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Forest Service
Southern Region

June 2015



Draft Decision Notice and Finding of No Significant Impact

Laurel Creek Property Owners Association Access Across National Forest System Lands Project

National Forests in North Carolina
Nantahala National Forest
Tusquitee Ranger District
Clay and Cherokee Counties, North Carolina

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and
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Decision and Rationale

Draft Decision

Based upon my review of the alternatives, I have decided to select **Alternative B** (proposed action) of the Laurel Creek Property Owners Association Access Across National Forest System Lands Project (June 2015 Environmental Assessment). The Selected Alternative will grant a special use authorization to the Laurel Creek Property Owners Association (LCPOA) allowing passenger vehicle access across National Forest System lands to their property at the headwaters of Laurel Creek for their stated purpose of ingress and egress to construct, use, and enjoy four primitive cabins.

- The special use authorization will grant access beginning at the point where Rockhouse Branch Road (Forest Service Road (FSR) 340A) leaves Fires Creek Road (FSR 340) and continues up Phillips Ridge Road (FSR 340A1) to its end point. From the end point of FSR 340A1, the access crosses National Forest System lands for approximately one third of a mile to the LCPOA property.
- The special use authorization will allow the LCPOA to make improvements to FSR 340A1 and to build a segment of new road from the end of FSR 340A1 to their property to enable access by passenger vehicles, providing year-round access to the tract of private land by the LCPOA.

Scope and Limitations of the Access Application

The scope and limitations of the access are outlined in the Environmental Analysis (EA) (Section 1.9.4, Chapter 1). In summary, the scope and limitations include:

- The Forest Service will grant the special use authorization conditional upon (1) the LCPOA's compliance with all applicable Federal and State laws, such as but not limited to, the North Carolina Sediment Control Act, the Clean Water Act, and the Endangered Species Act and (2) the LCPOA's receiving (a) all necessary permits and waivers by the North Carolina Department of Environmental Quality and (b) all necessary permits and waivers by the United States Army Corps of Engineers.

- The special use authorization will not include utilities. If the LCPOA wishes to have electrical service at the property in the future, the LCPOA will have to apply for a utilities access and special use authorization from the Forest Service and go through a separate EA for the utilities application.
- The special use authorization will not extend to hauling logs. If the LCPOA wishes to conduct timber harvesting activities at the property in the future, the LCPOA will have to apply for a haul permit to transport logs across Forest Service roads.
- The special use authorization will not allow the LCPOA to engage in commercial activities at the property. If the LCPOA wishes to engage in commercial activities in the future, the LCPOA will have to apply for a separate special use authorization that includes commercial uses, go through a separate EA process, and comply with the National Forests in North Carolina (NFsNC) *General Guidelines for Road Construction – Roads Accessing More than Five Homes and Commercial Buildings*.
- The LCPOA will be responsible for the cost of any improvements necessary to upgrade any sections of the existing Forest Service roads to year-round standards and will also be responsible for all costs associated with constructing the new access.
- The LCPOA will be responsible for maintaining existing Forest Service roads to Forest Service standards for passenger vehicles for the duration of the special use authorization.
- FSR 340A will continue to remain open to public vehicular use. FSR 340A1 will continue to remain closed to public vehicular use. Both roads will remain open to use by hikers and horseback riders to the boundary between National Forest System lands and the LCPOA property.

Design Criteria

Design criteria are outlined in the EA (Section 2.3, Chapter 2). In summary, the design criteria include:

- Wherever the LCPOA will have to establish a new road prism and new cut and fill slopes to access their property, the standards in the NFsNC *General Guidelines for Road Construction – Single Lane Road with Turnouts – Five Homes or Less* will be applied.
- Wherever the LCPOA will have to apply reconstruction and reconditioning activities to existing Forest Service roads, including any work that is required to restore the road to a state where it meets the criteria set forth in NFsNC *General Guidelines for Road Construction – Single Lane Road with Turnouts – Five Homes or Less*, some of the guidelines may be modified for reconstruction activities to minimize soil disturbance, to reduce the risk of acid runoff in areas where the access route crosses the Nantahala Formation, and to reduce the risk of sedimentation into nearby waters. In areas agreed upon with the NFsNC, where cut and fill slopes are stable and where road widths are currently less than 12 feet but are wide enough to accommodate emergency response vehicles and equipment used to perform road work and deliver materials, the LCPOA will not be required to engage in reconstruction activities that will result in ground disturbance solely to achieve the minimum design standards in the NFsNC *General Guidelines* because doing so would result in unnecessary soil disturbance.
- Improvements to existing roads and construction of new roads will be subject to design criteria to reduce the risk of acid runoff from acid-bearing rock. These design criteria include requirements adopted from the December 14, 2007 Memorandum issued by the North Carolina Division of Water Quality, *Assessing and Controlling Acid Rock Drainage on Projects Requiring Section 401 Water Quality Certification*. The specific requirements are listed on pages 26 and 27 of the Environmental Assessment (EA).
- During road reconstruction and construction, the following Best Management Practices (BMPs) will be implemented to stabilize the road prism and reduce the risk of sediment movement:
 - Limiting road grade to a maximum of 12% and limiting fill slopes to a maximum of 2H:1V and cut slopes to a maximum of 1H:1V (H = horizontal, V = vertical);
 - The construction of outslopped roadway for portions of road with grades up to 8% and the construction of rolling dips at frequencies appropriate for the road grades;
 - The construction of crowned and ditched roadway where the grade exceeds 8% and the

installation of relief culverts at spacings appropriate for the ditch grade;

- The design of culverts with capacity to carry the 50 year storm flow and have a minimum width of bankfull width where live water is crossed;
- The surfacing of the roadway using appropriate grade and depth of stone;
- The use of silt fences, mulch, and other measures to minimize sedimentation;
- Seeding exposed soil with native plants; and
- The installation of a slash filter wind row along the entire length of road work.

The three existing stream crossings and the eroded crossing at Hickory Cove Creek will be replaced with structures that provide passage for aquatic organisms and reduce the risk of road failure during flood events. Such structures could include bridges or open bottom arch pipes, sized to meet the bankfull width at a minimum. The existing plugged culverts will be replaced with crossings designed to pass the 50 year storm flow for those drainages.

Rationale

The purpose and need for the proposal are disclosed in Chapter 1, Section 1.3 of the June 2015 EA and respond to the LCPOA's application for a special use authorization across National Forest System lands. The Forest Service is required to respond to a formal request for transportation and utility systems and facilities on federal lands.

Title 36 CFR 251.110 through 251.114 - Access to Non-Federal Lands, establishes the procedures the Forest Service follows in evaluating proposals for access and defines the criteria, terms and conditions for the use of the access. As the land management agency responsible for managing the national forests, the Forest Service has the discretion to determine the location, design, type, and extent of the access to be granted across National Forest System lands.

The Forest Service has proposed and analyzed methods of access and the location of proposed access routes. The Forest Service has also disclosed the effects to the environment associated with each alternative consistent with The National Environmental Policy Act and with the Land and Resource Management Plan for the Nantahala and Pisgah National Forests based on the extent of the access.

In reaching my decision, I reviewed the purpose and need for the project and the alternatives considered in the EA. I then carefully weighed the effects analyses of the alternatives and the public comments received on the EA. The Laurel Creek Property Owners Association Access

Project Interdisciplinary Team (ID Team) conducted field surveys, database queries, and other localized analyses to determine effects the alternatives considered in detail could have:

- On recreation resources, including effects to trails in the analysis area;
- On scenery;
- On water quality and hydrology;
- On the potential for encountering acidic rock;
- On soils;
- On the potential for erosion and sedimentation;
- On air quality;
- On cultural and historic resources;
- On biological resources, including aquatic organisms, botanical organisms, and terrestrial wildlife;
- On the area's ecology, including threatened, endangered, sensitive and forest concern species
- On native brook trout streams and rare aquatic species;
- On wildlife habitat.

I am selecting Alternative B because it achieves the purpose and need for the project. Compared to two other access routes considered in detail, the selected alternative results in the fewest acres impacted, the smallest amount of new road construction in the Nantahala geologic formation, and results in a road system with smaller cut and fill slopes.

Other Alternatives Considered

In addition to the Selected Alternative B, I considered three other alternatives in detail: *Alternative A – No Action*; *Alternative C – Access from the East*; and *Alternative D – Access from the North*.

Alternative A – No Action

The no action alternative provides a baseline for estimating the effects of the proposed action. Alternative A would grant no additional access beyond the existing non-motorized routes currently available to the LCPOA as described in Sections 1.9.1 and 2.3 of the EA.

I did not select Alternative A because 67% of similarly situated properties in the area are accessible by passenger vehicle (Section 1.9.2 of the EA). I therefore concluded that vehicular access is the method that constitutes reasonable use and enjoyment of the land based on contemporaneous uses per 36 CFR §251.114, paragraph a: *“The authorizing officer shall determine what constitutes reasonable use and enjoyment of the lands based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria.”*

Alternative C – Access from the East

This alternative would provide access to the LCPOA property from Big Stamp Road (FSR 427) for approximately 3.6 miles to its intersection with the Rim Trail and Rockhouse Creek Trail below Big Stamp, and the LCPOA would reconstruct the entire length of FSR 427 under this proposal. A new road segment approximately 1.6 miles in length would be constructed to access the inholding from the end of FSR 427.

I did not select Alternative C because this alternative would have resulted in 1.26 more miles of new road construction, 0.37 more miles of new road construction in the Nantahala Formation, would have been out of compliance with scenery standards in the LRMP, would have resulted in higher cut banks (65 feet), would have resulted in seven more acres of disturbance, and 72,000 more cubic yards of excavation than Alternative B.

Alternative D – Access from the North

This alternative would provide access to the inholding from the north, beginning at the gate that accesses FSR 6148A and continuing to a point approximately 1.3 miles from the gate at FSR 6148A. From that point, a new road segment approximately 3.5 miles in length would be constructed to Forest Service standards for passenger vehicles to access the inholding. The new road segment would approach Will King Gap on an unnamed ridge east of Nancy Hawkins Branch and then turn east above the headwaters of Aaron Creek, Alfred Creek, and Colvard Creek to access the inholding from its northwest corner at the rim of the Valley River Mountains.

I did not select Alternative D because this alternative would have resulted in 3.16 more miles of new road construction, 0.47 more miles of new road construction in the Nantahala Formation, would have been out of compliance with scenery standards in the LRMP, would have resulted in higher cut banks (80 feet), would have resulted in 43 more acres of disturbance, and 286,000 more cubic yards of soil excavation than Alternative B.

Alternatives Considered but not Analyzed in Detail

Four additional alternative routes for vehicular access were considered but were not analyzed in detail for reasons consistent with 40 CFR 1502.14 (Section 2.5 of the EA).

I did not consider granting access via an off highway vehicle (OHV) trail because OHV use is illegal on all Forest Service roads on the Tusquitee Ranger District.

Public Involvement

The proposal was provided to the public and other agencies for comment during a scoping period in April

and May 2008. This proposal has been listed on the NFsNC Schedule of Proposed Actions since July 2008.

An EA was released to the public for a formal 30-day Notice and Comment period in November 2011. A total of 62 comments on the EA were submitted to the Forest Service by members of the public and by representatives of state and federal agencies and non-governmental organizations.

These comments were reviewed by the ID Team which concluded that sufficient issues were raised to warrant revision of the EA. These include revisions to Section 1.9 (Federal Regulations – Access to Non-Federal Lands); consideration of additional alternatives; and expanded recreational and scenery analyses. The ID Team further determined that the revisions were substantial enough to require that the revised EA be released to the public for a second 30 day notice and comment period.

In December 2012 the revised EA was released to the public for a 30 day notice and comment period. Forty three persons, organizations, and agencies commented on the EA. I carefully reviewed and weighed all comments received during the 2012 notice and comment period and used them to guide my decision to grant access to the LCPOA in June 2013.

This decision was appealed on grounds that the Forest Service did not analyze in detail alternative access routes, particularly approaches from the north and east, and that the Forest Service had prematurely and improperly dismissed alternative routes from the north, east, and west. After review by the Regional Forester, the decision was remanded in August 2013. The LCPOA exercised their right to continue their application because a final determination on their application for access did not result from the June 2013 decision and subsequent appeal.

In October 2014 a new draft EA was released to the public for a 30 day notice and comment period. Forty persons, organizations, and agencies commented on the EA. I carefully reviewed and weighed all comments received during the development of this decision and used them to guide my decision. Comments are addressed in the EA and in the Response to Comments, Appendix 4.

Finding of No Significant Impact

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR §1508.27). Thus, an environmental impact statement will not be prepared. I base my findings on the following:

Context

For the proposed action and alternatives, the context of the environmental effects is based on the analysis of the biological, physical, and social conditions as presented in the EA.

There are approximately 52 miles of roads (open, closed, state, Forest Service) that result in approximately 85 stream crossings in the Fires Creek watershed. The access route authorized under Alternative B is approximately 3.84 miles in length, with 3.5 miles of that total consisting of partial reconstruction treatments to an existing road prism and the remaining 0.34 miles being new construction. Alternative B has twelve existing stream crossings and new road construction will require one new stream crossing. The project will result in a 0.65% increase to the road network in the Fires Creek watershed. The four stream crossings that will be rebuilt with structures designed to facilitate aquatic organism passage will improve conditions to almost 5% of the existing stream crossings and the one new stream crossing will increase the total number of stream crossings in the watershed by approximately 1%.

The physical, biological and social effects are limited to the project area and immediate adjacent areas, which are analyzed in Chapter 3 of the EA. All actions are consistent with the Land and Resource Management Plan, Nantahala and Pisgah National Forests and Amendment 5. All environmental effects are within the range disclosed in the Final Environmental Impact Statement for the Land and Resource Management Plan, Nantahala and Pisgah National Forests.

Intensity

Intensity is a measure of the severity, extent, or quantity of effects, and is based on information from the effects analysis of this EA and the references in the project record. The effects of this project have been appropriately and thoroughly considered with an analysis that is responsive to concerns and issues raised by the public. The agency has taken a hard look at the environmental effects using relevant scientific information and knowledge of site-specific conditions gained from field visits. My finding of no significant impact is based on the context of the project and intensity of effects using the ten factors identified in 40 CFR 1508.27(b).

1. Both beneficial and adverse effects have been considered (see EA, Chapter 3, Environmental Consequences, pages 34-114). Design criteria include actions to prevent or lessen adverse impacts of the decision (EA pages 25-27, Decision Notice pages 2 and 3).
2. There will be no significant effects on public health and safety and implementation will be in accordance

- with project design features (Chapter 2; Section 2.3; Chapter 3).
3. There will be no significant effects on unique characteristics of the area (historic and cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers or ecologically critical areas). Archaeological sites or other cultural resources found during the examination of the access routes by the Forest Service archaeologist will not be affected. There are no prime farm lands based on the type of soils and the topography in the area. Wetlands will not be impacted by the activities. The EA analyzed potential impacts to the recreation resources in the Fires Creek area (EA section 3.1). No ecologically critical areas were identified along the access route during project analysis by Forest Service specialists. (Chapter 3).
 4. The effects on the quality of the human environment are not likely to be highly controversial because there is no scientific controversy over the impacts of the project. Chapter 3 of the EA provides the scientific and analytical basis for the determination of effects to the physical, biological and social environment. Chapter 4 lists the Forest Service interdisciplinary team and other specialists who provided input and/or were consulted during analysis. Reference information is provided on pages 161-165 of the EA. Other federal and state agencies also provided input information during scoping and/or the review period or concurred with determinations made in the BA/BE and, where appropriate, in the review of the heritage reports. A review of the EA and the project record indicates that the best available scientific information was used to inform the environmental analysis. There is no known scientific controversy with respect to the effects of this action. The effects associated with this type of action are well understood and documented in scientific literature referenced in this EA and the Forest Plan FEIS.
 5. The National Forests in North Carolina has considerable experience with the types of activities to be implemented. The effects analysis shows the effects are not uncertain, and do not involve unique or unknown risk (see EA Chapter 3, Environmental Consequences, pages 34-114).
 6. The actions in this decision are not likely to establish a precedent for future actions with significant effects and do not represent a decision in principle about a future consideration (EA, 1.1 Introduction (page 2) and 2.2 Alternatives (pages 20-24)). Future decisions will require review under the National Environmental Policy Act including public notification.
 7. There are no significant adverse cumulative effects between this project and other past, present and reasonable foreseeable actions (see EA Chapter 3, Environmental Consequences, pages 34-114).
 8. The action will have no effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places (Section 3.7, Chapter 3). The action will also not cause loss or destruction of significant scientific, cultural, or historical resources (Section 3.7, Chapter 3). Heritage reports were completed for this project which found that two of the five archeological sites in the analysis area are eligible for the National Register of Historic Places. Alternative B will not affect these sites. The Forest Service consulted with the Tribal Historic Preservation Office (THPO) of the Eastern Band of Cherokee Indians and identified sites in the analysis area that have special significance to the Cherokee people. Alternative B will not affect these sites. The State Historic Preservation Office concurred with the reports on June 2, 2009 and the THPO concurred with the reports on December 2, 2011, March 8, 2013, and November 4, 2014.
 9. The October 2, 2014 Biological Evaluation (BE) (Updated June 19, 2015 - Appendix 2 of the EA) concluded:
 - A. This proposal may affect, but is not likely to adversely affect the Indiana bat (*Myotis sodalis*). This proposal will not affect (directly, indirectly, or cumulatively) any other proposed or listed Federal T&E species because none occur in the project area. The U.S. Fish & Wildlife Service concurred with the determinations of effect on April 21, 2011, June 24, 2013, and on November 3, 2014.
 - B. The project may impact individuals of the sensitive aquatic species *Cambarus parrishi*, but is not likely to affect the viability of the species across the forest.
 - C. The project may impact individuals of the sensitive plant species *Trillium rugelii*, but is not likely to affect the viability of the species across the forest.
 - D. The project may impact individuals of the sensitive terrestrial wildlife species *Callophrys irus*, *Plethodon teyahalee*, *Scudderia septentrionalis*, *Sorex palustris punctulatus*, and *Speyeria diana*, but is not likely to affect the viability of the species across the forest.
 10. The action will not violate Federal, State, or local laws or requirements for the protection of the environment. Applicable laws and regulations were considered in the EA. The action is consistent with the Land and Resource Management Plan for the Nantahala and Pisgah National Forests, Amendment 5 (cited as Amendment 5 below) and the Land and Resource Management Plan for the Nantahala and Pisgah National Forests, 1986-2000 (cited as LRMP below).
 - Forest-wide Direction and Management

Prescriptions

- Riparian Area Management, Water Quality, Aquatic Habitats (Management Area 18, page III-179, Amendment 5) and Soil and Water Management (pages III-19 - III-21, LRMP).
- Wildlife and Fish Resource Management, including Proposed, Endangered, Threatened, Sensitive, (PETS) and Forest Concern species - pages III-10 - III-12, LRMP.
- Dispersed Recreation Management - pages III-7 - III-8, LRMP; Trails Management - page III-9, LRMP.
- Visual Resource Management - pages III-6 and III-7, LRMP.
- Cultural Resource Management - pages III-4 and III-5, LRMP.
- Transportation System Management and Road Planning Construction and Maintenance - pages III-25 - III-28, LRMP.

Findings Required by Other Laws and Regulations

My decision to implement the Selected Alternative is consistent with the intent of the long-term goals and objectives listed on pages III-1 and III-2 of Forest Plan Amendment 5. My decision is also consistent with 36 CFR 251.110 - 251.114 - Access to Non-Federal Lands.

Forest Service Manual *FSM 7712* states: “Use travel analysis to inform decisions related to identification of the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands per 36 CFR 212.5(b)(1) and to inform decisions related to the designation of roads, trails, and areas for motor vehicle use per 36 CFR 212.51, provided that travel analysis is not required to inform decisions related to the designation of roads, trails, and areas for those administrative units and ranger districts that have issued a proposed action as of January 8, 2009.”

A Project Level Travel Analysis Process (TAP) was completed for this project. Recommended changes to the transportation system from the TAP were incorporated into the analysis.

Administrative Review and Contacts

This project is subject to the pre-decisional objection pursuant to 36 Code of Federal Regulation (CFR) §218

Subparts A and B. The opportunity to object ends 45 days following the date of publication of the legal notice in *The Asheville Citizen Times*. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an objection, and those wishing to object should not rely upon dates or timeframe information provided by another other source.

Objections will be accepted only from those who have previously submitted specific written comments regarding the proposed project during scoping or other designated opportunity for public comment. Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after designated comment opportunities §218.8(c).

The objection must contain the minimum content requirements specified in §218.8(d) and incorporation of documents by reference is permitted only as provided in §218.8(b). It is the objector’s responsibility to ensure timely filing of a written objection with the reviewing officer. All objections are available for public inspection during and after the objection process.

Written objections, including attachments, must be filed with: Reviewing Officer Tony Tooke, Regional Forester, 1720 Peachtree Street, Atlanta, GA 30309, 404-347-4177 (voice), 404-347-4821 (fax). The office business hours for those submitting hand-delivered objections are: 8:00 am to 4:30 pm Monday through Friday, excluding holidays. Electronic objections must be submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), or Word (.doc, .docx) to objections-southern-regional-office@fs.fed.us. Please state “Laurel Creek Access Project” in the subject line when providing electronic objections, or on the envelope when replying by mail. For further information on this decision, contact Stevenson Moffat, NEPA Team Leader, at 828-837-5152.

Implementation Date

36 CFR §218 Subparts A and B, if no objection is received, a final decision may occur on, but not before, the 5th business day following the close of the objection-filing period. The Decision Notice will not be signed subject to the provisions of §218.12 until all concerns and instructions identified by the Reviewing Officer in the objection response have been addressed.

KRISTIN M. BAIL
Forest Supervisor
National Forests in North Carolina

Date