



File Code: 1570-1

Date: December 15, 2005

Route To: (1570 - 215)

Subject: 215 - ARO Letter - Upper Palouse ATV Project DN - Clearwater NF - Appeal #06-01-00-0023 - Idaho Department of Parks and Recreation

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jeff Cook, on behalf of Idaho Department of Parks and Recreation, 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: Forest Service planning requires that a site-specific analysis be conducted to make changes in the travel management designations. The EA examined (non-system) routes in only part of the Palouse Ranger District. The Upper Palouse ATV (trail) project area covers 27% of the Palouse Ranger District. The remaining 73% of the District received no specific route analysis. Without a site-specific analysis, these non-system routes outside of the Upper Palouse ATV (trail) project area will continue to erode, possibly affecting water quality.

Response: The environmental assessment (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 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: The Decision Notice asserts that the public was invited to identify and locate any known user-created trails. In fact, the planning team refused public information on routes located outside of the Upper Palouse Planning Area.

Response: The noted statement in the decision document is made in a paragraph that specifically discusses the Upper Palouse ATV Trail proposal (DN, p. 3), not the District-wide area restriction proposal. In this context, the Ranger’s statement is factual. While there are not

any notes about specific discussions made during the October 2002 field trip noted by the appellant (Project Record, B-99), I have reviewed the decision record, including public meeting notes, presentations and public documents, including the EA, and find the District explicitly and consistently differentiated the two proposals and the difference in the scope and information needs of each (Project Record, B-54, B-94, B-131, B-130; EA, Ch. I, pp. 2 and 7). My response to Issue 1 above also discusses the need for a more detailed route analysis relative to the "Area Restriction" proposal.

Issue 3: The reasons given for dismissal of Alternative G are inadequate.

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 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 4: The Decision Notice and the EA asserts that the over-arching need to prohibit cross-country travel was to stem the proliferation of illegal, user-created trails. However, the Area B decision goes much beyond this. The Area B also prohibits motorized use on existing, legal non-system routes. Motorized recreationists are using old routes that may have never been recorded on the INFRA data base, though they have existed long before INFRA or travel management on the Clearwater National Forest. In most cases, these routes have not been specifically closed by either a travel management plan or special order.

Response: The appellant contends the selected alternative inappropriately exceeds the purpose of the proposal. In contrast to the contention, the purpose of the proposal as stated in the EA and DN is actually 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. Based on my review of the EA and record, I believe the selected alternative is within the scope of the purpose provided for the proposal and reasonable rationale is provided in the decision for selection of that alternative. Additionally, regulation of the use or development of unauthorized routes is clearly within the authority of the agency.

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 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.

Issue 5: Three hundred feet is too far off system roads and trails to allow recreationists to camp, park, and gather firewood. Adopting a more restrictive standard would allow for better consistency between National Forests and Idaho agencies, in addition to providing a better management guide for trails.

Response: The appellant does not raise or contend any specific deficiency of law, regulation, or policy, but instead suggests the decision should use a different design feature, in part to be more consistent with Idaho agency travel decisions. The Idaho Department of Parks and Recreation also made this recommendation in its comments on the EA (Project Record, B-217). In considering those comments, the District documents that the 300-foot allowance was Regional [Forest Service] policy (Project Record, A-4). That assumption appears to have been based on recommendations included in a draft of a Regional memo that was never finalized (Project Record, J-95). While the draft memo does not serve as policy, the decision to use the 300-foot allowance does make the project consistent with most Region 1 Forests at this time, which may also provide consistency for users who recreate on more than one National Forest. As there is no deficiency of law, regulation, or policy, and the design feature serves its intended purpose, I believe the record supports the Ranger’s 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