



File Code: 1570-1

Date: July 12, 2007

Route To:

Subject: Appeal Reviewing Officer's Recommendation: Falls Creek Road Improvements and FRTA Easement Appeal #07-13-00-0005

To: Gloria Manning, Appeal Deciding Officer

I have reviewed the Decision Notice and Finding of No Significant Impact (DN/FONSI) for the Falls Creek Road Improvements and FRTA Easement signed by Greg Griffith, Deputy Regional Forester, Rocky Mountain Region on April 5, 2007. I have reviewed the Notice of Appeal of the Decision received from James McCann on May 29, 2007. This appeal was filed pursuant to 36 CFR 215. The project is located within the boundaries of the Columbine Ranger District, San Juan National Forest.

Background

Direction in 36 CFR 212.5 (b) (1) states, in part, "For each national forest....the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization and protection of [NFS] lands".

The Falls Creek Ranch Homeowners Association and the Forest Service have operated under a cooperative agreement for road maintenance since 1998, sharing maintenance costs at 71 and 29 percent, respectively. Driving conditions on approximately two miles of Forest Service Road (FSR) 065 have deteriorated and are becoming unsafe due to increasing traffic volume and snow removal. This road is primarily used for private access and is in need of repair beyond general maintenance.

The decision is to chip and seal this section of FSR 065, bringing it up to acceptable county standards. The proposed project would be cooperatively funded by La Plata County, the Falls Creek Ranch Homeowners Association, and the Forest Service. Once completed, jurisdiction for operation and maintenance of the road would transfer from the San Juan National Forest to La Plata County. This action meets the desired condition of eliminating the need to maintain a road used primarily for private access, while economically providing for public access to the national forest. General forest visitor traffic is expected to increase as a result of the increasing population in and around Durango, Colorado.

Appeal Summary

The appellant claims that:

1. The Forest Service failed to make a proper analysis in the EA study including not considering an adequate range of alternatives;



2. The Forest Service used inaccurate and incomplete road use data, including average daily traffic (ADT) counts and studies of national forest visitor use, resulting in an improper assignment of commensurate use; and
3. The Forest Service used inaccurate and incomplete cost information to support the Proposed Action.

Relief Requested

- Withdraw Notice of Falls Creek Road Improvements and FRTA; and
- Present a new environmental assessment (EA) using accurate and updated information concerning ADT counts and cost analysis figures to comply with NEPA 40 C.F.R. 1500, Section 1500.1 (b).

On June 7, 2007, Acting District Ranger Cynthia Hockelberg offered to meet with Mr. McCann to discuss and explore opportunities to resolve his appeal issues. Mr. McCann declined the invitation.

Issue 1: The Forest Service failed to make a proper analysis in the EA study including not considering an adequate range of alternatives.

Response: 40 CFR 1500.1 (b) states, “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail”.

The EA considers five alternatives. The No Action and Proposed Action alternatives were analyzed in detail. Three additional alternatives were eliminated from detailed study and are more fully discussed in the EA (page 15). These alternatives include:

1. Pave the road with asphalt rather than chip and seal.
2. La Plata County could apply for a FRTA Easement for an upgraded gravel road.
3. Install speed bumps on existing gravel road or as part of chip-sealed surface.

40 CFR 1502.14 (a) states...”explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” I find that the Forest complied fully with NEPA and that the range of alternatives is adequate and appropriate.

Issue 2: The Forest Service used inaccurate and incomplete road use data, including average daily traffic (ADT) counts and studies of national forest visitor use, resulting in an improper assignment of commensurate use.

Response: The Appellant maintains that the Forest Service underestimated private landowner use by 83 percent. The San Juan National Forest engineering staff conducted ADT counts on four separate days in July and August, 2004. The study concluded that traffic going to and coming from Falls Creek Ranch residents ranged from 77 to 92 percent. Their methodology and data counts are on file in the project record.

The *National Forest Roads and Trails Act of 1964, PL 88-657 (FRTA)*, Section 6, states, in part: “The Secretary may require the user or users of a road under the control of the Forest Service ... to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use” (16 USC 537) (535). This statute prohibits the Forest Service from requiring a user to reconstruct a road to requirements greater than its needs or requiring a user to contribute a share greater than its proportion of total use. However, a user may choose to fund the entire cost of maintenance or reconstruction of a road in which the Forest Service has a share. Additionally, improvement of National Forest System (NFS) roads that serve subdivisions should conform to appropriate county or local authority standards. Reconstruct or improve only after agreement is reached to transfer jurisdiction to appropriate local road authorities (FSM 7731.13).

The parties are not bound to base commensurate use on absolute use figures. La Plata County, the Falls Creek Ranch Homeowners Association and the San Juan National Forest have mutually designed this proposal. All parties have agreed to share in the improvement construction costs of FSR 065 at 41, 48 and 11 percent, respectively. Upon transfer of jurisdiction to La Plata County, annual maintenance responsibility will be theirs. The project record clearly documents these agreements.

Issue 3: The Forest Service used inaccurate and incomplete cost information to support the Proposed Action.

Response: The Forest engineering staff estimated costs based upon their professional opinion on approximately two miles of road. The Forest and La Plata County Public Works Department have agreed upon the costs presented in the estimate for the improvement and maintenance FSR 065. La Plata County conducted a separate public process regarding their consideration of funding. That process is not within the jurisdiction of the Forest Service and was not evaluated in our analysis.

Replacing the existing gravel surface with a new chip sealed surface will reduce maintenance costs. FSM 7703.3 does not include cost as a criteria regarding when a NFS road should be considered for transfer of jurisdiction to a local transportation authority. It should further be noted that the authorities of the Secretary of Agriculture to grant permanent easements over NFS lands in Section 2 of FRTA (16 USC 533) and to enter into cooperative financing arrangements with public agencies in Section 4 of FRTA (16 USC 535) establish no criteria for costs involved.

Appeal Recommendation

I recommend the decision made by the Rocky Mountain Deputy Regional Forester be affirmed. I do not support the Appellant’s request for relief to: 1) withdraw notice of the Falls Creek Road

Improvements and FRTA, and 2) prepare a new environmental assessment. I have found that the San Juan National Forest has complied fully with NEPA and that NFS roads authority, policy and direction was appropriately exercised and followed.

/s/ Corbin L. Newman, Jr.
CORBIN L. NEWMAN, JR.
Reviewing Officer for the Chief

cc: Greg Griffith, Diana Menapace, Tom Ford