LANDS SPECIALIST REPORT
TRAVEL MANAGEMENT
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Review of Direction and Requirements:

Adoption of the Travel Management Rule (TMR) will initiate substantial changes in the way the Forest Service manages motorized use of National Forest System (NFS) lands. The primary focus of these efforts is enhanced protection and restoration of natural resources. However, as we implement the TMR, we must carefully weigh our actions against our statutory obligation to provide access to private property interests. Within the TMR guidelines, this is the primary focus of the Lands group. TMR Guidelines contain direction in support of this goal; however, the complexity associated with meeting this requirement makes fulfilling our obligations to both sometimes difficult.

Travel Management Rule

The regulations contained within the Travel Management Rule pertinent to this report read as follows:

Title 36: Parks, Forests, and Public Property
PART 212—TRAVEL MANAGEMENT
Subpart A—Administration of the Forest Transportation System

§ 212.6 Ingress and egress.

(b) *Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service.* Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service shall be permitted ingress and egress over the same and use of existing National Forest System roads and trails in order to reach their homes and to utilize their property: Provided, such ingress and egress or use shall conform to rules and regulations governing the protection and administration of the lands and the roads or trails to be used.

Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

§ 212.51 Designation of roads, trails, and areas.

(a) General. Motor vehicle use on National Forest System roads, on

National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

(1) Aircraft;

(2) Watercraft;

(3) Over-snow vehicles (see Sec. 212.81);

(4) Limited administrative use by the Forest Service;

(5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

(6) Authorized use of any combat or combat support vehicle for national defense purposes;

(7) Law enforcement response to violations of law, including pursuit; and

(8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) Motor vehicle use for dispersed camping or big game retrieval. In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

§ 212.55 Criteria for designation of roads, trails, and areas.

(d) *Rights of access.* In making designations pursuant to this subpart, the responsible official shall recognize:

(1) Valid existing rights; and

(2) The rights of use of National Forest System roads and National Forest System trails under § 212.6(b).

Section 212.51 and 212.55(d) were adopted as part of the changes resulting from the adoption of the Travel Management Rule. The language in Section 212.6(b) is quite old, and dates back to the Organic Act of June 4, 1897.

The general designation of roads and trails for motorized use required by the TMR applies to use by the general public. The exceptions listed in items 1 through 8 are for motorized use by more specific, limited groups (e.g. administrative use, law enforcement response, use authorized under written authorization). The general designation for motorized use by the public is the designation that is relevant to the discussion in this report.

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ANILCA

The Forest Service has a statutory obligation to provide access to private land within the National Forest boundary. Section 1323(a) of the Alaska National Interest Lands Conservation Act of 1980 (P.L. 96-487, 16 U.S.C. 3210) (ANILCA) states:

> §1323. (a) Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to non-federally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

In essence, while the Forest Service is required to provide access, this requirement is not unqualified. The Forest Service is not required to physically construct it or to absorb the construction cost. The manner in which access is provided to a private land inholding is a discretionary decision for Line Officers, and is based upon individual facts and circumstances. ANILCA does not require that the Forest Service authorize access in a manner that would degrade natural resources. For example, if a property has historically been accessed via a riparian area and that manner of access causes resource damage an alternate means of access and location can be allowed instead.

ANILCA requires the Forest Service to provide physical access. Physical access is not usually sufficient for the "legal access" requirement usually imposed by mortgage lenders and title companies. Most institutions require either an easement or a Forest Service system road open to the public to meet this additional legal access requirement. While ANILCA does not obligate the Forest Service to provide legal access, it is practically a necessary complement to physical access. If the Forest Service refused to provide legal access, it would significantly disrupt the right of private landowners to develop and sell their property.

FOREST PLAN

Our amended Forest Plan from 1987 specifies the following:

> Allow only one private road permit for private land or subdivision access unless public safety or natural features dictate otherwise.
>
> Authorizations for special uses may be issued to qualified applicants when the proposed use:
>
> - Fulfills a demonstrated special need without unduly infringing on use by the general public;

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- Is in accordance with an approved implementation plan (where called for) and will not cause adverse impacts on the National Forest and its resources;
- Serves a function that cannot be provided by private enterprises off National Forest lands;
- and/or is compatible with Management Area Objectives within the plan.

TMR REGIONAL GUIDANCE

Regional guidance for the implementation of the Travel Management rule attempts to address the numerous gray areas surrounding access to private lands, but in some cases lacks the specificity necessary for individual cases. The direction dated June 30, 2008 states:

> Many roads and trails accessing National Forest System lands traverse other land ownerships and jurisdictions. Jurisdiction determinations should be made locally, on a case-by-case basis, in coordination with the Lands staff and the Office of the General Counsel. Units should consider historic rights and other rights which may not be documented in a legal rights-of-way instrument when determining jurisdiction under federal law and applicable state law. Evidence of historic rights might include documented construction and/or maintenance records, routes depicted on GLO plats, or visitor or travel maps, signing, and other indicators of ownership assertions. Where the Forest Service has a legal right to a particular road or trail, that road or trail should be considered for designation. The Forest Service will not manage, maintain, or designate roads and trails where it does not have the right to do so. Some questions of jurisdiction have long predated the Rule. Implementing the Rule does not require resolving all these questions, nor should implementing the Rule unwittingly surrender our assertion of rights where those rights are yet to be resolved.

The "R3 Guidance for MVUM Display of NFS Routes Having Difficult-to-Determine Jurisdiction" (Dec. 21, 2007) provides this direction to forests:

> Existing roads and trails shall be coded so they appear on the MVUM as a National Forest System Road or National Forest System Trail open to motorized vehicle travel when jurisdiction remains unresolved, public access had not been ruled out with certainty, and motorized travel is the selected alternative (p.1).
>
> The Responsible Official may choose to override this regional guidance in cases where the display of these routes may be detrimental to ongoing or potential negotiations or other activities related to the route (p. 2).

LIMITATIONS

ANILCA, the Forest Plan, and the portion of the TMR regulations described above do not individually create limitations. When evaluated separately, each of these laws and

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regulations preserves private rights of access, subject to appropriate regulation. The two options for satisfying the Forest Service's ANILCA obligation to allow access to private land would be, either 1) a road designated for motorized use under the TMR, which will be open to the public and displayed on the MVUM; or a road which may not be designated under the TMR, but is authorized under easement or Special Use Authorization to the appropriate party. In practice, however, the application of the TMR rule may conflict with the desires of private landowners, the historic manner in which private lands have been accessed, or the need to protect natural resources. Both the Travel Management Rule and the RO Guidance acknowledge that there will be numerous grey areas where we must evaluate the specific situation and apply discretion to our decisions. As will be identified throughout this report, identifying ways to resolve these issues will prove challenging.

INFRA/MVUM

Currently, the Forest Service maintains road information for Forest System Roads in a database accessed through INFRA, an integrated suite of Forest Service software applications and databases. The Travel Management direction requires that roads designated for motor vehicle use be shown on the Motor Vehicle Use Map (MVUM). This map is to be reviewed and republished annually and may be revised as necessary to reflect changes to the designated system.

LIMITATIONS

A majority of the roads across the Forest were placed into the INFRA database a number of years ago, for using the information as a road engineering management tool. The INFRA database is one of the sources for data used to develop the MVUM. Because motorized use of routes and areas by the general public is limited to those shown on the MVUM, the MVUM (and INFRA) may be used as title evidence demonstrating a landowner's legal access to their private lands across National Forest. We already experience this inappropriately with our existing maps for which we make no representation about legal access. While neither MVUM nor INFRA is intended to be a legal representation by the Forest Service of landowner legal access rights, the private sector will make use of it for that purpose. It is important that all Forest Service staff dealing with this issue with the public continue to educate landowners, title companies, mortgage lenders about the complexities of this issue.

BACKGROUND:

Historically speaking, access to private lands across the Santa Fe National Forest and other private land has been handled in a somewhat casual manner. This is a broad generalization and there are numerous examples of carefully platted, deeded, and recorded access. However, it is common to find examples of generations old agreements for access, based on nothing more than a handshake deal. Private properties have been bought and sold with this casual approach to access. Examples range from the historical lack of easements to the State Highway Department for

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portions of significant rights of way such as State Highway #4 thru the Jemez Canyon to the complete lack of right of way reserved across patented homesteads in the middle of the Forest. Since the area has been settled, public and private roads have been established through the public domain at a time when this was considered a very positive improvement on the local quality of life. It was important to have easily traveled public highways; otherwise, goods and services could not be moved to market.

Informal agreements have affected real estate transactions in other ways. Where property values have been historically low and the honesty and integrity of a handshake deal were respected mechanisms for doing business, handshake agreements remained acceptable. To formally survey property boundaries and roadways is an expensive proposition, especially where defects in title are a common occurrence. No matter how advisable it might be from a legal standpoint, a prudent person will not typically expend more money on real estate surveyors and attorneys to solve a problem than the property is worth. It is human nature to find a more economically efficient solution.

Informal agreements for access, whether for private access across private lands, or for public access to NFS lands across private lands, are quickly being supplanted by refusal by landowners to allow continued access, and locked gates. As a result, the Forest Service often becomes the solution of first choice in attempting to resolve these issues, resulting in more roads than necessary across public lands. This situation has been compounded by two other factors; the physical location of many roads on the Forest, and the Forest-wide lack of any prohibition against overland travel. Historically, roads constructed and used by settlers, grazers, and loggers followed the path of least resistance, which means they were often constructed along and through drainages and riparian areas. Later, the recreating public often created new roads to suit their purposes, whether it was to reach a favored hunting or fishing location, or for easier access to "back-forty" portions of their private lands. These roads further evolved into separate access points in support of the subdivision and sale of former homesteads. In recent years, the Forest Service has rarely been able to maintain these roads to the standard desired by private landowners. Maintenance was often performed by the landowners, sometimes with authorization, sometimes without. This pattern has further reinforced the perception that these roads are private and for the sole benefit of the private landowners. In some cases, private landowners have installed gates to keep the public off "their" roads, sometimes with Forest Service approval.

Finally, for decades, as the Forest has sought ways to manage the network of roads across the Forest, for the purpose of identification and classification we have assigned numbers to almost all of them, making them Forest System Roads, and ultimately have placed them into INFRA. By doing so, we have given them a status which allows public use, which provides legal access status in the eyes of mortgage lenders and title companies. As a result, landowners have relied upon these roads as evidence of legal access; properties have been bought, sold, appraised, subdivided, mortgaged, and received title insurance guaranteeing access to private lands across these Forest System Roads.

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This evolutionary backdrop for the way roads on the Santa Fe NF have been used has left us with the following set of circumstances and expectations:

Maintenance Standards: The Forest Service does not have a management reason and lacks the resources to maintain most roads to the standard desired by most private landowners. Nevertheless, many landowners, lacking their own ability to absorb maintenance costs, routinely demand road maintenance to a higher standard than we can accomplish. Some are willing to pay for and perform maintenance duties under a road use permit.

Exclusive Use: Many landowners who perform their own maintenance have an expectation of exclusive access and control over the road. They want their own road, do not want to share their access road with other landowners or the public who have a similar need for access. They often want to gate and sign the road at some distance from the edge of their private land, in order to discourage trespass, vandalism, and theft from their homes. Prohibiting public use also eliminates the additional maintenance needs that would be created by additional traffic.

Physical Location: Many roads originally established by homesteaders or the general public are situated in locations which are detrimental to natural resources. Often running through riparian areas, these roads are not appropriate for access, whether used by the public or private landowners.

Financial Implications: Landowners are finding that it will cost them significant sums of money to continue private access across NFS land with an easement, a privilege they may have enjoyed for generations for free.

The process of implementing the Travel Management regulations is bringing these issues to a head at an accelerated pace. A road which provides private land access must now either have a formal authorization from the Forest Service, or it must be a system road open to all, and shown that way on the MVUM.

CHARACTERISTICS OF AUTHORIZATIONS

As discussed, the ANILCA statute requires that we authorize reasonable access to private lands. Typically, the Forest Service is concerned with the physical nature of that access, as it relates to protection of natural resources. The FS can authorize access in one of three ways; 1) a formal National Forest System Road (NFSR) open to the public; 2) by Special Use Permit; and 3) by Easement.

NFS roads are legally recognized as public roads, open to all for access, although subject to FS regulation for resource protection. While these roads are considered public, the maintenance objectives of the FS are typically not at the same level expected by private property owners. Among other things, our maintenance regulations direct us to manage our road program for public and administrative access needs and resource protection, not for levels generally thought of as desirable for access to private

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inholdings and subdivisions. Because our maintenance standards often do not meet private property owners' expectations with regard to road maintenance, this dilemma can be addressed by the issuance of Road Use Permits (RUP's), Special Use Permits (SUP's) and Easements, which enable the holder to perform maintenance work on the road. Often with such an authorization, comes an expectation by the private party that the road is a private road, not open to the public.

While an Easement is often the best choice for both the private landowner and the FS, the FS retains the discretionary decision over whether a Road Use Permit, Special Use Permit or Easement is issued. Our primary responsibility remains to protect natural resources, and limiting permanent encumbrances (like an easement) over Federal lands is always an important consideration. Another important consideration for the private landowner is that the FS does not issue exclusive easements, meaning that over any given road, the FS retains the right to authorize another entity to use the same road, and retains the right to use the road for administrative access. In addition, while a restriction against public vehicular access may be authorized (usually by gate), that is not always appropriate. Even if a gate is authorized, FS Easements will not restrict the public's right to make other use of the easement issued for private road access. The public can still walk down the road easement in an unrestricted manner. Finally, the FS will continue to require reciprocal easements for public access through private lands, in situations where a private landowner has a need for legal access from the FS, and there are additional access needs beyond the private landowner's property, such as recreational purposes, or for access to other private lands.

RUP's can authorize a private party to perform maintenance work on NFSR's, but do not specifically authorize access beyond that granted to the public in general. SUP's and Easements can both be used to authorize access, but they have important differences. An SUP is legally considered a license, in essence written permission, and therefore does not convey an interest in real property when issued. An Easement conveys an interest in real property, and under New Mexico State law, becomes appurtenant to, and automatically transfers to a new owner upon conveyance of the private property. This distinction is very important to title companies and mortgage companies. Most will no longer accept an SUP as evidence of legal access – they require either an open public road (like an NFSR) or a specific, recorded easement deed. Historically, the more casual approach described above has been sufficient. As most mortgage loans are now being bundled into some form of Mortgage-backed security for sale on the secondary markets, loan underwriting standards have become much less flexible, and continuity in the way access is documented and insured has become stricter. Title companies too are becoming more sensitive to the distinction, having paid title insurance claims for access problems that were assumed to be okay, due to a long history of informal usage. We have seen a number of these examples here on the Santa Fe NF.

COST RECOVERY

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The other significant change that has occurred in the past several years is the overall cost associated with obtaining a Permit or Easement. The FS has the authority and requirement to collect fees to cover agency administrative costs necessary for processing and monitoring an authorization; this is referred to as cost recovery. Administrative costs such as salary time for NEPA review, archaeological review, and case processing are examples of costs subject to recovery. There are few differences between Permits and Easements with regard to these costs. The primary difference is that under New Mexico State law, an Easement must be formally surveyed and a recordable plat prepared by a licensed surveyor before it can be granted. While often costly, this is advantageous to both the private landowner and the FS, as it minimizes future disagreement over location and legal status of the road. In addition, a formal easement normally enhances the private landowner's property values, because of the mortgage and title insurance issues described above. The drawback is that now, the cost of applying for and receiving an access authorization is considerably higher than what it was a few years ago. Costs can easily range from $10,000 to $15,000 for a relatively short and simple stretch of roadway, to many times that for a significant or lengthy road. Many landowners are finding themselves in a situation where they absolutely do not want access by the public to and/or through their private lands; however, they are unwilling or unable to absorb the costs associated with establishing a private easement.

FOREST APPROACH FOR TRAVEL MANAGEMENT RULE

Implementation of the TMR requires a more formal and consistent approach to management of the Forest road and trail system. Roads designated for motorized use can satisfy the legal access need for private landowners. However, they must be shown on the MVUM, and that makes them available for use by the general public. During public meetings after the proposed action was released, we heard from many landowners who wanted to retain legal access on a Forest Service road, but who wanted to close the road to public use. The only option to accomplish that is to issue an easement. In the short-term, the Forest does not have the capacity to issue easements to all the landowners who would require one if the road accessing their property is not designated for motorized use. For this reason, the proposed action was designed to designate for motorized use all the roads accessing private inholdings. For those that only access a private parcel and do not have significant need for public motorized use, consideration will be given to designating the road for use by highway-legal vehicles only.

Those roads that do not have a need for public motorized use and for which the landowner prefers (and is willing to pay for) an easement will eventually be granted an easement. More specifically, the Forest decided to propose for designation all roads believed to be necessary for access to private land as system roads open to the public in at least one alternative. Given the clear statutory direction contained in ANILCA, we chose to err on the cautious side, not wanting to risk unintended financial consequences for private landowners. One consequence of this approach is that a few roads that

access private lands that are causing natural resource management issues may be designated for continued use in the short-term. Roads with less than satisfactory consequences will be targeted for future action, with access roads that cause resource damage prioritized at the top of the list for elimination from the designated system and conversion to more limited use by the private landowners under easement or SUP, or relocation to a better route and closure of the problematic route. This mitigation would require separate NEPA analysis.

Additionally, the Forest chose to not show some of the routes in one alternative in order to display the range of effects and consequences.

ANALYSIS AREA

Direct & Indirect Effects

Spatial: Lands within and adjacent to the Santa Fe National Forest whose owners make use of National Forest System roads for access to their private property. Only lands that need or use access across NFS lands are within the scope of the TMR.

Temporal: From the publication of MVUM to 2025, because the enforcement of motor vehicle use will start with MVUM, and 2025 is the next likely time that Forest would likely do a comprehensive review of the designated system. (Note, however, that there will be yearly updates of the designation and re-publication of the MVUM with updated information.) Refer to the IDT document in project record.

Cumulative Effects

The spatial and temporal bounds for the cumulative effects are the same as for the direct and indirect effects because each individual access issue is unique in its location and, therefore, by time (if a dispute or issue arises, it is limited to that road).

CONCERNS AND MEASURES

The Interdisciplinary Team discerned from public comments that the public was most concerned with the following issue (as it relates to the Lands and Boundary Management Program):

Concern #1: Depending on one's point of view, designating routes to or motorized dispersed camping close to private property limits recreational opportunities, or encourages trespass.

Discussion: The public and private landowners are often unaware that the public is permitted access on NFS roads to private land. The land up to the private property is still public land, regardless of whether the road leads to private property or not. If a gate exists, the public may continue to walk, bicycle, or ride horses behind the gate. The presence of gates on public land can give the impression that the road

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gate. The presence of gates on public land can give the impression that the road behind the gate is closed to all public use. This perception effectively reduces recreational opportunities since most people will not trespass on what is perceived to be private land. Conversely, private landowners often request gates some distance from their boundary to intentionally limit the possibility of trespass and vandalism, or because the terrain lends itself more to a gate and/or fence than another. Gates on the Forest have been placed with or without the Forest's permission.

If these perceptions exist, they exist for all routes to private property that have gates on NFS land. The only difference between alternatives would be the number of routes leading to private property by alternative. At the forest scale, the difference between the alternatives is negligible.

AFFECTED ENVIRONMENT

For purposes of this report, the "affected environment" can be identified as the real property associated with the Santa Fe NF, which is: made up of 1) those lands, or interests in lands, held in title by the United States; 2) those lands, or interests in lands held in title by an outstanding party; and 3) outstanding real property rights which are an encumbrance upon Federal ownership. In addition, consideration must be given to those gray areas where ownership rights are not necessarily clear, and we may be called upon to defend what we believe to be Federal title to or interest in real property.

We typically think of the land within the Santa Fe National Forest boundaries as the affected environment. But in certain instances, that can be overly simplistic. There are examples of Federal interests in real property located outside the proclaimed boundary, such as a portion of the Atalaya Trail located near St. John's College in Santa Fe. Another example would be private properties that are not within the proclaimed boundary, do not specifically adjoin the Forest boundary, but nevertheless make use of roads that cross the Forest for access to their private property.

MEASURE:

Discussion/Limitations:

As data for this report was compiled, there was a desire expressed for some manner of quantitative evaluation of the effects between the various alternatives. A GIS query was developed and run, which resulted in the road data shown below. The data attempts to compare the number of access roads leading to private land for each of the alternatives. Unfortunately, because of the lack of site specific knowledge, the only practical method of determining a comparative measure was to identify all roads situated within a 100 ft. buffer from the private lands, and then add a filter which counted any given road that came near a private parcel only once, to avoid unnecessarily counting the road more than once. However, because the way each block of private land is subdivided is

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It does however, remain a good tool for measuring the alternatives, as any mistakes made were carried forward through all alternatives. A reasonably accurate comparison can still be made as to the effects of any given alternative.

Method: The manner in which these numbers were specifically calculated can be found within Attachment #1, at the end of this document.

Number of Routes Within 100 feet of Private Land Inclusion

Alt 1	Alt 2	Alt 3	Alt 4	Alt 5
Road	Road	Road	Road	Road
766	492	463	502	481

ENVIRONMENTAL EFFECTS

Alternative #1 (No Action)

Historically, we have responded to access requests as they have surfaced, which is essentially what Alternative #1 represents. We currently lack the comprehensive knowledge to determine specific private access needs. We don't know how the hundreds of blocks of private land on the Forest are subdivided; we don't know who has access already secured by other easements across other private lands; and we don't know who will qualify for ANILCA access rights. Determining this level of detail would require very extensive title and ownership research, and could trigger numerous quiet title actions against both the Forest Service and other private landowners. At the current level of staffing, it could take years to compile this information, and unfortunately, it would be immediately out of date due to constant real estate market activity. Lacking this level of detailed information, we don't know how many separate access routes might ultimately be necessary to provide sufficient access to all owners.

The current situation (Alternative #1) is not implementable, because it does not implement TMR. However, if we were to continue that mode of management, it would allow the individual cases to be addressed as they need to be for the private landowners and as our staff resources can accommodate. Because of the earlier decision to assign road numbers to every route identified that crosses NFS lands, this provides a default resolution to most cases until alternative authorizations can be processed.

While not practical, if Alternative #1 were implemented, more roads would be left open to motor vehicle use by the public, resulting in a greater likelihood that the FS will successfully provide for access to private lands.

Alternative #2 (Corrected Proposed Action)

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If Alternative #2 is adopted as the manner in which the Travel Management Rule would be implemented on the Santa Fe NF, the following is predicted to occur:

- The road and trail system designated for motorized use by the general public would, in effect, provide legal access across National Forest lands for those private inholdings served by that system.
- Landowners would discover that the manner in which they were allowed to use roads leading to their private property will be very different with the sudden (perceived) implementation of TMR. Many roads that have been historically perceived as private, must now become open to public use, at least until another form of authorization can be secured.
- While we have worked hard to identify access for all private lands, there will likely be individual parcels of land that will not enjoy the same access that once existed because either they are not inholdings with ANILCA entitlement or because there are currently multiple un-needed access routes to the same parcel.
- Because of the date-certain nature of TMR implementation, the discovery and need to address access conflicts would be amplified, because there would be a number discovered all at the same time, as opposed to a more spread out process of discovery resulting from typical market forces such as the sale of property, or the settlement of estate issues. This will leave some landowners who have enjoyed a de-facto private road access with unwanted public access to their property boundary line for an indeterminate time into the future.
- Landowners who have been making use of certain roads for little or no cost over an extended period who wish to restrict vehicular traffic on the road would have increased costs of obtaining an easement.
- As illustrated by the table above, if Alternative #2 was implemented, fewer roads would be left open to motor vehicle use by the public as compared to Alternative #1, resulting in the possibility that some overlooked parcels of private land will not initially be provided access.

Alternative #3

- The road and trail system designated for motorized use by the general public would, in effect, provide legal access across National Forest lands for those private inholdings served by that system.
- Landowners would discover, at a much greater rate, that the manner in which they were allowed to use roads leading to their private property will be very different with the sudden (perceived) implementation of TMR. Many roads that have been historically perceived as private, must now become open to public use, at least until another form of authorization can be secured. The number of these instances would be higher if this alternative is adopted.
- In other cases, there would be individual parcels of land that would not have legal access identified, for which they have historically believed has existed. In some instances, this would result from a misunderstanding of the consequences from having requested no roads to their private lands be shown on the MVUM. In other cases, this would result from closing the road for resource reasons. The number of these instances would be higher if this alternative is adopted.

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- While we have worked hard to identify access for all private lands, there will likely be individual parcels of land that will not enjoy the same access that once existed because either they are not inholdings with ANILCA entitlement or because there are currently multiple un-needed access routes to the same parcel.
- Because of the date-certain nature of TMR implementation, the discovery and need to address access conflicts would be amplified, because there would be a number discovered all at the same time, as opposed to a more spread out process of discovery resulting from typical market forces such as the sale of property, or the settlement of estate issues. This will leave some landowners who have enjoyed a de-facto private road access with unwanted public access to their property boundary line for an indeterminate time into the future. Because a greater number of roads which provide access to private lands were identified to be closed in this alternative, the number of these instances would be higher if this alternative is adopted
- Landowners who have been making use of certain roads for little or no cost over an extended period who wish to restrict vehicular traffic on the road would have increased costs of obtaining an easement.
- As illustrated by the table above, if Alternative #3 were implemented, fewer roads would be left open to motor vehicle use by the public as compared to Alternative #1, however, there would also be fewer than Alternative #2, resulting in certain parcels of private land that will not initially be provided access.

Adoption of Alternative #3 will interfere with access to a greater number of parcels of private land.

Alternative #4

- The road and trail system designated for motorized use by the general public would, in effect, provide legal access across National Forest lands for those private inholdings served by that system.
- Landowners would discover that the manner in which they were allowed to use roads leading to their private property will be very different with the sudden (perceived) implementation of TMR. Many roads that have been historically perceived as private, must now become open to public use, at least until another form of authorization can be secured.
- While we have worked hard to identify access for all private lands, there will likely be individual parcels of land that will not enjoy the same access that once existed because either they are not inholdings with ANILCA entitlement or because there are currently multiple un-needed access routes to the same parcel.
- Because of the date-certain nature of TMR implementation, the discovery and need to address access conflicts would be amplified, because there would be a number discovered all at the same time, as opposed to a more spread out process of discovery resulting from typical market forces such as the sale of property, or the settlement of estate issues. This will leave some landowners who have enjoyed a de-facto private road access with unwanted public access to their property boundary line for an indeterminate time into the future.

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- Landowners who have been making use of certain roads for little or no cost over an extended period who wish to restrict vehicular traffic on the road would have increased costs of obtaining an easement.
- As illustrated by the table above, if Alternative #4 were implemented, fewer roads would be left open to motor vehicle use by the public as compared to Alternative #1, however, there would also be a few more than Alternative #2, resulting in greater access to private land.
- Adoption of Alternative #4 is likely to have similar results to the adoption of Alternative #2, with little difference perceived.

Alternative #5

If Alternative #5 is adopted as the manner in which the Travel Management Rule would be implemented on the Santa Fe NF, the following is what we believe would occur:

- The road and trail system designated for motorized use by the general public would, in effect, provide legal access across National Forest lands for those private inholdings served by that system.
- Landowners would discover that the manner in which they were allowed to use roads leading to their private property will be very different with the sudden (perceived) implementation of TMR. Many roads that have been historically perceived as private, must now become open to public use, at least until another form of authorization can be secured.
- While we have worked hard to identify access for all private lands, there will likely be individual parcels of land that will not enjoy the same access that once existed because either they are not inholdings with ANILCA entitlement or because there are currently multiple un-needed access routes to the same parcel.
- Because of the date-certain nature of TMR implementation, the discovery and need to address access conflicts would be amplified, because there would be a number discovered all at the same time, as opposed to a more spread out process of discovery resulting from typical market forces such as the sale of property, or the settlement of estate issues. This will leave some landowners who have enjoyed a de-facto private road access with unwanted public access to their property boundary line for an indeterminate time into the future.
- Landowners who have been making use of certain roads for little or no cost over an extended period who wish to restrict vehicular traffic on the road would have increased costs of obtaining an easement.
- As illustrated by the table above, if Alternative #5 were implemented, fewer roads would be left open to motor vehicle use by the public as compared to Alternative #1, however, there would also be fewer than Alternative #2, resulting in the greater possibility that some overlooked parcels of private land will not initially be provided access.
- Adoption of Alternative #5 is likely to have similar results to the adoption of Alternative #2, with little difference perceived.

CUMULATIVE EFFECTS

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Because issues of access to private land occur over specific roads, they are unique. No additional factors contribute to access issues that are outside the scope of the original issue, so no cumulative effects exist for any of the alternatives.

EFFECTS OF PROPOSED FOREST PLAN AMENDMENTS
FOREST PLAN CONSISTENCY AND REVISION

During the research necessary for completing this Specialist's Report, it was concluded that as currently written, the Forest is not meeting Forest Plan direction, and would continue to not meet Plan direction with the implementation of the Travel Management regulations without a Plan amendment.

The primary reason Plan direction is not being met relates to the manner in which access to private land is authorized. In certain instances, direction has not always been followed, with the result that some blocks of private land are authorized and served by multiple points of access. In other cases, private land access has been authorized even though the property does not meet ANILCA standards as they pertain to inholdings.

Because the direction is contained in the Forest Plan as a "standard and guideline", we are automatically not meeting the Plan if we're unable to authorize private access in the manner prescribed. Amending the Forest Plan by identifying this direction as a "goal", maintains the appropriate direction to the field, while at the same time enabling the Forest to achieve compliance.

In addition, the Plan direction was slightly modified to reflect current terminology, and to make the Plan direction congruent with Manual/Handbook direction. There is no change in practice for either, as the Forest is currently following this direction. Adoption of this Forest Plan Amendment will bring the Forest into compliance.

LITERATURE CITED

- Section 1323(a) of the Alaska National Interest Lands Conservation Act of 1980 (P.L. 96-487, 16 U.S.C. 3210) (aka ANILCA).
- 36 CFR 212, Subpart A, § 212.6(b)
- 36 CFR 212, Subpart B, § 212.51 and § 212.55(d)
- 36 CFR 251, Subpart D, § 251.110

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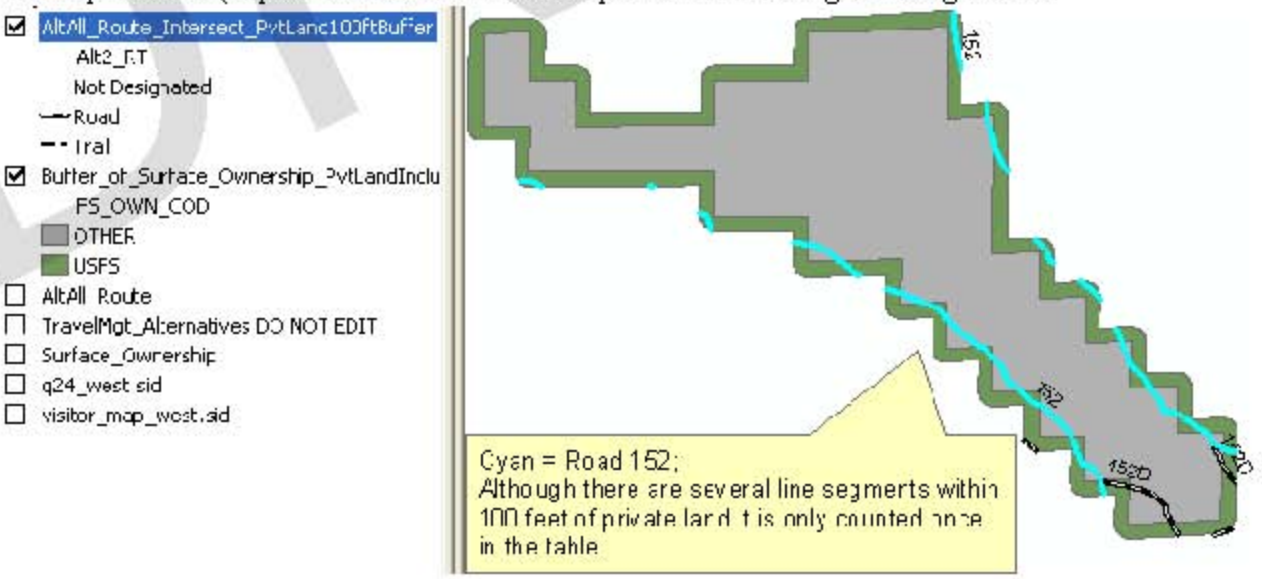
Attachment #1

How the table LAND01_TravelMgt_NumRoutes100ftPvtLand_20091109.xlsx was created
Julie Luetzelschwab, 11-9-09

ALP surface ownership was selected for FS_OWN_CODE = OTHER. These polygons were buffered 100 feet.

An intersect was done with AltAll. The output feature class had both the private land inclusion and the 100 foot buffer which is on USFS lands. A dissolve was done to reduce the number of arcs using the fields ID,AltX_RT,ExistCondition,FS_OWN_CODE. Then the unauthorized routes were exploded since they don't have unique numbers but in most cases should be counted as unique routes (explode resulted in 18 multi-part arcs becoming 168 single arcs.



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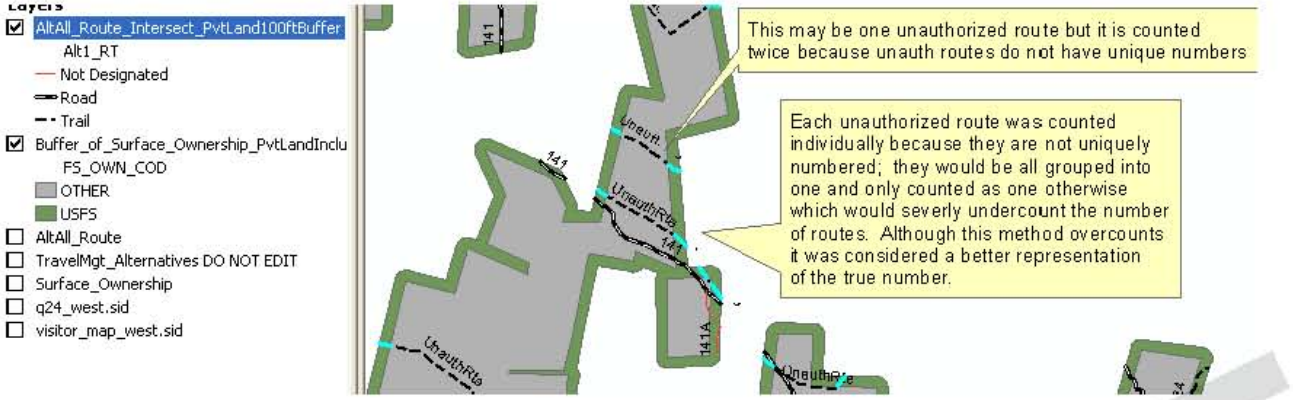

A frequency table was generated for each alternative using this query so roads that were within 100 ft of private lands: "Alt1_RT" IS NOT NULL AND "FS_OWN_COD" = 'USFS'. The fields used were ID (for the unique route number), AltX_RT to determine if it's a designated road or trail, ExistCondition (just in case) and miles.
The final table needed to show a COUNT. Road 100O below had 2 line segments, but it was counted as one road for this table.

A	B	C	D
FREQUENCY	ID	Alt1_RT	Miles
1	10	Road	0.32684610619
1	100	Road	1.02427246756
1	100CE	Road	0.13859993119
1	100CED	Road	0.02333888785
2	100O	Road	0.14843296546

Unauthorized routes were treated differently since they are not uniquely numbered. They were exploded from multi-parts to single parts (see map above) so each arc was counted individually so in the table there are 73 unauth routes that were added into the TRAIL count for Alt 1.

762	1	CR-B022	Road
763	1	RA-CR-418	Road
764	1	Trl 286	Road
765	3	UnauthRte	Road
766	1	Trl 132	Trail
767	1	Trl 279	Trail
768	1	Trl 424	Trail
769	73	UnauthRte	Trail

Above is the table for Alt 1. There are 763 (764 minus 1 row which is the field titles) plus 3 unauth routes that are designated as roads so the total is 766. For trails there are 3 plus 73 unauth routes designated as trails for a total of 76.

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