



File Code: 1570-1

Date: December 15, 2005

Route To: (1570 - 215)

Subject: 215 - ARO Letter - Upper Palouse ATV Project DN - Clearwater NF - Appeal #06-01-00-0015 - Northwest Access Alliance

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by David Vig, on behalf of Northwest Access Alliance, protesting the Upper Palouse ATV Project Decision Notice (DN) on the Clearwater National Forest (Palouse Ranger District).

The District Ranger's decision authorized two distinct activities: 1) ATV trail construction and designation in the Upper Palouse ATV project area, and 2) prohibition of motorized cross-country travel off designated routes on the Palouse Ranger District of the Clearwater National Forest (DN, pp. 13-14).

ATV Route Construction and Designation – 119 miles

- Construct about 10 miles of new motorized ATV trail.
- Reconstruct about 15 miles of existing trail.
- Designate about 80 miles of existing system trails and user-created trails and roads.
- Install route signs and post accepted uses.
- Allow dual use on 14 miles of existing motorcycle system trails in the Gold Hill area.
- Construct four trailheads at: 1) the Dredge area, 2) Ruby Creek, 3) Strychnine Creek, and 4) Horse Camp.
- Trailheads will have information boards, parking areas, and restrooms.

Area Decision

- Restrict motorized use to designated routes (except snowmobiles) on the Palouse Ranger District.
- Designated routes are marked open to motorized use; all other routes are closed.
- Motorized wheeled use will be permitted a maximum of 300 feet off designated roads and trails for camping and parking.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellant's objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellant alleges violations of the National Environmental Policy Act (NEPA) and Forest Service policy.



ISSUE REVIEW

Issue 1: “The decision adopts a district-wide regulation to restrict motorized use (except snowmobiles) to designated routes on the Palouse Ranger District. This decision was made without sufficient analysis...73% of the district received no specific route analysis. This is in direct conflict with existing Forest Service planning direction that requires a site-specific analysis to make changes in the travel management designations. The analysis in the document may be sufficient to allow changes in the Upper Palouse area but is totally inadequate to support closure of routes in areas that have not been analyzed.”

Response: The EA serves to briefly provide sufficient evidence and analysis to determine whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (FONSI) [40 CFR 1508.9(a)(1)]. The environmental analysis required under NEPA focuses on the potential impacts of the proposed action that an agency is considering (CEQ 2005, Guidance on the Consideration of Past Actions in Cumulative Effects Analysis).

The District put forth a dual proposal. The District proposed to develop designated ATV trail routes on a portion of the District. Under the second proposal, traveling off designated roads and trails or traveling “cross-country” on a motor vehicle would be prohibited (EA, Ch. I, pp. 2-3).

The appellants contend that, for the travel restriction proposal, the site-specific analysis required under NEPA and the Forest Service policy necessitates a more detailed analysis of existing routes across the District. The District conducted an extensive public involvement and scoping effort (EA, Ch. II, pp. 2-9). None of the issues identified through these efforts indicated the potential for significant adverse environmental effects from restricting motorized travel to designated routes. In other words, there is no indication that a more exhaustive inventory or analysis of existing routes (authorized or not) would highlight potentially significant effects that would result, directly or indirectly, from the restrictions proposed by the District.

The District did recognize that the latent effects of the past cross-country travel, use, and establishment of unauthorized routes will continue for some time. As such, the District properly considered these latent and ongoing effects both as part of the baseline condition and trend and, where appropriate, cumulative to the actual effects of the proposed restrictions (for example EA, Ch. III, pp. 50, 60-61, and 91-102). Based on my review of the record, the nature of the proposal, the results of the District’s scoping efforts and the environmental analysis, I believe the route analysis was adequate to support the FONSI and the Ranger’s decision to proceed with the proposed restrictions.

Issue 2: Dismissal of Alternative G is arbitrary.

Response: An EA shall include a brief discussion of alternatives as required by section 102(2)(E) of NEPA [40 CFR 1508.9 (b)]. Alternatives should be guided by and substantially address the purpose of the proposal (CEQ Guidance 12/2002 and 9/2005). “Alternative G” was developed and considered based on public comments during scoping. The District Ranger describes and evaluates “Alternative G” in the EA in Chapter II, page 8. The alternative was not

given further analysis because the Ranger determined it would not adequately satisfy the purpose as discussed in the Environmental Assessment (EA) on pages 8 and 9 and in the DN beginning on page 18. I reviewed the purpose and need described for this proposal and find that, while focused, it is not so narrowly defined as to preclude reasonable alternatives. I have also reviewed the Ranger's rationale for eliminating "Alternative G" from further study and find he made a reasonable determination in finding the alternative does not sufficiently address the purpose of the proposal to warrant further analysis in this EA.

Issue 3: The decision maker continues to assert that the result of a legal activity such as driving cross-country creates an illegal result that of a track across the land or a user created trail. This is clearly an unjustifiable position.

Response: The appellant does not raise or contend any specific deficiency of law, regulation, or policy. Nevertheless, I reviewed the decision documentation relative to the appellant's complaint. The purpose of the proposal as stated in the EA and DN is to, "stem the proliferation of unauthorized route development" (emphasis added) (EA, Ch. I, p. 4; DN, p. 4). This purpose statement does not try to differentiate routes created through repeated "legal" use, which may have unintentionally resulted in unauthorized routes on the ground from those that have been intentionally constructed or maintained without authorization. The difficulty in distinguishing between the two uses from a practical managerial and administrative standpoint is clearly reflected in the need for the "area" restrictions.

The term "illegal" is used in various parts of the documentation, generally referring to a specific type of prohibited activity. The term is used less precisely, and therefore is less clear and subject to various interpretations in the DN summary of why "Alternative G" was not considered in detail (DN, p. 6). The discussions may have been less contentious, and equally reasonable, had the term "illegal" simply been left out of the summary. Nevertheless, based on my overall review of the record, it is clear to me the decision maker understands the issues at hand, fully considered public comment and concerns, and reached a reasoned decision.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellant. I recommend the District Ranger's decision be affirmed and the appellant's requested relief be denied.

/s/ Bob Castaneda
BOB CASTANEDA
Appeal Reviewing Officer