

**DECISION MEMO**  
**SPECIAL USE AUTHORIZATIONS FOR PRIVATE ROAD EASEMENTS**  
USDA-Forest Service, Eastern Region  
Huron-Manistee National Forests, Tawas and Harrisville Ranger Districts  
Alcona and Iosco Counties, Michigan

**I. DECISION**

**A. Background**

Each of the following 8 applicants need access to their private lands across National Forest System lands, as described in this document. Their existing private road special use permits expired on 12/31/2008. New private road easements issued for 30 year terms would provide legal access and allow the continued use of the roads and performance of minor maintenance and maintenance of gates (where indicated).

**B. Description of Decision**

My decision is to issue a 30-year private road easement to each of the following 8 applicants.

Donald Clark has maintained a gated private road easement for a ten-year term providing legal access to his private lands across the Huron National Forest. Mr. Clark is a permanent residence at this location and snowplows the road in winter. A new easement would be granted to utilize the existing forest road, approximately 16 feet wide and 3,010 feet long. The easement would allow Mr. Clark to perform minor maintenance needed for access to his property and maintain a gate. No new road construction or disturbance outside the existing road area will be allowed by this decision. A gate which is in place on this road at the north line of Section 24 T24N R7E as well as an existing road easement was authorized by a Consumers Energy easement of March 22, 1965 prior to Forest Service acquisition of these lands. The forest road to be recognized by a new easement is located in Section 13 of T24N R7E, Michigan Meridian, Oscoda Township, Iosco County, Michigan (as shown on attached map). Total National Forest System land involved in this decision is 1.1 acres. Forest Plan Management Area 4.3W, Roaded Natural Wetlands.

Lawrence Conarton has maintained a gated private road easement for a ten-year term providing legal access to his private lands across the Huron National Forest. The Conarton property is used seasonally as recreation and hunting property. It has been determined that Mr. Conarton is deceased and his heirs have been paying the easement fees. An easement will be issued to the appropriate legal owner of the private parcel served by this access road. A new easement would be granted to utilize the existing forest road, approximately 16 feet wide and 2,920 feet long. The easement would allow the landowner to perform minor maintenance needed for access to their property and maintain a gate. No new road construction or disturbance outside the existing road area will be allowed by this decision. A gate is in place on this road at the intersection with Bissonette Road which is the boundary of

the Forest's AuSable Semi-Primitive Non-Motorized Area. The Forest had worked with Mr. Conarton to have the permit holder install the gate to allow his continued access and to enforce the closure of the area to motorized vehicle use. The road is located in Section 6 of T24N R6E, Michigan Meridian, Oscoda Township, Iosco County, Michigan (as shown on attached map). Total National Forest System land involved in this decision is 1.1 acres. Forest Plan Management Area 6.1, Semi-Primitive Non-Motorized

Charles Davidson has maintained a gated private road easement for a ten-year term providing legal access to his private lands across the Huron National Forest. The Davidson property is used seasonally as recreation and hunting property. A new easement would be granted to utilize the existing forest road, approximately 12 feet wide and 2,640 feet long. The easement would allow Mr. Davidson to perform minor maintenance needed for access to his property and maintain a gate. No new road construction or disturbance outside the existing road area will be allowed by this decision. In 1990, the Forest Service and Mr. Davidson agreed to have the Forest Service, at Mr. Davidson's expense, to construct and install a gate at the intersection of Inglis Road to eliminate public motor vehicle access to this area and protect an abandon gravel pit which is being revegetated. The road is located in Section 2 of T25N R7E, Michigan Meridian, Mikado Township, Alcona County, Michigan (as shown on attached map). Total National Forest System land involved in this decision is 0.73 acres. Forest Plan Management Area 4.2, Roaded Natural Sandy Plains and Hills.

Donald Lawson has maintained a private road easement for a ten-year term providing legal access to his private lands across the Huron National Forest. Mr. Lawson is a permanent residence at this location and snowplows the road in winter. A new easement would be granted to utilize the existing forest road, approximately 12 feet wide and 520 feet long. The easement would allow Mr. Lawson to perform minor maintenance needed for access to his property. No new road construction or disturbance outside the existing road area will be allowed by this decision. The road is located in Section 5 of T24N R6E, Michigan Meridian, Oscoda Township, Iosco County, Michigan (as shown on attached map). Total National Forest System land involved in this decision is 0.14 acres. Forest Plan Management Area 4.3, Roaded Natural Wetlands.

Harry Morris has maintained a private road easement for a ten-year term providing legal access to his private lands across the Huron National Forest. Mr. Morris is a permanent residence at this location and snowplows the road in winter. A new easement would be granted to utilize the existing forest road, approximately 18 feet wide and 2,218 feet long. The easement would allow Mr. Morris to perform minor maintenance needed for access to his property. No new road construction or disturbance outside the existing road area will be allowed by this decision. The road is located in Section 25 of T25N R6E, Michigan Meridian, Curtis Township, Alcona County, Michigan (as shown on attached map). Total National Forest System land involved in this decision is 0.92 acres. Forest Plan Management Area 4.2, Roaded Natural Sandy Plains and Hills.

Bruce Myles has maintained a gated private road easement for a ten-year term providing legal access to his private lands across the Huron National Forest. The Myles property is used seasonally as recreation and hunting property. A new easement would be granted to

utilize the existing forest road and permitted area, approximately 16 feet wide and 1,260 feet long. The easement would allow Mr. Myles to continue to perform minor maintenance needed for access to his property and maintain a gate. No new road construction or disturbance outside the existing road area will be allowed by this decision. The Myles access is through an industrial park road and across private lands by easement (Beck property). A gate has been authorized at this private easement (Beck property) to eliminate public motor vehicle access to the National Forest. All other Forest roads into Section 9 have been closed by the Forest Service as excess to management needs for this area. The Myles ownership was permitted in 1991 to construct a short section of road to continue to maintain access to private lands when the Forest Service closed all other roads on National Forest System lands. The road is located in Section 9 of T23N R9E, Michigan Meridian, AuSable Township, Iosco County, Michigan (as shown on attached map). Total National Forest System land involved in this decision is 0.46 acres. Forest Plan Management Area 4.3, Roaded Natural Wetlands.

Charles Wooten has maintained a private road easement (no gate) for a ten-year term providing legal access to his private lands across the Huron National Forest. The Wooten property is used seasonally as recreation and hunting property. The new easement would be granted to utilize the existing forest road, approximately 33 feet wide and 46 feet long. The easement would allow Mr. Wooten to perform minor maintenance needed for access to his property. No new road construction or disturbance outside the existing road area will be allowed by this decision. The road is located in Section 3 of T22N R6E, Michigan Meridian, Grant Township, Iosco County, Michigan (as shown on attached map). Total National Forest System land involved in this decision is 0.03 acres. Forest Plan Management Area 4.4, Rural.

Donald Worthington has maintained a gated private road easement for a ten-year term providing legal access to his private lands across the Huron National Forest. The Worthington property is used seasonally as recreation and hunting property. A new easement would be granted to utilize the existing forest road, approximately 12 feet wide and 4,686 feet long. The easement would allow Mr. Worthington to perform minor maintenance needed for access to his property and maintain a gate. No new road construction or disturbance outside the existing road area will be allowed by this decision. The Forest Service gated this access road in 1993 because of the damage occurring to the road from public motor vehicle use and the need to access the area for wildlife opening maintenance. Previous landowners described and validated their need to use the road for access and successive permits have been granted. The road is located in Section 16 of T26N R8E, Michigan Meridian, Gustin Township, Alcona County, Michigan (as shown on attached map). Total National Forest System land involved in this decision is 1.3 acres. Forest Plan Management Area 2.1, Roaded Natural Rolling Plains and Morainal Hills.

Environmental reviews including Botanical and Biological Evaluations and Cultural Resource Reviews have been prepared for the proposed projects and are part of the project file. There are no historic properties or cultural resources, ETS species, or sensitive areas that will be impacted by this decision. The easements allow the Forest Service to control the type and level of maintenance performed on the road.

This decision will be implemented through issuance of special use authorizations that meet the requirements of the decision and Forest Service regulations. Forest Service regulations require the applicants to: pay any necessary fees, post any necessary bonds; and secure any state or federal permits or authorizations required by law.

It is also my decision that a special use fee will be charged for these special use authorizations because these applicants do not qualify for a fee waiver in accordance with the Code of Federal Regulations (CFR) Title 36 par 251, section 57(b).

### **C. Purpose of Decision**

The purpose of the decision is to respond to the expiration of existing permits and easements which allow reasonable access to private properties. No other reasonable means of access are available to these applicants. In such instances, the Forest Service has a legal obligation to provide reasonable access according to the requirements of the Alaska National Interest Lands Conservation Act of 1980.

The proposal is consistent with the approved Forests' Land and Resource Management Plan. Reference pages in Chapter III, III-2.1-7, III-4.2-11, III-4.3-12, III-4.4-6 & 7, and III-6.1-10.

## II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when:

1. They are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR Part 1b.3 or;
2. They are within one of the categories identified in 36 CFR 220.6(d) and (e) and;
3. There are no extraordinary circumstances related to the proposed action.

### A. Category of Exclusion

This project is within Category 15 of 36 CFR 220.6(e)

“Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.”

### B. Relationship to Extraordinary Circumstances

**Threatened and Endangered Species or Their Critical Habitat** – The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species’ designated critical habitat. A Biological Evaluation was completed by the District Biologist and Botanist.

Wildlife surveys for federally endangered or threatened species and Regional Forester Sensitive Species were not conducted since there would be no change from existing use, no disturbance or alteration of habitat and there are no known locations in the vicinity of the project areas. There are no documented occurrences of federally listed species on the project areas.

It is the professional opinion of the Biologist that:

- Issuance of the easements complies with the requirements of the Endangered Species Act.
- There is no critical habitat within the project area, therefore actions will not jeopardize or adversely modify critical habitat of federally listed species.
- All ETS and associated suitable habitat for species documented within the Huron Shores Ranger Station of the Huron-Manistee National Forests received full consideration in the decision making process.
- The described actions will not contribute to the loss of viability of any native or non-native species and will not cause a trend toward Federal listing of any species.
- The proposed easements will have no effect on any federally endangered or threatened species and no impact on any Regional Forester Sensitive Species.

The Biologist and Botanist determined that implementation of the proposed actions will have no effect on any Federally endangered or threatened species or their habitat and no impact on any Regional Forester Sensitive Species.

### **Floodplains, Wetlands or Municipal Watersheds**

Floodplains – The primary purpose of Executive Order 11988 is to avoid adverse impacts associated with the occupancy and modification of floodplains. Floodplains are defined by this order as, “...the lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any one year”.

The subject National Forest System land is not located in or near floodplains. This has been validated by map and site-review ([www.fws.gov/wetlands/data/index.html](http://www.fws.gov/wetlands/data/index.html)).

Wetlands – The primary purpose of Executive Order 11990 is to avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, “...areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction.”

The subject National Forest System land does not contain any wetlands. This has been validated by map and site-review ([www.fws.gov/wetlands/data/index.html](http://www.fws.gov/wetlands/data/index.html)).

Note that Clark, Lawson and Myles roads are within “wetland” management areas, but the roads are not actually running within wetlands.

Municipal Watersheds – Municipal watersheds are designated by Congress and managed under multiple use prescriptions in forest plans.

There are no municipal watersheds within the Huron-Manistee National Forests.

**Native American Religious or Cultural Site, Archaeological Sites or Historic Properties or Areas** - Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. Section 106 of the National Historic Preservation Act also requires federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.

The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands.

The Native American Graves Protection and Repatriation Act cover the discovery and protection of Native American human remains and objects that are excavated or discovered in federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items.

This decision complies with the above cited Acts. Surveys were conducted for Native American religious or cultural sites, archaeological sites, and historic properties or areas that may be affected by this decision. A 'no historic properties affected' determination has been made. Appropriate consultation with the Forest Archeologist, State Historic Preservation Officer and tribal government was completed.

### **Congressionally Designated Area**

Wilderness - The only Wilderness Area within the Huron-Manistee National Forests is Nordhouse Dunes and the proposed action does not take place in or adjacent to the Wilderness Area.

This decision does not affect Wilderness.

Wilderness Study Areas - There are no Wilderness Study Areas on the Forests.

This decision will not affect Wilderness Study Areas.

National Recreation Areas - There are no National Recreation Areas on the Forests.

This decision will not affect National Recreation Areas.

Wild & Scenic Rivers – The road is not located within a Wild and Scenic River corridor.

This decision will not affect Wild and Scenic Rivers.

Inventoried Roadless Areas – The National Forest System land is not in or near Roadless Areas.

This decision will not affect inventoried roadless areas.

Research Natural Areas – There are no Research Natural Areas (RNA) in the decision area.

This decision will not affect RNA's.

No other extraordinary circumstances related to this decision were identified.

### **III. PUBLIC INVOLVEMENT**

Scoping was conducted internally on this proposal and the project has been posted on the Forest's Project Web Site since October 30, 2008.

As provided for in 36 Code of Federal Regulations (CFR) 215.4, this action is not subject to notice and comment procedures. 36 CFR 215.4 – The procedures for legal notice (§215.5) and opportunity to comment (§215.6) do not apply to: (a) Projects and activities which are categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) pursuant to FSH 1909.15, Chapter 30, section 31.

#### **IV. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS**

My decision will comply with all applicable laws and regulations. I have summarized some pertinent laws below:

Environmental Justice (EO12898) – This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement occurred for this project, the results of which I have considered in the decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations.

This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act – This Act requires public involvement and consideration of potential environmental effects.

The entirety of documentation for this decision supports compliance with this Act.

Federal Land Policy and Management Act of 1976 (FLPMA) – This Act allows the granting of rights-of-way across National Forest System Lands. The regulations at 36 CFR 251 guide the issuance of permits, leases, and easements under this Act. Permits, leases and easements are granted across National Forest System lands when the need for such is consistent with planned uses and Forest Service policy and regulations.

This decision is consistent with this Act.

Alaska National Interest Lands Conservation Act of 1980 (ANILCA) – Section 1323a applies to all National Forest System lands. The section provides that, subject to terms and conditions established by the Secretary of Agriculture, the owners of non-federal land within the National Forest System shall be provided adequate access to their land.

This decision is consistent with this Act.

I have summarized the pertinent regulations below:

Title 36, Code of Federal Regulations, Part 251, Subpart B – This subpart provides direction for special uses management on National Forest System lands, including guidance pertaining to the special-use process; terms and conditions of use; rental fees; fee waivers; termination, revocation, suspension, and modification of existing authorizations; and permit administration.

Title 36, Code of Federal Regulations, Part 251, Subpart D – This subpart governs procedures by which landowners may apply for access across National Forest System lands, the terms and conditions that govern any special use authorization that is issued by the Forest Service to permit such access, and the criteria that authorized officers must consider in evaluating such applications.

**V. ADMINISTRATIVE REVIEW AND APPEAL**

This Decision Memo is not subject to the appeal procedures for National Forest System projects and activities pursuant to 36 CFR 215.12(f), Decisions Not Subject to Appeal.

**VI. IMPLEMENTATION DATE**

This decision may be implemented immediately.

**VII. CONTACT PERSON**

Further information about this decision can be obtained from Gordon L. Haase at the Huron Shores Ranger Station, 5761 North Skeel Avenue, Oscoda, Michigan; Telephone: (989) 739-0728; TTY: (989) 739-0806; FAX: (989) 739-0347; email [ghaase at fs.fed.us](mailto:ghaase@fs.fed.us).

**VIII. SIGNATURE AND DATE**

I have concluded that this decision qualifies for categorical exclusion from documentation in an environmental impact statement or environmental assessment as identified in 36 CFR 220.6(e) category 15.

“Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.”

It is my finding that there are no extraordinary circumstances which may result in significant individual or cumulative effects on the quality of the human environment.

This project is consistent with the Forests’ approved Land and Resource Management Plan.

My conclusions are based on information presented in this document and the entirety of the Project Record.

/s/ Barry Paulson  
BARRY PAULSON, Forest Supervisor

Dated: January 23, 2009

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