



United States  
Department of  
Agriculture

Forest  
Service

National Forests  
in Florida

Woodcrest Office Park  
325 John Knox Road  
Suite FO-100  
Tallahassee, FL 32303

---

File Code: 1570-1  
06-08-05-0023  
Date: April 17, 2006

WildLaw  
ATTN: Mr. Brett M. Paben  
1415 Devils Dip  
Tallahassee, Florida 32308-5140

CERTIFIED MAIL – R.R.R.

RE: Appeal 06-08-05-0023 of District Rangers Richard Lint's and Jerri Marr's December 27, 2005, Decision for the Access Designation in Restricted Areas Record of Decision (ROD) on the Seminole and Lake George Ranger Districts of the National Forests in Florida.

Dear Mr. Paben:

According to the authority granted me by 36 CFR 215, this letter contains my appeal decision on your appeal of the decision for the Access Designation in Restricted Areas Record of Decision on the National Forests in Florida.

## **BACKGROUND**

On December 27, 2005, District Rangers Lint and Marr signed the ROD for this project and the legal notice was published on January 17, 2006. It has been verified that you provided timely 30-day comments for the proposed action thereby meeting 36 CFR 215.13, regulatory requirements for eligibility to file an appeal on this project. Therefore, your timely appeal was accepted on March 17, 2006.

The District advised us that you participated in an informal disposition meeting on March 17, 2006, discussing many issues. Resolution was reached on the specific issue of Recreation Standard (RE-4) as it related to the gopher tortoise. However, as no resolution was reached on the other appeal issues, we continued with our review.

## **RECOMMENDATION OF APPEAL REVIEWING OFFICER (ARO)**

I received the ARO's recommendation that the District Rangers decision be affirmed except for the designation of the Rodman Pit Area as a concentrated use area. The ARO's recommendation is based on a review of the project record and your issues. A copy of that ARO recommendation is enclosed.



**RELIEF REQUESTED**

Your appeal requests specific changes in the ROD.

**CONCLUSION**

My review of your appeal was conducted pursuant to, and in accordance with, 36 CFR 215.18 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy and orders. I have reviewed the appeal record and the ARO's recommendation. Based on my review, I conclude that the decision for Access Designation in Restricted Areas was adequately documented by the District Rangers in their ROD and record except for the designation of the Rodman Pit Area as a concentrated use area. Therefore, I am affirming the Rangers' decision except the part which designates the Rodman Pit Area as a concentrated use area. I am reversing the decision for the Rodman Pit Area as a concentrated use area because this designation is not consistent with the Forest Plan.

As a result of the 2005 OHV Rule, work on a Forest Plan amendment has already been initiated which will address the consistency of the Rodman day-use area with the Forest Plan. Upon completion of this amendment, I plan to immediately re-evaluate the decision for the Rodman day use area.

This constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

*/s/ Marsha Kearney*

MARSHA KEARNEY  
Appeal Deciding Officer  
Forest Supervisor

Enclosure



United States  
Department of  
Agriculture

Forest  
Service

Wayah Ranger District

90 Sloan Road  
Franklin, NC 28734  
Phone: 828-524-6441

File Code: 1570-1  
Route To:

Date: April, 14, 2006

Subject: ARO Recommendation Appeal 06-08-05-0023 Access Designation in  
Restricted Areas ROD, WildLaw-Paben, Ocala NF in Florida

To: Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Brett M. Paben of WildLaw on the Ocala National Forest in Florida.

My review was conducted pursuant to 36 CFR 215. To ensure the analysis and decision are in compliance with applicable laws, regulations, policies and orders, I have reviewed and considered each of the points raised by the appellant and the decision documentation submitted by the Ocala National Forest. My recommendation is based upon review of the Appeal and Project File, including but not limited to the scoping letter, public comments and the Record of Decision.

## ISSUES

- Issue 1 Whether the decision complies with Forest Plan access standards. [Reference IV. A. 1. p. 3-4]
- Issue 2 Whether the decision is in compliance with Forest Plan for road management. [Reference IV. A. 3., pp.4-5]
- Issue 3 Whether an adequate range of alternatives were considered. [Reference IV. B. 1., pp.5-7]
- Issue 4 Whether cumulative and indirect impacts were adequately considered. [Reference IV. B. 2. pp. 7-10]
- Issue 5 Whether the purpose and need was unreasonably narrow. [Reference IV. B. 3., pp. 10-11]
- Issue 6 Whether the analysis satisfied the "hard look" requirement regarding the project BE analysis. [Reference IV. B. 4., p.11]
- Issue 7 Whether the NEPA process was unbiased. [Reference IV. B. 5., pp.11-12]

- Issue 8 Whether the FEIS complies with 36 CFR 212 and EO 11644 regarding public safety and recreational users. [Reference IV. C. 1. and 2., pp.12-15]
- Issue 9 Whether the FEIS complies with 36 CFR 212 and EO 11644 regarding minimizing damage to various forest resources. [Reference IV. C. 3, pp.15-18]
- Issue 10 Whether the FEIS complies with 36 CFR 212 and EO 11644 regarding adequate monitoring of motor vehicle use. [Reference IV. C. 4. pp. 19-20]
- Issue 11 Whether forest policy was violated regarding the restoration of the Ocklawaha River. [Reference IV. D. 1., p. 20]
- Issue 12 Whether the access plan violates noxious weed guidance (FSM 2080). [Reference IV. D. 3., p.21]

## **DISCUSSION OF ISSUES**

### **Issue 1 Whether the decision complies with Forest Plan access standards**

The appellant contends that the decision to retain the Rodman Pit, “violates Forestwide Access Standards (AC-2), Forestwide Goal 14 and Forestwide Objective 13, which only direct for the designation of a system of trails and roads for motorized and non-motorized use, not OHV areas” (Appeal, p. 2).

The Forestwide Access Standards state that motorized vehicle cross-country travel is not permitted (AC-1), and defines the three categories of bicycle and motorized vehicle use (AC-2). The current project is within Category 2 of AC-2 “the restricted area, as areas where motorized vehicles and bicycles are restricted to travel on open classified roads and designated trails specified for use” (Forest Plan Amendment 2, p. 11).

Rodman Pit is described in the FEIS as a 37 acre OHV day use area, which provided fill material during construction of the Kirkpatrick (Ocklawaha) Dam and will be used as a disposal site when the Ocklawaha River is restored and the dam removed (p. 2-5). Currently, the area is used by motorized vehicle users, and can include as many as 200 users on peak weekends (FEIS, 4-68).

Forest Plan Access Standards do not permit cross-country travel for motorized vehicles and only designates the use of open classified roads and designated trails for use (Forest Plan, p. 3-2, Forest Plan Amendment 2, p. 11). The designation of an OHV use area is inconsistent with the Forestwide Goal 14 and Forestwide Objective 13, because they only designate the development of trails and marked numbered roads (Forest Plan, pp. 2-4, 2-6).

## **Finding**

I find that the Rodman Pit OHV use area is not consistent with the Forest Plan.

### **Issue 2      Whether the decision is in compliance with Forest Plan for road management.**

The appellant asserts that the decision violates the Forest-wide Infrastructure Standard for road management (IN-2) (Reference Appeal IV. A. 3, pp.4-5). The referenced LRMP standard for road management (IN-2) does state “[c]lose and return to resource production all existing roads, whether temporary or system roads, that are not needed for resource activities.” The decision (ROD,pp. 6-7) designates a system of motorized trails. The selected alternative would provide access to many areas of the forest while protecting sensitive areas and modifying some trail/road locations and mileages for ecological or cultural resource reasons. Providing access (both public and administrative) and managing recreation opportunities are resource activities. Providing for motorized vehicle mixed use on system roads does not violate LRMP standard 3.1-2 (p. 4-22) which states “[r]estrict motorized vehicles to open, numbered roads and designated trails.”

The roads analysis is not a decision document- it is intended to provide information and analysis to help the responsible official(s) make an informed decision. Designating roads for motorized mixed use that were not identified previously in the roads analysis does not violate the Forest Plan.

The appellant mentioned that EPA raised a concern that there is no explicit commitment to either close, decommission, or monitor extensively the remaining unclassified roads. EPA’s comments were addressed in the Response to Comments (FEIS, Appendix F, pages F-22 to F-23). The Forest will utilize an adaptive monitoring plan to allow flexibility for changing budgets and staff levels and for monitoring results. The Forest Service will utilize natural restoration where feasible, but does not preclude actively restoring, gating or closing non-designated routes if necessary.

## **Finding**

I find that the decision is in compliance with Forest Plan for road management.

### **Issue 3      Whether an adequate range of alternatives were considered.**

The appellant contends that agency planners have not developed or analyzed in detail a proper range of alternatives, and dismissed reasonable alternatives provided during the DEIS comment period(Appeal, pp. 5-7).

The FEIS “considered a full range of reasonable management options” (FEIS, p 2-1). Public involvement contributed to the development of three of the five alternatives

analyzed in detail, including input from access user groups and a coalition of forest users. Six additional alternatives were eliminated from detailed analysis, including those proposed by the appellant (FEIS, pp. 2-8 to 2-10).

Those alternatives proposed by the appellant and eliminated from further study include : 1) Expand the proposal to include the entire forest, not just the restricted area, 2) Ban ORV's from the forest., 3) Register or permit unlicensed vehicles 4) Seasonal closures and restrictions, and 5) Vehicle equipment restriction.

Four of these alternatives were eliminated from detailed analysis because they are outside the scope of the project, while the alternative banning ORV use on the forest does not meet the purpose and need of the project (FEIS, pp. 2-8 to 2-10)

## **Finding**

I find an adequate range of alternatives was considered.

### **Issue 4      Whether cumulative and indirect impacts were adequately considered**

The appellant contends that agency planners have not adequately considered associated cumulative and indirect impacts (Appeal, 7-10). The appellants consider the cumulative effects analysis lacking, as evidenced by the following contentions, “[t]he FEIS contains very little information on past ORV damage to forest resources . . . it does not include a discussion of reasonably foreseeable actions . . . there is little to no discussion of ORV use on adjacent State or private land . . .” (Appeal, p. 8).

Information on past ORV damage is adequately presented in the FEIS with the existing condition representing the results of past use (FEIS pp. 1-12, 4-70, 4-83 to 4-84). An intensive road inventory was conducted in the restricted area that identified and plotted every travelway, including non-system routes (FEIS 3-20). In addition, site specific field surveys of the designated trails were conducted inventorying impacts created by user-created trails (FEIS, 4-46).

The Forest Service has determined that an Access Designation Process (ADP) will be completed on the Ocala NF for “unrestricted areas” next. The appellant considers this to be part of “reasonable and foreseeable actions” and that the agency planners should have analyzed this as part of the cumulative effects in the FEIS (Appeal, p. 8).

The scope of the project was limited to the restricted areas based on the fact that these areas were determined to be ecologically sensitive and/or in the urban interface in the Forest Plan and therefore a priority for management. No proposal has yet been developed for the unrestricted areas, therefore it is not possible to provide any detailed analysis other than to acknowledge that the existing routes in the unrestricted areas may be reduced in the future (FEIS, p. F-13). The results of an ADP for the unrestricted areas of the forest could potentially reduce motorized recreation opportunities on the forest, but

this would be offset by reduced environmental effects in general such as less wildlife disturbance and fewer wetland impacts (FEIS, p. F-13). The appellant did raise the concern about no discussion of ORV use on state and private land during the comment period. The response to this comment in the FEIS, states that, “there are no other designated OHV use areas on adjacent state or private lands” (FEIS, p. 13). The FEIS also presents information that describes the potential development of a motorized use area by the state in the Eureka Springs Area (pp. 4-71, 4-84, F-13).

The appellant also contends that a “no motorized access alternative” is required to provide a natural baseline to compare against, which is needed to consider cumulative effects on the forest and comply with NEPA (Appeal, p. 9). As discussed in the FEIS (p. 2-9) the purpose and need of the project would not be met by a no motorized access alternative, and therefore was not required to be analyzed in detail.

Another contention presented by the appellant is that “[t]he FEIS fails to consider indirect effects because it is based on assumptions that compliance, education and enforcement will be 100% effective” (Appeal, p. 9). On page 2-8 of the FEIS it states that “[f]or each alternative, it is assumed that public education and enforcement of regulations will successfully limit public travel to designated routes.” It is unreasonable to expect 100% compliance, and the forest did not claim this in the FEIS. Attempting to quantify the amount of non-compliance would be speculative due to the unpredictable nature of the issue (FEIS, p. 21). Yet the reduction in road and trails and a clearly marked system of roads and trails will enable Forest Officers and compliance personnel to more effectively identify violations and enforce the rules (FEIS, p. 4-71.). An example of successful enforcement is provided in the FEIS (p. 4-71), documenting that the “closure order has been excellent and many of the unclassified roads in the area are beginning to re-vegetate naturally.”

## **Finding**

I find that cumulative and indirect effects were adequately considered and the decision to bound the scope of analysis to the restricted areas is appropriate.

### **Issue 5      Whether the purpose and need was unreasonably narrow**

The appellant contends that the agency’s “discretion to determine the purpose and need of the project is not unfettered” (Appeal, p. 10). However, the appellant presents no specific discussion as to how the current project purpose and need is unreasonably narrow, which would restrict the reasonable range of alternatives.

The project purpose and need is directed by the 1999 Revised Land and Resource Management Plan (Forest Plan) which “required the forest to develop and implement an access policy that would protect resources while providing motorized recreation

opportunities, particularly within the high demand, wildland urban interface areas of the Forest” (ROD, p. 4).

### **Finding**

I find the project purpose and need to be consistent with the Forest Plan, and not to be unreasonably narrow.

### **Issue 6 Whether the analysis satisfied the “hard look” requirement regarding the project BE analysis.**

The appellant contends that the Forest Service did not satisfy NEPA “hard look” requirements concerning significant impacts to the environment and that “the Forest Service cannot satisfy this requirement without knowing what actually exists in the area the agency is supposed to be assessing” (Appeal IV, B. 4. p. 11). Specifically, the appellant contends that “the designation of the Rodman Pit as a concentrated use area was not discussed in the BEs for plants or wildlife. As such, the DOE for the Forest Service Sensitive Species did not anticipate any impacts in that area” (Appeal IV, B. 4. p. 11).

Chapter 3 of the EIS describes biological resources (including, but not limited to, Sensitive Species) considered in the analysis (pp. 3-6 through 3-15). Chapter 4 of the EIS discloses environmental consequences of each alternative considered in detail on these resources (pp. 4-14 to 4-42). Additionally, the Biological Assessment for wildlife, Biological Evaluations for wildlife and for plants (EIS Appendices D and E, respectively) and the Biological Opinion prepared by the United States Fish and Wildlife Service (USFWS, EIS Appendix H) provide an in-depth analysis of federally-listed species. The Rodman Pit is specifically mentioned in Appendix D and E as part of Alternative D (EIS, pp. 3-2 to 3-5, D-8, E-8).

### **Finding**

I find that the analysis did satisfy the NEPA “hard look” requirements and adequately addressed the Rodman Pit area as part of Alternative D.

### **Issue 7 Whether the NEPA process was unbiased**

The appellant contends that District Rangers were biased in the NEPA process, being committed to the designation of motorized trails in the restricted areas of the forest (Appeal, pp. 11-12)

Forestwide Objective 13 of the Forest Plan states that “[w]ithin 2 years of Forest Plan approval, develop implementation plans for a system of designated trails and marked, numbered roads in areas where motorized vehicles and bicycles are restricted. This

process will incorporate existing travel-ways as much as possible and include public participation and collaboration with local user groups” (Forest Plan, p. 2-6).

District Rangers were not biased towards the designation of motorized trails in the restricted areas of the forest; they were directed by the forest plan to develop a system of trails in the restricted areas of the forest that allows motorized vehicles.

## **Finding**

I find that the NEPA process was not biased.

### **Issue 8      Whether the FEIS complies with 36 CFR 212 and EO 11644 regarding public safety and recreational users.**

The appellant contends that “[t]he access plans violates 36 CFR 212 and Executive Order 11644”, does not adequately project public safety on designated trails, and does not minimize conflicts for other recreational use (Appeal, pp. 12-13).

The trail widths discussed in the document are recreational standards for ATV and motorcycle use. Additionally, one way trails are not recommended generally under the type of trail system that the Access Plan has developed. See FEIS, Appendix F, F-9. The FEIS considered visitor safety issues in analyzing each alternative for the number of intersections of roads and motorized trails, intersections of motorized trails and non-motorized trails, and the number of miles of mixed use roads. A designated system of regularly maintained routes should make trails safer to ride (FEIS, pp. 1-8, 1-14, 4-46, 4-70; ROD, pp.10–12). The appellant also refers to the possibility of requiring safety equipment for riders and training beyond that required by the State of Florida. The focus of this decision is to identify a system of motorized roads and trails. This type of management action is outside of the scope of this decision. Note that, as discussed in the response to comments in the recent Travel Management rule making: “State governments have long taken the lead in establishing registration, safety, and licensing requirements for motor vehicles and motor vehicle operators, providing a consistent framework for users within State boundaries.” 70 Fed. Reg. 68271 (Nov. 9, 2005).

The Forest did consider conflicts between non-motorized and motorized recreations throughout the process. A broad group of Forest recreationists and other interested groups participated in the public meetings (FEIS, pp. 1-12 to 1-13, Appendix A, F-14, F-21(4), F-13 (5)). It used specific criteria to evaluate potential for user conflicts, including noise, in each alternative (ROD, p. 11, FEIS pp. 1-13, 4-54 to 4-70).

**Finding:** I find that the Access plan and ROD did adequately address the motorized system for public safety and does adequately minimize conflicts among various recreational users as required by 36 CFR 212 and Executive Order 11644.

**Issue 9**      **Whether the FEIS complies with 36 CFR 212 and EO 11644 regarding minimizing damage to various forest resources.**

The appellant contends the EA fails to minimize damage to soil, watershed, vegetation, and other forest resources and the EA allows significant disruption of wildlife and wildlife habitats (Appeal, p. 15). The appellant contends "the Access Plan did not have as its [objective] the minimization of the impacts to these resources" (Appeal, p. 16).

As the appellant suggests, 36 CFR 212.55 states when designating National Forest System trails and related areas "the responsible official shall consider effects on [soil, watershed, vegetation, wildlife and disruption of wildlife habitat] with the objective of minimizing [impacts]."

The purpose and need section of the EIS states "[t]he purpose of this initiative is to develop a designated public access system within the restricted areas of the ONF, which provides access for various recreation and management uses while reducing fragmentation of habitat and adequately protecting forest resources such as wetlands, prairies, longleaf pine wiregrass systems, and other ecologically sensitive areas" (EIS, p. 1-8).

The EIS discusses impacts to soil and water resources (pp. 4-6 to 4-13). The EIS discusses impacts to vegetation and wildlife, including disturbance, fragmentation, noxious weeds, threatened, endangered, and sensitive species as well as management indicator species (pp. 4-14 to 4-42).

The EIS states "[m]uch of the historic Florida landscape has been irreversibly modified... Reducing the number and density of roads and trails on the Forest would further improve habitat quality and reduce fragmentation, disturbance, road-kill, and other negative impacts on wildlife. Selection of Alternative A, C, D, or E along with future enforcement of access policy and a successful program of public outreach would reduce the cumulative impacts of past, present and future activities and reduce habitat loss both on and off the forest. Alternatives A, C, D, and E are consistent with direction in the Forest Plan for wildlife. Alternative B would not address the need to reduce the impacts of unmanaged vehicle use on wildlife" (pp.4-42).

**Finding**

I find the EIS complies with 36CFR212 and EO 11644 regarding minimizing impacts to forest resources.

**Issue 10**      **Whether the FEIS complies with 36 CFR 212 and EO 11644 regarding adequate monitoring of motor vehicle use.**

The appellant contends that the FEIS does not provide for adequate monitoring (Appeal, pp. 19-20). The access monitoring in Appendix G of the FEIS is described as, "...perfunctory and not objective oriented" (Appeal, p. 19).

The plan for access monitoring is discussed in several responses to comments in Appendix F of the FEIS. Page F-22 of the FEIS states that the access monitoring plan will be tiered to Forest Plan monitoring activities, and that the first year plan will be adapted as needed based on changing needs, findings, and budget levels. The results of the monitoring plan will be evaluated annually, and based on the findings, potential solutions will be developed.

At 36 CFR 212.57 it states that, "For each administrative unit of the National Forest System, the Forest Supervisor or other responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that Forest Supervisor or other responsible official, consistent with the applicable land management plan, as appropriate and feasible." The planned access monitoring is consistent with the Forest Plan and is also consistent with 36 CFR 212 and EO 11644.

### **Finding**

I find that the project complies with 36 CFR 212 and EO 11644 regarding adequate monitoring of motor vehicle use.

### **Issue 11      Whether forest policy was violated regarding the restoration of the Ocklawaha River.**

The appellant contends that the Forest violated forest policy with regard to the restoration of the Ocklawaha River. They contend that, "designating the Rodman Pit as a concentrated use area conflicts" with the Forest's commitment to use the Rodman Pit in the restoration of the Ocklawaha River (Appeal, p 20).

The ROD, page 8, lists four modifications to Alternative D. Modification 1, states that the Forest will "retain the area known as Rodman Pit as a 37 acre OHV day use area. This area provided fill material during construction of the Kirkpatrick (Ocklawaha) Dam and will be used as a disposal site when the Ocklawaha River is restored and the dam removed."

Additionally, the decision states that "[s]ince the site will not be restored until the dam is removed, it was decided to continue use as an OHV area" and that "as we implement the selected alternative, we will monitor results, compare them with our assumptions, and make adaptations where necessary." On page 8, the ROD states "[i]f unauthorized use in and around the site is found to be occurring, this decision will be re-evaluated." Further discussion is provided on page 2-5 and page 4-68 of the Access FEIS.

In addition, the Forest Plan states “The Forest Service is also committed to work in partnership with the State of Florida in the Ocklawaha River Restoration Project”. Forestwide Goals include: “[m]aintain or, where necessary, restore ecosystem composition, structure, and function within the natural range of variability in all ecosystems” and “[m]anage floodplains, groundwater, lakes, riparian areas, springs, streams, and wetlands to protect or enhance their individual values and ecological functions” (p. viii).

## **Finding**

I find that the decision to allow OHV use in Rodman Pit is not in violation with the management objectives for the Ocklawaha River.

### **Issue 12 Whether the access plan violates noxious weed guidance (FSM 2080)**

The appellant contends that “the access plan violat[es] Forest Service policies [FSM 2080] regarding noxious weed management” (Appeal IV, D. 3., p. 21) and that “the Forest Service is required to “determine the risk of introducing or spreading noxious weeds associated with the proposed action” when proposing any ground disturbing activity” (Appeal IV, D. 3., p. 21). The appellant contends, “the Forest Service is to use contract and permit clauses to prevent the introduction or spread of noxious weeds by contractors or permittees to clean their equipment prior to entering National Forest System lands” (Appeal, p 21).

During project planning and implementation, the Forest Service must abide by all Federal, State, and local laws, regulations, and policies. This includes FSM 2080 (Noxious Weed Management) and any recommendations or guidelines therein deemed appropriate for the project in question. (FSM 2081.03).

The appellant states, “under this guidance, the Forest Service is required to ‘determine the risk of introducing or spreading noxious weeds associated with the proposed action,’ when proposing any ground disturbing activity” (Appeal, p. 21).

The EIS discloses the risk of introducing or spreading noxious weeds for each alternative (EIS, pp. 4-19 to 4-23). This analysis shows that Alternative B “ would provide the most sources of invasive exotics seed for further spread, and represents the highest potential for spread of invasive exotics to continue in the restricted area” (EIS, p. 4-21). The EIS documents that each of the other action alternatives considered (A, C, D, and E) pose a lower risk for the introduction or spread of noxious weeds than Alternative B (EIS, pp. 4-21 to 4-23).

## **Finding**

I find that the FEIS and ROD did not violate policy regarding management and control of noxious weeds (FSM 2080).

**RECOMMENDATION**

After reviewing the project record and considering each issue raised by the appellant, I recommend that District Rangers Lint's and Marr's December 27, 2005, Decision for the Access Designation in Restricted Areas Record of Decision on the Ocala National Forest, be affirmed except for the decision to designate the Rodman Pit Area as a concentrated use area. This designation would require cross country travel which is not consistent with the Forest Plan. I recommend reversing the part of the ROD that designates Rodman Pit as a Concentrated Use Area.

*/s/ Michael L. Wilkins*

MICHAEL L. WILKINS  
Appeal Reviewing Officer  
District Ranger