

5. LANDS

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Definitions

1. The Forest Service should specify the reference of the word “treaty” in the DEIS.

Response: In the DEIS and FEIS the Forest Service is referring to treaties with American Indians.

2. The Forest Service should define the term “valid” when used to describe access to public or private land within roadless areas; and

3. The Forest Service should clarify the definition of “valid existing rights.”

Response: “Valid existing rights” was a term used in the DEIS to collectively describe rights that exist pursuant to reserved or outstanding rights or as provided by statute or treaty. We have removed the term valid existing rights from the FEIS. The FEIS refers to rights to use and occupy National Forest System (NFS) lands, as rights granted pursuant to a reserved or outstanding right or as provided by statute or treaty. The FEIS continues to use the term “valid” in reference to access pursuant to ANILCA or R.S. 2477 assertions. See Response 4.

Non-Federal Real Property Rights

4. The Forest Service should honor R.S. 2477 claims.

Response: Future claims and existing rights under Revised Statute (R.S.) 2477 will not be affected by this rule. There are exceptions to the prohibition on road construction and reconstruction in inventoried roadless areas. One exception is a road needed pursuant to reserved or outstanding rights or as provided by statute or treaty (section 294.12 of the proposed rule, paragraphs (a), (b), and (b)(3) on

DEIS p. A-27.) The DEIS disclosed that under all alternatives, the use and occupancy of NFS lands as part of a valid existing right would be accommodated in all inventoried roadless and unroaded areas (DEIS p. 3-140). The FEIS removed the collective term “valid existing rights.” See Response 3.

R.S. 2477 rights pre-date the designation of NFS lands, and rights must be exerted by a public road authority. Therefore, even though R.S. 2477 was repealed with passage of the Federal Land Management and Policy Act of 1976, the rights that preexisted the establishment of the national forest or grassland remain. The Forest Service recognizes valid R.S. 2477 rights-of-way as outstanding rights. See Response 43 in the Roads section.

5. The Forest Service should consider the impacts of the proposed rule on in-holdings, access to in-holdings and adjacent private, Tribal and non-Federal lands, including State Lands.

Response: The alternatives described in the DEIS are only applicable to National Forest System lands within inventoried roadless areas and unroaded areas as defined in the DEIS, Volume 1 and Volume 2 (Maps). Additionally, responsible officials may authorize road construction or reconstruction in inventoried roadless areas when needed pursuant to reserved or outstanding rights or as provided for by statute or treaty such as the Alaska National Interest Lands Conservation Act (ANILCA) (DEIS p. 3-140). These rights would continue to be recognized under all alternatives.

The DEIS further described (p. 3-140) that landowner access need not be the most direct, economical, or convenient route for the landowner. Pursuant to Title 36 Code of Federal Regulations 251, Subpart D, the authorized officer shall authorize such access deemed adequate to secure the landowner the reasonable use and enjoyment of their land. Adequate access may not be a road access in all cases, and alternative modes of access may be considered. If a landowner has an alternative mode of access, the Forest Service is not obligated to authorize access. Reasonable access would continue to be determined on a case-by-case basis under all alternatives. In addition, the cost to construct, reconstruct and/or maintain access to non-Federal lands is usually incumbent upon the non-Federal landowner and not the agency.

6. The proposed rule at section 294.12(b)(3) should be rewritten to reflect Forest Service authority to regulate (under ANILCA) the means of access to private in-holdings in inventoried roadless areas, to non-motorized means and deny applications to construct and reconstruct roads in these areas.

Response: The Forest Service recognizes valid ANILCA access as a statutory right. The DEIS (p. 3-140) identified that valid ANILCA rights of access would be recognized by the proposed rule. The regulations proposed in the rule cannot supersede rights granted in statute. See also Response 5 in this section.

Land Adjustments: Acquisition and Exchange

7. The Forest Service should acquire all in-holdings.

Response: The Forest Service has authority to acquire lands through direct purchase and equal value exchange. The Forest Service has an active land adjustment program working with voluntary, willing sellers. The analysis in the FEIS is expanded to address the effects of the proposed rulemaking on land acquisitions. However, the broad issue of acquiring in-holdings is outside the scope of this rulemaking and environmental analysis.

8. Any land trades from or to roadless areas should be critically analyzed by a team of qualified neutral professionals with the authority to pass or reject the proposal.

Response: The Forest Service agrees that a team of qualified professionals should analyze land exchange proposals. Therefore, Forest Service land exchange proposals are analyzed through the National Environmental Policy Act (NEPA) process. Pursuant to NEPA, the Forest Service analyzes land exchange proposals using an interdisciplinary team approach. These teams typically consist of professionals from various natural resource fields. In addition, the process provides for extensive public involvement and participation in providing input and comment prior to any decision to approve a land exchange. Land exchanges that may involve lands identified within the Roadless Area Conservation rule would continue to be critically analyzed under the agency's procedures pursuant to NEPA.

The FEIS analysis is expanded to address the effects of the proposed rule on landownership adjustments. However, the broad issue of the land exchange analysis process is not within the scope of this rulemaking and environmental analysis.

9. The Forest Service should consider the changes and hardships the eminent right of public domain caused in the Southern Appalachians and apply this to present private landowners.

Response: The Forest Service recognizes the impacts of exercising the right of eminent domain and does not propose invoking those rights with this rule. Exercising the right of eminent domain is not within the scope of this rulemaking and environmental analysis.

10. The Forest Service should do a better job evaluating and appraising properties for land exchanges.

Response: The Forest Service may use land exchange and direct purchase acquisitions to acquire non-Federal parcels within NFS lands to enhance existing natural resources, or reduce management costs to the public due to boundary irregularities or other in-holding issues. The FEIS analysis was expanded to describe the effects of the proposed rule upon landownership adjustments.

However, the broad issue of land adjustment practices of evaluation and appraisal is not within the scope of this rulemaking and environmental analysis.

11. The Forest Service should address the impacts of the proposed rule on private property values.

Response: The prohibition alternatives would not affect private property values. The past inventories and identification of roadless areas has already had the effect of increasing the market value of the private property if that property is within or adjacent to an inventoried roadless area. However, there would be no such effect if the private property does not share a common boundary with National Forest System lands.

Access to Public Land

12. The Forest Service should address access to public land through private land.

Response: Securing reasonable public access to National Forest System lands is a goal of the Forest Service. An April 1992, General Accounting Office (GAO) Report concluded that approximately 17 million acres of National Forest System lands have inadequate access.

The Forest Service will continue to emphasize the importance of the rights-of-way acquisition program; however the broad issue of acquiring access to public lands through private lands is not within the scope of this rulemaking and environmental analysis. See also Response 8 in the Roads section of this volume.

13. Clarify how this proposal will affect access to and use of lands acquired in the future.

Response: The Forest Service sometimes acquires private, State, or other Federal land adjacent to or surrounded by National Forest System land by exchange, purchase, or other means. In the future, some lands within or adjacent to inventoried roadless areas could be acquired to consolidate NFS lands and make their management more consistent with the overall management of the roadless area. For lands acquired through *exchange*, Forest Service regulation provides that lands within areas having an administrative designation set through the forest and grassland planning process, shall automatically become part of the area within which they are located, and shall be managed in accordance with the laws, regulations, and land and resource management plans applicable to the area (36 CFR 254.3(f)). For lands acquired through *purchase or other means*, Forest Service policy provides similar direction. Under the alternatives, any existing access to acquired lands would be unchanged. Access to lands acquired in the future would be subject to local forest and grassland planning, and project planning, consistent with the Roads Policy, the new Planning Regulations (36 CFR 219), and the NEPA regulations and procedures, including public participation.

14. Access to public lands is being jeopardized by the proposed rules governing Cost Recovery for Processing Special Use Applications and Monitoring compliance with special use authorizations.

Response: On November 24, 1999, the Forest Service published for notice and comment proposed regulations to recover costs for processing special

use applications and monitoring compliance with special use authorizations. The comment period closed on March 9, 2000. The agency received 602 individual responses to the proposed cost recovery regulations and is currently evaluating the issues and concerns these respondents raised, including the issues raised by this respondent. The Forest Service expects to have published final cost recovery regulations in the fall of 2000.

The broad issue of cost recovery regulations is not within the scope of this rulemaking and environmental analysis.

Special Uses

15. When the Forest Service issues permits for certain activities, they should ensure those activities will enhance the land for our society in the long run.

Response: The Forest Service agrees that uses authorized on National Forest System lands should be for appropriate uses and properly administered to minimize impacts to natural resources. On November 30, 1998, the agency adopted a revision to its special use regulations found in Title 36 Code of Federal Regulations that formalized a screening process to ensure that requests to use NFS lands are appropriate.

The specific concern is beyond the scope of this rulemaking and environmental analysis.

16. The Forest Service should reword for grammatical purposes, the first sentence of paragraph five on p. 3-141 of the DEIS, regarding limited effects to non-recreation special uses.

Response: We have expanded the paragraph in the FEIS regarding non-recreation special uses. The first sentence in question in the DEIS was intended to read: “Under all action alternatives, potential effects on non-recreation special uses within inventoried roadless areas would be limited.” The sentence has been corrected for grammar.

17. The Forest Service should clarify whether the proposed rule would restrict access to Snowtel sites (access is usually by snowmobile), or other similar uses authorized under a special use permit.

Response: The proposed rule would not suspend or

modify any existing permit, contract, or other legal instrument authorizing the use and occupancy of NFS land (DEIS, Appendix A, p. A-27). Use of existing roads included as part of an authorized use or occupancy would be continued as provided in the authorization. No existing roads or trails would be closed as a result of the proposed rule. Whether or not to allow off-highway vehicle (OHV) use on national forest and grasslands is beyond the scope of this rulemaking and environmental analysis. See also Response 6 in the Roads section, under Access.

18. The proposed rule should comply with special use evaluation criteria in the Code of Federal Regulations, Part 251, Subpart B – Special Uses (36 CFR 251).

Response: The proposed rule does not conflict with the regulations governing special uses found at 36 CFR 251. The screening criteria identified in regulation are used to screen proposals to better identify if the proposal is an appropriate use of NFS lands. Successfully meeting the screening criteria does not imply that a use will be approved and authorized. Decisions on formal applications for use and occupancy of NFS lands are determined by Forest Service procedures pursuant to NEPA.

19. The Forest Service should analyze the economic effects of the proposed rule on railroad companies.

Response: The Forest Service conducted a data call to each national forest and grassland requesting information on planned or anticipated projects that would necessitate the construction or reconstruction of a road in inventoried roadless areas before 2005. Review of this data indicated no requests for railroad construction in inventoried roadless areas.

Under all action alternatives, non-recreation special uses including railroads may be authorized in inventoried roadless areas if the use could be accommodated without road access and the use and occupancy is consistent with the management objectives of an area's roadless values.

A cumulative effects discussion on non-recreation special uses has been added to the FEIS. The analysis shows that the economic, social, and biological impacts are believed negligible given the limited number and small scope of non-recreation special use requests that are likely to be affected by the rulemaking.

20. Existing non-recreation special use facilities that reside within or adjacent to inventoried roadless areas, including the Hat Creek Observatory, should be exempt from the rulemaking and allowed to expand facilities into inventoried roadless areas.

Response: The proposed rule would not suspend or modify any existing permit, contract, or other legal instrument authorizing the use and occupancy of NFS lands (DEIS, Chapter 2) including uses that are currently authorized within an inventoried roadless area. Under the action alternatives, new construction or projects proposed outside an existing special use authorization boundary, including the proposed Hat Creek Observatory expansion, Lassen National Forest, could be subject to the prohibitions; it would depend on the design, method of construction, location, and proposed implementation of the project.

Expansion or new construction, inside or outside a special use authorization boundary, could occur in an inventoried roadless area provided that expansion or construction was addressed in an environmental analysis and approved by a signed NEPA decision document before implementation of the rule. Currently, the Hat Creek Observatory expansion proposal is in a conceptual planning phase and has not yet been analyzed pursuant to Forest Service procedures under NEPA, and thus has not received approval.

Utility Corridors

21. The roadless area rule should not interfere with the building, maintenance, or operation of electrical facilities.

Response: The proposed rule would not suspend or modify any existing permit, contract, or other legal instrument authorizing the use and occupancy of NFS lands (DEIS, Chapter 2). Use of existing roads included as part of an authorized use or occupancy would be continued as provided in the authorization. No existing roads or trails would be closed as a result of the proposed rule. The prohibitions on road construction and reconstruction described in the alternatives do not include a prohibition on road maintenance. Therefore, existing uses are not precluded from using existing roads for the operation and maintenance of the authorized facilities. Whether

or not to allow OHV use on national forest and grasslands is beyond the scope of this rulemaking and environmental analysis. See also Response 6 in the Roads section, under Access.

The FEIS includes additional analysis that describes effects upon proposed utility corridors in inventoried roadless areas.

22. The Forest Service should expand the “public health and safety” exemption at Section 294.12(b)(1) of the proposed rule, to accommodate access to utility facilities, to ensure operation of these facilities for public health and safety.

Response: Under the range of alternatives analyzed in the DEIS Chapter 3, no existing roads or trails would be closed as a result of the prohibitions, including roads and trails that may access authorized utilities. See also Response 6 in the Roads section, under Access.

Exemptions in the proposed rule have been clarified and expanded to better address health and safety concerns associated with existing roads.

Land Use Rents

23. The Forest Service is collecting too much land use rent and should do activities that don’t cost so much.

Response: Land use rents are deposited in the General Treasury and are not retained by the agency. Land use rents are unrelated to funding priorities and are outside the scope of this rulemaking and environmental analysis.

Cumulative Effects

24. The Forest Service must develop a Cumulative Effects section to Real Estate Management.

Response: A cumulative effects section has been added to the FEIS for Real Estate Management.

End of Lands Section