



File Code: 1570-1/2350

Date: April 20, 2004

Kelly J. Shira and R. Gehl Tucker
Attorneys for Appellants
Hufford, Horstman, Mongini, Parnell & McCarthy, P.C.
120 N. Beaver St.
Flagstaff, AZ 86002

Dear Appellants:

This is my review decision concerning the appeal you filed regarding the Decision Notice and Finding of No Significant Impact, which authorize construction of a non-motorized trail west of the Kachina Peaks Wilderness on the Peaks Ranger District to tie together existing trail segments, forming a part of the Arizona Trail and amending the Forest Plan.

BACKGROUND

Forest Supervisor Nora Rasure issued a decision on January 14, 2004, for the Arizona Trail-Peaks Segment. This authorized construction of approximately 15 miles of new trail, a new trailhead at the Arizona Snowbowl and associated interpretive loop, the Bismarck Loop, use of about 15 miles of existing National Forest System Trail, social trails, and two track roads, and removal of motorized recreation from 1.5 miles of trail.

The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations. Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.18. I have reviewed the appeal record and the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer concluded that:

1. The analysis process, and the decision made, is consistent with applicable law, regulation, policy, orders and supporting evidence in the record. Relative to appeal issues, the decision is in compliance with the National Environmental Policy Act, the Administrative Procedures Act, the National Historic Preservation Act, the Endangered Species Act, and the National Forest Management Act.
2. The disclosure of environmental effects was adequate, a reasonable range of alternatives was analyzed, and a FONSI was appropriate.
3. The record reflects that the Responsible Official offered ample opportunity for the public to be meaningfully involved during the analysis, and their suggestions and comments were considered during the decision making process.



4. Effects on the San Francisco Peaks TCP were considered and addressed in decision making.
5. The Biological Opinion on the project was “no jeopardy”, and consultation was completed.
6. The record reflects that the decision is consistent with the Coconino National Forest’s Plan.
7. The Responsible Official’s decision document is based on the record and reflects a reasonable conclusion.

REVIEW AND FINDINGS

ISSUE 1: The appellants feel that the decision violates the National Environmental Policy Act.

Contention A: The disclosure of direct, indirect, and cumulative effects to wildlife was inadequate. This includes effects to MSO, elk, deer, northern goshawk, turkey, migratory birds, bears, and sensitive animal species.

Discussion: There is substantial discussion of the direct, indirect, and cumulative effects of the project within the Environmental Assessment (PR#88) for MSO (pp. 21-24), elk (pp 38-39), Northern goshawk (pp. 24-26), turkey (pp. 33-34), and bears (pp. 39-40). In addition, these species were considered during issue development (PR#17).

Discussion of the effects of the project on migratory birds are disclosed in the EA (PR#88) on pages 34-38; effects to deer are disclosed on pages 16 and 32. Impacts to these species were disclosed as occurring from disturbance (i.e., recreation). Cumulative effects (increased recreation use) are discussed in PR#88, page 18.

Sensitive species occurring in the project area are listed in PR#27. Effects to sensitive animal species are from disturbance (i.e., recreation) and are disclosed in the EA (PR#88, pages 30-31); cumulative effects (increased recreation use) are discussed in PR#88, page 18.

Finding: The disclosure of direct, indirect, and cumulative effects to wildlife species was adequate for an informed decision.

Contention B: The disclosure of effects to vegetation was inadequate. This includes effects to sensitive plants and noxious weeds.

Discussion relative to sensitive plants: Direct, indirect, and cumulative effects for sensitive plants are disclosed in the Environmental Assessment (PR#88, page 42; PR#88, pages 26-27); sensitive plant species included in the analysis are disclosed on page 31. Conservation measures for sensitive plants were incorporated into all alternatives (PR#88, page 8) which were incorporated into project design from the proposed action (PR#12, page 4). Effects to sensitive plants were minimized in project design; effects which could not be eliminated were disclosed.

Discussion relative to noxious weeds:

Page 42 of the EA discloses direct, indirect, and cumulative effects relative to noxious weeds. It states: Equestrian use may increase the potential for spread of noxious weeds along the trail. Best Management Practices including monitoring and treatment of weed populations will be implemented along the trail corridor. Trail design includes identification of any non-native or invasive weed species that may exist and actions to prevent spread and/or eradicate the plants. Trailheads will be monitored annually to see if recreation users have transported non-native or invasive plants along any of the alternative routes. Surveys have documented noxious weeds in the parking areas associated with the proposed Snowbowl Trailhead. These areas are currently and will continue to be monitored and treated on an annual basis. No alternative is expected to increase non-native and invasive weed species in the trail route areas.

The Arizona Trail combined with these activities may increase noxious weeds in the analysis area. The same measures of control and eradication of nonnative and invasive plant species will be undertaken for these species.

Page 9 of the EA documents mitigation and preventative measures:

- Develop a noxious weed risk assessment. Conduct pre-construction surveys for noxious weeds and Implement Best Management Practices as identified in the *Coconino National Forest Noxious Weed Strategy* through the weed risk assessment. Prior to final Arizona Trail construction, crews would be trained to identify noxious weed species. Should populations be found, workers would consult with District wildlife and recreation staff to determine a course of action to eradicate plants and/or prevent spread.
- Annually search for noxious weeds at trailheads. Train the trail stewards to recognize and report weeds.

Finding: The disclosure of effects to sensitive plant species was adequate for an informed decision.

The disclosure of direct, indirect, and cumulative effects relative to noxious weeds was adequate. Mitigation and preventative measures fully address noxious weed concerns both now and in the future.

Contention C: The consideration of impacts on cultural resources was inadequate.

Discussion: Appellants contend that substantial questions exist because the Forest Supervisor failed to adequately consider and address potential negative impacts to the San Francisco Peaks Traditional Cultural Property (TCP), Native American cultural values, and Little Springs. Appellants further contend that the Forest Supervisor failed to explain why she selected Alternative C1 over Alternative D, when the EA indicates that Alternative D poses fewer traditional cultural property concerns and does not include access to the Little Springs area.

The record documents numerous contacts with 13 American Indian tribes regarding the Arizona Trail proposal (PR #29, 79). During scoping, four tribes responded with comments indicating an interest in the project (PR #16, comment letters 113-116), but concerns about the project's impact on the San Francisco Peaks TCP did not surface as a significant issues (PR #31, 34, 39). Only the Hopi Tribe made a field trip to visit and discuss the preferred alternative (PR 76). The Hopi Tribe also submitted the only comments on the EA (PR #80, comment letter 30), which stated that their concerns had been addressed and that they supported Alternative C. There is nothing in the record that supports the Appellant's contention that concern about impacts on the San Francisco Peaks TCP was a controversial issue in this project. Tribal concerns that were expressed were considered, and addressed.

The potential for impacts on Little Spring was identified as Issue #3 in the environmental analysis (PR #39, 88, p.4), and the location of the proposed Arizona Trail was adjusted to provide a greater buffer between the trail and the spring (PR #38). The historical significance of the Little Spring area was discussed in the EA (PR #88, p.26). The EA concluded that although visitation to Little Spring might increase slightly in Alternative C1, this should not adversely affect cultural and archaeological values (PR #88, p. 27). In addition, the sensitive resources of the Little Springs area would be better managed by designating a formal access route, the Bismark Loop, which makes use of an existing non-system trail and two-track, and by obliterating the unmanaged social trails leading to the springs (PR #88, p. 13, 27, 67). In Alternative D, which does not include an access route to Little Spring, the unmanaged use at Little Springs would continue (PR #88, p.13, 27).

In the Decision Notice (PR #94, p. 4), the Forest Supervisor discussed the rationale for selecting Alternative C1, including the opportunity to better manage the Little Springs area (PR #94, p. 4). She also documented that tribal concerns had been addressed and that the Arizona SHPO had concurred that the project would have no adverse effect on the San Francisco Peaks TCP or other cultural resources (PR #94, p.8).

Finding: Potential impacts on cultural resources were adequately considered in the environmental analysis and Decision.

Contention D: The disclosure of effects to public health and safety was inadequate. This includes effects related to bear/human confrontations, lion-human interactions, hunter/recreationist interactions, lack of law enforcement resources, impacts to private landowners, and creation of social trailheads.

Discussion: Potential effects to human health and safety were addressed in a number of places in the project record, in the EA, and in the Decision Notice and FONSI. A summary of public health and safety effects is found on page 48 of the EA.

Human/wildlife interactions were summarized on pages 13-14, 26-27, and 39-40 of the EA. Pages 39 and 40 of the EA (PR#88) address human encounters with black bears. Page 40 of the EA identifies which alternatives have a greater likelihood of hiker encounters with black bears. Mitigation is identified as education at trailheads which will focus on controlling attractants and appropriate responses to bear encounters.

Pages 40 and 41 of the EA (PR#88) address human encounters with mountain lions. The discussion identifies that the likelihood of encounters between humans and mountain lions will probably increase. Mitigation measures are identified on pages 9 and 40 of the EA.

Impacts to nearby landowners are stated on page 45. A number of studies were provided in the record (PR#60, 65, 67, and 68) to support the contention in the EA that little vandalism or property damage is associated with trails located near private property. The Decision Notice (PR#94) states that trail layout will be done to provide vegetative screening between the trail and private property.

Lack of law enforcement resources was also mentioned by the appellants. This is addressed in PR#80, Response to Substantive Comments, which says, "Signing at trailheads and appropriate trail locations will advise trail users of proper trail etiquette and prohibitions including camping locations. The trail steward program will help monitor violations and educate trail users."

Another concern of the appellant's is the development of "social trailheads", and associated traffic and pedestrian safety issues. This concern is addressed on page 48 of the EA which states that "Where the Arizona Trail crosses roads appropriate measures will be taken to ensure safe crossing." Also, page 2 of the Decision Notice (PR#94) identifies five "official" trailheads, where people would be encouraged to park.

Sharing of motorized and non-motorized trail and their associated safety concerns was evaluated as Issue #1 on page 20 of the EA. As documented on page 48 of the EA (PR#88), the selected alternative improves public health and safety by removing motorized use from the Schultz Creek trail. This will reduce the hazards associated with mixing motorized and non-motorized traffic on the same trail.

Finding: It is reasonable for a Forest visitor to expect encounters with various hazards, including wild animals, when recreating in a backcountry setting. The EA appropriately identified potential impacts to public health and safety. Health and safety concerns related to construction of the trail were identified, related effects were analyzed, and appropriate mitigation measures were identified.

Contention E: The effects of the selected alternative are significant, and an EIS should have been prepared. Effects believed to be significant include effects to wildlife, public health and safety, unique and unknown risks, and cumulative effects. Specifically cumulative effects from Snowbowl ski use and other trails in area, San Francisco Peaks in its entirety, Veit Springs, and Little Springs should have been addressed. The current high road density is a problem, and the potential to designate this trail as a National Scenic Trail will increase use.

Discussion: Effects to wildlife and public health and safety are discussed elsewhere in this review. The EA (PR#88) states that none of the effects to wildlife habitat are substantial under any alternative (page 19).

There are no unique and unknown risks associated with this project. Trail building is an activity that the Forest Service has been involved in since its inception. Standards for trail construction are detailed in the design features identified in the EA pages 8-10. Trail construction effects of this project are typical on the Coconino National Forest (Decision Notice page 8, PR #94).

Cumulative effects are addressed in the EA and record. Projected increases in trail use and population growth effects on trail use were analyzed (EA page 18). Veit Springs and current use of the area under Arizona Game and Fish Department management is described. A possible land exchange of the Veit Springs property, and the future Snowbowl facilities development in the area (EA page 25) is included in the effects analysis.

The project effect on Little Springs area is disclosed on pages 4, 26 and 27 of the EA, and discussion includes history of a restoration project which already closed roads and did spring development. The effect on Little Springs was one of the significant issues addressed in the EA (page 4).

Some of the wilderness trail use will be funneled into the new trail, and access from the Snowbowl area is discussed on page 28 of the EA. Tying the trail to the Snowbowl parking area or a trailhead was another significant issue in the EA (page 8). The Arizona Trail is recognized as a statewide trail, and increased use is anticipated (PR#80, Response to Comments item #16).

A roads analysis (PR#84) review showed that this project would not make a great change in road density, having some improvement, but that further analysis would be needed. The project is not a roads development project, but a trail project, and it consolidates some existing user-created trails, funnels traffic onto a designated trail, and thereby changes foot access, but not road access to the area. Motorized trail access is changed, but not eliminated (EA page 2, 8).

Finding: The EA adequately disclosed effects. A Finding of No Significant Impact is appropriate, and an EIS is not required.

Contention F: The range of alternatives was inadequate. Dismissal of other publicly proposed alternatives has little or no justification in the document, and the Forest Service failed to respond to these alternatives. The Forest Service failed to look at an east side trail alternative in detail.

Discussion: The range of alternatives should meet the stated purpose and need, and address one or more issues. The formulation of alternatives is driven by significant issues identified in the scoping of the proposed action (40 CFR 1501.2(c)). Four issues were addressed in this project, 1) non-motorized and motorized use, 2) disturbance to Mexican spotted owl and goshawk areas, 3) impact on Little Springs, and 4) Snowbowl use. Alternatives developed in detail were addressed to answer these issues.

Five alternatives were eliminated from detailed consideration on page 6 of the EA (PR#88), and four alternatives were developed and analyzed in detail, EA pages 6-11. Several alternatives were proposed by the public (PR#9, #11, #16, #54, #65, #78). Objectives for the proposed action were set forth by the District Ranger (PR#3). The interdisciplinary team reviewed several alternatives and discussed their feasibility (PR#37). Impacts were also discussed and displayed

in this document and in the EA. The eastside trail option was dropped because of the increased adverse effects to sensitive cultural resources and to the Kachina Wilderness, as well as the impacts to the largely unfragmented eastern side of the Peaks (EA page 6).

Finding: The Responsible Official appropriately defined the scope of the analysis and analyzed a range of reasonable alternatives within that scope.

ISSUE 2: The appellants feel that the proposed project violates the Administrative Procedures Act.

Contention: Selection of Alternative C1 over Alternative D was arbitrary and capricious.

Discussion: The EA discusses and discloses effects of the four action alternatives against the issues that were identified and other resource impacts. Effects to wildlife, recreation use, cumulative recreation effects with Little Springs and Snowbowl use, soil and water, wilderness, health and safety are analyzed in the consequences section.

Alternative D was evaluated in an open and transparent way. See Response to Comments (PR#80 item #1), for the reasons why Alternative D was not the preferred alternative. Alternative C balanced the recreational demand with tribal concerns while Alternative D did not. Refer to the heritage discussion in this review on how the tribes were involved and their concerns addressed.

There is an extensive discussion of the rationale of the selection of Alternative C1 over D in the Decision Notice (PR#94 on pages 3-6).

Finding: The decision does not violate the Administrative Procedures Act; the decision was not arbitrary or capricious.

ISSUE 3: The appellants feel that the decision violates the National Historic Preservation Act (NHPA).

Contention: The appellants feel that the decision violates NHPA.

Discussion: The Appellants contend that because the project is located within the San Francisco Peaks TCP, a property eligible for the National Register of Historic Places, the Forest Service must not take any action that would compromise the TCP and that Alternative D, which presented fewer traditional cultural concerns, should have been selected. NHPA, however, does not require that an eligible TCP not be compromised. Rather, NHPA requires that effects on such properties must be considered and addressed in decision making, in consultation with affected tribes and the State Historic Preservation Officer (SHPO). The record documents that tribes were consulted throughout the environmental analysis process (PR #15,16-comments 113-116, 76) and that tribal concerns regarding potential impacts on the TCP were considered and addressed (PR #29, 34, 78-comment letter 61, 94-p.9). In addition, the SHPO was consulted and concurred that the project would have no adverse effect on the San Francisco Peaks TCP (PR #83).

Finding: The Decision is in compliance with NHPA.

ISSUE 4: The appellants feel that the decision violates the Endangered Species Act.

Contention: The proposed project may jeopardize the continued existence of the MSO because of threats from catastrophic wildfire, increased recreation, incidental take, and impacts on proposed MSO critical habitat.

Discussion: Impacts to listed species were considered throughout the project (PR#28, #33, #37, #44, #45, #46, #48). A biological assessment was prepared (PR#41), and, though incidental take would occur, a biological opinion of “no jeopardy” was obtained from the US Fish and Wildlife Service for the species (PR#82). To reduce impacts from chronic disturbance, the terms and conditions from the Biological Opinion were incorporated into the alternatives (PR#88, pp. 8-10; PR#94, pp. 2-3). Risks of catastrophic wildfire were addressed in PR#88, p 48. Proposed critical habitat for the MSO was considered and a finding of “not likely to jeopardize” [sic] was determined (PR#88, page 29; PR#85).

Finding: The Biological Opinion was “no jeopardy”, and consultation was completed. All legal requirements of the Endangered Species Act have been met.

ISSUE 5: The appellants feel that the proposed project violates the National Forest Management Act.

Contention: Aspects of the proposed project are in conflict with standards and guidelines in the Forest Plan – relative to trails, roads, and MSO. Creation of new trail miles is inconsistent with the Forest Plan, see Chapter 4 A01; and is inconsistent with the MSO recovery plan since new trail miles were not in use when the owl was listed in 1993. The project adds to road density which already exceeds Forest Plan standards, and doing a Plan amendment should not be allowed.

Discussion: Forest Plan Amendment #12 (6/98) page 108 under Kachina Peaks Wilderness states “Construct a trail around the Peaks that links existing and proposed trailheads in first decade.” Amendment #9 under A01 “Special” says Arizona Trail will be a non-motorized pathway, use public lands to ensure public access, and use existing trails where use of trails does not cause substantial negative impacts. It also allows for trail location, design, construction and signing to be accomplished.

Current Forest Plan language provides for the same level of recreation activities that were occurring prior to listing of the Mexican spotted owl in 1993 (see page 21 of EA). Quantifying use prior to 1993 was difficult and use is expected to increase, according to the EA. By channeling use onto the designated trail, other use on other trails is reduced. A Biological Opinion was issued by USFWS which spelled out effects to Mexican spotted owl (Decision Notice page 9). Also see the response to the wildlife contention, and the previous point on EIS regarding the road density question.

Finding: The proposed project is consistent with the Forest Plan, as amended, in regards to management area direction for trails, wildlife, and recreation.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision with respect to all of the appellant's contentions, and the requested relief is denied.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR215.18(c.)].

Sincerely,

/s/ Lucia M. Turner
LUCIA M. TURNER
Appeal Deciding Officer, Deputy Regional
Forester

cc: Deidre S StLouis, Constance J Smith, Leonard Atencio, Mailroom R3 Coconino, Nora Rasure