasonable and does not signify a problem unless the private OGD miles are mistakenly swapped as is the case in point with Forest Service jurisdiction roads which were 1,267 miles in total in the 2003 FWRAP. The appellants do not distinguish between the two types of numbers and whether or not they are actually on the ANF or simply within the proclamation boundary.