

DRAFT
DECISION MEMO
SPECIAL USE AUTHORIZATION FOR AUSABLE TOWNSHIP
OSCODA SCHOOLS SIDEWALK
USDA-Forest Service, Eastern Region
Huron-Manistee National Forests, Tawas Ranger District
Iosco County, Michigan

I. DECISION

A. Description of Decision

My decision is to issue a 20-year permit to AuSable Township for installation and maintenance of an 8-foot wide sidewalk, 3237 feet long within 60 feet of the centerline of River Road between Grass Lake Road and Oscoda School's property.

The proposed pathway along River Road is a component of Oscoda Area School's "Safe Routes to School" Grant Program.

The path is a component of an overall plan of creating safer routes for walking and biking to the school. The path will also be used in conjunction with other recreational paths under consideration by both Au Sable and Oscoda Townships.

Primary use of the path will be during those times when there is not considerable snow and ice. The volume of bikes and walkers is not known at this time. There are no related structures or facilities associated with this path. Maintenance of the path will be coordinated by Au Sable Township. The Township will provide periodic clearing of the path, edging, patching, repairs and clearing of any overgrowth.

The proposal is consistent with the Forests' Land and Resource Management Plan, Management Area 4.2 (Pages III-4.1-11).

The project record demonstrates a thorough review of relevant scientific information, consideration of responsible opposing views, and, where appropriate, the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk.

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.

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

It is my decision that the special use fee will be waived for this special use authorization because the applicant does qualify for a fee waiver in accordance with the Code of Federal Regulations (CFR) Title 36 Part 251, section 57(b)(1) because AuSable Township is a Government Agency.

B. Purpose of Decision

The purpose of the decision is to respond to a new special use application that would allow reasonable access from private properties to a public school. No other access exists to these properties, except over other National Forest lands. This project would provide a safe pathway for students and teachers to walk or bicycle to school functions, providing a healthy alternative to motor vehicle transportation.

Use and maintenance of lands for access to private lands is considered a special use of National Forest lands and must be authorized by the terms of a special use permit. It is the responsibility of the Forest Service to ensure any potential environmental concerns associated with the use of the federal lands are mitigated. This Decision Memo documents the evaluation of effects the proposed action may have on the economic, social, physical, biological and other components of the ecosystem.

II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

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

- a. They are within one of the categories identified by the Secretary of the U.S. Department of Agriculture in Title 7 CFR Part 1b.3 or;
- b. They are within one of the categories identified by the Chief of the Forest Service in 36 CFR 220.6(d) or (e), and;
- c. There are no extraordinary circumstances related to the proposed action.

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. This project is to issue a 20-year permit to construct and maintain a sidewalk within a road right of way.

A. Category of Exclusion

The decision to issue a new easement qualifies for categorical exclusion from documentation in an environmental impact statement or environmental assessment as identified in 36 CFR 220.6(e)(3).

“Approval, modifications, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.”

B. Relationship to Extraordinary Circumstances

Steep Slopes or Highly Erosive Soils

Rolling to flat, the terrain is conducive to the activities included in the decision. The soils present are resistant to erosion. This is supported by topographical map review and field visits.

Similar past projects in this area were determined to have no significant soil-related impacts. To further ensure that soil-related impacts are minimized, Best Management Practices are incorporated.

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.

Biological Evaluations were completed by the District Biologist on May 30, 2008 and by the District Botanist on July 15, 2008. As a part of that process, a review was completed of the District's ETS database and the Michigan Natural Features Inventory occurrence records. It was determined that the proposed project would have no impact to endangered, threatened and sensitive plant or animal species or critical habitat.

The proposed special use permit is for a sidewalk next to a major existing public roadway. The scale of the project areas is small. Existing habitat conditions are common and can be found throughout the Huron Shores Ranger Station and the Huron-Manistee National Forests. There are no documented occurrences of federally listed species on the project areas. Implementation of the proposed activities would have no effect on Federally endangered and threatened species or their habitats and no impacts to Regional Forester Sensitive Species.

Therefore, it is the professional opinion of the District Biologist:

- That the Oscoda School's Safe Route project complies with the requirements of the Endangered Species Act.
- That there is no critical habitat within the project area, therefore actions will not jeopardize or adversely modify critical habitat of Federally listed species.
- That 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.
- That 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.
- And that the described actions will have no effect on any Federally Endangered or Threatened species, and no impact on any Regional Forester Sensitive Species.

In addition, it is the professional opinion of the District Botanist:

- That the described actions would have no impact on any plant Regional Forester's 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 (U.S. Fish and Wildlife Service, 200605, NWIDBA.CONUS_wet_poly: Classification of Wetlands and Deepwater Habitats of the

United States. U.S. Department of the Interior, Fish and Wildlife Service, Washington, DC. FWS/OBS-79/31., U.S. Fish and Wildlife Service, Branch of Habitat Assessment, Washington, D.C.).

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 (U.S. Fish and Wildlife Service, 200605, NWIDBA.CONUS_wet_poly: Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service, Washington, DC. FWS/OBS-79/31., U.S. Fish and Wildlife Service, Branch of Habitat Assessment, Washington, D.C.).

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 cited Acts. Identification studies were conducted within the area of potential effect 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’ assessment was made. Appropriate consultation with the Forest Archeologist, State Historic Preservation Officer and tribal government was completed.

Congressionally Designated Area

Wilderness - The National Forest System land is not in or near Wilderness. The only Wilderness Area within the Huron-Manistee National Forests is Nordhouse Dunes and it is located over 100 miles from the project areas.

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 – These roads are 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. The closest RNA, Hayes Tower, is over 30 miles from the from the project.

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 listed in the “Schedule of Proposed Actions” (SOPA) since 04/01/08. This publication is sent to interested parties and is posted on the Forests’ website [<http://www.fs.fed.us/r9/hmnf/pages/PlanningandProjects/SOPA.htm>]. No negative comments or inquiries regarding the proposal were received.

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.

Forest Plan Consistency (National Forest Management Act) - This Act requires the development of long-range land and resource management plans. The Huron-Manistee National Forests Land and Resource Management Plan was approved in March of 2006, as required by this Act. The

Act requires all projects and activities are consistent with the Plan. The Plan has been reviewed in consideration of this project. This decision is responsive to guiding direction contained in the Plan, as summarized in Section I of this document. This decision is consistent with the standards and guidelines contained in the Plan. The proposal is consistent with the Forests' Land and Resource Management Plan, (Chapter III-4.1-11).

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@fs.fed.us.

VIII. SIGNATURE AND DATE

I have concluded that this decision to issue a new permit qualifies for categorical exclusion from documentation in an environmental impact statement or environmental assessment as identified in 36 CFR 220.6(e)(3).

“Approval, modifications, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.”

It is my finding that there are no extraordinary circumstances which would affect my choice of categorical exclusion.

In addition, I have concluded there are no extraordinary circumstances related to the decision that may result in a significant individual or cumulative environmental effect.

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

BARRY PAULSON, Forest Supervisor

Dated: _____

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