



United States
Department of
Agriculture

Forest
Service

Huron-Manistee National Forests

1755 South Mitchell St.
Cadillac, MI 49601
231-775-2421 (voice)
231-775-5551 (fax)
231-775-3183 (TTY)

File Code: 1570-1

Date: September 10, 2004

Ms. Carla Boucher
Attorney
United Four Wheel Drive Associations, Inc.
P.O. Box 15696
Chesapeake, VA 23328

Re: Appeal of the Decision Notice and Finding of No Significant Impact for the Briar Hills Project Environmental Assessment, Cadillac-Manistee Ranger District, Huron-Manistee National Forest, Appeal 04-09-04-0034 A215

Dear Ms. Boucher:

On August 6, 2004, you filed a notice of appeal pursuant to 36 CFR 215.18. District Ranger Jim A. Thompson signed his Decision Notice and Finding of No Significant Impact on May 27, 2004, choosing Alternative 4 of the Briar Hills Project. The legal notice for the decision was published on June 22. My decision is based upon the appeal record and the recommendation of the Appeal Reviewing Officer (ARO), District Ranger Dan Lentz, Jonesboro/Murphysboro Ranger District, Shawnee National Forest, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Jim A. Thompson, and the issues raised in your appeal. The Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

FOREST ACTION BEING APPEALED

The Briar Hills Project will manage the transportation system and conduct vegetative treatments in the Briar Hills Project area managed under the Huron-Manistee National Forest Land and Resource Management Plan.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer found no evidence that the Responsible Official's decision violated law, regulation or policy. He found that the decision responded to comments raised during the analysis process and comment period and adequately assessed the environmental effects of the selected action. In addition, he found that the issues raised in your appeal were addressed, where appropriate, in the decision documentation. Based on his review, the Appeal Reviewing Officer recommended that the decision be affirmed.



DECISION

After review, I concur with the Appeal Reviewing Officer's analysis and findings regarding your specific appeal issues. To avoid repetition, I adopt his rationale as my own and refer you to the enclosed Appeal Reviewing Officer recommendation for further detail.

It is my decision to affirm District Ranger Jim A. Thompson's Decision Notice and Finding of No Significant Impact for the Briar Hills Project Environmental Assessment, Huron-Manistee National Forest.

Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Leanne M. Marten
LEANNE M. MARTEN
Appeal Deciding Officer
Forest Supervisor

Enclosure

cc:
Responsible Official, Jim A. Thompson
ARO, Dan Lentz
RO, Patricia Rowell



United States
Department of
Agriculture

Forest
Service

Shawnee National Forest
Jonesboro/Murphysboro
Ranger District

521 N. Main Street
Jonesboro, IL 62952
618-833-8576

File Code: 1570-1

Date: September 9, 2004

Route To:

Subject: Appeal of the Decision Notice and Finding of No Significant Impact for the Briar Hills Environmental Assessment Project, Cadillac-Manistee Ranger District, Huron-Manistee National Forest, Appeal 04-09-04-0034 A215

To: Forest Supervisor, Huron-Manistee National Forest

This letter constitutes my recommendation for the subject appeal filed by Carla Boucher on behalf of James Humphreys for Cadillac Jeepers of the Briar Hills Project on the Cadillac-Manistee Ranger District of the Huron-Manistee National Forest. District Ranger James A. Thompson signed this Decision Notice on May 27, 2004. The legal notice of the decision was published on June 22, 2004.

My review was conducted pursuant to 36 CFR 215 – “Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities.” 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 Appellants and the decision documentation submitted by the Huron-Manistee National Forest. My recommendation is based upon review of the Project Record including but not limited to the scoping letter, public comments, Decision Notice (DN/FONSI), and the Environmental Assessment (EA).

On August 11 and 13, respectively, James Humphreys, representing Cadillac Jeepers, participated via conference call with Acting District Ranger Patricia O’Connell regarding an informal disposition meeting for the appeal of the Briar Hills Project. A meeting was scheduled for Friday, August 20 at the Manistee Ranger Station at 10:30 a.m., between Mr. Humphreys (and possibly other members of the Cadillac Jeepers Club) and Huron-Manistee National Forest personnel. Issues in the appeal were discussed. The appeal was not resolved.

Appeal Issue

The Appellant raised one main issue in this appeal of the Briar Hills Project Decision. The appeal point is answered below.

Issue 1 - The appeal rights listed in the Decision Notice and Findings of No Significant Impact are in error (NOA, p. 1).

The Appellant alleges, “...since the responsible official who made the decision is the District Ranger the Appeal Deciding Officer is the Forest Supervisor and the public must file appeals in accordance with 36 CFR 215...The address of record for the Forest Supervisor, Huron-Manistee National Forest is 1755 S. Mitchell Street, Cadillac, MI 49601...The appeal rights listed in the Decision Notice and Findings of No Significant Impact is in error...”.



Response: The Briar Hills Decision Notice and Finding of No Significant Impacts (Folder 1, #3) directs Appellants to, “send Notice of Appeals to: Attn: Appeal Deciding Officer, USDA, Forest Service, Gaslight Building, Suite 700, 626 East Wisconsin Avenue, Milwaukee, WI 53202. The Notice of Appeal may alternatively be faxed to: 414-944-3963, Attn: Appeals Deciding Officer, USDA, Forest Service, Eastern Regional Office. Those wishing to submit appeals by email may do so to: appeals-eastern-regional-office@fs.fed.us. Acceptable formats for electronic comments are text or html email, Adobe portable document format, and formats viewable in Microsoft Office applications. Hand-delivered appeals may be submitted at the above address between 7:30 and 4:00 pm CT Monday through Friday, except on Federal holidays. Appeals must meet the content requirements of 36 CFR 215.14 and will only be accepted from those who have standing to appeal as outlined at 36 CFR 215.13. It is the appellant’s responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official’s decision should be reversed. The appeal must be filed with the Appeal Deciding Officer in writing.”(Decision Notice, Folder 1, # 3, pp. DN-21 & DN-22).

The Responsible Official for the Briar Hills Project followed direction from the Eastern Regional Office concerning this matter (Folder 3, #42). On 17 July 2003, the Regional Office Appeals and Litigation Division advised Forests in Region 9 to have all appeals sent directly to the Regional Office until further notice.

The regulations at, 36 CFR 215.8, provide that appeals of district ranger decisions must be filed with the Forest Supervisor. However, the regulation does not indicate an address as to where the appeals should be sent. The regulations at 36 CFR 215 do not prohibit appeals from being sent to an address different from the address of record for the Appeals Deciding Officer. Based on 36 CFR 215 and direction from the Regional Office, I feel the Responsible Official for the Briar Hills Decision conformed with the requirements of 36 CFR 215.

RECOMMENDATION:

After reviewing the Project Record for the Briar Hills Project, and considering the issue raised by the Appellant, I recommend District Ranger James A. Thompson’s Decision Notice of May 27, 2004 be affirmed.

/s/ Dan L. Lentz
DAN L. LENTZ
Appeal Reviewing Officer
District Ranger

cc:
Responsible Official, Jim A. Thompson
RO, Patricia Rowell