

3.13 SPECIAL USE ROADS

3.13.1 Summary

Under Alternative 1 (No Action), the non-federal land owners would not have legal access across federal land. The proposal for special use rights-of-way are the same under all action alternatives (Alternatives 2, 3 and 4). All action alternatives would result in an increase of special use roads administered by converting approximately 3.32 miles of unclassified roads (encumbering 9.08 acres of federal land) to special use roads within the Superior National Forest. The special use rights-of-way proposals analyzed would provide reasonable access across federal land for the “reasonable use and enjoyment” of the non-federal land or recreation residences located on federal land.

3.13.2 Introduction

Under authority of the Organic Administration Act (OAA) of June 4, 1897 and the Federal Land Policy and Management Act (FLMPA) of October 21, 1976, the use of National Forest land for access to non-federal land can be granted under the auspices of a special use authorization (Title V of the FLMPA). The landowner’s statutory right of access is limited to that which is adequate to secure to the owner the reasonable use and enjoyment of the subject non-federal lands across federal land. The right of access is also subject to the reasonable rules and regulations of the Secretary of Agriculture (36 CFR 251). The primary purpose is to provide the most reasonable access to non-federal land in accordance with the FLPMA and Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980.

The Forest Plan desired condition is for non-federal landowners to have reasonable access to their land (Forest Plan, p. 2-47). An attempt was made to contact all known non-federal land owners utilizing unclassified routes within the Superior National Forest who may have a statutory right for access across the federal land. A Forest Plan objective is to attempt to meet demand for special use activities when consistent with the Forest Plan direction and when the proposed use cannot be accommodated on non-National Forest land (Forest Plan, p. 2-52).

3.13.3 Analysis Methods

The overall position of the Forest Service, when identifying the preferred route, is to select a route that would serve the most land owners and encumber the least amount of federal land with the least impact to the environmental resources.

3.13.4 Analysis Area

The analysis area is the special use roads considered in the Alternatives. The time scale used for the analysis of direct and indirect effects is 10 years. This time scale is chosen because it is reasonable to assume that all proposed projects would be implemented by this time and expected effects have occurred. The time scale for cumulative effects is 15 years, looking back 10 years into the past, and 5 years. This is also an appropriate time scale for cumulative effects because it allows for the most realistic prediction of reasonably foreseeable future projects.

3.13.5 Affected Environment

The Superior National Forest currently administers approximately 495 special use access authorizations of which the majority are long-term and will likely continue into the foreseeable future. In general, these permits provide road access to private residences or recreation residences located on federal land.

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The authorizations range from approximately 20 feet to 2 miles in length, with a total length of 168 miles, encumbering 408 acres of federal land.

Special use authorizations for utility corridors have been issued in the past and are considered long-term. The majority of the utility rights-of-way authorized over the past ten-year period were for buried cable, although aerial cable was allowed when burying the cable was not feasible.

Any future rights-of-way requests that involve federal land within the Superior National Forest and pass the initial application screening would be analyzed in separate future analyses. Upon receipt of a request, the authorized officer shall screen the proposal to ensure that the use meets the minimum requirements applicable to all special uses [CFR 254.54 (e)]. This would include new utility corridor right-of-ways and access routes requests, and newly identified encroachments.

Environmental Consequences

3.13.6 Direct and Indirect Effects

Alternative 1 (No-action)

If Alternative 1 were selected, the 14 road special use requests for access across federal land would be denied. See Table 3.13-1 for information on the 14 special use requests. For special use requests *SUP-K1* through *K5*, *K7*, *K8*, *K12*, and *SUP-LAU4* federal land cannot be reasonably avoided. With the current information available, federal land cannot be reasonably avoided and the Forest Service would be in violation of the Alaska National Interest Lands Conservation Act (ANILCA).

It may be possible to locate the state special use request identified as *SUP-K8* to come directly south off County Road 404 in Section 28 or head in a southwesterly direction from County Road 404 in Section 27. However, this would require new construction through rough terrain. It may also be possible to come from Township Road 4501 in Section 27 and utilize an old winter route (used in the 1930s and briefly again from 1985-1987) which for the most part goes through a wetland and is currently flooded by beavers, in addition portions of this route would require new construction and cross in close proximity to a private residence. The route requested is an existing old winter roadbed used in the recent past on a temporary basis by the Forest Service (1990-1992), state (1993-1997), and a private landowner (1996-1997).

For special use requests *SUP-K6*, *K9*, *K10*, *K13*, and *LAU4* the existing unauthorized roads have been used to access the respective non-federal land for the past 38-78 years. The users may choose to relocate the unauthorized road onto non-federal land. They would need to comply with all applicable state, county, and federal laws. In most of these cases to do so would impact adjacent non-federal land with new road construction across wetlands and/or rough, steep terrain. In addition, in most of these cases to relocate the road would require a longer route to avoid the federal land and/or to accommodate the terrain. If the unauthorized road was relocated, the portion abandoned on federal land would have to be decommissioned per Superior National Forest Land and Resource Management Plan direction. See the project file for further descriptions of potential alternatives to relocate the unauthorized road onto non-federal land.

SUP-K11 (Snowbank Beach Road): Since the initial public scoping of this project, this route has been relocated onto non-federal land and is no longer needed to provide access to the non-federal land. The unclassified route would not be decommissioned per the Superior National Forest Land and Resource Management Plan direction.

Alternatives 2, 3 and 4

As required by 36 CFR 251.112, the following five items were analyzed for each special use route and are summarized in Table 3.13-1. See the Alternative Maps for location of routes.

- Intended mode of access to non-federal land.
- Uses of the non-federal land for which the special use authorization is needed.
- Historic access to non-federal land (if any).
- Rights of access that may exist over non-federally owned land.
- Reasons why these means of access do not provide adequate access.

The following is a brief description of the three proposed special use access requests to State land:

SUP-K4: Federal land cannot be reasonably avoided to access State land in Township 63 North, Range 9 West, Section 2. This route would cross approximately 0.51 mile of federal land on an existing roadbed. The request is for long-term seasonal access.

SUP-K5: Federal land cannot be avoided to access State land in Township 61 North, Range 11 West, Section 5. This route would cross approximately 0.37 mile of federal land on an existing roadbed. The beginning portion of the road is Forest System Road 1900. The request is for long-term seasonal access.

SUP-K8: Federal land cannot be reasonably avoided to access State land in Township 63 North, Range 13 West, Sections 27 and 28. The route requested is an existing roadbed used in the past for temporary winter access by the Forest Service (1990-1992), state (1993-1997), and a private landowner (1996-1997). The proposed route would cross approximately 0.69 miles of federal land on an existing roadbed. The State would need to obtain permission from the non-federal land owner for the beginning portion of the road, prior to the Forest Service granting a long-term authorization. The request is for long-term winter access.

The Recreation Residences were established in the late 1940s on federal land and are administered under a Term Recreation Residence Special Use permit (RR Permit). The RR Permit is issued specifically for recreation residence purposes, with a 20-year term. Access authorizations are issued under a different authority and were never included in the RR Permit.

SUP-K1 (Timber Bay Lodge Road): Federal land cannot be reasonably avoided to access federal recreation resident sites in Township 61 North, Range 12 West, Section 31. This unauthorized route crosses approximately 0.1 mile of federal land on an existing roadbed. The beginning portion of the road is Forest System Road 131. The request is for long-term, year-round, legal access.

SUP-K2 (Plantation Road): Federal land cannot be reasonably avoided to access federal recreation resident sites in Township 61 North, Range 12 West, Section 32. This unauthorized route crosses

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approximately 0.36 mile of federal land on an existing roadbed. The beginning portion of the road is Forest System Road 132. The request is for long-term, year-round, legal access.

SUP-K3 (Bear Road): Federal land cannot be reasonably avoided to access federal recreation resident sites in Township 61 North, Range 12 West, Section 32. This route would cross approximately 0.13 mile of federal land on an existing roadbed. The users of the road would need to obtain permission from the private land owner for the beginning portion of the road, prior to the Forest Service granting a long-term authorization. The request is for long-term, year-round, legal access

While conducting the transportation roads analysis for proposed projects in the area we became aware of the unauthorized use of the roads listed below. Many have been in use providing passenger vehicle ingress to and egress from private land for 40 years or more. Some may be the result of the relocation of a county route, lapse in the re-issuance, transfer of a previous authorization, or an oversight.

SUP-K6 (Beel Road): Federal land cannot be reasonably avoided to access non-federal land in Township 63 North, Range 12 West, Section 13. This unauthorized route crosses approximately 160 feet of federal land on an existing roadbed. The request is for long-term, year-round, legal access. The route requested is an existing road that is apparent on aerial photos dated 1970 and apparently has provided access for the past 38 years. St. Louis County is proposing to re-work the intersection of the Beel Road and County Road 990 (Cloquet Line) to improve the safety of this intersection; however federal land is still proposed to be involved. The re-construction of County Road 990 is being addressed in a separate environmental analysis.

SUP-K7 (Canadian Border Outfitter Road): Federal land cannot be reasonably avoided to access non-federal land in Township 63 North, Range 10 West, Section 1. This unauthorized route crosses approximately 0.34 mile of federal land on an existing roadbed. The right-of-way would be 33 feet wide encumbering 1.36 acres of federal land. The route requested is an existing road that is apparent on aerial photos dated 1930 and apparently has provided access for the past 78 years. The request is for long-term, year-round, legal access.

SUP-K9 (Shady Lane): Federal land cannot be reasonably avoided to access non-federal land in Township 63 North, Range 11 West, Section 17. The route requested is an existing road that is apparent on aerial photos dated 1970 and has provided access for the past 38 years. This unauthorized route crosses approximately 0.21 mile of federal land on an existing roadbed. The right-of-way would be 33 feet wide encumbering less than 1 acre of federal land. The request is for long-term, year-round, legal access.

SUP-K10 (Onigum Trail): Federal land cannot be reasonably avoided to access non-federal land in Township 63 North, Range 12 West, Section 13. The request is to utilize approximately 0.11 mile of an existing road for ingress to and egress from private property. The right-of-way would be 20 feet wide encumbering less than 0.5 acre of federal land. The route requested is apparent on aerial photos dated 1930 and has provided access for the past 78 years. In addition the route requested was previously under a special use authorization from 1958-1987, at which time it was not transferred or re-issued. The request is for long-term, year-round, legal access.

SUP-K11 (Snowbank Beach Road): Since the initial public scoping of this project this route has been relocated onto non-federal land and is no longer needed to provide access to the non-federal land in Township 64 North, Range 9 West, Section 35. The unclassified route is proposed to be decommissioned per the Superior National Forest Land and Resource Management Plan direction.

SUP-K12: Federal land cannot be reasonably avoided to access non-federal land in Township 64 North, Range 12 West, Section 24. The request is to utilize approximately 0.3 mile of an existing old roadbed for ingress to and egress from private property. The right-of-way would be 20 feet wide encumbering less than 1 acre of federal land. This route was previously authorized under a temporary special use permit for winter access to the non-federal land from 1995 to 1997. Recently the land has exchanged ownership and the new owners are requesting long-term, year-round, legal access.

SUP-K13 (One Pine Estates Road): Federal land cannot be reasonably avoided to access non-federal land in Township 62 North, Range 12 West, Section 32. The request is to utilize approximately 0.1 mile of an existing road for ingress to and egress from private property. The right-of-way would be 33 feet wide encumbering less than 0.5 acre of federal land. This route was originally part of St. Louis County Highway 21 and this abandoned portion of the Highway continued to provide access to the private land on the north side of One Pine Lake since the Highway was relocated in the 1940's or 1950's. The request is for long-term, year-round, legal access.

SUP-LAU4: Federal land cannot be reasonably avoided to access non-federal land in Township 56 North, Range 12 West, Section 15. The request is to utilize approximately 0.07 mile of an existing road for ingress to and egress from private property. The right-of-way would be 20 feet wide encumbering less than 0.5 acre of federal land. This route has been used as an access since 1970 and has provided access for the past 38 years. The request is for long-term, year-round, legal access.

All action alternatives would result in an increase of special use roads administered by converting approximately 3.32 miles of unclassified roads (encumbering 9.08 acres of federal land) to special use roads within the Superior National Forest. The special use authorization(s) would meet the requirements of the laws and regulations that apply to National Forest Management. Forest Service regulations require the applicant to:

- Conform to plans, specifications, written stipulations based on this environmental analysis prior to construction or improvement of access route.
- Pay any necessary fees.
- Post any necessary bonds.
- Secure any State or federal permits or authorizations required by law.

Special use access routes would be monitored to insure authorized users are in compliance with the terms and conditions of the associated special use authorization. The state special use access route (SUP-K8) would be posted closed to non-logging traffic during harvest and until reforestation activities are complete. During extended periods of non-operation during the winter the route would not be plowed. Winter routes would not be conducive to use by ATVs, OHVs, or highway vehicles.

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3.13.7 Cumulative Effects

As a result of efforts to identify unclassified roads, 11 unauthorized access routes to private land and county and state leases were identified. These unauthorized access routes are deferred from this analysis. These unauthorized access routes could potentially become a special use access in the future. A decision on the deferred unauthorized access routes and any new requests for access will be analyzed in separate future analyses. These 11 potential special use access routes could convert approximately 3.71 miles of unclassified roads (encumbering 8.98 acres of federal land) to special use roads within the Superior National Forest. This could result in total conversion of approximately 7.03 miles of unclassified roads (encumbering 18.06 acres of federal land) to special use roads in the foreseeable future. There will be no cumulative effects to special use roads. The effects of the special use roads on other resources are disclosed in those resource sections of this document.

3.13.8 Conclusion

Under Alternative 1 (No Action), the non-federal land owners would not have legal access across federal land. The proposal for converting existing unclassified roads to special use roads are the same under all action alternatives (Alternatives 2, 3 and 4). Therefore, the effects would be the same under all action alternatives. All action alternatives would result in an increase of special use roads administered by converting approximately 3.32 miles of unclassified roads (encumbering 9.08 acres of federal land) to special use roads within the Superior National Forest. The special use rights-of-way proposals analyzed would provide reasonable access across federal land for the “reasonable use and enjoyment” of the non-federal land or recreation residences located on non-federal land.