

DECISION MEMO
Wesley Woods Renewal Project
USDA Forest Service, Eastern Region
Allegheny National Forest
Bradford Ranger District
McKean County, Pennsylvania

I. DECISION TO BE IMPLEMENTED

A. Description of Decision

My decision is to combine two existing outfitter guide special use permits and renew them under one special use permit. The permits issued to Wesley Woods, Inc. have expired and are in need of renewing. Special Use Permit BRD49 authorizes horseback outfitting and guiding services using 30 miles of roads and connector trails on the Allegheny National Forest. Special Use Permit BRD60 authorizes the outfitting and guiding services for a 50-mile hike on the North Country National Scenic Trail and rock climbing/rappelling at Rim Rock and Minister Creek (Exhibit A - Vicinity Map attached). Services at Rimrock will be conducted outside the prohibited area (Exhibit B – Map attached). These services will be provided on an average of 10 days during the summer months as specified in an annual operation and maintenance plan submitted to the authorized officer prior to providing the services. The proposed routes pass through MA's 2.2, 2.1, 8.2, 3.0, 8.3, 6.1, 5.2, 7.2 (Record 1). These two special use permits will be renewed as BRD155.

The decision will be implemented through the issuance of a special use authorization that meets the requirements of the decision and Forest Service regulations. Forest Service regulations require the applicant to: submit an operation and maintenance plan that complies with the decision requirements, pay any necessary fees, comply with Civil Rights requirements, post any necessary bonds, secure any state or federal permits or authorizations require by law, and provide proof of liability insurance.

It is also my decision that a Special Use Fee will be charged for this Special Use Permit because Wesley Woods, Inc. does not qualify for a fee waiver in accordance with Code of Federal Regulations Title 36 part 251, section 57(b)(1) (CFR 251.57(b)(1)) because they charge a fee for services provided.

Mitigation Measures to be Implemented are as follows:

- Any significant change or modification to the activities proposed under this permit must be reviewed again by the Bradford District Wildlife Biologist to ensure no further mitigative actions are required.
- Each year, the applicant must contact the Bradford Ranger District at least four weeks prior to conducting the rappelling/climbing activity, to arrange an on-site meeting and identify the exact climbing locations at both Rimrock and Minister.
- BRD wildlife personnel must survey the sites and determine wildlife use prior to the applicant conducting any climbing activities each year.

- If the presence (or activity for any) of a wildlife species is found, no climbing will be allowed on that boulder complex/outcrop that year.
- Do not collect, move or disturb any wood turtles that participants may encounter in pursuit of permit activities.
- Alternative sites within the Minister or Rimrock sites may be identified, surveyed and cleared for use if the primary location is occupied.
- All activity should cease immediately if any of the species listed in BE/BA (report 2) are noted by applicant or participants. The observer should then notify the BRD wildlife staff. The BRD will conduct further surveys and recommend appropriate action. Specifically, report the location of any wood turtle sightings to BRD wildlife personnel.
- Do not use any permanent or temporary anchors that require drilling or cause the displacement of rocks at any site.
- Use existing roadways, skid trails or travel paths for horseback riding, hiking and access to climbing locations whenever possible. This will minimize disturbance to other wildlife species and their habitats.
- The proposed work will be completed in a timely manner to reduce disturbance to and displacement of fish and wildlife species.

B. Purpose of Decision

The decision is in response to a request to renew existing outfitter and guide special use permits. The decision ensures Forest Plan direction is carried out while protecting the environment. Permittees are required to meet the same environmental standards as the Forest Service.

C. The ANF Land and Resource Management Plan (LRMP)

The LRMP and Resource states: *“Provide a diverse range of high quality, sustainable recreation opportunities consistent with public demand and resource capability emphasizing locally popular recreation places and those important to the tourism industry.”* (p. 13) and *“...All existing and established permitted uses of this type will remain suitable and may be renewed during the plan period”* (p. 37).

II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in Forest Service Handbook (FSH) 1909.15 sections 31.12 or 31.2, and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment.

My conclusion is based on a review of the record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk.

I have concluded that this decision is appropriately categorically excluded from documentation in an environmental impact statement or environmental assessment as it is a routine activity within a category of exclusion and there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative effect on the quality of the human environment. My conclusion is based on information presented in this document and the entirety of the record.

A. Category of Exclusion

The decision is within the category of exclusion 31.2.15 that includes, “*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

1. Threatened and Endangered Species or Their Critical Habitat -

The Endangered Species Act requires that federal activities 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. In accordance with Section 7(c) of this Act, a list of the listed and proposed, threatened or endangered species that may be present in the project area was requested from the U.S. Fish and Wildlife Service. It was determined that this decision will have ‘no effect’ on listed species or their critical habitats. (Record 2).

2. Floodplains, Wetlands, or Municipal Watersheds -

Floodplains: 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 [100-year recurrence] or greater chance of flooding in any one year.”

The decision does not include occupancy or modification within floodplains.

Wetlands: 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. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.”

There will be no destruction or modification of wetlands. Use will take place on already established, hardened routes.

Municipal Watersheds: Municipal Watersheds Are Managed Under Multiple Use Prescriptions In Land And Resource Management Plans. Municipal watersheds on the ANF are the Big Mill Creek – Ridgway Reservoir and the West Branch Tunaungwant – Brad Reservoir. The decision area is not within a municipal watershed.

3. Congressionally Designated Areas -

Wilderness:

The decision involves activities adjacent to the Hickory Creek Wilderness Area. No occupancy and minimal impacts will occur. The decision will not result in Wilderness-related impacts.

Wilderness Study Areas:

This decision includes activity partially within a Wilderness Study Area (Record XX). The portion of the decision within this area includes rock climbing/rapelling. These activities will be minimal and not detract from potential classification as Wilderness. This decision will not result in significant impacts on the Wilderness Study Area.

National Recreation Areas:

The only National Recreation Area on the Forest is the Allegheny National Recreation Area. A portion of the North Country National Scenic Trail is located in this area. This has been validated by map and site-review (Record 1). The trail is well established in this area, and use of the trail for this purpose is consistent with the goals and objectives for which the trail and the National Recreation Area were established. The decision area will occur on existing hardened surfaces. The decision will not adversely affect the National Recreation Area.

Wild and Scenic Rivers

There are two Wild and Scenic Rivers, the Allegheny and Clarion Rivers, on the Forest. The permitted area is not within the corridor of either river. This decision will have no adverse effect on the Wild and Scenic Rivers.

4. Inventoried Roadless Areas -

The North Country Trail passes through an inventoried roadless area (Record 3). However, no new road construction will occur as part of this decision. This decision will not result in significant impacts on inventoried roadless areas.

5. Research Natural Areas -

A small section of the North Country Trail is adjacent to a Research Natural Area. The decision will not affect Research Natural Areas (Record 1).

6. American Indian and Alaska native religious or cultural sites -

Additionally, the Federal government has trust responsibilities to Tribes under a government-to-government relationship to insure that the Tribes' reserved rights are protected. The ANF Programmatic Agreement with State Historic Preservation Office (SHPO) and the ACHP states that activities such as those in this project that do not have the potential to affect access to or use of resources by Native Americans are considered an "exempt undertaking." No resources are affected (Record 4).

7. 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 of Historic Places. 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 on agency undertakings. The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered on federal lands. It affords protection of archaeological resources and sites that are on public and Indian lands. The Native American Graves Protection and Repatriation Act covers 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 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 (Record 4). A 'no properties affected' determination was made.

8. No other extraordinary circumstances related to the project were identified.

III. PUBLIC INVOLVEMENT

Public involvement included posting on the ANF web site on October 17, 2008, internal specialists scoping, and direct mailings to the Forest NEPA mailing list. Two comments were received in favor of the renewal of the permit.

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 ones below.

Federal Land Policy and Management Act - This Act allows the granting of easements 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.

Forest Plan Consistency (National Forest Management Act) - This Act requires the development of long-range land and resource management plans. The Allegheny National Forest LRMP was developed, as required by the Act. The Act requires all projects and activities be consistent with the LRMP. The LRMP has been reviewed in consideration of this project. This decision is responsive to guiding direction contained in the LRMP, as summarized in Section I of this document. This decision is consistent with the standards and guidelines contained in the LRMP.

Endangered Species Act - See Section II, Item B1 of this document. (Record 2)

Sensitive Species (Forest Service Manual 2670) - This Manual direction requires analysis of potential impacts to sensitive species, those species for which the Regional Forester has identified population viability is a concern. On the Allegheny National Forest, the Regional Forester approved the sensitive species list. Potential effects of this decision on sensitive species have been analyzed and documented in a Biological Evaluation (Record 2). This decision will have “no impact” on sensitive species.

Clean Water Act – The intent of the Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act through the use of Best Management Practices. This decision incorporates Best Management Practices to ensure protection of soil and water resources.

Wetlands (Executive Order 11990) - See Section II, Item B2 of this document.

Floodplains (Executive Order 11988) - See Section II, Item B2 of this document.

Clean Air Act – An air analysis was described in the LRMP (FEIS p 3-55) and a Review of Information OGM Activity and Air Quality Allegheny National Forest Supplemental Information Report (SIR) supplemented the 2007 LRMP FEIS. The decision will have a no effect determination.

Federal Cave Resources Protection Act - This Act is to secure, protect, preserve, and maintain significant caves, to the extent practical. No known cave resources will be affected by this decision.

National Historic Preservation Act - See Section II, Item B6 of this document.

Archaeological Resources Protection Act - See Section II, Item B7 of this document.

Native American Graves Protection and Repatriation Act - See Section II, Item B7 of this document.

Wild and Scenic Rivers Act - See Section II, Item B3 of this document.

Environmental Justice (Executive Order 12898) - 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 this 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.

V. ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This decision is not subject to a administrative review or appeal pursuant to 36 CFR 215.12(f) and the Earth Island Institute v. Ruthenbeck Ruling of October 19, 2005. This decision is subject to appeal pursuant to 36 CFR 251 by those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands. No adverse comments were received, therefore, this decision is not appealable.

VI. IMPLEMENTATION DATE

This decision may be implemented immediately.

VII. CONTACT PERSON

Further information about this decision can be obtained from Cindy Hervatin during normal office hours (weekdays, 8:00 a.m. to 4:30 p.m.) at the Bradford Ranger District office, 29 Forest Service Drive, Bradford, PA 16701; Phone: voice 814-363-6077; Fax: 814-362-2761; e-mail: chervatin@fs.fed.us).

VIII. SIGNATURE AND DATE

/s/ Anthony V. Scardina
ANTHONY V. SCARDINA
Bradford District Ranger
Allegheny National Forest

12/03/2008
Date

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's target center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-w, Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250-9410 or call 202-720-5964 (voice or TDD).

USDA is an equal opportunity provider and employer.