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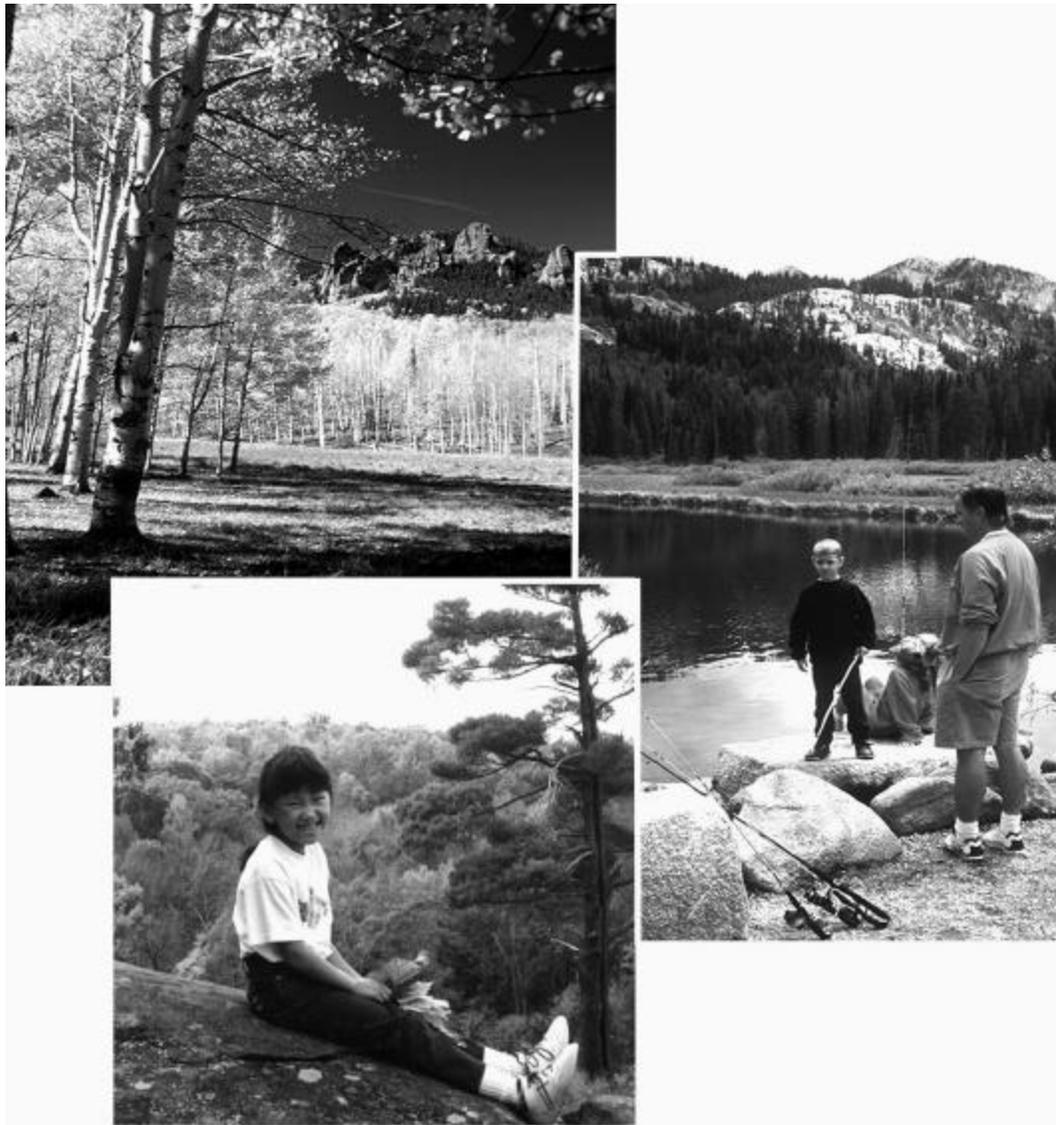
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Forest Service Roadless Area Conservation

Final Environmental Impact Statement

Real Estate Management Specialist Report



Real Estate Management Specialist Report

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Abstract:

The Real Estate Management Specialist Report provides the background information and analysis used to describe the affected environment and environmental consequences of the alternatives analyzed for the Forest Service Roadless Area Conservation Final Environmental Impact Statement. This report is intended to help readers understand the data, resources, and analysis of effects for real estate management, specifically boundary management and landownership adjustments, access to non-federal ownerships within the National Forest System and, non-recreation special uses that are summarized and disclosed in Chapter 3 of the FEIS.

The proposed rule provides an exception to the prohibition on road construction and reconstruction when a road is needed pursuant to reserved or outstanding rights, or as provided in statute or treaty. Therefore, special use authorization requests for access to non-Federal ownership of lands or interests in lands that are associated with these types of rights would be accommodated under all alternatives. In regards to other types of non-recreation special use authorization requests, analysis and evaluation revealed that the effects of the action alternatives on these types of uses would be minimal, since all or part of the more common types of uses, such as utility corridors, linear irrigation facilities and public and private roads, could continue to occur without road construction, but most likely at a higher cost. Analysis revealed that fewer than 20 proposed uses over the next 5 years, with an estimated 35 miles of associated road construction or reconstruction, most involving small development and uses, would be affected by the action alternatives. These estimated 35 miles of road are distributed throughout the nation, regions and forests and as such, there is not a good means of differentiating the impacts specific to each region or national forest. In conclusion, analysis and evaluation of the Roadless Area Conservation alternatives revealed that under both the no action and action alternatives, effects on boundary management and landownership adjustments would be minimal.

Changes between Draft and Final EIS:

The Draft Environmental Impact Statement contained two sections titled Non-Recreation Special Uses that are Not Associated with Valid Existing Rights. “Valid existing rights” was used in the DEIS to collectively describe rights to use and occupy National Forest System (NFS) lands that exist pursuant to a reserved or outstanding right, or as provided by statute or treaty. Respondents to the DEIS expressed confusion over use of this term and therefore, it was removed from the FEIS. The FEIS refers to rights to use and occupy NFS lands, as rights granted pursuant to a reserved or outstanding right, or as provided by statute or treaty, which are discussed under one subsection titled Access to non-Federal ownership within the National Forest System.

To more clearly identify the affected environment and the effects of the proposed alternatives upon the different elements within the real estate management program, in addition to the above subsection, a Boundary Management and Landownership Adjustment

subsection was added and a third subsection that addresses other Non-Recreation Special Uses is also included.

Based on more recent data, the estimated number of road miles associated with proposed non-recreation special use requests in the next 5 years were revised.

Sections describing the cumulative effects of the alternatives have been included for each subsection.

Affected Environment:

The fundamental purpose of the real estate management program is to conserve and manage the public's real property on NFS lands. This purpose is complicated because landownership within NFS boundaries includes parcels of lands owned by States, private individuals, and other Federal and non-Federal entities. Issues connected with real property may be resolved through boundary management, landownership adjustments (land exchanges and direct purchase acquisitions), and properly authorized and administered special uses on NFS lands. To better describe activities that occur within the real estate management program, the affected environment is divided into discussions on: Boundary Management and Landownership Adjustments, Access to Non-Federal ownerships within the National Forest System and, Non-Recreation Special Uses.

Boundary Management and Landownership Adjustments: Within the exterior boundaries of NFS lands are lands that are under private, State, and other Federal and non-Federal ownerships. Private, State, and other Federal and non-Federal ownership lands constitute approximately 17% of the acreage within NFS land boundaries. The Forest Service engages in land exchanges and direct land purchases to consolidate the NFS landownership pattern to facilitate efficient real estate and resource management. The Agency has conveyed an average annual 70,755 acres in the last 12 years and has acquired an average of 124,470 acres over the same period through the Land Exchange Program. These land transactions resulted in a fractional increase in total NFS lands over the last decade.

Inventoried roadless areas generally have fewer roads, improvements, and development and therefore, real property issues are not usually a major consideration. However, issues do arise around access to non-Federal inholdings that are in inventoried roadless areas. Less than 1% of inventoried roadless areas are estimated to be blocks of non-Federal land.

Access to Non-Federal Ownership within the National Forest System: Non-Federal ownership of lands or interests in lands may include rights granted pursuant to a reserved or outstanding right or as provided in statute or treaty. These rights include, but are not limited to, rights of access provided in the Alaska National Interest Lands Conservation Act (ANILCA) (Public Law 96-487) and recognized highway rights-of-way granted over NFS

lands under Revised Statute 2477(R.S. 2477) (Public Law 94-579)¹. The most common type of access pursued in conjunction with these two prominent statutes is roaded access.

ANILCA (Public Law 96-487) ensures access to non-Federal land inholdings. The authorized officer shall authorize such access deemed adequate to secure the landowner the reasonable use and enjoyment of their land (36 CFR 251, Subpart D). Landowner access need not be the most direct, economical, or convenient route for the landowner. Adequate access may not be road access in all cases. Alternative routes and modes of access may be considered. If a landowner has an adequate alternative route or mode of access, including access across other land ownerships, the Forest Service is not obligated to authorize roaded access. Reasonable access is currently determined on a case-by-case basis. The Forest Service recognizes valid ANILCA (Public Law 96-487) access as a statutory right.

R.S. 2477 (Public Law 94-579) provides a means by which rights-of-way were granted for public highways constructed across public domain lands in the late 1800s to early 1900s. A R.S. 2477 (Public Law 94-579) highway must have been constructed across public domain lands before the date of the national forest reservation. R.S. 2477 (Public Law 94-579) did not require issuance of any formal authorization to exercise and perfect rights-of-way. The Federal Lands Policy Management Act repealed R.S. 2477 (Public Law 94-579) in 1976. However, rights-of-way that predate the establishment of the national forest are still in effect, unless they have been subsequently relinquished. The Forest Service recognizes valid R.S. 2477 (Public Law 94-579) rights-of-way as outstanding rights.

Non-recreation Special Uses: Commercial and non-commercial interests, not associated with a right granted pursuant to a reserved or outstanding right, or as provided by statute or treaty, often use and occupy NFS lands for a variety of purposes. The Agency administers more than 46,000 non-recreation authorizations to use and occupy NFS lands (USDA Forest Service 2000b). The Agency estimates that it receives approximately 3000 non-recreation special use authorization or reauthorization requests a year. Not all requests are authorized and some requests authorized may be for short term (less than one year) in duration. More than 80 different types of non-recreation special uses are authorized most often by issuing special use authorizations. The more common of these non-recreation special uses include communication sites, utility corridors (oil/gas pipelines, fiber optic, telephone lines, and power lines), linear irrigation facilities (pipelines, ditches, canals), and public and private roads.

These more common types of non-recreation uses generally, but not always, rely on road access to accommodate construction, operation, and maintenance. As such, the majority of existing and proposed uses are either located or proposed to be located where roads currently exist. However, a small percentage of these types of uses can exist without road access and do occur within inventoried roadless areas.

¹ Rights provided under the 1872 Mining Act (17 Stat. 91) are discussed in the Mineral and Geology section of the FEIS.

Assumptions:

Boundary Management and Landownership Adjustment – Boundary management and landownership adjustments will continue to be determined and prioritized under existing planning processes.

Access to Non-Federal Ownership within the National Forest System – The Forest Service will continue to recognize and honor valid requests for road access to non-Federal ownership of lands or interest in lands, pursuant to a reserved or outstanding right, or as provided by statute or treaty. The level of road construction and reconstruction in the future will remain at levels comparable to what is being projected for the next 5 years.

Non-Recreation Special Uses – Use of existing roads included as part of an authorized use and occupancy of NFS lands will continue as provided in the authorization. The number of special use authorization requests involving road construction and reconstruction in inventoried roadless areas in the future will remain at levels comparable to what is being projected for the next 5 years.

Tree cutting and/or vegetation removal is allowed when authorized as part of an existing non-recreation special use in an inventoried roadless area.

Proposed non-recreation special uses that can be constructed, operated, and maintained without road access, may be authorized in an inventoried roadless area. Tree cutting associated with an authorized non-recreation special use would be allowed in inventoried roadless areas. For example, tree cutting would be allowed for authorized utility corridors, such as, power lines, telephone lines, oil/gas pipelines; communication sites; and linear irrigation facilities, such as, pipelines, ditches, canals and so forth.

Information Used:

The data used in this analysis came primarily from two sources. First, the number of non-recreation special use authorization requests that involve or are projected to involve either road construction or reconstruction from 2000 to 2004 were the result of several data calls from the Roadless Data Team to Forest Service field units. Special use authorization requests were identified as either those associated with rights granted pursuant to a reserved or outstanding right, or as provided by statute or treaty, or those without such associated rights. Secondly, national databases, publications and practicing Forest Service professionals in the field and Washington Office were consulted and provided review.

Methodology:

Boundary Management and Landownership Adjustments – Historic trends and the number of acres of NFS lands as summarized in the Land Areas of the National Forest

System annual report (1999) was the data used to describe the affected environment and to analyze alternatives in the environmental consequences for this section. This data and consultation with Forest Service subject matter specialists provided the basis to evaluate potential effects upon boundary management and landownership adjustments.

Access to Non-federal Ownership within the National Forest System –Requests for access to Non-federal ownership of lands or interests in lands within the NFS may include rights granted pursuant to a reserved or outstanding right, or as provided by statute or treaty. Requests for access associated with these types of rights cannot be superseded by a prohibition established in regulation. Therefore, it was recognized from the onset of the Roadless Area Conservation Initiative, that requests for access associated with a reserved or outstanding right, or as provided by statute or treaty, would be accommodated as an exception.

Historic trends, consultation with subject matter specialists, and data collected from Forest Service Field units provided the basis to describe the affected environment and analyze alternatives in the environmental consequences for requests for road access associated with a reserved or outstanding right, or as provided in statute or treaty. The number of proposals and miles of road construction and reconstruction proposed, in the near future, 2000 to 2004, were utilized to measure the degree to which these types of access requests may exist at the national, regional and forest level. However, because the proposed rule provided an exception for these types of requests, the method by which the Agency would evaluate these requests would not alter. Thus, effects under all alternatives were analyzed as though they were one alternative.

Non-recreation Special Uses - Special use authorization data was limited regarding road construction and/or reconstruction beyond the next five years. Describing the affected environment and analyzing alternatives in the environmental consequences for non-recreation special uses was based on historic trends and data collected from Forest Service Field units. The number of proposals, miles of road construction and reconstruction proposed, in the near future, 2000 to 2004, were utilized to measure the degree to which non-recreation special uses may be affected at the national, regional and forest level. The effects on non-recreation special uses were generally displayed in terms of number of proposals that could potentially be affected by a prohibition of road construction or reconstruction. Use of this data, along with consultation with other Forest Service subject matter experts provided the basis to evaluate the potential effect upon non-recreation special uses and to estimate future program levels.

The action alternatives were distinguished from the no action alternative for non-recreation special uses that are not associated with a reserved or outstanding right, or as provided in statute or treaty. However, no discernable difference could be determined between the action alternatives. The prohibition on road construction and reconstruction was the determining feature used to analyze if a proposed non-recreation special use request may or may not be affected under the action alternatives. Thus, the action alternatives were analyzed as one for effects related to non-recreation special uses.

Environmental Consequences:

Depending on which alternative is selected, the prohibitions would apply to the entire area within the boundaries of inventoried roadless areas, including portions that contain existing roads. Refer to Chapter 2 of the FEIS for additional detail.

Alternative 1

No Action; No Prohibitions

Alternative 2

Prohibit Road Construction and Reconstruction Within Inventoried Roadless Areas

Alternative 3

Prohibit Road Construction, Reconstruction and Timber Harvest Except for Stewardship Purposes Within Inventoried Roadless Areas

Alternative 4

Prohibit Road Construction, Reconstruction and All Timber Cutting Within Inventoried Roadless Areas

Alternatives 1 through 4

Boundary Management and Landownership Adjustment - All alternatives would have only minor effects on NFS boundary management and land adjustments. None of the alternatives would directly change the ownership status of non-Federal lands. For lands acquired through exchange, Forest Service regulation states that those lands within areas having an administrative designation set through the land management planning process, shall become part of the area within which they are located, and shall be managed in accordance with the laws, regulations, and land 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.

In some isolated instances, the recognized roadless characteristics of certain inholdings in inventoried roadless areas may encourage landowners and land managers to consider land adjustments to consolidate NFS lands as part of the overall management of roadless areas. However, in other isolated instances, maintaining roadless characteristics around inholdings may be the desirable activity, which would reduce the likelihood that landowners would be interested in land adjustments.

Access to Non-Federal Ownership within the National Forest System – Requests for access to non-Federal ownership of lands or interests in lands pursuant to a reserved or outstanding right, or as provided by statute or treaty, including valid ANILCA (Public Law 96-487) or R.S. 2477 (Public Law 94-579) assertions, and under all alternatives would continue to be recognized on a case-by-case basis. Under Alternative 1, an estimated 50 projects involving an estimated 130 miles of road would be undertaken to provide access for reserved or outstanding rights, or as provided by statute or treaty.

Although, Alternatives 2 through 4 includes prohibitions on road construction and reconstruction, all action alternatives provide an exception for roads needed pursuant to reserved or outstanding rights or as provided for by statute or treaty. Under all action alternatives, the Forest Service would continue to recognize and honor requests for access to non-Federal ownership of lands or interests in lands, pursuant to a reserved or outstanding right, or as provided for by statute or treaty, including valid ANILCA (Public Law 96-487) and R.S. 2477 (Public Law 94-579) assertions.

Alternative 1 – No Action

Non-recreation Special Uses - Authorized use and occupancy of NFS lands including roads associated with uses such as, communication sites, utility corridors (oil/gas pipelines, fiber optic, telephone lines, and power lines), linear irrigation facilities (pipelines, ditches, canals), and public and private roads, would continue as provided for within the authorization, in all inventoried roadless areas throughout the term of the existing authorization. Upon expiration, reauthorization and proposals for new roads or uses would continue to be evaluated and authorized in compliance with existing rules, regulations, and Agency policies.

Alternative Alternatives 2 through 4

Non-recreation Special Uses - No action alternative would suspend or modify any existing permit, contract, or other legal instrument authorizing the occupancy and use of NFS lands. Existing roads included as a part of an authorized use and occupancy of NFS lands would continue as provided for in the authorization in all inventoried roadless areas through the term of existing authorization.

The action alternatives would not affect reauthorization of an existing use or occupancy unless such reauthorization involved road construction or reconstruction, however road maintenance is not precluded under these alternatives. Upon expiration, reauthorization would be evaluated and authorized in compliance with existing rules, regulations and Agency policies. Effects related to the management of existing roads, including classified, unclassified and temporary roads, which may be associated with a non-recreation special use is discussed in the National Forest Roads specialist report.

Under all action alternatives, potential effects on non-recreation special uses in inventoried roadless areas would be limited. Non-recreation special uses may be authorized in inventoried roadless areas if the use could be accommodated without road access. Under these alternatives, all or part of the more common types of uses such as, communication sites, utility corridors, linear irrigation facilities, and public and private roads could occur without road construction, but most likely, at a higher cost than if road construction was allowed to occur. In some circumstances, the cost to construct, operate, and maintain a facility without a road would make the use and occupancy economically or technically infeasible.

Special use authorization data is very limited regarding road construction beyond the next 5 years, but it is estimated that within the next 5 years, fewer than 20 non-recreation special use projects, with an estimated 35 miles of associated road construction or reconstruction, may be affected under Alternatives 2 through 4. These estimated 35 miles are distributed throughout the nation, region and forest, and as such, there is not a good means of differentiating the impacts specific to each region or national forest.

Designation of major utility corridors is generally incorporated into land management plans. A review of the Western Regional Corridor Study (Clayton and others 1992) conducted in 1992, is a valuable resource used by the Forest Service and Bureau of Land Management for making reasonably foreseeable estimates of utility corridor needs. Because of this study, many of the existing and proposed utility corridors are identified throughout the Western United States. The study indicates that only two proposed corridors in the Western States may be affected under the prohibitions in Alternatives 2 through 4. These corridors are located on Ashley National Forest in UT and Santa Fe National Forest in NM. However, at this time, it is unknown if these proposals would be precluded from consideration for authorization in an inventoried roadless area under these alternatives, since all or part of the corridor, if proposed, could still be considered depending on the design, location, and implementation of the project.

Current uses and occupancies authorized in inventoried roadless areas would not be affected under any of the action alternatives. Also, fewer than 20 proposed uses with an estimated 35 miles of road construction and/or reconstruction could be affected by the action alternatives. Given the 5 year projected span, this equates to an average of 4 proposals a year that may be affected by the action alternatives. Considering that the Agency receives an estimated 3000 non-recreation special use authorization and reauthorization requests each year, it is reasonable to conclude that since only 4 out of 3000 annual proposals may potentially be affected by the action alternatives, the effect on non-recreation special uses is minimal. It is also reasonable to conclude that the effect on businesses, individuals, or communities would be minimal since the number of proposed uses that may be affected is small and the proposals are distributed equally among the national forests.

Effects of Social and Economic Mitigation on Non-recreation Special Uses

A potential mitigation measure is identified in Chapter 2 of the FEIS states that: The responsible official may authorize road construction and reconstruction in any inventoried roadless area when the Secretary of Agriculture determines that a Federal Aid Highway project authorized pursuant to Title 23 of the United States Code is in the public interest or is consistent with the purposes for which the land was reserved or acquired, and no other feasible alternative exists. The Federal Highway Administration (FHWA) and State Departments of Transportation work cooperatively when planning for new State and interstate highways. Regulations and a Memorandum of Understanding (Title 23 Section 317, and CFR 23, 712.03, August 28, 1998) between the Forest Service and FHWA describe the process used for land transfers between the Forest Service and States in support of approved highway projects.

Numerous State and interstate highways run adjacent to inventoried roadless areas. One project currently proposed, but not yet approved, would cross through an inventoried roadless area on the Chugach National Forest. If mitigation is adopted, existing State highways as part of an authorized use and occupancy of NFS lands, would be allowed in inventoried roadless if authorized by the Secretary of Agriculture. All alternatives would have minimal effects on federally assisted State highway planning over time. Such mitigation would pose no known conflict with other special use authorizations that might be reasonably foreseeable nor would this mitigation affect other aspects of real estate management.

Conclusions:

Other Indirect and Cumulative Effects on Real Estate Management

Boundary Management and Landownership Adjustments. Alternatives 2 through 4 would have minimal effects on boundary management and land adjustments over time. In some isolated instances, recognizing roadless characteristics may actually enhance interest in land adjustments, while in other isolated instances roadless characteristics may deter interest in land adjustments.

Access to Non-Federal Ownership within the National Forest System – Alternatives 2 through 4 would have minimal effect on access to non-Federal ownership within NFS lands over time. The Forest Service would continue to recognize and honor requests for access to non-Federal ownership or lands or interests in lands pursuant to a reserved or outstanding right, or as provided by statute or treaty, including ANILCA (Public Law 96-487) and R.S. 2477 (Public Law 94-579) assertions.

Non-recreation Special Uses – The majority of these types of uses are located where roads already exist because they are generally dependent on road access for construction, operation, and maintenance. Therefore, the current and expected future demand to locate these types of uses in inventoried roadless areas is minimal. The effect of the action alternatives is further minimized by the fact that all or part of many types of the more common non-recreation special uses could be constructed, operated, and maintained without road access, but likely at a higher cost. Non-recreation special uses may be authorized in inventoried roadless areas when the use and occupancy is consistent with the management objectives of an area's roadless values.

Under all action alternatives, approximately 50% of all NFS lands would be available for road based non-recreation special uses. Since so few non-recreation special use proposals would be affected, NFS land outside inventoried roadless areas should be adequate to accommodate the majority of non-recreation uses that may be displaced as a result of the action alternatives.

Demand for special uses authorizations in inventoried roadless areas that would involve road construction and reconstruction may increase in the future as the population grows and use of national forests increases. However, it is uncertain what future levels of demand will be, and if these demands can be met by lands outside inventoried roadless areas. It is not anticipated that these increased demands will be substantially different from the types of uses currently being requested. Therefore, the economic, social, and biological impacts are not believed to be significant given the limited number and small scope of these requests.

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