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**Testimony
Before the Subcommittee on National Parks, Forests & Public Lands
Committee on Natural Resources
United States House of Representatives**

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"Management by Exclusion: The Forest Service Use of Categorical Exclusions from
NEPA"
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I. Categorical Exclusions

As part of the processes under the National Environmental Policy Act (NEPA), Categorical Exclusions (CEs) are used to analyze projects and actions that an agency can demonstrate have no environmental impacts. Thus, projects that fall within the bounds of a CE do not need the lengthy environmental impact analysis process of an Environmental Impact Statement (EIS) or the shorter Environmental Analysis (EA). When used rationally and appropriately, CEs can be useful and proper tools for handling certain types of small projects and immediate but limited needs.

Like all tools for accomplishing work, CEs can be properly used, improperly used or abusively misused. There is nothing inherently wrong with CEs, any more so than there is anything wrong with EAs and EISs. While some decry CEs as ways to limit public participation and eliminate review of environmental impacts, others laud them as the prime solution to getting good work done on public lands. Both views miss. CEs are nothing but a NEPA tool. They are not the cause of abuse or the cause of solutions; they are merely the mechanism by which some abuses and some solutions can be accomplished.

Are CEs being abused by the Forest Service and sometimes used to limit or eliminate public participation in management of public lands? Absolutely. But so are the EA and EIS processes. I can show you full blown EISs that are garbage, nothing but ruses for doing things that the laws passed by Congress do not allow. I can show you EAs that got less environmental analysis, public participation and on-the-ground monitoring than some CEs.

Every agency this size has people in it that will abuse any authority they have to achieve goals that are not in the public interest. Like with all human endeavors, this abuse is done by a small minority of the people involved. Still, such abuses can loom large in physical consequences and in public perception. But just because a murder uses a hammer to kill someone, you do not condemn hammers.

Are there proper uses of CEs by the Forest Service? Absolutely. Indeed, in WildLaw's experience (which is mainly in Region 8, the Southern Region), we find that the vast majority of uses of CEs are proper. It cannot be assumed, however, that the experiences in Region 8

translate to the entire National Forest system. What few CEs we have reviewed outside Region 8 have mostly been improperly used. The detailed review and tracking WildLaw does of CEs in most of Region 8 does not appear to have been replicated by anyone else in any other Region, to our knowledge. I do know that the agency itself does not track the use of CEs in the detail that we do, and the Forest Service does not have a national data set to tell you or anyone the full extent of CE use and misuse. This lack of comprehensive information on the use of CEs is troublesome but solvable through the use of an independent ombudsman.

The main issue with CEs is whether they are being properly used in a context that will produce good results on the land and for the people who care about and depend on National Forests. When used by a line officer in the context of a good management plan that emphasizes restoration of the natural forests and that encourages sustainability, CEs are almost always a useful tool for developing and implementing small projects which fit within that larger restoration and sustainability framework. See attachment.

II. Healthy Forest Initiative CEs

In 2003 the Forest Service adopted new CEs. *See* 68 Fed. Reg. 33813 (June 5, 2003).

The types of projects being conducted by these agencies under the NFP include prescribed fire (including naturally occurring wildland fires managed to benefit resources), mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions.

Id. at 33807.

WildLaw currently tracks and monitors almost every HFI CE project in the Southern Region (except for Arkansas and Texas). Out of those approximately 350 projects that we know of, we found 58 that, when proposed, did not comply with the law, which includes the applicable HFI regulations themselves and the applicable sections of the Appeals Reform Act (ARA), the Administrative Procedures Act (APA) and the parts of the National Environmental Policy Act (NEPA) that apply to the HFI. Out of those 58, 27 were corrected after we brought the problem to the attention of the agency. Thus, in Region 8, you could give the agency a preliminary grade of “83,” a “B.” Then, upon further work and correction of problems, the grade rises to “92,” an “A-.” We have also reviewed certain specific HFI projects in many states throughout the country. Over all, our analysis is based on our review and work on more than 400 HFI projects, a level of review that exceeds the level of review done by the agency itself when it adopted some of these very regulations. (For example, when the Forest Service developed the Fire CE, the number of thinning projects it reviewed in that process was only 81. The Forest Service supported adoption of the Small Timber Sale CE with a review of only 154 projects.)

This high compliance rate in Region 8 is impressive for a set of CEs that had been predicted by many (including by me) to be a potential source of massive abuse. However, the media and many environmental advocates usually do not focus on the compliance but on the ugliness of some of the few projects that are noncompliant. Here is why: while an “A-”

compliance rate seems pretty good, the impacts of one bad project can far outweigh the positive effects of many, many good projects. A really destructive noncompliant project, such as one that logs old growth unnecessarily, can do orders of magnitude more damage than the good that comes from most compliant projects. The few bad projects can taint the work and image of the many good ones. And the media has a natural tendency to focus on the bad, the controversial, rather than on the good and the acceptable.

Of those projects that do not comply with the applicable authorities, the vast majority of problems involved break down into just four areas. Therefore, fixing the problems and making the programs successful should not be that difficult. This monitoring by WildLaw does not show systemic abuses or widespread problems with HFI CEs but shows localized and sporadic abuses of these new authorities, more often through ignorance rather than actual intent. There is a real potential for the success of these programs as they were set forth to Congress and the public, if the problem areas are addressed and monitored closely and if some changes are made to Forest Service CEs in general to make them more adaptable and less prone to erroneous uses and abuse.

These four main problems areas of the HFI CEs are:

1. Failure to provide adequate scoping notice of an HFI project. While most ranger districts monitored provide good scoping notices that adequately describe the proposed project and the potential impacts (and thus the areas of concern for public participation), there are some districts that produce insufficient notices, such as two-paragraph scoping notices that do not even tell the public where the project will occur and what the project will entail. This clearly defeats the main purpose of the HFI of making public participation be more cooperative and occur earlier in the process.
2. Failure to have an open, collaborative public participation process in the development of projects that will be decided with a CE. Invariably, the National Forests with the most success with, and least abuse of, CEs are those that bring the public into a conversation about the proposals long before they become locked into stone. Such collaborative work includes field trips to review proposed project sites, the seeking of input from the public on the need and scope of the projects and much more. Really good examples of public participation can currently be found in the Bankhead National Forest in Alabama, the De Soto National Forest in Mississippi and the Ocala National Forest in Florida.
3. Segmentation of a larger project into smaller chunks so as to make the smaller “projects” qualify for the CEs of the HFI. While not common, when this abuse occurs, it is often quite blatant and obviously intentional. Commentary with the HFI regulations plainly states that the new CEs provided under the HFI are NOT to be used to segment larger projects into smaller ones that could use the CEs, but the regulations themselves do not specifically prohibit segmentation. Segmentation is a major NEPA violation.
4. Failure to protect larger trees and old growth as impliedly required by the HFI. Cutting larger, older, fire-resistant trees is clearly not in the best interests of healthy forests and of protecting communities from catastrophic wild fires. Where this abuse occurs, needed work to thin young trees in the wildland urban interface (WUI) is often sacrificed in order to cut the bigger trees further from communities. This violates the spirit of the HFI as it was presented to the public and Congress.

Easy actions to limit these problem areas (such as strong guidance documents from the Chief and interpretive regulations on these areas) and constant tracking and monitoring could solve the vast majority of problems with the implementation of the HFI CEs and would go most of the way to solving public relation problems with the programs.

More fundamentally, though, the long-term solution to problems with CEs is the same solution to most problems with the National Forest System. CEs will work best (and thus be less abused) when they are used in a framework of restoration and sustainability for the National Forest involved. The best examples of good use of HFI CEs are found in Alabama and Mississippi, where the National Forests there have adopted restoration programs for their forests overall. Therefore, adoption of a national policy of restoration and sustainability as the guiding theme for the National Forests would provide a context for better and consistent use of CEs, as well as all other authorities and tools the agency uses. See attachment.

Possible Solutions

- Require that all scoping notices for CEs provide adequate information on what actions are being proposed, where they are being proposed, and why they are being proposed. Adequate maps should be required. Guidance should encourage explanations in the scoping notice of the current conditions needing to be addressed, including good explanatory photographs of the current conditions and the desired conditions after the project is complete. We have seen excellent examples of all this being done in five pages and can provide Congress and the agency with those examples.
- Encourage more up-front public participation, train line officers and support the use of more cooperative conservation collaboration techniques and efforts in the development, shaping and implementation of project proposals.
- Explicitly place segmentation prohibitions in all CEs. Conduct a public rulemaking process to amend the CEs to include specific language instructing line officers not to segment larger projects into smaller segments that can each fit within the acreage limits of the CEs. Guidance should also be issued to flesh out the perimeters of what is and is not improper segmentation.
- Amend the small timber sale CE (CE 12, FSH 1909.15_31.2(12)), the salvage CE (CE 13, FSH 1909.15_31.2(13)), and the hazardous fuels reduction CE (CE 10, FSH 1909.15_31.2(10)) to include protection and retention of large trees as much as possible. I suggest incorporating the old growth and large tree protection and retention sections of the Healthy Forest Restoration Act (HFRA) as a good example. The HFRA contains two large tree sections that would be good additions to the HFI regulations:
 - 1. “In carrying out a covered project, the Secretary shall fully maintain, or contribute toward the restoration of, the structure and composition of old growth stands according to the pre-fire suppression old growth conditions characteristic of the forest type, taking into account the contribution of the stand to landscape fire adaptation and watershed health, and retaining the large trees contributing to old growth structure.” HFRA § 102(e)(2).
 - 2. In areas outside of delineated old growth stands (which have to meet the requirements in § 102(e)(2)), the HFRA also provides requirements for the keeping of large trees in project areas. § 102(f) mandates that projects be carried

out so that they (1) focus largely on small diameter trees, thinning, strategic fuel breaks, and prescribed fire to modify fire behavior and (2) maximize the retention of large trees, as appropriate for the forest type, to the extent that the trees promote fire-resilient stands.

- Initiate more in-depth training for line officers to teach them the proper use of the HFI CEs and how they should and should not be used. This training needs to include instruction on how to build a good collaborative process for public participation in development of CE projects. This should be a cooperative effort that includes non-agency personnel who can provide a perspective agency staff needs in order to make these regulations succeed. Many line officers (more than 75) have sought assistance in the proper use of CEs from WildLaw, because they could not get that from the agency.
- Establish, fund and contract for an independent Healthy Forests Ombudsman to provide independent, comprehensive and unbiased review of HFI (and HFRA) projects and training and assistance for line officers.
- Long-term, the Forest Service needs to adopt as a guiding mission the restoration of the National Forests and the sustainable protection and use of those lands. See attachment.

While not necessary to fix current problems with HFI CEs, we feel that some additional changes to the CEs are needed to make them more flexible and make their proper uses clearer to line officers who often have difficulty knowing when and how to use these tools. Also, like all “top down” regulations that attempt a “one size fits all” rule, these CEs do not fit equally everywhere. A 70-acre logging thinning project in young Longleaf Pine may be fine, while a 10-acre project in a cove hardwood forest could be devastating. The CEs need better guidelines for their proper use and to prevent abuses. Our suggested changes/additions to the CEs are:

- Revisit the data and information used to establish these CEs. Because these CEs have been used hundreds of times since their adoption, there is now a much better data set on their impacts, uses and effectiveness than existed when they were adopted. Examples:
 - Data used to adopt the small timber sale CE did not support 70 acres as the limit; the administrative record had good information to support a 10-acre CE. Now, though, the CE has been used on projects up to 70 acres. Revisiting that information may support use of 70 acres or may show that a different limit or set of limits is required. Some forest types may handle 70 acres of logging without any adverse impacts while other types may have suffered adverse impacts at smaller acreages.
 - The acreage limits in the hazardous fuels reduction CE need to be refined to general forest type. Fire-dependent forest types (such as Longleaf Pine) clearly can handle a 4,500 prescribed burn, and use of a CE on that level is appropriate. Fire-intolerant forest types, though (such as Southern Appalachian cove hardwoods), do not need prescribed fire at all, and a burn of any size there can have devastating impacts. Fire-adapted or tolerant forest types (such as Oak-Hickory in the Piedmont or Cumberland Plateau) can handle infrequent fires but do not need them regularly for their health. For those types of forests, more analysis may be needed to justify fires of more than 1,000 acres or so.
- Based upon that review, refine the acreages and proper uses of these CEs and give better guidance on their proper usage. Adding requirements about taking forest type and the

ecosystems involved in a proposed CE project into account in determining whether or not the CE is applicable would be helpful.

- Prohibit use of the hazardous fuels reduction CE for fire in fire-intolerant forest types.
- Consider adoption of a specific wildland urban interface (WUI) CE, to be used in conjunction with Community Wildfire Protection Plans. Many of the HFI CEs have been used to conduct projects in the WUI, and the HFRA has WUI-specific authorizations in it. With this new experience and information, it may be appropriate at this time to explore the adoption of a CE specifically designed for use in the WUI for small community protection projects; this would be a CE tailored to fit the needs of WUI projects. That may work better than trying to fit a WUI project into the current HFI CEs, which are more generalized and not specifically designed for WUI needs and work.

III. CE for National Forest Plans

WildLaw does not support the development and use of a CE for the adoption or major revision of National Forest management plans, as required by NFMA. Certainly, planning as it exists under the 1982 NFMA regulations has become too complex and cumbersome and needs a major overhaul. But to throw the baby out with the bath water is not the solution. CEs are screwdrivers, tools to get small, routine jobs done. Plans are the framework of the entire “house” that is a National Forest’s long-term management; you cannot build the frame of a house with just a screwdriver.

Forest plans are critically important documents that embody the overarching goals and objectives for our National Forests and establish guidelines for how to achieve them. It is imperative that these forest plans are drafted with extensive input from scientific experts and the interested public so that wilderness, old-growth, drinking water, recreation, and wildlife habitat are adequately provided for and protected. Plans determine what types of projects can occur and where they can occur, even if they do not determine exactly which projects will occur or when. Since all projects, permits, contracts, etc. must be consistent with the forest plan (16 U.S.C. § 1604(i)), it is clear that plans are important in determining what activities can occur. Forest plans also make final decisions, such as designation of special areas, opening of lands to mineral exploration and development, and recommendations for wilderness areas. Thus, their development should be subject to detailed and thorough NEPA analysis and public participation.

Instead of avoiding the problems with planning by attempting to get around it with a CE, the Forest Service should finally attempt to solve the problems with NFMA’s implementation. The Forest Service should take the time to do a good job and really figure out new regulations (1) that really comply with NFMA and give the agency a strong scientific basis for management and (2) that resolve most of the conflict around management of the public’s forests. Using cooperative conservation approaches, new NFMA regulations and directives should be developed through a facilitated group problem-solving process involving all the diverse interests involved in management of the National Forests. Instead of an agency-driven and developed set of NFMA regulations, we propose a collaborative development of solutions to National Forest problems that then lead to new regulations to implement those solutions.

In February 2003, as part of the adoption of the 2005 regulations, the Forest Service brought together approximately 100 interested people to discuss options for protecting biological diversity on the National Forests under the new National Forest Management Act regulations. I was one of the participants in that workshop and the only environmentalist/conservationist who gave a presentation at it. While the agency ultimately ignored what this group suggested, the people and the balance of types of people (agency, industry, scientists, environmentalists, etc.) at that workshop were excellent. No party of interest could claim not to be adequately represented there. Given a few more days and a real mandate to find common ground solutions to problems on the National Forests, I guarantee that that group would have found at least a handful of common sense solutions 90% of everyone would have agreed with. The agency could have then moved forward on those consensus items and left more contentious issues aside for the time being, thus accomplishing much needed work in the public forests and reducing litigation significantly.

Despite the legal limbo of the various Roadless Rules, the creation of the Roadless Area Conservation National Advisory Committee (RACNAC, of which I am a member) has proven to be a unique success. For the first time ever, the agency has successfully brought together diverse interests, got them talking without conflict baggage and seen them produce proposed solutions, some of which go beyond the boundaries of just roadless areas. Other agencies have had success with standing FACA committees and other advisory groups that work to resolve long-standing issues. It is time the Forest Service tried this conflict resolution approach on a larger scale, on the scale of planning for all the National Forests.

IV. CE 6

In our experience, the worst problem area with CEs appears to be with an old CE, CE 6, which was adopted long before this Administration. WildLaw has already submitted an APA petition to the Secretary to fix the problems with CE 6. Having this Subcommittee advise the Secretary on that CE may also be useful. WildLaw has reviewed, commented on and challenged numerous improper uses of CE 6; we have also reviewed, commented on and supported numerous proper uses of CE 6.

Summary of the CE 6 Problem

A. Southeast Situation

Categorical Exclusion 6 was adopted some time ago, well before this present Administration. Agency records on the adoption of CE 6 are scant to nonexistent, and the original intent behind it is not readily apparent. In the Southeast, in particular, CE 6 has been abused frequently. While Tennessee is notable for its frequent reliance on CE 6 in large projects, South Carolina is notorious for applying it to very large projects, some more than 66,000 acres in size. Florida is similar to South Carolina, except worse, with some CE 6 prescribed fire projects there being more than 100,000 acres in size. We got most of those abuses stopped.

B. Nationwide Situation

The Forest Service does not know the extent of its use of CE 6. WildLaw has tracked Forest Service CE 6 projects in the Cherokee, Pisgah, Nantahala, Sumter, Francis Marion, Apalachicola, Ocala, Osceola, Alabama and other National Forests in Region 8. The materials we received in response to a Freedom of Information Act request on the use of CE 6 shows clearly that the Forest Service is not tracking its own use of CE 6—it took months to get a full response and then it came from each region, not a centralized location.

Basically, CE 6 is often used to get around the acreage limitations in the HFI CEs. This CE needs to be revisited and overhauled.

Description of CE 6

The language of CE 6 is exceptionally broad:

31.2 - Categories of Actions for Which a Project or Case File and Decision Memo Are Required

6. Timber stand and/or wildlife habitat improvement activities which do not include the use of herbicides or do not require more than one mile of low standard road construction (Service level D, FSH 7709.56). Examples *include but are not limited to*:

- a. Girdling trees to create snags.
- b. Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand.
- c. Prescribed burning to control understory hardwoods in stands of southern pine.
- d. Prescribed burning to reduce natural fuel build-up and improve plant vigor.

FSH 1909.15, chapter 31.2(6)(emphasis added).

CE 6 evolved from two CEs no longer in existence:

1. “Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood sales; salvage, thinning, and small harvest cuts; site preparation; and planting and seeding,” (“Low-impact Silvicultural CE”). FSH 1952.2 (4), and
2. “Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.” (“fish and wildlife CE”) FSH 1952.2 (9).

50 *Fed. Reg.* 26078 (June 24, 1985).

The CEs scoped and issued at the same time as the Low-impact Silvicultural CE and the Fish and Wildlife CE included exemptions from NEPA’s requirements when the Forest Service controlled poisonous plants in campgrounds, removed small mineral samples, and constructed

picnic facilities—all mundane tasks with little chance of causing significant impacts either individually or cumulatively. See 50 *Fed. Reg.* 26078 (June 24, 1985).

At the time the Low-impact Silvicultural CE was adopted, the Forest Service provided assurance to commenters concerned about abuse of the broadly-worded authority, saying that “[t]he guiding principal is that the depth and breadth of the environmental analysis, the extent of public involvement, and the type of documentation for a proposed action must be commensurate with the scale and intensity of the anticipated effects.” 50 *Fed. Reg.* 26,078 (June 24, 1985)(emphasis added). Only where “both past experience and environmental analysis demonstrate that no significant effects on the human environment will result, individually or cumulatively (FSM 1952.2)” were actions to be excluded from documentation. 50 *Fed. Reg.* 26,078 (June 24, 1985).

The final language of CE 6 was adopted in 1992. See 57 *Fed. Reg.* 43180. Once again, the Forest Service made clear that “[t]he intent of the agency is that only routine actions that have no extraordinary circumstances should be within categories for exclusion.” 57 *Fed. Reg.* 43180 (Sept. 18, 1992). During scoping for the language change, the Forest Service defined a routine action as one which “will have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values and is consistent with Forest land and resource management plans.” 56 *Fed. Reg.* 19718 (April 29, 1991).

The historical justification for CE 6 is important because “CEQ must review all CEs before the FS adopts them to assure the CE’s compliance with CEQ and NEPA regulations.” *Heartwood, Inc. v. United States Forest Serv.*, 73 F. Supp. 2d 962, 966 (D. Ill., 1999); see also 48 FR 34263 (July 28, 1983)(“Categorical exclusions promulgated by an agency should be reviewed by the Council at the draft stage.”). “Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.” 40 C.F.R. § 1507.3. Since the CEQ must approve CEs and revisions are to be made in consultation with CEQ, only those actions contemplated at the time of approval as falling under a CE can be validly excluded from normal NEPA procedural requirements without further consultation. Any other reading renders the CEQ review meaningless.

In our FOIA request, WildLaw formally requested, among other things, “[a]ny documents describing the scope, purpose, and/or the intended use of CE 6’s predecessors in application,” and “[d]ocuments which the Forest Service has in its possession regarding the Forest Service’s present understanding of the scope and application of CE 6.” See WildLaw FOIA request of April 6, 2005. The Forest Service was unable to provide any documents justifying either CE 6 or its predecessors.

CEs should be used for “only routine actions that have no extraordinary circumstances.” 57 *Fed. Reg.* 43180 (September 18, 1992). The Forest Service defined routine as: “the activity will have little potential for soil movement, loss of soil productivity, water and air degradation or impact on sensitive resource values and is consistent with Forest land and resource management plans.” 56 *Fed. Reg.* 19718 (April 29, 1991). Both good and bad effects can be significant—it is the degree of impact, not the quality of impact that matters.

The Forest Service is misusing Categorical Exclusion 6 (“CE 6”), also called the timber stand improvement CE (“TSI CE”). The Forest Service is often using CE 6 to effect sweeping management objectives, not the small routine actions for which the CE was originally written and approved by the CEQ. While it is clear that some in the agency are using CE 6 to avoid NEPA as it makes management decisions for hundreds of thousands of acres of land in the Southeast, it is equally clear that the Washington Office of the Forest Service has no idea how many acres of land are being treated under this authority.

As part of the Healthy Forests Initiative, the Forest Service adopted a new set of CEs for thinning and prescribed fire use. The administrative records for those new CEs demonstrate clearly that the use of a CE for such projects cannot be justified for more than 4,500 acres for prescribed fire and 1,000 acres for thinning. Yet, the agency is using CE 6 for projects in the tens and even hundreds of thousands of acres that are precisely the same as the ones in CEs 10, 11, 12 and 13 that said projects larger than of such size cannot be justified through the use of a CE.

The Forest Service is performing large prescribed burns and thinnings using CE 6 precisely for the purpose of having a significant impact on the environment: to reduce fuel loadings, improve habitat, or to restore a former fire regime. “A categorical exclusion, however, is appropriate only when the agency determines that the proposed action will have ‘no effect’ on the environment.” *Riverhawks v. Zepeda*, 228 F. Supp. 2d 1173, 1189-1190 (D. Or., 2002)(citing 40 C.F.R. § 1508.4)(holding that the potential for impacts on turtles and salmon, as well as conflicts between various user groups precluded the use of a CE), *Heartwood, Inc. v. United States Forest Serv.*, 230 F.3d 947, 954 (7th Cir., 2000)(“categorical exclusions, by definition, do not have a significant effect on the quality of the human environment”). The only way for the Forest Service to avoid the conclusion that its actions are having an effect on the environment is to claim that many of its management activities are not accomplishing the goals and objectives that the Service uses to justify funding these same projects. This is not a novel position by an agency, but it is not one that courts appreciate either. The *West v. Secretary of the DOT* court did not appreciate a similar approach by the Federal Highway Administration:

The FHWA regulations forbid the use of a categorical exclusion for projects that will have “significant impacts on travel patterns.” 23 C.F.R. § 771.117(a). The new South DuPont interchange was designed with the intent that it have significant impacts on travel patterns. It was designed and constructed because the agencies predicted that the existing interchanges were inadequate to handle the traffic from the anticipated growth. It is axiomatic that a new, fully-directional interchange cannot simultaneously relieve traffic congestion and yet have no significant impact on travel patterns.

206 F.3d 920, 929 (9th Cir. 2000).

CE 6’s vague, broad language has allowed projects having significant environmental effects to be carried out without normal NEPA environmental review. That these projects apparently fit within the language of CE 6 proves that the categorical exclusion may be illegal on its face. The hope of WildLaw is that CE 6 can be modified in order to save it for proper use.

While we have much more information on CE 6, a brief summary of it is that there is evidence suggesting that the Forest Service did not originally intend the present misuse of CE 6, and therefore did not establish that it could be categorically excluded from NEPA.

First, the Forest Service has not been able to produce documentation of an evaluation of similar projects to support its conclusion that the type of projects it is proposing and carrying out outside of NEPA do not have a significant effect on the environment.

Second, as with the Low-impact Silvicultural CE, CE 6 was introduced in the context of other CEs of a much more mundane nature than the projects the Forest Service is presently claiming fall within the scope of CE 6.

Third, anecdotally (and since the Forest Service does not know how often it uses CE 6, anecdotes are all we have) the Forest Service in Region 8 (and apparently elsewhere) has only recently begun to exploit the nearly unbounded authority it provided itself in CE 6.

Fourth, the Forest Service recently introduced the Healthy Forest Initiative CEs which would be completely redundant with CE 6 if CE 6 were given the expansive reading some in the Forest Service now claim.

Lastly, one clue exists in CE 6 itself; the CE clearly states that it is for “Timber stand ... improvement.” Note the use of the SINGULAR version of the word “stand.” CE 6 is for improvement to a “**stand**” of timber, not multiple “stands” of timber. Use of the word “stands” would make CE 6 unbounded, as it is being used too many times now. Use of the singular word “stand” does indeed limit the CE to a discrete area that can arguably fall with the proper use of categorical exclusions, as most stands are only a few tens of acres in size.

The Forest Service has not recently examined the use of CE 6 as it is required to do. Because of changes in use over time, a CE that was valid at adoption may be applied illegally now. “CEQ suggested . . . that agencies conduct periodic reviews of how existing categorical exclusions are used, how frequently EAs for repetitive actions result in FONSI, and then establish comprehensive databases, preferably electronic.” The NEPA Task Force Report To The Council on Environmental Quality: Modernizing NEPA Implementation, 5.2.2, Importance of the Administrative Record (Sept. 2003). There is no evidence that the Forest Service has taken this precaution. Indeed, it took months for the Forest Service to fully answer WildLaw’s FOIA request for documentation of CE 6 projects and ultimately each region sent its own answer, all formatted differently.

Proposed Changes to CE 6

The administrative records for the new HFI CEs show that use of a CE on this scale for thinning and prescribed fire cannot be justified in any way. Therefore, by definition, a CE is not appropriate, and the Forest Service should prepare at least an environmental assessment (“EA”) for projects beyond the 1,000 acres of thinning or 4,500 acres of prescribed fire. Our suggested solutions include:

- Initiating a full investigation of the uses of CE 6 to get a clear picture of how it has been used properly and how it has been used improperly. WildLaw is aware of a number of projects that are good examples of the proper uses of CE 6.
- During this review of CE 6, guidance and instructions should be issued to all line officers ordering them not to use CE 6 on projects larger than the acreage limits in the HFI CEs.
- Conducting a public rulemaking process to amend the CE to include specific language limiting the acres it may be used on or making it clear that it can be used only on a singular stand, not multiple ones.
- Amending the CE to change the stated uses for CE 6, to make it clear that it is not a substitute for the other thinning and burning CEs. Make it clear that CE 6 is for other uses in stand improvement.
- Issuing clear and unequivocal guidance to all forests and districts on the proper use of CE 6 and how it is for use in a singular stand and how it cannot be used as a way to get around the limitations in the HFI CEs.
- Initiating multi-party training for line officers to teach them the proper use of CE 6, how it should interact with the HFI CEs, and how CE 6 should and should not be used.

CONCLUSION

I deeply appreciate this opportunity to address the Subcommittee and present this testimony before it.

CEs have their place and can be useful tools for implementing small projects under NEPA. Like all tools, the CEs used by the Forest Service have the potential for abuse. The massive and widespread abuses predicted at the adoption of the HFI CEs have not materialized, at least in Region 8; only occasional abuses have occurred there. Perhaps Region 8 is an exemplary region, the best of the agency. Without better monitoring and information, we cannot know exactly how abused CEs are in the other regions; although, anecdotal information indicates that abuses are worse outside Region 8. Abuses of CEs can have serious impacts and jeopardize the proper use of CEs. However, the ways for the agency to fix the main problem areas exist.

I think that improvements and additions to the HFI CEs and a major overhaul of CE 6 will go far in making these tools into what they need to be. With targeted changes and additions, these CEs can be more useful for the agency and communities while also being less susceptible to abuse and misuse. The Forest Service should also attempt a more innovative and collaborative approach to reform NFMA planning instead of using a CE for plans.

Thank you,
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Attachment

A Modest Proposal for the U.S. Forest Service (Short Version)

A White Paper by Ray Vaughan, WildLaw

“Harmony with land is like harmony with a friend; you cannot cherish his right hand and chop off his left.” “A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise.” Aldo Leopold.

“Conservation is the foresighted utilization, preservation and/or renewal of forests, waters, lands and minerals, for the greatest good of the greatest number for the longest time.” Gifford Pinchot, first Chief of the U.S. Forest Service.

After decades of conflict over a handful of issues involving our National Forests, perhaps it is time to ask whether common ground can be found and progress made on areas of agreement. Can those parties and interests who have fought so long over the public lands put aside those conflicts and work together on other issues that make the public’s forests healthier? Can an agency so long captured by a political mindset of short-term extraction move toward the goals of stewardship and sustainability it was originally formed to achieve? Can a way of resolving issues be found instead of people being stuck in a backward-looking paradigm of endless conflict?

We think that the answer to all those questions is “Yes.” Here are our suggestions for moving forward. What does WildLaw want?

First, what we do not want. WildLaw does not want an agency that is a slavish and harried servant of the irreconcilable self-interested and shortsighted demands of “multiple use,” as if anyone really knows what that term means. We do not want an agency wrapped in controversy and endless conflict. We do not want a land management agency that hides in a bunker of “agency expertise,” afraid of really engaging in conversation with the people who own the forests, who pay the salaries of their managers and who often know those forests better than the agency experts.

We want a USFS that is a model agency the public can be proud of, an agency taxpayers want their money spent on, and an agency that Congress sees as a problem-solver it wants to support. We want a Forest Service that embraces genuine ecological restoration, protection and sustainability such that the many uses of and desires for the National Forests can finally be reconciled by a guiding principle that puts the good of the forest first, in the long-term, over the good of any one interest in the short-term. We want an agency driven by science, not politics. We want an agency that accepts the various public interests involved in our National Forests as indispensable partners in land management decision-making. We want a new USFS.

And a new USFS is coming; internal agency demographics and external realities make that inevitable. The issue is what type of new Forest Service we will have. This is our proposal.

From Conflict to Cooperative Conservation

From our many conversations with USFS personnel at all levels, industry folks, and other interested people, it is clear that a critical mass of people involved in our National Forests are ready to change how business as usual is done. The seemingly endless days of conflict and trench warfare among competing concerns wear down parties while the needs of the forests are sidelined.

Instead of frustration and anger, we propose a new course for positive change in the USFS and on our National Forests. Instead of focusing on the issues and principles we each hold that have divided us over the past decades, we need to begin talking with each other with respect and open minds. Let us focus on the areas of common ground where we can agree on the problems facing our forests, on the issues involved and on the solutions. We can always come back to the contentious issues later, and when we do, we may well find that after a few years of cooperation on common ground issues, we are not so far apart on those problem issues either.

We all now have an opportunity to figure out how to fix real problems and encourage the real innovations and successes the agency can achieve. Such an effort can be exciting while producing a better agency, better public relations, more certainty in forest management, and much less litigation. While there will be issues and areas where we do not agree, we can put those aside for the time being and work on the issues and areas upon which we can agree. In our experience, we find that 20% of the issues on the National Forests divide us, and the conflict around those issues prevents conversations and solutions on the other 80%. In every instance where we have been open to exploring the neglected 80%, we have found common ground with all reasonable people who care for our public lands.

As one of the top litigators against the Forest Service, WildLaw knows where the agency cuts corners and where the agency shines. We know many good people in this agency, good people who are true public servants. We also know the few bad people in the Forest Service, bad people who will do anything they can to make short-term money for their buddies in industry at the expense of the public at large. The few bad folks spoil things for the many good agency employees. Every agency or collection of people is subject to this dynamic of a few dragging down the work of the whole; this is not unique to the Forest Service. But, at this time, we believe that we all really have the chance to reverse this dynamic for the Forest Service, to seize this opportunity to end the days of the few holding back the rest.

It is clear that collaborative efforts and cooperative conservation plans have been notably successful in many areas throughout the nation; WildLaw and our Executive Director Ray Vaughan have participated in several such efforts and know some of those successes. But as admirable as those success stories are, they are still the exception, not the rule, of how conservation work is done in America or on our National Forests. Clearly, more efforts are needed so that they become more of the rule.

Cooperative conservation efforts on our National Forests can produce results as good as the rhetoric. One example of success is the largest timber sale in agency history: the Hurricane

Katrina salvage project in Mississippi (490,000,000 board feet) was conducted by a collaborative, cooperative process, and it was a success at every level.

If cooperative conservation succeeds on a broader, national scale, all of us can celebrate. If it does not, our forests will continue to degrade and command-and-control regulatory warfare will return. Trusts will be betrayed if cooperation does not lead to better forest management, but the possibilities cannot be known without trying.

Details of the WildLaw Proposal for National Forests

Since WildLaw's founding a decade ago, litigation and other legal actions have been our key methods for stopping egregious and illegal projects on public lands. During these ten years, we have developed critical links between regional efforts to facilitate restoration-based management on both public and private lands. Building upon and branching out from litigation, we have learned to use a broad array of tools in a proactive approach to both public and private resource management issues in our region: legal defense, economic reform, community empowerment, capacity building, and technical support.

WildLaw's concept of ecological restoration and sustainability for National Forests can help serve as a national policy statement to guide sound forest management. By including social and economic criteria, ecological restoration also bridges the gap between what is good for the land and what is good for communities and workers. Our concept would increase the amount of good work being done in our forests and reverse centuries of unwise resource extraction and development that have fundamentally altered most of America's forests. This history of unguided management has directly contributed to a dramatic loss of habitat, decline in water quality, and disappearing old-growth forests, as well as economic and social harm to communities and workers. Such good restoration efforts only work, however, if they are based on science and recognize that ecosystems are complex and our understanding of them is still limited.

Through a process of truly doing what is best for the land through restoration and management based on sustainability, the Forest Service needs to fully examine the role it could play in restoring community-based forestry economies and cultures in the regions surrounding our National Forests. During a period of significant change in forest policies at the federal, state and local level, WildLaw's vision of ecological forest restoration and sustainability establishes a viable vision for restoring natural ecosystems and a sustainable human relationship with the land.

Simply being an oppositional organization seeking to stop bad projects, while a worthwhile strategy and an integral part of our history, cannot be the only focus for WildLaw. We have an obligation to find ways to make the National Forests more vital and functioning ecosystems that meet the needs of a diverse set of people who use and love these lands. Through our initial experiences with pushing science-based ecological restoration and sustainability, WildLaw has begun a new and proactive/positive avenue of affecting forest management for the better.

We are faced with a synergistic combination of crisis and opportunity, and WildLaw is proposing three strategies:

1. Facilitating ecosystem-based forest management that restores and enhances the ecological health and sustainability of forests while producing services and goods for human communities, whether those economic opportunities are recreational or physical byproducts of ecosystem restoration.
2. Developing local, regional, and national markets, value-added enterprises, and business networks that maximize the economic benefits of sustainable forest management for the Forest Service, local private landowners, workers, and communities.
3. Developing a skilled workforce of forestry professionals with access to the technical expertise, equipment, and financial resources required to carry out restoration and low-impact management activities on the ground.

Facilitating ecosystem-based forest management restores and enhances the ecological health of forests while producing services and goods for human communities.

Ecological Restoration Projects

In the late 1990s, WildLaw pioneered the model of ecosystem restoration on the National Forests in the South. Starting in Alabama, WildLaw worked with the USFS to develop the first forest-wide, science-based restoration programs in the nation. These restoration programs in the National Forests in Alabama have been extremely successful and have become national models. Our goal is to spread this model throughout the entire National Forest system nationwide.

Obviously, what is restoration of functioning forest ecosystems and what is sustainable management of those ecosystems will vary from forest to forest. There clearly can be no “one size fits all” approach to what is required on the ground. Some areas will need a hands-off approach, letting nature heal itself. Some areas will need road maintenance, road obliteration, stream restoration and other site-specific actions. Some areas will need thoughtful, long-term manipulation of the vegetation, sometimes through mechanical treatments, sometimes through prescribe fire. Some areas will need aggressive invasives treatment. Some areas will need planning for eliminating uncontrolled harmful recreation while still providing fun and safe areas for all forms of recreation. There is much genuine restoration work to be done.

While the work required on the ground might be different for each Forest, the process for arriving at a consensus of what the restoration and sustainable management needs of a particular Forest are can be universal. It is not a matter so much of using once set of laws and regulations over another. It is more about common sense, openness, humility and a willingness to listen and learn from others whom you may not agree with right now.

To make cooperative restoration programs work on our National Forests, folks like us at WildLaw must maintain vigilance in reviewing, commenting on and, when necessary, challenging projects on our public lands. Cooperative conservation only works when those who would abuse the land and the public for short-term gain cannot do so and when those whom they would adversely influence know they have the room to do the right thing, despite the politics of exploitation. So, we are not going away if cooperative conservation works; if anything, we will

be more involved. We hope that the Forest Service and industry will get more involved also; that will be the only way for solutions to work.

For the USFS, to make a change in direction that solves most of the current problems in management of the National Forests, it needs to do these things:

Follow the law, use good science, be honest and open with the public.

For folks in the industry who are frustrated by the unpredictable and intermittent flow of materials from the National Forests and for agency personnel frustrated by the inability to get work done and the inability to do needed management, I want you to imagine something. Imagine a place where the flow of timber off the National Forests is at a known level and stable and predictable for at least 50 years, a place where the harvesting of that timber is not controversial and projects to approve that harvesting are not appealed or litigated, a place where industry, forest practitioners, environmentalists, scientists and agency personnel have all agreed on the management needed. Well, you do not have to imagine such a place. That place is the National Forests in Alabama.

The solution to analysis paralysis lies not so much in changing the rules of analysis but in changing how you do your analysis. For too long, the agency has compartmentalized (literally) its forests and its work. Trying to make each project look small and insignificant seemed like a good way to avoid doing population data collection, cumulative impacts analysis and a host of other things required by law for “big” projects. This scheme has not served either the forests or the Forest Service.

The Forest Service must stop managing merely by compartment and individual project. Instead, step back and assess at a landscape or watershed level what it is that the forests need and what can be done to meet those needs over a longer term, at least five years. Fifty years would be better. This is not planning but how to implement plans with a broad vision instead of a microscope. The Forest Service also must not focus on “product” being produced for sale; having timber quotas has never helped the forests or the agency. It would be far better to focus on acres restored, watersheds healed, rivers and streams restored, wild places protected, visitor experiences enhanced, conflicts resolved, new workforces created, and the like. Do what the land needs, use the right tools to do the right job, and there will be products and services provided in their own due course. Focus on the work, the land and the people; the rest will take care of itself and be much better than artificial targets.

Take a year or two to develop a full and quality EIS on what restoration really means for your district or forest. Think big. Look at all forest needs, road repair and road obliteration, stream rehabilitation, indeed entire watershed rehabilitation, invasives removal, native forest restoration, etc. Involve all stakeholders at every step, especially at the start of the process. Instead of proposing actions, share each Forest’s problems with all the collaborative stakeholders and seek their input on what the solutions (and thus the management actions) should be to solve those problems. Seek out ideas and assistance. Think big. Instead of a series of “small” projects that cumulatively are big (but which you claim are not), admit that what you are doing is one big project and analyze and act accordingly.

In woodworking, the saying goes “measure twice, cut once.” It means to take the time to make sure the planned action is correct and then you get to take that action without making major mistakes and without having to do the work over. For NEPA, NFMA and ESA analysis, the same is true. Take the time to make sure what you are doing is right and done well, then you can do it without having a judge tell you to go do it over again. And over again....

To see how to do this right, look at the Conecuh National Forest in Alabama which prepared an EIS on a five-year program to restore Longleaf Pine over some 4,222 acres. It would give Forest Service restoration work better direction and improved validity if it abandoned all the piecemeal projects and instead looked at the forest as a whole to prepare and implement a full EIS on a comprehensive restoration program for each forest that could guide the timber management and other actions for a five-year period. One comprehensive and more-thorough analysis gives a better picture of the work that needs to be done (and where it *really* needs to be done) and can be done without the problems that arise from piecemeal implementation.

Now, all the forests in Alabama have prepared restoration programs. The Talladega National Forest released their five-year Longleaf Pine restoration EIS in early 2004. It covers 19,000 acres. They had MIS data for the entire area over several years, as well as complete PETS surveys for every acre of that 19,000 acres. That created a baseline and a need which no one could challenge.

Benefits of a Restoration/Sustainability Paradigm for the Forest Service

There are many benefits for all interested parties from a shift to this paradigm for the Forest Service:

- The USFS reduces conflict and litigation, most likely a significant amount.
- An end to “analysis paralysis,” “process predicament,” or whatever you call the excessive paperwork the agency engages in to justify plans and projects.
- Legal requirements for the development and implementation of projects and programs become clearer and better defined.
- Resources needed to plan and propose programs and projects are reduced while resources for actual implementation of work and monitoring on the ground increase.
- The timber industry and local communities gain a predictable and sustainable supply of economic and ecologic services and products from the National Forests. This paradigm will never recreate the unsustainable heyday of 12,000,000,000 board feet of lumber coming off the National Forests, but the intended sustainable reality of a more diverse economic engine from the National Forests will emerge.
- The public and conservation organizations gain the comfort that special areas in the National Forests are not the target of exploitation and management resources are expended on restoration of areas that really need that better management.
- Conflicts over hot-button issues are reduced, and “judgment day” on dealing with those issues is postponed, if not eliminated.

- Communications, dialogue and cooperation among previously adversarial parties increases and could lead to a new level of understanding that will solve many of the problems and conflicts on these public lands.
- Restoration and sustainable management improve habitat conditions for all native wildlife on the National Forests.
- The number of species headed toward extinction will be reduced, and those listed under the Endangered Species Act will head more toward recovery.
- Habitat for game species will be enhanced and improved.
- Protection of watershed values and clean water coming off the National Forests will increase.
- Clean air provided by natural forests will increase.
- Forests will become more resilient. Long-term restoration and sustainable management will reduce the National Forests' susceptibility to major damage from fire, insects, drought, hurricanes and other events.
- Restoration of natural ecosystems and sustainable management of those ecosystems will make the forests better able to handle changes due to climate change.
- Restoration and sustainable management make the National Forests a partial solution in reducing the severity of climate change.
- Conflicts between recreational users will be reduced as careful planning of where and how to accommodate the various uses sustainably will help resolve these conflicts.
- Training and new opportunities for forest practitioners and local communities will increase and provide long-term, predictable opportunities.
- A unified and agency-wide program for solving problems through this new paradigm with the widespread support of diverse interests could convince Congress to be more supportive of the agency and its funding needs.
- The National Forests and their management paradigm of restoration and sustainability would be a powerful and true model for the management of private forest lands.
- Work on the National Forests would be a jumpstart for the development of sustainable local economies based around the forests. There has been a lot of difficulty of developing new markets for private forest landowners and practitioners. The National Forests could provide the genesis for this and give it the ability to grow into the broader realm of forestry on all lands.

US Forest Service and Its Opportunities with Communities

WildLaw feels that the US Forest Service has both a relationship to the communities in the areas surrounding its forests as well as an opportunity to help better those same communities. First, many areas near National Forests tend to be rural, with little or no real industry to provide employment. Second, the artificially high and unsustainable harvests of the 1970s and 1980s created a reliance on those forests for jobs that were not sustainable for the long-term. Third, by harvesting most of the resource "capital" from these forests without any accompanying reinvestment, the Forest Service in effect stole from residents in communities surrounding these forests, and they have an obligation to right those wrongs from past mismanagement.

After years of dis-investment from rural, forest dependent communities, it is time for a major change. Elsewhere, especially in the West, communities and the Forest Service have recognized

this need and have been working towards the creation of a restoration economy. The trick is how to get dollars for the work. The Forest Service and Congress seem intent on trying to make the forests pay for this out of dwindling forest reserves. To accomplish this, the Forest Service all too often puts out timber sales that involve harvesting the limited old growth or mature, functioning forests in order to pay for restoration. This is like borrowing money at 8% to reinvest it at 4%. It is taking the last capital out of the bank which will continue to bankrupt the forests and surrounding communities.

A sounder approach is to recognize the depleted accounts and to make a reinvestment that could be used to rebuild the capital so that once again we could live off the interest of a sustainable endowment in our forests and communities. This approach allows for the development of local workforces due to the sustainable nature of forest investments and activities, each Forest having its unique set of restoration needs and unique situation for sustainability.

WildLaw feels strongly that the Forest Service is in a position to do this. Science-based ecological restoration could provide the dual benefits of improving and restoring areas of the forests to more natural state and at the same time providing sustainable, well-paying jobs in the process.

As an agency guiding principle, the US Forest Service needs to recognize and embrace the need for ecological restoration and sustainable management on the National Forests. True restoration and sustainability implemented on National Forests can be accomplished by engaging in the following strategies:

1. Every National Forest should engage in an open, cooperative public process to develop a vision for what that Forest needs and should move toward, like all the National Forests in Alabama did. All the restoration needs of that Forest need to be examined and prioritized in a collaborative process that gives all interests the assurance that they are heard and that their needs are met to at least a reasonable level. All available scientific knowledge and expertise on the particular Forest's ecosystems must be fully integrated into the entire collaborative process. The agency should let proposed management actions come out of that process instead of proposing actions prior to the process. If additional authority and funding for this collaborative process are needed, the agency should go to Congress to seek that, showing them the successes the agency has thus far and how this approach can solve many of the problems facing the National Forests.
2. At the project level and the Forest planning level, the USFS should advocate for ecological restoration whenever appropriate, including having restoration-only alternatives developed for proposed projects. As an example, the 2004 revised plan for the National Forests in Alabama emphasizes restoration as the main management goal for the next 15 years in all the Forests in the state.
3. At every level, starting at the Washington Office, Forest Service decision-makers need to make it a priority to move the National Forests toward this model of ecological restoration, protection and long-term sustainability. Needed changes to regulations, additions to the Handbook and the Manual, and any needed guidance on this type of work should be developed and adopted with full public participation.

4. More work by the Research Stations should be focused on restoration and sustainability, both in general and in what particular Forests need. For some ecosystems, Longleaf Pine as the primary example, the actions needed to restore the ecosystem are well known. For most forest ecosystems, though, what is needed to restore the forest to a healthy state and keep it in a sustainable management regime is not yet known, or not well known. For such forests, restoration plans should start with well-monitored pilot and experimental projects before moving to a large scale, forest-wide program. For a well designed and monitored project to test restoration techniques for such forests, all parties involved must be willing to accept risk and be willing to allow the agency to fail occasionally without punishment.
5. To make all of the above possible and attractive for Line Officers in the agency, the Forest Service should engage in a thorough and comprehensive training program for its personnel to show them how to engage in the collaborative process to produce good restoration and sustainable management for their individual Forests. There are personnel in the agency who know how to do this; folks in groups like WildLaw and in industry also know how to do this. The agency should sponsor a program of training and education that brings together these people who have experience in this new paradigm so that they can educate others in this process and help them find the cooperative solutions that work for their individual Forests. WildLaw is fully prepared and ready to assist in this educational effort wherever it is needed.

Litigation risk and adversarial relationships would diminish drastically with this approach.

One of the greatest obstacles to accomplishing good forest management on the ground is the lack of skilled professionals practicing low-impact forestry. Our forest industry has mainly evolved to rely on large-scale logging operations that maximize short-term timber production, often at the cost of forest health. As a result, the vast majority of our logging workforce is deeply invested in expensive harvesting systems that require very high “production efficiency” to achieve profitability. While timber harvests have increased, the size of our workforce has actually declined. Loggers have had little choice but to follow the lead of industrial forestland owners and timber buyers to remain competitive.

With increasing interest in, as well as demand for, ecosystem-based forest management, the time is right to begin facilitating skill development for logging crews and other forestry and restoration practitioners. Pursuing this goal will require a significant investment in education, equipment financing, business development assistance, and technical assistance, and will require that we engage a new array of partners.

The US Forest Service needs to work with partners such as community colleges, universities, established local logging crews, local mills, and nonprofits such as WildLaw and the Southern Forests Network (SFN) to explore opportunities for workforce development using such strategies as:

1. Meet with potential partners to introduce them to new ideas and gauge their interest in working together (our SFN program recently met with a local university forestry program and community college forestry & logging program).

2. Facilitate collaborative development of pilot projects on National Forests where there is the need to learn how to restore the forest ecosystems there.
3. Examine new markets and new products that can come from restoration activities, including small diameter wood products and products from thinning and clearing of undergrowth (including biomass energy, mulch, specialty crafts, carbon sequestration market credits, and other products).

EVALUATION

While a new paradigm in forest protection and management will take time to take hold and grow, there are ways to recognize and know that it is doing just that:

- Increasing number of valid restoration programs and projects on more National Forests.
- Open recognition by the USFS at all decision-making levels that restoration and sustainability are the goals of management.
- Increased involvement and interest by private forest land interests in the restoration work on National Forests and use of that restoration work as models for their private land work.
- New and increased market and economic opportunities for local communities and forest practitioners in sustainable forestry work, both on public and private lands.
- More National Forest management plans that directly and openly embrace restoration as the primary management goal, such has been done in Alabama, and to a lesser extent, Florida.
- More individual National Forest projects that are restoration based and fewer projects that fail to comply with the law.
- Where legal actions are necessary, they lead to the litigants and the Forest Service using the cases as opportunities to reevaluate management, instead of blindly defending past mistakes or blindly attacking the agency. And for those who challenge the agency, those groups must be open to finding a new direction for management, instead of just saying “no” to any management. Industry must be willing not to demonize environmentalists who challenge real violations of the law and bad management decisions; industry should not defend bad agency actions in a mentality of “defend it all, right or wrong.” Industry must be willing to admit that certain activities should not be conducted on the public lands (or not conducted in certain ways or for certain reasons) in order to get better and truly sustainable management on the National Forests. Basically, trench warfare amongst all parties must end, and litigation must be reserved for truly illegal and unwise management decisions.
- Increased reporting of the ideas and implementation of restoration and sustainable management, both in the mainstream press and in forestry and academic publications.
- New and increased participation by traditional forestry industry in sustainable forestry efforts to help communities and workers make their work truly sustainable for the land and themselves.