UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE
UNITED STATES FOREST SERVICE

Before the Appeals Deciding Officer
George Washington and Jefferson National Forests
5162 Valley Pointe Parkway
Roanoke, VA 24019-3050

Appeal of the Decision Notice
And Finding of No Significant Impact for the
Peters Mountain Access Project
James River Ranger District
Alleghany County, VA

Appellants:

Wild Virginia
Virginia Forest Watch
Heartwood
Sherman Bamford
Steve Krichbaum

NOTICE OF APPEAL AND STATEMENT OF REASONS
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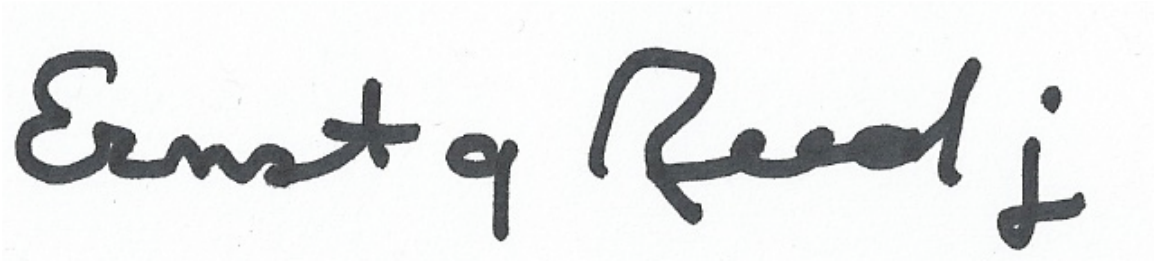

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NOTICE OF APPEAL

Pursuant to 36 C.F.R. Part 215, Wild Virginia, Virginia Forest Watch and Heartwood (Appellants) hereby appeal the Decision Notice (DN) and Finding of No Significant Impact (FONSI) for the Peters Mountain Access Project on the James River Ranger District of the George Washington and Jefferson National Forests, USDA Forest Service in Alleghany County, Virginia. The Responsible Officer is Patrick Roy Sheridan, District Ranger for the James River Ranger District of the George Washington and Jefferson National Forest who signed the decision on January 15, 2013.

This appeal is timely under 36 C.F.R. § 215.15, having been filed within the 45 day appeal period. The legal notice was published January 24, 2013 and the appeal period ends March 11, 2013.

For the reasons explained below, the Decision Notice (DN) and Finding of No Significant Impact (FONSI) violate the National Environmental Policy Act (NEPA), the Administrative Procedures Act (APA), the Endangered Species Act (ESA), and Forest Service policy as set forth in the agency's Handbook, Manual and other guidance.

The Appellants participate actively in management of the GWNF. The Appellants specifically participated in the public process surrounding the Peters Mountain Access Project, including submitting comments during the scoping and 30-day comment periods.

Wild Virginia is a not-for-profit membership organization devoted to preserving and protecting Virginia's forests, wild lands, unique habitats and endangered species. Wild Virginia has over 500 members and supporters. Wild Virginia educates their 500 members and supporters about forest management issues through newsletters, our website, hikes and outings and comments to the press. Wild Virginia's members, supporters, staff and board of directors are very familiar with the Peter's Mountain Project Area, having visited the area and promoted the protection of old growth forest—Hematite Timber Sale and the Peter's Mountain North Conservation Site—geological sites—Jingling Rocks—rare high elevation wetlands—Thomas Spring—and Indiana Bat populations and habitat.

The Peters Mountain Access Project appealed here would directly and significantly degrade all of these values, conservation and research uses. Wild Virginia submitted timely comments during the scoping process for the Peters Mountain Access Project, dated August 19, 2010.

Virginia Forest Watch is a grassroots based coalition of individuals and environmental groups organizing throughout the Commonwealth of Virginia. Their mission is "to maintain and restore the natural ecology and biodiversity of woodlands across Virginia through education and citizen participation." Virginia Forest Watch has over 85 members and supporters who promote conservation efforts throughout the George Washington and Jefferson National Forest, including the Peters Mountain area. Virginia Forest Watch submitted comments during the scoping process for the Peters Mountain Access Project, dated May 6, 2009.

Heartwood is a cooperative network of grassroots groups, individuals, and businesses working to protect and sustain healthy forests and vital human communities in the nation's heartland and in the central and southern Appalachians. Heartwood has over 1000 members and 100 member groups, including appellants Wild Virginia and Virginia Forest Watch. Heartwood members and member groups have visited, recreated and done research in the project area and the impacts to flora, fauna, endangered species, water resources, pedestrian recreation, conservation and research opportunities would directly affect the organization and our membership. Heartwood submitted comments during the

scoping process for the Peters Mountain Access Project, dated August 21, 2010.

Sherman Bamford has a long history of using the forest and of being involved in management of the George Washington National Forest. Mr. Bamford submitted comments for the Peters Mountain Access Project on behalf of Virginia Forest Watch, dated May 6, 2009.

Steve Krichbaum has a long history of using the forest and of being involved in management of the George Washington National Forest. Mr. Krichbaum submitted comments for the Peters Mountain Access Project, dated May 6, 2009.

1. The purpose and need of the Peters Mountain Access Project is arbitrary and ulterior motives are unaddressed in the Environmental Assessment.

According to the Peter's Mountain Access Project Environmental Assessment (EA), "The entire proposed project area…is in Management Area 17-Timber Production…' and "the proposed action was developed to move the existing condition of the project area towards the desired condition outlined in the forest plan and also responds to a public desire to restore public motorized access to FSR 175(EA-2)."

This assumes a need to "restore public motorized public access" to the project area based on MA 17 motorized access priority. Access to this area exists at present through various non-motorized means. Yet the Forest Service's tacit position is that access does not currently exist here ("re-establish . . . access"). Just because motor vehicles cannot be driven into an area does not mean that "access" does not exist.

Clearly motorized access is necessary for timber management and logging. This project literally paves the way for timber management, a reality not addressed in the purpose or need. The fact that this is not stated in either the decision or EA does not negate the fact that this road will see logging trucks in the reasonably foreseeable future, since timber production is clearly the overarching priority for MA 17. Peter's Mountain has a history of logging, most recently the contentious Hematite Timber Sale of the mid 90's when a portion of the remaining rare old growth forest was logged. The statement that "the project is to re-establish public and administrative motor vehicle access" ignores the reality that this project also creates access for vegetation and timber management. Yet, there is no mention of logging or vegetation management in the EA as possible "future actions." This statement is unconvincing, disingenuous, arbitrary and capricious.

A project to build any new road that is independent from a connected project is unusual, perhaps precedent setting. In an interview with Pat Sheridan on 2/20/2013, the District Ranger noted that there has never been a "stand alone" road project "to his knowledge." Normally roads are considered secondary to the actual project and considered an accessory to the project. In this case, the purpose and need as stated is arbitrary and incomplete; that vegetation and timber management is not stated as a purpose and need or future action is striking in its absence.

The Forest Service failed to disclose that logging roads (such as this road) and future timber sales in this area are clearly linked. The current GWNF Plan states the following for this Management Area: Standard 17-8: "Road locations and densities should meet timber access needs and provide opportunities for OHV use in some areas." (p. 3-90). In other words, roads in this management area have a primary goal to meet timber access "needs" Connected actions and the environmental and economic effects associated with this project and these connected actions should have been analyzed and disclosed. Connected actions, such as logging projects facilitated by this road project, should have been analyzed and disclosed.

Labeling this road as "public" access masks the below cost nature of future logging projects facilitated by the project, and precludes a true cost benefit analysis in future projects.

2. The purpose and need of the Peters Mountain Access Project is arbitrary and unsubstantiated.

It has been 9 years since there has been motorized access to the crest of Peter's Mountain. It is arbitrary, capricious and self-serving to call vehicular access "traditional". During this time pedestrian access has allowed forest users to the area; access to the crest of Peter's Mountain has never, in fact, been denied. Given the tank traps which local landowners have erected blocking vehicular access to FSR 175, and the denying of requests for establishing a legal right-of-way, it is questionable whether access is really desired or warranted in this area. Garbage, debris, lack of law enforcement and illegal off road use were reasons given by local land owners for taking steps to deny vehicular access.

Furthermore, comments by organizations such as Heartwood, Virginia Forest Watch and others representing hundreds of forest users who would like to see this area protected from motorized recreation confirms that the public is extremely divided on the purpose and need for this project.

3. The Peter's Mountain Project is inconsistent with the Draft Revised Forest Plan.

The timing of this project also is of great concern. If anything there appears to be a purpose and need to get this project approved before the Final Land Management Plan for the GW is released. This project would be extremely unlikely under the draft revised plan since much of this area is proposed for prescription 4.D.1 (Key Natural Heritage Community Area) primarily because of its old growth forest, while other portions of the mountain are proposed for prescription 13 (Mosaics of Habitat).

Under the draft revised plan, the 4.D.1 area of Peters Mountain would be managed to "maintain and enhance the unusual character of the vegetation for which the area was identified (GWNF Draft Plan, 4-5). The EA for the Peters Mountain Access Project,

however, only mentions consistency with Management Area 17 under the current forest plan. These prescriptions have major differences regarding management priorities including timber and vegetation management, motorized vehicle use and recommended recreational activities.

The Forest Service released the draft revised Forest Plan for the George Washington National Forest in April, 2011, with a projected Final Plan due in Spring 2013. The Forest Service issued the Decision Notice authorizing the Peters Mountain Access Project on January 15, 2013 under the current forest plan.

It is virtually certain that this project would be implemented after the effective date of the New Forest Plan. The National Forest Management Act ("NFMA"), requires that the Peters Mountain Access Project must be implemented consistent with the revised Forest Plan. Section 1604(i) explicitly states that, when forest plans are revised, contracts and projects must be revised to be consistent with the new Forest Plan.

"Resource plans and permits, contracts and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights. [16 U.S.C. § 1604(i)].

The Forest Service's own regulations implementing NFMA [36 C.F.R § 219.10(e)] and case law [Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1068 (9th Cir. 1998); Nat'l Audubon Society v. Hoffman,132 F.3d 7, 19 (2nd Cir. 1997)] further reinforce this fact.

Because the Peter's Mountain Access Project is inconsistent with the 4.D.1 Key Natural Heritage Community management prescription under the Draft Revised Plan and is virtually certain to be implemented under the new plan, it is therefore potentially in violation of the National Forest Management Act.

As stated in the appeal, plans for this project will have to be revised if inconsistent with the GWNF Plan Revision. New road segments pass through a proposed 4D1 area. The desired condition for 4d1in the Draft Revised GWNF Plan states: "ideally natural processes … within these areas proceed unencumbered and any management activities should mimic these natural processes." "Access to these areas may be limited. New roads are managed as closed." (p. 4-58). See also Standard 4D-019A "Only permit road construction to access valid existing rights and mineral leases, <u>if necessary to achieve the objectives of the specific SBA</u>, or if entering the rare community to access an adjacent area results in <u>less</u> environmental impact." [underlining for emphasis]. The EA does not demonstrate how the road project is necessary to achieve the objectives of the specific SBA or

how the new construction of roads will create less environmental impact than the status quo or other viable alternatives.

4. **The Environmental Assessment for the Peters Mountain Access project fails to identify many significant issues raised during the scoping process.**

The failure of the EA to identify many significant issues raised by Heartwood, Wild Virginia, Virginia Forest Watch, Virginia Wilderness Committee and Steve Krichbaum arbitrarily and capriciously limits the analysis and range of alternatives given detailed study in the EA. These organizations represent hundreds of concerned citizens on the management of the forest and specifically how they and their interests are affected by this project. These significant issues include, but are not limited to: timing relative to the implementation of the new revised GWNF Forest Plan, effects on rare geological formations including Jingling Rocks, effects of the project on endangered Indiana Bat and Cerulean Warbler populations, inclusion of new information in the USFW consultation under the Endangered Species Act, and the environmental impacts that that motorized access will have beyond the limited project area proposed in the scoping notices. Failure to identify these as significant issues arbitrarily and capriciously limits the range of alternatives and the alternatives given detailed study. It arbitrarily and capriciously limits the analysis, depriving the public of meaningful environmental analysis on which to base their knowledge and opinions, and eliminates critical information needed for the agency to make an informed decision.

5. **The range of alternatives for the Peters Mountain Access Project is inadequate.**

While we appreciate the efforts the made to involve the public in the development of alternatives and to have created three different alternatives, this does not absolve the GW of its responsibilities under the National Environmental Policy Act (NEPA) to define and evaluate an adequate range of alternatives.

NEPA specifies that the Forest Service must take a "hard look" at all projects and consider all reasonable alternatives in planning them. The Forest Service violated these requirements by failing to disclose, consider, or address the significant changes in management goals for these project area under the draft revised Forest Plan.

The four alternatives that were listed could all be described as "all or nothing" approaches to the project. They were, in essence "new road" (alt. #1), "old road" (alt #2), "trail only" (removed from consideration) and no action (alt. #3). These alternatives reflect an "all or nothing" approach to this project that is not sufficient or to fulfill the requirement for a full range of alternatives. The range of alternatives fails to include a necessary, creative and reasonable alternative that would fulfill the purpose and need and minimize the harmful environmental impacts while reducing engineering, construction and maintenance costs. It also fails to identify in the range of alternatives, at least one alternative that is consistent with the new management area designation for the project area. If fact, the only active alternative that is consistent with the draft plan was

arbitrarily and capriciously removed from consideration.

For example: the previous roadway can serve as the route for two significant recreational resources, the Allegheny Trail and Great Eastern Trail. Maintenance of this route as a motor vehicle road is not necessary for it to function as a recreational trail. In fact, maintaining this route for motor vehicles would significantly diminish the recreational experience for hikers, primitive hunters, bikers, and equestrians.

In this case, the road is the project itself. The unusual nature of this project, which does not fit the normal mold for project analysis, requires a clear consideration of conservation, transportation, recreation and economic alternatives. It is not just a question of yes, no or where. Any alternative that can fulfill the purpose and need and simultaneously address most of the needs of all interested parties should be considered.

Another alternative that should have been considered is a road to the crest, building a small parking area and turn-around there and then a trail from there across the ridge. This would allow for ease of travel to the crest, parking, and then limit access along the crest. This would mitigate the potential for damage to the Thomas Spring area, Jingling Rocks special geologic area and the crossing by the OHV crowd while allowing easy access to users. It would not fragment and bisect the old growth stands on either side and instead, they could still be considered as one. It would also limit the spread of invasive species by limiting the amount of surface disturbance and significantly reducing the size and scope and impacts of the use of the invasion vector. (Japanese stilt grass already has established itself along the roadbed.) This alternative would significantly reduce the total cost of the project and future necessary maintenance and law enforcement costs. It would allow for the use of vehicles to get to the summit for recreation without jeopardizing the special ecological and geologic conditions that predominate. Most importantly, such an alternative would be consistent with the management prescription for the project area under the draft revised forest plan.

The National Environmental Policy Act requires that the Forest Service must take a "hard look" at all projects and consider all reasonable alternatives in planning them. The Forest Service violated these requirements by failing to disclose, consider, or address the significant changes in management goals for these project areas under the revised Forest Plan, potentially the Final Plan, which directly undercuts the agency's purpose and need for these projects and opens a further range of reasonable alternatives.

6. The Peters Mountain Access Project EA and decision are in violation of the Endangered Species Act.

The Endangered Species Act states that persons, including federal agencies, are specifically instructed not to "take" endangered species, meaning that no one is "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" such life forms [16 U.S.C. §§ 1532(14), 1538(a)(1)(B) (1976 ed.)]. The Forest Service must "use all methods and procedures which are necessary" to preserve endangered species [16 U.S.C. §§ 1531(c), 1532(2) (1976 ed.)]. Section 2 of the ESA states: "all Federal

departments and agencies shall seek to conserve endangered and threatened species and shall use their authorities in furtherance of the purpose of this Act." 16 USC § 1531(c). The ESA defines "conserve" as "mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary [16 USC § 1532(2)]." Case law directs the Forest Service to conserve and preserve Indiana bat habitat [Bensman v. United States Forest Service, 984 F.Supp. 1242 (W.D.Mo.(1997)) and House v. United States Forest Service, 974 F.Supp. 1022 (E.D.Ky. 1997)].

The Virginia Fish and Wildlife Inventory Service lists the Indiana Bat (*Myotis sodalist)* as a Tier 1, Federally listed Endangered Species (BOVA Code 050023) VaFWIS Search Report, with potential habitat within a 3 mile radius around point Thomas Spring, Allegheny County (at 37, 42, 35.4-80,09,21.2).

The Peters Mountain Access Project EA notes that the Bat Amendment EA to the current Forest Plan "concluded that individual bats might be killed or harmed by such activities as associated with this project (EA-35). The fact that the USFWS determined this to be an "incidental take" does not consider the cumulative effects of projects in the past or reasonably forseeable future throughout Indiana Bat Habitat in the George Washington and Jefferson National Forest, or throughout Critical Indiana Bat habitat (as specified by USFWS in September 16, 1997) throughout National Forests in IN, IL, KY, TN, WV, MO, and WV.

White Nose Syndrome (WNS) is threatening to wipe out huge numbers of bats in the United States which will have a huge cumulative effect on bat populations well into the future. The US Fish and Wildlife Service's National Plan for Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats May 2011 identifies WNS as a serious threat to the survival of the Indiana bats. In response to WNS, the USFWS identifies "conservation measures" needed to assure the survival of the Indiana bats. The USFWS stated, "Until the threat of WNS has passed or has been mitigated, best practices are needed for the maintenance and recovery of bat populations of greatest conservation concern." The USFWS identified "Protect or restore summer and winter habitat to ensure that quality habitat is available for bat populations before and after exposure to WNS" as one of the conservation measures/best practices. Because this project would open Peter's Mountain to vehicular access and fragment Indiana Bat Habitat, it is in violation of Therefore, this project would violate "the Forest Service's duty and highest priority to "protect ...habitat to ensure that quality habitat is available for bat populations before and after exposure to WNS."

7. The Peter's Mountain Access Project fails to consider new information in its assessment of impacts to bats affected by white nose syndrome.

The Peter's Mountain EA is tiered to a United States Fish and Wildlife Biological Opinion of September 16, 1997 (EA-35). That opinion is over 15 years old and clearly

outdated. The "current forest monitoring" data published in 2004 only covers data from the 1990's. The data included in the Detailed Monitoring and Evaluation Report, Fiscal year 2004-2007 is now over 7 years old. This data is all clearly outdated and must be updated and resied to be applicable to this EA.

On January 17, 2012, the USFWS issued new Indiana bat population numbers and a press release explaining how White Nose Syndrome (WNS) has had much more devastating impacts than previously thought. 70% of the Indiana bat population in the Northeast has been lost to WNS since 2007. This includes one state losing 99% of its Indiana bat population between 2009 and 2011. USFWS's press release stated, "U.S. Fish and Wildlife Service biologists and partners estimate that at least 5.7 million to 6.7 million bats have now died from white-nose syndrome. Biologists expect the disease to continue to spread. White-nose syndrome (WNS) is decimating bat populations across eastern North America, with mortality rates reaching up to 100 percent at many sites." (See the USFWS hosted blog at http://whitenosebats.wordpress.com/2012/02/14/estimating-mortality/.) When the Forest Service prepared the EA for the Peters Mountain Access Project it failed to take into account this estimate and its impact on the cumulative effects to bats.

In addition new research from the University of Wisconsin (Dec 2012) shows that the organism that causes deadly white-nose syndrome persists in caves long after it has killed the bats in those caves where it lives on in cave soils. This may force surviving bats to find new caves and change their foraging areas in order to survive. This discovery may make protection of foraging areas and unaffected bat caves more important than previously thought and has not been analyzed in the EA updated for the Peter's Mountain Access Project. It fails to reflect current mortality numbers or population trends for the Indiana bat in the region, state or forest.

This and all new information requires that the Forest Service reinitiate ESA Section 7 consultation [50 C.F.R. § 402.16]. The much higher fatality rate cited above—more than five to six time higher than the agency believed when the EA was prepared—represents "new information" under the ESA, as well as "changed circumstances" under NEPA. This new information on unprecedented Indiana bat mortality takes precedence over tiering to previous evaluations and assessments. Its protections for the Indiana bat are not sufficient.

The Final Forest Plan will hopefully be updated to reflect the new reality of White Nose Syndrome through a Section 7 ESA Consultation Process with The Fish and Wildlife Service. Following this programmatic process the Forest Service should reinitiate a site-specific formal consultation under Section 7 of the ESA in order to determine the effect of its decision.

8. **The Peter's Mountain Access Project fails to consider the presence of the Cerulean Warbler in the project area and in its Environmental Analysis.**

The Virginia Fish and Wildlife Inventory Service lists the Cerulean Warbler, *Dendroica cerulean* as a Tier II species with a very high conservation need as noted by the Virginia Wildlife Action Plan, with potential habitat within a 3 mile radius around point Thomas Spring, Allegheny County (at 37, 42, 35.4-80,09,21.2).

The Cerulean Warbler is recognized by the FS and others as an area-sensitive species (SAA, Terrestrial Rept, Robbins et al., Cove Creek BE, 1995, Clinch RD, J&GWNFs, Maple Springs Branch BE, Clinch RD, J&GWNFs). The Cerulean Warbler has exhibited the greatest rate of any warbler species and the cerulean is declining at the center of its range. (Robbins, Fitzpatrick and Hamel, 1989, " A warbler in trouble: Dendroica cerulea") There are viability concerns for cerulean warblers, other species of interior forest-dwelling warblers, species of cuckoos, and other interior-forest dwelling songbirds listed as declining in BBS (or other ornithological data) that must be taken into consideration.

The Peters Mountain Access Project EA should consider the impacts to all area-sensitive species whose range includes the project area. Yet the Environmental Analysis for the project fails to identify the fact that the range of the Cerulean Warbler includes the project area. Protective measures for the Cerulean Warbler cannot be deemed sufficient if they have failed to be considered.

9. **The Project Area for the Peters Mountain Access Project is arbitrarily limited and, therefore, the environmental assessment of the project is unrealistically narrow.**

The decision notice specifies that "the scope of this decision is limited to the FSR 175 road corridor (DN-6)." However the effects and impacts of this decision cover an area much larger than merely the road corridor.

The project area is (within) the proposed 4,051 acre Peters Mountain North Conservation Site as presented in Biological Diversity Protection on the George Washington National Forest-First Supplement, Natural Heritage Technical Report 00-10, July 2000. To assume that this project will have no significant impact on that area is both arbitrary and capricious.

Providing motorized access to Jingling Rocks facilitates, encourages (and arguably rewards) illegal ATV use and destruction of this rare geological formation. "There is ample evidence of illegal ATV use at Jingling Rocks (photo attached) and along FSR 175, as observed during a site visit on 8/17/10 (see Comments, Wild Virginia, 8/19/10, pg. 2). There is no intention in either the DN or EA of providing necessary monitoring or law enforcement to protect this area. (See #9)

Similarly, here is no mention of the impacts of providing motorized access to Thomas Spring area. This rare highlands spring lies just a few yards from FSR 175. Increased access will undoubtedly harm the Thomas Spring wetland area including Cast Steel Pond and Cast Steel Run headwaters. These are not considered in the analysis of the

project area. (see #8)

The project area impacted by providing motorized access on FSR 175 is the core of a very valuable ecological area, the 4240a Peters Mountain North Site, identified by the Virginia Division of Natural Heritage. The area is ranked B2, "very high" for biodiversity and is described as "a large, contiguous stand of old-growth, oak-dominated forest (and) supports several globally rare ecological communities and rare plant species. This site is an important component of the greater landscape (08/2006). This road would bisect and divide his important block of habitat that has become a single ecological unit by virtue of the simple act of restricting motorized access. In this case, some adjacent landowners have been able to succeed at accomplishing what the agency purports to do but rarely does: close a road in order to enhance the ecological values of the area. (See #10)

By arbitrarily and capriciously limiting the project area to the roadbed, the agency avoids its responsibility to analyze immediate and cumulative impacts over the reasonably foreseeable future throughout the entire project area.

10. The Environmental Assessment for the Peters Mountain Access Project fails to fully analyze the impacts to rare hydrological areas within the project area and in areas impacted by the project.

The hydrologic analysis of the project area is surprisingly and clearly flawed. The DNR/DNH has identified the 539 acre Thomas Spring/Cast Steel Pond Montane Depression Wetland as a B2 area, warranting protection, and recommended by the Department of Natural Heritage as a Special Biological Area. FSR 175 passes through this area and therefore opening up FSR 175 to motorized access would adversely affect this area. FSR 175 goes straight through the center of the proposed DNR/DNH SBA and crosses immediately below Thomas Spring, cutting it off from the rest of the headwaters of Cast Steel Creek. A site visit on August 17, 2010 identified two other spur road beds that go directly to and within 50 feet of Thomas Spring. The statement that "no activity would adversely affect riparian areas, floodplains or wetlands" is clearly false. Moreover, any motorized use of FSR 175 would also encourage (illegal) use of these spur roads and encourage encroachment on deeper into and throughout the proposed SBA, creating a huge incentive to create more ecological havoc in this sensitive and rare ecological area.

11. The Environmental Assessment for the Peters Mountain Access Project fails to fully analyze the impacts to rare geological formations a within the project area and in areas impacted by the project.

Jingling Rocks is a rare and special geological feature of the Peters Mountain area. A 08/17/10 site visit showed recent illegal ORV activity on this precious geological resource. It is questionable how access was obtained given the tank traps blocking vehicular entry to Peters Mountain Road, but regardless, it demonstrates the impacts

inherent to this project which stretch the entire range of Peter's Mountain. These cumulative and consequential effects need to be considered.

12. The Environmental Assessment for the Peters Mountain Access Project fails to fully analyze the impacts to rare biological and old growth areas within the project area and in areas impacted by the project.

The Scoping Notice for the Peters Mountain Project notes that "the proposed route passes through stands 13 and 14 of compartment 1564. (VDNH Nat. Her. Tech. Rpt. # 00-07. "Plant Communities and Ecological Land Units of the Peters Mountain Area). Fig 11 (p. 182, ibid.) shows the "approximate extent of old-growth forests" as including the area where the road relocation is planned. It is clearly mapped as old-growth.

It further states (p. 177, ibid.) "Large, rugged areas on the the Peters Mountain ridges have never been logged. Two stands are present. Excluding five relatively small clearcuts and one selectively cut site, the first unlogged forest covers ca. 1455 ha (3,600 ac) on the northern ridge (Fig. 11, ibid.). Old-age, generally oak-dominated forest covers ca.1130 ha (2,800 ac) of this area; the remaining 325 ha (800 ac) supports younger, pyrogenic forests that have regenerated following intense disturbance by fires. The second stand, on the southern ridge (Fig. 12, ibid.), contains similar old-age forest and covers ca. 445 ha (1,100 ac) of the more remote middle to upper slopes and crest. Evidence of the unlogged status of both stands includes the absence of stumps, the presence of thousands of *Castanea dentata* boles which fell in place following their demise by chestnut blight, and the large size and old age of presently dominant canopy trees. While not directly impacted by timber harvests, these areas have nevertheless experienced widespread natural and indirect human disturbances. One such disturbance, the chestnut blight, approached catastrophic magnitude, as *Castanea dentata* was clearly one of the most abundant tree species here and throughout this part of the Appalachians (Braun 1950, Stephenson *et al.* 1991).

Despite this evidence, the EA for the project notes that this area "is unlikely to ever meet all four of the evaluation criteria due to their low productivity (EA-30)" although "under the no action alternative the portions of the stands would provide the development of future old growth (ibid.)." Logic and reality itself dictates that the evaluation critereon is flawed, if contrary conclusions are reached given the identical data inputs. Any stand, can become old growth and therefore be considered potential old growth. Any stand, given time, will become old growth. Disturbances and productivity do not invalidate this fact.

One of the more valuable assets of the Peters Mountain old-growth forests is preserved evidence that elucidates the former distribution and abundance of *Castanea dentata*. Except where localized fires have destroyed wood debris, the rotting boles of this species – many of them obviously once massive – still lie where they fell after succumbing to the blight more than 60 years ago. The distributional pattern of such boles indicates that *Castanea dentata* was most abundant, and in some localities overwhelmingly dominant, on submesic, somewhat sheltered middle slopes.

It is altogether conceivable, if not realistic, that one purpose of this road is intended to provide access for future projects that could adversely impact these old growth areas. The cumulate effects to the rare old growth resources on Peter's Mountain that this project will put into motion are significant.

One of the consequences of this project is further fragmentation of the existing old growth stands on Peters Mountain. Over the years that FSR 175 has not been used for legal vehicular traffic, the FSR 175 area has begun to exhibit more and more potential old growth characteristics, effectively closing the gap between old growth on either side of the project area. This area has the potential of becoming a much larger block of old growth, perhaps the largest in the entire forest. This project would eliminate this possibility and bisect the islands of old growth on either side, rendering it less integral, less intact and therefore less resilient. The project will leave the old growth resources in a weakened state as a result. This needs to be considered as critical to the environmental analysis as potentially an opportunity lost.

The VDNH is on record as recommending "Peters Mountain North" (including this project area) as a "Special Biological Area" or "Special Interest Area – Biologic" (MA 4 in the current Forest Plan). See Wilson 2000 at pg. 74. The VDNH again recommended this area as a SBA/SIA-B during the ongoing Plan revision process (*e.g.*, 2006-2007). This fact intensifies the significance of this project area and actions that affect it.

Part of the reason this project is controversial is because larger areas than the 4D1 areas in the preferred GWNf plan alternative have been proposed/embraced by the public and may be needed to provide adequate protection for the old growth resources in this area. The rarity of an old growth tract of this size in close proximity to the project should be considered, as well as the harm that would occur if portions of the old growth tract or tracts were split the area in half or segmented by a newly opened road - after 9 years of closure. The Forest Service has not analyzed whether this project would contribute to the fragmentation of old growth forest and surrounding contiguous late successional forest. The Forest Service has not analyzed whether this project would otherwise degrade the habitat value of old growth forest and surrounding contiguous late successional forest by allowing motorized use in and around these areas.

In FR-62, the FS includes the following "considerations for old-growth forests during project-level planning:""When developing overall management strategies for an area, care should be taken not to isolate the medium- and small-sized old growth patches from the mid- and late-successional forests." (pp. 26-7)

As stated in Mr. Bamford's Oct 17, '11 comments on the draft GWNF Plan Revision:

"Peters Mountain North and Frozen Knob old growth areas identified by Virginia Division of Natural Heritage must be identified as unsuitable for timber production. These two areas should be protected in the agency's preferred alternative. Among other reasons, the 3,600-acre Peters Mountain North old growth site

and the 1,100-acre Frozen Knob site are large and medium patches of old growth which should be identified during forest planning as part of the old growth network. See Guidance at 17, 19. We recommend that the FS consider the following designation for these two areas: Recommended Research Natural Areas and Management Prescription Area 6A (from the Jefferson National Forest Plan Revision(2004)).

"The Virginia Division of Natural Heritage wrote of the area: "Both [old growth tracts on Peters Mountain] rank among the largest old-growth patches documented to date in the George Washington and Jefferson National Forests (J. Overcash, pers. comm.).

"Old-growth forests have unique biological, scientific, educational, recreational, economic, cultural, and spiritual values (Whitney 1987, Davis 1996, USDA Forest Service 1997). Forest Service guidelines for the conservation and management of these forests are less clear than the operational criteria for their identification. We would state **unequivocally** that the outstanding size and internal community type diversity of the Peters Mountain old growth warrants its **exclusion from the timber base** and justifies formal protection of some kind. Although the amount of old growth in the central and southern Appalachians may be underestimated due to lack of recognition and inventory, estimates of the amount of existing old-growth oak and oak - hickory forest are generally low (Davis 1996, Parker 1989, Smith 1989). Moreover, the remaining stands are subject to increasing fragmentation, as well as compositional changes resulting from fire suppression and the invasion of more mesophytic successors. Because of these factors, collection of baseline data from larger old-growth oak forests is becoming critical. The inclusion of smaller-scale, young patches that have been impacted by natural disturbances such as destructive fires within the unlogged stands on Peters Mountain adds value to these areas. According to White and White (1996),

" "Oak and hickory trees can live at least 200 to 400 years, so for most areas we are still within the period for which old-growth forests can have individual trees that predate European settlement. As these trees age and die, emphasis must shift from the question of whether the forest has continuously existed from presettlement times with no direct harvest of trees. Forests that have existed continuously as forests (even if they have changed with such factors as changing climates, chestnut blight, fire suppression, and air pollution) are valuable for research. By recognizing such forest sites, we are essentially recognizing that the forest can be older than the current generation of trees on the site .... Such forests are valuable for their species composition and their ancient undisturbed soils, even if they are not now dominated by old trees or characterized by compositional stability. If we set high priorities only on the patches currently holding large trees, we will miss the full mosaic of patch states .... Such sites are important for understanding natural vegetation....." [VDNH Natural Heritage Technical Report 00-07 Apr. 2000, p. 180. [underlining and bold text for emphasis]

"And,

" "The Peters Mountain study area contains several rare natural community types with high biodiversity significance, including shale barrens (LTP 1.3), a natural mountain

pond (LTP 2.2), and a high-elevation boulderfield forest (LTP 4.1). Two plant species occurring in the area – *Arabis serotina* (shale barren rockcress) and *Scirpus ancistrochaetus* (northeastern bulrush) – are listed as endangered under the federal Endangered Species Act and by the Commonwealth of Virginia. Also of special significance are approximately 1,900 ha (4,700 ac) of the area that escaped logging. Included are patches of ca. 1,130 ha (2,800 ac) and 445 ha (1,100 ac) that qualify as old-growth forest under regional criteria set forth by the Forest Service (USDA Forest Service 1997). These patches are among the larger occurrences of old growth in the George Washington and Jefferson National Forests and provide exceptional opportunities for the investigation of disturbance regimes, post-chestnut-blight succession, and compositional variation in stands that have not been altered by cutting." VDNH Natural Heritage Technical Report 00-07 Apr. 2000, p. 189.

"See also VDNH Tech. Rpt. 00-10 pp. 74 & following page.

"Also, "VDNH states: "It is important to identify these largest areas of relatively undisturbed habitat so that they may be targeted for inventory and assessment of biological significance, for avoidance of further fragmentation, and as logical 'core areas' of reserves." (Apr. 2, '96 letter). Identified threats to the proposed special interest area are logging or road construction.: "Logging or road construction would destroy the integrity of this unusually large stand of old growth." (VDNH Tech. Rpt. 00-10, p. 74).

"VDNH Natural Heritage Technical Report 00-07 and the sections of VDNH Tech. Rpt. 00-10 on Peters Mtn. North (pp. 74 et seq) and Frozen Knob (pp. 44 et seq), already in your possession, are incorporated by reference into this letter.

"The Forest Service should protect and buffer all "Special Biological Areas" and areas with rare communities or other natural heritage resources recommended for protection in 1991 and 2000 reports, subsequent lists, and other biological diversity reports.

"Alternative G and some other alternatives understate the acreage of special biological areas found on the George Washington National Forest. The Virginia Division of Natural Heritage recommended numerous areas for protection as special interest areas, research natural areas, and other designations in 1991 and 2000 reports, subsequent lists, and new biological diversity reports. Over 140,824 acres have been so recommended. This acreage includes part of the acreage of the Peters Mountain North, Frozen Knob, and Paddy Run/Cove Run Special Biological Areas that were omitted.....

"The 6 candidate areas from the 1993 Plan and the Peters Mountain North special biological area should be designated as candidate research natural areas in this Plan Revision."

Approval of this project would preclude full consideration of these issues, raised by the public, in the GWNF Plan Revision.

13. The Peters Mountain Access Project Environmental Assessment fails to consider the effects of this project on increasing invasive species populations.

The Peters Mountain Access Project Environmental Assessment fails to consider the effects of this project on increasing invasive species populations, both within the project area and in the areas surrounding the project area. Site visits confirms the fact that garlic mustard and Japaneese Stiltgrass have established themselves along the abandoned roadbed and especially in areas disturbed by the ice salvage cutting in 1979. This despite the fact that the area has been virtually closed to vehicular access and road disturbing activities for 9 years and access has been limited since the north end closure, 18 year ago.

NFMA regulations state that projects "where appropriate and to the extent practicable, shall preserve and enhance the diversity of plant and animal communities, including endemic and desirable naturalized plant and animal species, so that it is at least as great as that which would be expected in a natural forest . . ." (36 CFR 219.27(g))

The EA makes note of "relatively low numbers of exotics" in areas that were not part of the land disturbances as a result of the 1979 salvage project. This is a credit to the limiting of vehicular access.

Road construction and reconstruction will establish a permanent vector for invasive species to increase their range and populations beyond the project area. Opening up Thompson Spring hydrological area and the full length of FSR 175 will have catastrophic results and allow genetic material freedom to roam throughout the areas adjacent to the project area. This runs in direct contradiction to directives to take all measures in management to restrict or eliminate the spread of non-native invasive species, especially to special biological areas, rare habitat and old growth areas. This project does it all, as effectively as if there were a purpose and need to allow invasive species into the project area.

Road construction/reconstruction and maintenance would significantly harm the natural values and conditions of this area through deleterious edge effects (Letters of October 30, 2008 and January 9, 2009 letters to the GWNF from Steve Krichbaum regarding edge effects and fragmentation, incorporated by reference). These impacts must be fully and fairly analyzed and disclosed in the EA.

Not only does the project itself have these deleterious effects directly but the continued use of FSR 175 will guarantee that this will become a deeper and more widespread problem ad the range and population and density of invasives continue to increase with every tire that makes its way across FSR 175. Treatment is not a solution. Only limiting access can stem the tide of invasive species to Peter's Mountain. The EA conveniently, arbitrarily and capriciously avoids addressing this problem.

There is no evidence that the Forest Service has completed the requisite pre-activity studies of invasives/natives /old growth/ wildlife habitat in this area to adequately monitor this project. The Forest Service would have no baseline information on which to

base the monitoring of "trends" or the "effectiveness" of management activities "in preventing or controlling targeted invasive species" as will be required on p. 5-9 of the new GWNF Plan, for example. Pre/post activity monitoring needed for resources of this high level of significance [Peters Mountain North natural heritage site].

14. The Peters Mountain Access Project Environmental Assessment fails to consider the social and economic factors of the project.

The Peters Mountain EA places the cost of the project at $144,132. Given that one of the stated goals of the GWNF is road closures, this redirection of resources to reopening and creating a new road is in direct contrast to this directive. It redirects precious economic resources away from infrastructure improvements and actual road closures. It sets a precedent and disincentive for future road closures.

By the late 1990s, the Forest Service had a $8.4 billion backlog for road maintenance nationwide. This backlog has undoubtedly increased in the intervening years. There are thousands of miles of FS roads on the GWNF and the Forest Service does not have the financial wherewithal or the capability to maintain them or adequately patrol them to stop illegal use.

This EA fails to consider pertinent new information: Since the DN was signed, Congress has allowed drastic across-the-board cuts to federal agencies through the "sequester process." The FS did not consider whether the agency has the financial wherewithal or capability to maintain this road or protect this area from illegal motorized use given the precarious state of FS budgets.

These budgetary issues raise a number of issues unanswered in the EA: Is this project the wisest use of the Forest Service's money? Can the Forest Service sustain this project given the state of Forest Service budgets? Given a limited overall road budget, will the implementation of this project mean that fewer roads will be decommissioned elsewhere?

In addition, given the rare and valuable hydrological, biological and geological characteristics within and adjacent to the project area, and the history of illegal vehicular use of the area surrounding FR 175, some commitment towards the protection of these resources should be considered part of this project. Implementation of this proposal will facilitate and exacerbate illegal ATV trespass and associated criminal activities such as poaching. These effects must be fully and fairly considered, analyzed, and disclosed. Additional resources for monitoring and law enforcement must be included. The fact that these are being considered cost prohibitive, unnecessary and are absent from Table 3-7 (EA-58) demonstrates a lack of consideration for the responsibility the agency has for protecting these values. And, of course, the result is that the economic costs are undervalued ion the EA analysis.

The FS has not disclosed how many law enforcement officers are available to monitor this area now, and how the coming budget cuts will impact patrols in the area. Law

enforcement has already been cut to the bone and the number of law enforcement personnel has dwindled. In the 1990s, there were 23-25 law enforcement officers distributed throughout the ranger districts of Virginia's two national forests. In recent years there have only been 10-12 officers. (Meeting with Brian Webb, Patrol Captain, Supervisors Office, February 11, 2011).

15. The Peters Mountain Environmental Assessment fails to adequately address potential impacts to the James spinymussel and Allegheny Woodrat.

James spinymussel (*Pleurobema collina*) and other TESLR may occur in the vicinity of this project, or downstream. For example, the GWJNFs 2004 Rpt. Documents that a live James spinymussel was found in Potts Cr at the Cast Steel confluence (p. G-75 – already in your possession, incorporated by reference). This is only approx. 2 mi. or less from the project area, which drains into Potts Cr and adjoins part of Potts Cr (see James River RD maps and SN maps).

The FS should follow all provisions of the JNF Plan, the GWJNFs T&E Mussel and Fish Conservation Plan, the ESA, and James spinymussel recovery plan regarding the protection and monitoring of freshwater mussels. The FS is required to ." "Maintain a stable and/or increasing population trend for Blackside dace and James spinymussel."(Conservation Plan) but there are serious doubts evident as to whether this is occurring.

The '99-'00 GWJNFs M&E Report states "Throughout the Craig Creek drainage, P. collina numbers are declining (Pers. Comm. Neves 12/5/00)" (p. G-75) (incorporated by reference, already in your possession, enclosed as an attachment our previous (2nd) Little Mountain timber sale appeal). See also '01-'03 GWJNFs M&E Rpt G-67, already in your possession, incorporated by reference. See also the email from Dawn Kirk (GW&JNFs Staff Fisheries Biologist) regarding her conversation with Dr. Neves. It appears that Dr. Neves believes that sediment is the probable cause of the decline. According to the e-mail, [Neves] "said it is a downward trend in Johns Creek and the whole Craig Creek drainage." Kirk also states that based on the conversation, she does not believe that there is a viable population of James spinymussels on the Forest or that there ever will be one without "massive augmentation." (incorporated by reference, already in your possession, enclosed as an attachment our previous (2nd) Little Mountain timber sale appeal). Cumulative impacts to the James spinymussel should be considered.

"Direct monitoring of James spinymussel populations and habitat on Forest Service property.," "The Forest Service will continue to inventory potential Federally listed mussel and fish habitat on Forest Service land and assist the state in additional surveys." (Conservation Plan).

The agency must formally consult with the USFWS on this specific project regarding the James spinymussel. 16 USC 1536(a)(2). Other potential TESLR aquatic species

must be fully considered as well. The requisite full, intensive, and competent surveys, inventories, and data gathering for endangered species must be performed. Cumulative impacts must be analyzed and accounted for.

The James spinymussel depends on fish species such as the bluehead chub (Nocomus leptocephalus), rosyside dace (Clinostomus funduloides), satinfin shiner (Cyprinella analostana), rosefin shiner (Lythurus ardens), central stoneroller (Camptostoma anomalum), blacknose dace (Rhinichthys atralulus) and mountain redbelly dace (Phoxinus oreas) in order to reproduce, so potential impacts to these fish species should have been considered as well. These fish serve as the prime fish hosts for young developing mussel larvae, called glochidia (Terwilliger, 1990, p. 254; Hove and Neves, 1994) See also George Washington and Jefferson National Forest T & E Mussel and Fish Conservation Plan (Mussel and Fish Conservation Plan), 6 & 31: " The decline of fish host species may present a problem in mussel reproduction."

James spinymussel females usually produce significantly fewer glochidia than other mussels. Female mussels release glochidia during a short period from early June to through late July. Water temperature and springtime water flows are believed to be important factors as far as James spinymussel reproduction is concerned. (Hove and Neves, 1994, p. 34 & 37) The timing of activities and longevity of impacts should be of concern.

"The effects of sediment delivered to a stream channel diminish as watershed size increases. Most vulnerable are small sensitive headwaters catchments where concentrated timber harvest activity can have profound results. . . . After four years, sediment rates are normally back to predisturbance levels. However, once sediment is deposited in a stream channel, its effects can persist for decades or even centuries (Frissel, 1996)." (JNF Enterprise TS EA-42; incorporated by reference) So this project may result in significant impacts to channel condition and population viability or distribution.

A report by Dr. Michael Mengak on Allegheny Woodrats in Alleghany Co. and other portions of the GWJNFs (Challenge Cost Share Report Jul 1, '97 to Jun 30 '98, in the GWJNFs, possession, incorporated by reference. See also Mengak report in '01-/'03 GWJNFs M&E Rpt, in your possession incorporated by reference) indicated there were 21 actual or potential Allegheny woodrat sites in the James River RD during this time period. The report said that "Little is known of historic population levels, home range, dispersal, food habits, or habitat requirements. Our understanding of basic population dynamics - litter size, frequency of reproduction, survival of young, sex ratio of young and dispersal - is abysmally weak. The role of predators, disease, forest management, and food resources in regulating woodrat populations is completely unknown." (p. 6). According to Terwiller (1991), "Populations of Neotoma floridana magister have declined precipitously in recent years in the northeastern and midwestern portions of the range of the subspecies…. In view of the speed of its decline in states to the north, Virginia should initiate a program to periodically monitor woodrat cliffs and ledges

throughout the state to gain baseline data on the rat's population." (pp. 550 & 551). See also Mengak, 2002: "A recent study has examined woodrat population structure using microsatellite DNA analysis (Castleberrey et al, 2002c). This analysis suggests that across the woodrats range in Virginia and West Virginia, isolation by distance is occurring…Low population abundance (Tables 6,7 and 8) frequent loss of a colony at individual sites (Tables 4 and 6), declining abundance at monitoring sites (Table 8, Figures 3a and3b), absence of woodrats at 34% of historical sites, and loss of some historic sites to development (Appendix A.2) clearly suggest that the long term survival of the Allegheny woodrat in Virginia is in doubt…. Strategies such as habitat manipulation (eg creation of early successional habitat), nest box construction (as for songbirds, waterfowl, bats, and flying squirrels), and traditional habitat protection (such as bat gates on caves) may have no impact on woodrats." New strategies such as "maintaining sufficient old growth mast producing canopies (Beck 1977; McShea 2000), maintenance of continuously forested corridors," "public education, maintenance of course woody debris such as large snags and fallen logs, and more may be required to insure the long-term survival of the Allegheny woodrat" (See '01-'03 GWJNFs M&E Report Mengak 2002 pp. 30-34, See also the entire'01-'03 GWJNFs M&E Report Mengak 2002 pp. 1-38, already in your possession, incorporated by reference). The viability of the Allegheny woodrat is not assured in this project area. There is no assurance that all populations may have been identified and protected. Mitigation measures do not properly address threats.

The project has the potential to fragment Allegheny woodrat populations and increase "isolation by distance." Thorough surveys of Allegheny woodrats should have been completed in this area and a thorough exploration of these issues should have taken place.

16. The Peters Mountain Environmental Assessment fails to assess the controversy of the project in its analysis.

The agency has failed to include controversy as an element or significant issue in its analysis. The Forest Service has described the definition of controversy in its decision more narrowly than that prescribed by CEQ. CEQ regulations at 40 CFR § 1508.27 requires consideration of both context and intensity in determining significance under NEPA. Intensity refers to the severity of the impact and is further defined in detail. Element 4 at 40 CFR § 1508.27(b)(4) states, "The degree to which the effects on the quality of the human environment are likely to be highly controversial." The Forest Service in its decision has narrowed this definition beyond that contemplated or required by CEQ.

Controversy in this context refers to cases where there is substantial dispute as to the size, nature or effect of Federal action, rather than opposition to its adoption. The absence of this recognition is significant. As as our comments and appeal of the Peters Mountain Access Project make clear, there is substantial dispute as to the size, nature and effect of the Project. The historical controversy surrounding the Hematite Timber Sale and the facts and reasons included in this makes this project very controversial.

REQUEST FOR RELIEF

For the forgoing reasons, the appellants request that the Forest Service:

1. Withdraw the Record of Decision for the Peters Mountain Access Project.
2. Implement a stay of the Record of Decision for the duration of this appeal and until the new Revised GWNF Forest Plan has been released as appropriate under 36 C.F.R. § 215.
3. If the Forest Service is determined to proceed with this project, appellants request that the agency reinitiate the scoping process, and consider a full range of alternatives consistent with Management Area Prescriptions for the expanded project area as dictated under the new Revised GWNF Forest Plan.
4 If the Forest Service is determined to proceed with this project, appellants request that the agency prepare an Environmental Impact Statement to correct the inadequacies in the analysis discussed in the above Statement of Reasons, and provide legal notice and the opportunity for public review and comment under NEPA before making another decision on this project.
5. If the Forest Service is determined to proceed with this project under the current management prescriptions for the project area, appellants request that the agency amend the current Forest Plan to review current information and to set new standards and guides for the Indiana bats due to the negative effects by white nose syndrome through a Section 7 consultation with the Fish and Wildlife Service as part of the environmental analysis/environmental impact statement.