



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1

Date: JUNE 11, 1998

Mr. David M. Bentley
La Paloma Corporate Center
3573 East Sunrise Drive, Suite 221
Tucson, Arizona 85718

Certified RRR--Z095 869 126

RE: Agua Caliente South Trailhead and Trail Construction Appeal #98-03-00-0024-A215

Dear Mr. Bentley:

Following is my review decision on the appeal you filed regarding the Responsible Official's (RO), Santa Catalina District Ranger Dean McAlister, decision to implement Alternative B in the Environmental Assessment (EA) for the Agua Caliente Trailhead and Trail Construction proposal on the Santa Catalina Ranger District, Coronado National Forest.

Upon the completion of an EA, the RO issued a Decision Notice (DN) on March 5, 1998, to implement Alternative B for the Agua Caliente Trailhead and Trail Construction proposal on the Santa Catalina Ranger District, Coronado National Forest. You appealed the decision under 36 CFR 215 appeal regulations. Under 36 CFR 215, your appeal and the decision process is subject to administrative review by the Appeal Deciding Officer.

My review of this appeal has been conducted pursuant to, and in accordance with, 36 CFR 215.17. I have thoroughly reviewed the appeal record, the Appeal Reviewing Officer's (ARO) recommendation regarding the disposition of this appeal and your subsequent April 30, May 19 and May 29 letters.

INFORMAL DISPOSITION

As directed under 36 CFR 215.16, the Responsible Official (RO) met with you and Mr. John Hornburg, owner of Palo Verde Ranch Estates, on May 7, 1998, in an attempt to resolve the appeal informally. This meeting was documented in a letter by the RO on May 13, 1998. The letter indicates you wanted to revisit a rejected alternative you proposed in the EA process. This alternative required an *unrestricted* easement across Palo Verde Ranch Estates' land. An easement was not granted, so the alternative was rejected as one that could not be readily implemented in the EA process.

At the May 7, 1998, meeting, the position on unrestricted access by you and the owner had not changed. You and the owner indicated that an agreement for *unrestricted* access could not be entered into because Phase 1 of your land development did not show this easement and some lots had already been sold. The RO was still willing to revisit this alternative if the easement issue



could be resolved with the County. The RO met with Pima County official, Mr. Carroll, on May 12, 1998. Mr. Carroll informed the RO that for this alternative to be considered an *unrestricted* easement to Pima County would be required from the land owners to guarantee permanent public access to national forest lands. As a result, informal resolution to the appeal could not be reached.

APPELLANT ISSUES

- (1) Under EA Issue 1, security risks to local residents and cleanliness regarding trash pickup and animal droppings have not been adequately addressed.
- (2) Under EA Issue 3, the effects on air quality have not been adequately addressed.
- (3) Under EA Issue 6, the Forest Service may have violated federal regulations regarding the use and application of an appraisal report and results from the report may not be applicable to this project.
- (4) The DN falsely concludes that no other alternatives exist and public documents misrepresent the character of the alternatives.
- (5) The public has a right to know what is the estimated cost or budget.

APPEAL FINDINGS

I have addressed the Appellant's issues as follows:

Issue (1): Security risks to local residents and cleanliness regarding trash pickup and animal droppings have not been adequately addressed.

Comment: The Appellant has not accurately described Issue 1 in his appeal point. Risk to the local residents was not identified in the issues. In the EA, Issue 1 is "...to provide security of users; cleanliness; ...". However, security risks to the local residents was identified in Section F of the EA, "Concerns Not Included in Detailed Analysis", as item 4.

Security of users: This is addressed in the "Purpose and Need for Action" (PANFA) section of the EA. The PANFA clearly states that users do not have a designated, safe location to park. This issue resulted from comments received at the April 24, 1996, public meeting where uncontrolled parking in the county right-of-way (ROW) was a primary concern. The existing condition requires users to park along the county ROW. This situation has led to trespass situations and conflicts with local residents. Alternative B and responses to comments address this issue. Several comments (ie., 70-2, 76-1, 78-1, 81-1) indicated the public would be pleased with a secure place to park and that the ad hoc parking in the ROW was unacceptable and dangerous to trail users.

Security of local residents: In Section F, the EA points out that Pima County has law enforcement jurisdiction for this area (see also response 114, item 3). Response 109-7 gives an overview as to how the Forest Service will shift employee emphasis to this area. The Santa Catalina

District has two full-time law enforcement officers. Response 90-3 states the area will have a locking gate which will restrict nighttime use.

Cleanliness: There were very few comments in the project record directly related to trash and manure. Of comments received, most felt a designated parking area will reduce trash (ie., 93-1, 96-1, 97-1). Response 64-1 states that if manure accumulates in the parking area, it will be removed. Response 109-7 states that the developed site would receive more maintenance emphasis.

Finding: I find the record shows that an adequate analysis of security risks to local residents and cleanliness regarding trash pickup and animal droppings was considered in the decision. The RO is affirmed in regard to this appeal point.

Issue (2): The EA does not address dust pollution from the county dirt road leading to the parking area.

Comment: Section E in the EA acknowledges that the access to the parking area is via a dirt road, and this area is a Class II area which allows only a moderate increment of additional pollution. Under Affected Environment, the EA states that because of the small area affected by this project, the amount of airborne particulates generated by vehicle use will have no measurable affect on the quality of air in the national forest airshed or Tucson Basin airshed. However, in the evaluation of Environmental Consequences, alternative B, because of paving the parking area, is identified as *reducing* the amount of airborne particulates from current levels.

Although the county dirt road is outside Forest Service jurisdiction, additional dusting should not be expected, because a significant increase in use is not intended with this proposal. In the response to comments (90-1), past vehicle counts in the area ranged from an average of 20 per day on the weekends to 2-3 per day during the week. With the parking capacity designed for 16 cars and 4 horse trailer sites (or 8 cars), the site is designed to keep use at near existing levels (see also response 114). This data along with the paving of the parking area substantiates the evaluation of environmental consequences for alternative B stated as *reducing* the amount of airborne particulates from current levels in the EA.

Finding: I find the record shows that an adequate analysis of dust pollution was considered in the decision. The RO is affirmed in regard to this appeal point.

Issue (3): The Forest Service may have effectively violated federal regulations regarding the application and use of an appraisal report.

Comment: The information presented in the Decision Notice regarding property values does not violate the Uniform Standards of Professional Appraisal Practice (USPAP) nor does the use of the appraisal report misrepresent findings in the report. The appraisal report referenced in the Decision Notice merely discusses the overall trend in the market place in reference to property values and trail easements in Pima County. Additionally, the appraiser was contacted by the Forest Service on March 4, 1998, and informed that these trends were still valid. These conclusions from the local report in Pima county are also in line with nationwide studies the National

Park Service has conducted. The analysis indicates increases in property values in those instances where property is adjacent to open spaces. The studies were completed in Colorado, Oregon, Massachusetts, Ohio and Pennsylvania.

Finding: I find no violation of federal regulations nor misrepresentation or fraudulent use of the data in the EA or DN. The appraisal report was used correctly as only a general reference to the overall trend in Pima County. The RO is affirmed in regard to this appeal point.

Issue (4): **The DN falsely concludes that no other alternatives exist and that public documents misrepresent the character of the alternatives.**

Comment: The record does not support the Appellant's allegations. The DN addresses those alternatives that were developed in the EA process and carried forward in detail to address identified issues and concerns. The RO identified the alternative (alternative B) he feels will best address the issues and concerns in the EA.

In the NEPA process, a range of alternatives are developed to resolve major issues and satisfy the purpose and need for action. The process does not require all alternatives be carried forward and analyzed in detail. Except for the no action, alternatives which do not contribute to meeting the purpose and need or issues, are not technologically feasible, are duplications of other alternatives, reflect decisions already made, are not environmentally sound, cannot not be readily implemented or are remote or speculative, may be eliminated from detailed analysis. In review of the record, I found there were at least seven basic alternatives considered, including those you proposed. Four of the seven were eliminated from full analysis. Three had unresolved right-of-way needs and one did not address the stated purpose and need.

Finding: I find the DN *did not* falsely conclude that no other alternatives exist. I also found no misrepresentation; in the public documents (record) of alternatives proposed, those eliminated from further study and those carried forward to be addressed in detail in the EA. The RO is affirmed in regard to this appeal point.

Issue (5): **The public has a right to know what is the estimated cost or budget.**

Comment: This concern is not tied to the issues. However, the Appellant identified the concern during development of the EA. *Cost breakdowns are provided* in Appendix B-34 of the project record, "National Forest Foundation Recreation/Wildlife Challenge Cost Share Project - Project Terms". Cost breakdowns show most of the funding for the proposal will come from County bond funds and National Forest Foundation grant funds and not from taxpayers. This proposal is consistent with terms identified in the "Master Servicewide Challenge Cost-Share Agreement between the Forest Service and The National Forest Foundation" signed April 5, 1996. One purpose of the agreement is to complete projects which improve recreation opportunity on land administered by the Forest Service. This proposal meets that purpose.

Finding: I find the record shows that an adequate cost analysis and cost breakdown was considered in the decision. The RO is affirmed in regard to this appeal point.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended the RO's decision be affirmed. The ARO found the decision was consistent with laws, regulations, policies, plans, processes and agreements.

APPEAL DECISION

After a detailed review of the record, your subsequent letters and the ARO's recommendation, I affirm the RO's decision to implement Alternative B for the Agua Caliente Trailhead and Trail Construction proposal on the Santa Catalina Ranger District, Coronado National Forest. My decision constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

/s/ John R. Kirkpatrick

JOHN R. KIRKPATRICK
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc: Forest Supervisor, Coronado NF
District Ranger, Santa Catalina RD
ENG
EAP
C.Gonzalez
Mr. Carroll, Pima County, Tucson, Arizona