

**Wild Virginia**  
**108 5th St SE, Charlottesville, VA 22902**

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Elwood Burge  
District Ranger  
North River Ranger District  
George Washington and Jefferson National Forest  
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Submitted Via Email

Re: Wallace and Marshall Prescribed Burn Proposal – Public Notice Response

Mr. Burge:

I submit these comments on behalf of Wild Virginia. Our organization is a non-profit corporation dedicated to protecting the ecological health of Virginia's National Forests. We represent hundreds of members and volunteers who use the George Washington National Forest on a regular basis and have interests that will be affected by this proposed action. Further, our organization conducts educational and recreational programs on the Forest and has ongoing interests related to the management actions addressed here.

We believe an Environmental Assessment is required for this proposed project under federal statute and regulations, as explained below. Further, we believe the activities proposed may be inconsistent with stated goals for these tracts and that a consideration of cumulative impacts within the Cowpasture River watershed make these actions undesirable. These concerns must be addressed in a NEPA analysis to determine whether the activities are compelled by the Forest Management Plan and, even if the Forest Plan is held to support or even compel these actions, NEPA requires that the proper analyses be completed.

The notice for this proposal states that the land addressed was “acquired under authority of the Land and Water Conservation Fund Act (LWCF) to provide recreational opportunities for the American people.” Also, the notice states that “[t]he proposed action is needed to meet the direction set forth in the 2014 Revised Land Resource Management Plan (Forest Plan)” and that “[t]he following need is tied to the overarching purpose to restore ecosystems through the use of prescribed fire.” Wild Virginia has a number of comments and concerns about the efficacy of the proposal to meet the stated objectives and others that we believe are applicable to these tracts and I will explain these below.

First though, I wish to address the status of this proposal in relation to U.S. Forest Service (USFS) responsibilities under the National Environmental Policy Act (NEPA). The public notice states that the USFS is “currently preparing a categorical exclusion (CE), in accordance with 36

CFR 220.6(e)(6) subject to public involvement and the determination that no extraordinary circumstances exist.” The notice does not address or explain the kinds of factors that may constitute “extraordinary circumstances” in this case and does not include any analysis to explain the bases on which a categorical exclusion is anticipated. We believe NEPA requires the USFS to explain the reasons it is “currently preparing” a CE rather than an Environmental Assessment (EA). Without having that information, we believe the public’s involvement is hindered and an eventual finding that a CE is appropriate may not be sufficiently supported by the public record.

In addition, we assert that an analysis of the factors outlined at 36 CFR § 220.6. prevent a finding that a CE is appropriate and that an EA is required. The cited regulation lists a number of “[r]esource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS,” at 36 CFR § 220.6(b)(1). Of these resource conditions, it appears that two of those listed would apply to the areas to be affected by this project.

These include “(i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species” and “(ii) Flood plains, wetlands, or municipal watersheds.” The Jackson River is habitat to the James Spiney Mussel (*Pleurobema collina*) which is listed as and “endangered species” by the U.S. Fish and Wildlife Service USF&S).<sup>1</sup> The Roughhead Shiner (*Notropis semperasper*) is listed as a “Forest Service sensitive species.”<sup>2</sup> Thus, resource condition (i), as from the regulations applies to the areas in this proposal.

Also, given that the activities proposed would occur in the riparian areas adjacent to the Cowpasture River, with the Wallace Tract straddling the river and the Marshall Tract bordering the east side of the River, it would appear that resource condition (ii) also applies to these areas. The maps provided with the public notice do not provide significant detail, including topography, and hinder our ability to assess this factor fully. However, the fact that these tracts were both used for agriculture would seem to indicate that there is at least some relatively level land adjacent to the River and that some portion of these tracts qualifies as floodplain. It is also possible that some portions of these properties could qualify as wetlands.

We recognize that, according to federal regulations, “[t]he mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.” 36 CFR 220.6(b)(2). It is also important to note that the regulations favor additional analysis in the face of uncertainty. An EA is mandated when “the responsible official

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<sup>1</sup> U.S. Fish and Wildlife Service, ECOS-Environmental Conservation Online System, [http://ecos.fws.gov/tess\\_public/profile/speciesProfile.action?spcode=F025](http://ecos.fws.gov/tess_public/profile/speciesProfile.action?spcode=F025).

<sup>2</sup>Forest Service Sensitive Species that are not listed or proposed under the ESA Sorted by: Major Group, Subgroup, NS Sci. Name, 1 December 2004, [http://www.fs.fed.us/biology/resources/pubs/tes/fs\\_ss\\_1dec04.pdf](http://www.fs.fed.us/biology/resources/pubs/tes/fs_ss_1dec04.pdf).

determines, based on scoping, that it is uncertain whether the proposed action may have a significant environmental effect. . . .” 36 CFR 220.6(b)(3).

The land management activities proposed in this notice are located in the riparian areas along the Cowpasture River and the choices made for management in these areas will have direct impacts on the floodplain areas and to water quality in the stream. Therefore, the cause-effect connections between this proposed project and both of these resource conditions are clearly present. The overall management of these two tracts, which comprise about 332 acres and stretch along well over one mile of stream’s length, also could definitely have substantial effects on both resource conditions. In a rural area, such as that represented by the project areas, non-point sources of pollution produced by land management activities are the primary concern in relation to stream health. Both of the rare species named above depend on clear and clean waters, as do many of the other native aquatic animals found in the Cowpasture River. All of these factors must be assessed in the context of the riparian areas and overall watershed characteristics in the entire area.

As stated above, recreational activities are to be emphasized on these tracts but it is unclear what recreational objectives are being met by this project. Outside of the management prescription for the area, there is no analysis of alternative recreational possibilities that would be compatible with its restoration.

An important analysis of the important resources in the upper Cowpasture River watershed is provided in a “Conservation Area Plan” prepared by The Nature Conservancy (TNC), the Forest Service, and other resource agencies. That Plan includes analyses and recommendations for “the entirety of Warm Springs Mountain and the Cowpasture River watershed.”<sup>3</sup> One goal set in that plan was to use prescribed burns to “restore historic fire regime[s].” The notice for this project says the Wallace Tract was burned fourteen times between 1992 and 2012 and the Marshall Tract was burned 12 times in the same period. We question whether this frequency of burns reflects historical patterns.

Further, we note that the subjective historical regimes described for these tracts seems to represent a tiny window of time, covering only the last 200-300 years. The preservation/restoration of the kinds of plant communities described in this plan is almost surely less protective of these riparian lands and the River than were the diverse forests that likely existed before this land was committed to agricultural use. An alternative that allowed for a successional process and restoration of riparian forests, such as those found along other stretches of the upper Cowpasture must be considered under a NEPA analysis.

A cumulative impacts analysis for this proposal should include similar and related projects in the Cowpasture River watershed including Warm Springs burn regimes and the Lower Cowpasture burn regimes that are recent, current, ongoing or likely to occur in the near future and as projected by the Lower Cowpasture project. We note that there was no mention of this project in the cumulative effects analysis done for the Lower Cowpasture Project, representing a

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<sup>3</sup> The Nature Conservancy, Warm Springs Mountain, Cowpasture River Conservation Area Plan, March 2002,

fundamental flaw in the NEPA analysis on that project, which will carry over into this process, unless the USFS makes a more complete study of the overall status of lands in the watershed.

An analysis of the potential impacts from the proposals here cannot be complete or sufficient unless it addresses the karst topography which underlies most lands in the valleys in this region. Because the effects of land management on hydrologic patterns, both above and below the land surface are intricately related to the health of the Cowpasture River.

Thank you for the chance to comment on these proposals. We sincerely believe that an Environmental Assessment is not only preferable but required for this project. Please feel free to contact me at 434-964-7455 or [david@wildvirginia.org](mailto:david@wildvirginia.org) if we can clarify our concerns or provide further information.

Sincerely,

David Sligh, Conservation Director