



WildLaw

A Non-profit Environmental Law Firm

May 23, 2005

c/o Alice Riddle
Enoree Ranger District
3557 Whitmire Hwy
Union, SC 29379

Re: Comments on GERA Endurance Race Special Use Permit submitted via email

Dear Ranger Chinault:

These comments are submitted on behalf of **Southern Appalachian Biodiversity Project** (“SABP”, 191 Merrimon Ave., Asheville, NC 28801), **South Carolina Forest Watch** (“SCFW”, 209-C Pendleton Rd., Clemson, SC 29631), **Southern Appalachian Forest Coalition** (46 Haywood St., Ste. 323, Asheville, NC 28801), and **Wild South** (“WS”, P.O. box 117, Moulton, AL 35650). My clients are concerned that very little consideration has been given to a proposal to invite and encourage OHV use in the Sumter National Forest on an informally maintained 150 mile “race track.” My clients feel this is an inappropriate use of National Forest Land. It is contrary to the Forest’s Land and Resource Management Plan, contrary to the Sumter Roads Analysis, and because of these and other problems, illegal under the National Environmental Policy Act. Even if these problems are corrected, more information must be provided to the public, and preparation and mitigation must be more thoroughly thought through and implemented.

I. Provide more information about the race and GERA

Insufficient information was provided in the public notice of the Greenville Endurance Riders Association’s (GERA’s) proposed endurance race to allow for substantive comments. At the very least, the following are needed:

- A map (preferably on your web page) showing the proposed route or routes;
- A list of any stream crossings or places where bikers are likely to enter riparian areas;
- A list of any sensitive species in the area;
- A description of any race track preparation or creation you anticipate having to do for the race;
- A list of the management prescriptions included in the race area;
- A description of pre- and post-race procedures to prevent unauthorized use of the race path;

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- A description of methods that will be used to limit race-day use to the race area;
- A description of the size of the event (estimated number of participants and spectators);
- A description of the draw of the event (e.g. local, regional, or national) to justify your conclusion that there is a need to allow this event on public land;
- A description of where the race track will intersect other roads and trails;
- A list of intersections where “chasers” will have access to riders;

A quick internet search for the Greenville Endurance Riders Association yielded no results. You must know whether the association is commercial or noncommercial before you can even determine which proposal and application requirements and procedures under § 251.54 apply.¹ Even so, none of these questions should cause any significant burden to the Forest Service as your regulations require that a proponent of a special use provide at least the following:

- (A) A description of the proposed activity;
- (B) The location and a description of the National Forest System lands and facilities the proponent would like to use;
- (C) The estimated number of participants and spectators;
- (D) The starting and ending time and date of the proposed activity; and
- (E) The name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the proponent.

36 CFR 251.54 (d)(2). Please provide this information, which you certainly must have gathered in the application process.

II. This cannot be categorically excluded from NEPA

Approximately 150 miles of “race track” actually exist in the race area, apparently only used (legally) for this annual race. Eighty-five miles of the 150 are selected each year for use *after* public comments are submitted.² Personal communication with Alice Riddle (May 11, 2005). This race track does not appear to be included in either the roads analysis or the LRMP. Since you manage this area as a race track, then you must prepare an EIS under NEPA because the failure to consider this race track in your LRMP and roads analysis is a serious omission. A decision to manage 150 miles of road and/or trail as ORV race track obviously has significant effects on the environment.³

¹ Also, you determine GERA’s commercial status so that you know whether to require a rental payment under 36 C.F.R. § 251.57.

² If the Forest Service values public input, and is desirous of complying with NEPA, the path should be tentatively chosen *before* the public is asked to comment.

³ It also has a significant effect on Forest financial and management decisions. “There is a need to identify and prioritize the minimum road system necessary for access and management of the Forest due to these critical shortfalls in funding.” Roads Analysis, 11. The decision to maintain these roads is necessarily a decision not to maintain others.

Unless the race is taking place partially on improved roads, the race track was not part of the Roads Analysis, has not been evaluated under NEPA, and cannot be used by motorized vehicles. A total of 1,052.9 miles of road are recognized on the Sumter. Roads Analysis, p. 9. Of these, 399.6 miles are level 1, “Closed Road.” Roads Analysis, p. 9. Only 43.8 miles are level 2 roads, those “Maintained for High Clearance Vehicles.” Roads Analysis, p. 9. The race track is not level 1 road. This level is “assigned to intermittent service roads during the time they are closed to vehicular traffic. The closure period must exceed 1 year.” Roads Analysis, p. 7. Since the race is held each year, level 1 is not a proper designation—the closure period does not exceed one year. The 43 miles of level 2 road—the classification seemingly most consistent with an ORV race track—are insufficient to cover the 150 miles that are in fact managed as a race track. Also, because fewer than 150 miles of Forest roads are otherwise classified, the track must be Functional Class L: Local (Candidates for reduction of maintenance standards, decommissioning or obliteration), if it is in fact a road. *See* Roads Analysis, p. 10. If this is true, then you must amend your roads analysis before you can hold this race because re-opening the track is contrary to the maintenance trajectory for class L roads. From these simple calculations, it seems clear that the race track has not been evaluated in your planning process, and therefore you are not in compliance with NEPA.

III. Consider the use of the “race track” at other times of year

Riders use the track at other times than just race day. Personal communication with Alice Riddle (May 11, 2005). This is especially true in the days leading up to the race and immediately following the race day. In considering the impacts to the Forest, these additional days of use must be considered. Effects resulting from this use could include further damage to the Forest, particularly on wet days, or damage caused when riders ride outside the area where GERA is required to mitigate. Also, access to the forest means that riders familiarize themselves with the track, making it easier for them to return later and illegally use the trail.

IV. Do not create new race track

You say that the “event would utilize approximately 85 miles of trail and roadway,” but then you also say that “[t]his trail would be used only on the dates mentioned above.” From these two statements, it is unclear whether the route will largely track existing roads and trails, or new trail construction would be required. After further investigation, it is clear that most of the race will take place on part of an existing network of 150 miles of “race track” maintained exclusively for this annual event.⁴ Personal communication with Alice Riddle (May 11, 2005). My clients feel very strongly that new road or trail should not be created for a single weekend event, and that it is unfair those 150 miles of track are maintained for the use of this one group on one weekend a year. The unfairness is particularly apparent since road density for other uses is decreasing across the Forest: on 17,000 acres the LRMP says no new roads will be allowed, and on another 138,000 acres the open road mileage may decrease over the planning period. *See* LRMP, 2-30. Instead of keeping this track maintained, the Forest Service should relocate the race to logging roads, existing OHV trails, and service roads that are opened for other purposes. This should not be too great a burden given that the Enoree Ranger District has a “premier

⁴ Apparently, tread is still visible on the Forest year to year even after mitigation measures are in place.

network of trails for riding OHVs” (LRMP Final EIS, 3-265) and 97% of Sumter National Forest is considered roaded (3-270). It is also the only plausible way to comply with Forest Service regulations, which:

- “Require siting to cause the least damage to the environment” 36 C.F.R. § 251.56 (a)(1)(ii)(F);
- Require that you “Minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment” 36 C.F.R. § 251.56 (a)(1)(i)(B);
- “Require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law” 36 C.F.R. § 251.56 (a)(1)(i)(C)

as terms and conditions of a special use permit.

Opening a part of the Forest to motorized use is unfair to other users of the Forest. Motorcycle use in the forest should be limited to roads and OHV trails, not trails designated for hikers and horseback riding. OHV trail riding “may lessen the recreation experience of other recreation participants such as hikers, hunters, fishermen, campers, and those seeking solitude.” LRMP Final EIS, 3-278. By law, you absolutely must “Protect other lawful users of the lands adjacent to or occupied by” the race. 36 C.F.R. § 251.56 (a)(1)(ii)(C). My clients’ request is consistent with your LRMP, which has as standards:

- FW-69 Limit OHVs and mountain bikes to designated routes;
- FW-73 Motorized use of the trail system is permissible for administrative purposes and emergencies [and presumably not for racing];
-

Following these standards is important to protect the recreational resources of the Forest and to provide a safe experience for all Forest users. Since foot and horseback trails are not designed for use by motorcycles their use could be dangerous to riders unless modified. If modified, especially if widened, there would be negative impacts on the experience of other forest users.

The Sumter’s maintenance backlog, LRMP 2-29, along with the “off trail or unclassified road uses that are unauthorized and can be substantial in some instances” strongly suggest that you should not introduce new areas of the Forest to OHV users. Final EIS for the LRMP, p. 3-9. Because use an area for racing indicates that the Forest Service condones OHV use in that area, future illegal use of the area is made more likely.

V. Provide mitigation measures for impacts to soil, water, and wildlife.

The race trail should be hydrologically invisible—the same exact same water flow should exist after the race as before. You cite the *Trails South Guide* as the direction you will give GERA to mitigating impacts caused by the race, yet *Trails South* does not include directions for obliterating trails or roads—it is a guide for trail creation and maintenance. While this may be adequate direction to restore the existing trails that will be used, you must indicate what direction you will give GERA for those areas impacted by the event that are not presently trails, such as “trails” created only for, or used only on, the day of the event and spectator viewing and parking

areas.⁵ While the track may be “virtually unidentifiable in most locations after leaf fall,” there are still likely impacts to water quality, wildlife, and plants. This is not a novel statement, but rather a restatement of the Forest Service’s own policy:

- “Roads—in particular new construction and reconstruction—have a multitude of direct, indirect, and cumulative effects on nearly all environmental components.” LRMP Final EIS, 3-340.
- “Construction, reconstruction and maintenance of roads generate surface erosion.” Roads Analysis, p. 19.

You propose to authorize the race in early September. This presents an additional challenge. Fall is described in the LRMP Final EIS (3-341) as the wet season and the season of highest road use in the Sumter. The cumulative impact of increased use and seasonal weather is already potentially significant “road rutting and surfacing loss into ditches.” LRMP Final EIS, 3-341. The race will add to this burden on the watershed. “The high clay and mica contents of some soils on the Enoree . . . Ranger District[] create[s] less stable roadbeds and ditches.” LRMP Final EIS, 3-342. GERA should be given advice by you—the stewards of our public forest—as to how to address this special circumstance and restore the watershed to the exact hydrologic conditions existing today. The *Trails South* guidance (published in 1982) is not adequate direction since it does not address the variety of restoration challenges GERA must address.

My clients suggest that instead of *Trails South*, you use *A Guide for Road Closure and Obliteration in the Forest Service* (1996). Not only is this more up-to-date, it appears to be more appropriate to the project you have planned. In particular, my clients request that you consider Appendix B: Locating Temporary Roads to Facilitate their Obliteration.

VI. Increase the bond

Without criticizing the work GERA has done in the past, my clients are skeptical that GERA can carry out the type of preparation and restoration that will make this race hydrologically invisible, as modern forest management standards require. At a minimum, the public notice for this project failed to provide any adequate means to measure or insure compliance with the mitigation goals and objectives. If you decide to allow this race, you must guarantee resource protection by planning for the risk that GERA will not be able to do the work required. The public at large should not have to pay if GERA cannot properly restore the Forest, especially if some unforeseen event, such as weather, caused more damage than expected, and the Forest Service does not have the budget to cover a shortfall. Already, the Forest road “system is facing increased use with a declining road budget and a large backlog of deferred maintenance work.” Land and Resource Management Plan (“LRMP”), 2-29.

A bond adequate to cover the costs of mitigating likely damage from an event of this type is a reasonable and responsible requirement. In the past, Sumter Forest has collected a bond of only \$600 dollars to cover mitigation costs should GERA not fulfill its mitigation obligation.

⁵ For example, *Standard Specifications for Construction and Maintenance of Trails*, Forest Service (September, 1996), contains a section on obliteration of abandoned trailways (section 954).

This is clearly too little to cover potential damage to at least 85 miles of track. In fact, \$600 is unlikely to cover even the cost of blocking access to the trail.⁶ *See Road Closure and Obliteration*, p. 9. To maintain closed (level 1) road on the Forest, costs an average of \$116 per mile annually. Level 2 roads are dramatically more expensive to maintain, \$ 536/year. *Roads Analysis*, p. 11. Since the race track is maintained only for this event, the bond should reflect the cost of annual maintenance of a closed road—at least \$25,000.⁷ This would come closer to covering the cost of maintaining the 150 mile track for this single event as well as any damage to adjoining areas, should GERA not complete all mitigation and maintenance necessary for the year.⁸ In fact, this number is probably too low. *Road Closure and Obliteration* estimates a cost of \$2-\$5 per line meter of single lane road plus structure removal. p. 9. At this rate, obliteration of 150 miles of race track would cost over \$241,000.⁹ The burden of ensuring that the track is properly managed appropriately falls to GERA-- apparently the only legal user of the race track.

VII. Support your conclusion that this need cannot be met on private lands

The LRMP Final EIS describes the Enoree District as “a very rural setting with national forest lands interspersed with pasture lands, croplands, industrial timberlands, and small communities. National forest lands in this area are not consolidated and often are adjacent to private lands.” 3-265. It appears that the adjoining private lands are very much like the lands included in the Enoree District, and since GERA desires only a weekend of access, private lands could be rented for the purpose of the race.¹⁰ Private land owners might welcome the opportunity to host off-road vehicle riders, as they have been elsewhere. *See, e.g. Off-road Paradise: ATV fans heading for Kentucky mines*, www.cnn.com/2005/TRAVEL/DESTINATIONS/05/10/off.road.paradise.ap/index.html (May 10, 2005).

VIII. Conclusion

My clients would prefer that this race not happen at all on public land, and do not agree that there is not a privately owned alternative location that would be appropriate. My clients hope that you will reach this same conclusion after going through the alternatives analysis required by NEPA and your own planning regulations and directives. If the race is permitted, they strongly encourage you to limit the route to existing roads and OHV trails. You must

⁶ Blocking a single access point was estimated to cost between \$50 and \$5,000, and this was in 1996 dollars. With a 150 mile track, including multiple access points for chasers, there will be multiple access points that must be blocked.

⁷ While it may be true that failure to mitigate would result in the loss of the privilege of holding the race each year, this provides no assurance to may clients who are concerned more with preventing damage to the resource in the first place than with what the punishment would be to those who cause the damage. It is the Forest Service’s duty to protect the Forest by *preventing* harm.

⁸ To maintain 85 miles of level 1 road for a year costs \$9,860, and \$17,400 for 150 miles. Since an estimated 550-700 people will participate in the event as riders, chasers, or spectators, impact to land and water adjacent to the track is almost certain.

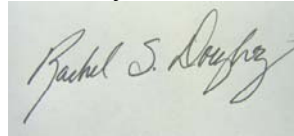
⁹ This number is likely too high since this track is not improved to the degree that most roads are. On the other hand, this estimate is in 1996 dollars.

¹⁰ As opposed to other recreational uses, like hiking and hunting, which are more spontaneous, spread over the course of the year, and not organized months in advance by an Association.

provide better and more appropriate mitigation and restoration guidance to GERA. Also, if the race does occur, you should use it as an opportunity to educate the public about the damage that OHVs are causing our public lands, and how some of this damage can be prevented.¹¹ Finally, you must provide more information about the proposed location of the race and its likely impact on the Forest.

Thank you for considering these comments. If you need further information, please do not hesitate to contact me by phone or e-mail.

Sincerely,

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and reads "Rachel S. Doughty".

Rachel S. Doughty
Attorney for SABP, SAFC, SCFW, & WS

¹¹ Unregulated OHV use is recognized by the Forest Service to be one of the top threats to National Forests. *See* <http://www.fs.fed.us/projects/four-threats/>.