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**Date:** May 30, 2008

**Route To:**

**Subject:** Cleveland NF Appeal Decision

**To:** Regional Forester, R-5

Pursuant to a U.S. District Court for the Northern District of California's ruling of October 23, 2007, in Center for Biological Diversity v. U.S. Forest Service, Case No. 06-6523, this is my decision on the appeal of the Record of Decision (ROD) for the Cleveland National Forest (NF) Revised Land Management Plan (LMP). The appeal reference number, 08-13-00-0012, is abbreviated throughout this decision and appendix by the last four digits of the notice of appeal (NOA).

The appellant, Center for Biological Diversity, et al., filed their administrative appeal of the decision for the Cleveland NF revised LMP under 36 CFR 217. The appellant will receive notification of my decision. The final appeal decision is available via the internet on the World Wide Web at: <http://www.fs.fed.us/emc/applit/nhappdec.htm> or in hard copy, upon request.

On April 3, 2006, you signed the ROD for the revised LMP. The revised LMP and final environmental impact statement (FEIS) were prepared in conformance with the 1982 planning regulations at 36 CFR 219 [1982, as amended] (ROD, p. 2). These regulations were last published in the Code of Federal Regulations (CFR) on July 1, 2000. The record for the appeal to the Chief of the Forest Service was transmitted in conformance with the regulations at 36 CFR 217.15(a).

### **Cleveland NF Revised LMP**

At issue in this appeal, the April 3, 2006, revised LMP replaces all previous land and resource management plans in their entirety for National Forest System lands on the Cleveland NF.<sup>1</sup> It does not apply to other Federal, Tribal, State, county, municipal, or private lands, although the effects of this decision on those other lands were considered (ROD, p. 2).

The ROD provides broad management goals and strategies for addressing the revision issue areas described in detail in the FEIS (public values and uses, ecosystem elements and function, commodity values and uses, urban development and forest habitat linkages, and special area designations) (ROD, pp. 6-13).

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<sup>1</sup> The Cleveland NF revised LMP was prepared under the Multiple-Use Sustained-Yield Act (MUSYA) (16 U.S.C. 528 et seq.), the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 as amended by the National Forest Management Act (NFMA) (16 U.S.C. 1600 et seq.), the September 30, 1982 implementing regulations of the NFMA (36 CFR 219, as amended September 7, 1983), and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1500-1508).



The standards contained in the revised LMP operate as parameters within which projects must take place. Approval of any project must be consistent with these management standards (16 U.S.C. 1604(i)). If a project cannot be conducted within these parameters, the project cannot go forward unless the plan is amended to allow for the project. The revised LMP is permissive in that it allows, but does not mandate, certain activities. Approval of the revised LMP does not mandate any project decisions. Projects occur only after they are proposed, their effects on the environment are considered, and a decision is made to carry out the project (ROD, pp. 3, 17).

Finally, the ROD discusses adaptive management and monitoring at the landscape-scale as well as including monitoring requirements (ROD, p. 10). By adopting a landscape-scale adaptive approach to management, the forest will engage in a continuing cycle of on-the-ground management, monitoring, and evaluating results, and adjusting management accordingly. In summary, the Cleveland NF Revised LMP establishes a framework for decisionmaking and uses programmatic direction as a gateway for compliance with environmental laws at the project level.

### **Issues**

This appeal decision is the outcome of a deliberate and extensive review process. My review of the appellant's concerns provides a response to contentions involving complex regulatory and management issues. Although many issues raised in the appeal are not specifically cited in this decision, all appellant's concerns have been considered. My appeal review focused mainly on compliance of the ROD, LMP, and FEIS with applicable law, regulation, and policy as cited by the appellant.

The appellant raises appeal issues concerning procedural and planning requirements, as well as a range of natural resource issues, which included inventoried roadless areas, motorized and non-motorized recreation, wilderness, wild and scenic rivers, social and economic considerations, water and soil resources, invasive species, air quality, global warming, threatened and endangered species, species viability, vegetation communities, fuel treatments, and commercial uses. Appellant contends the decision violates the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Wild and Scenic Rivers Act, Endangered Species Act, and Executive Order 12898—Environmental Justice.

### **Appeal Decision**

Your decision meets the requirements of applicable Federal law, regulations, and policy upon the condition that certain actions are completed. Attachment 1 describes the issues raised by the appellant, as well as where the record provides evidence to address those issues. I affirm your decision to select Alternative 4a from the FEIS and approve the Cleveland NF Revised LMP, with the following instruction:

I instruct the Regional Forester to correct discrepancies in the FEIS analysis that present different total acreages for the coastal sage scrub ecosystem, and to follow agency policy for consideration of new information (FSH 1909.15, section 18) to determine any subsequent actions that may be necessary.

Appellant contends that the FEIS fails to adequately describe the environmental baseline for coastal sage scrub. Specifically, the appellant notes the analysis presents different amounts in total coastal sage scrub acreage (NOA #0012, p. 135). There is no specific requirement in the NEPA regulations to describe an environmental baseline. The regulations do require that “the environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration (40 CFR 1502.15).” The FEIS complies with this NEPA regulation and adequately describes the affected environment with respect to the coastal sage scrub ecosystem (Vol. 1, p. 96) including describing the risk of conversion of coastal sage scrub to annual grasslands related to wildfire and fuels management (FEIS – Vol.1, p. 195; See also FEIS – Vol. 1, p. 321, 330, 379, 416, and 417). Additionally, the effects of the revised LMP management activities (vegetation management, livestock grazing, and fuels management) (FEIS - Vol. 1, pp. 193, 195, 321-322, 413, 421) and the effects of land development on coastal sage scrub (Vol. 1, p. 324 and 325), are disclosed.

The appellant is correct that the FEIS analysis contains different amounts for total coastal sage scrub acreage. The difference occurs between the total area of coastal sage scrub on the four national forests used in the analysis of fuels treatments (220,952 acres) (FEIS- Vol. 1, Table 554, pp. 320, 321) and the total area of coastal sage scrub on the four national forests used in the analysis of effects of livestock grazing (204,000 acres) (p. 321). This is most likely an error created by mapping total coastal sage scrub twice for different analysis purposes. Based on a review of the record, it does not appear that this error affects conclusions regarding the analysis of coastal sage scrub habitat and the effects of the revised LMP on this vegetation type. The forest plan is a strategic document and does not designate specific locations for projects, nor make project-level decisions and commitments. Proposed projects will have site-specific analysis with appropriate NEPA disclosure before any specific actions are taken (FEIS – Vol. 1, p. 2).

This decision is the final administrative determination of the Department of Agriculture, unless the Secretary, on his own initiative, elects to review the decision within 15 days of receipt of this decision (36 CFR 217.17(d)).

*/s/ Charles L. Myers*  
CHARLES L. MYERS  
Reviewing Officer for the Chief

Enclosure: Attachment 1 – Issues Reviewed and Affirmed

cc: Region 5 Appeals