



United States
Department of
Agriculture

Forest
Service

Huron-Manistee National Forests

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File Code: 1570-1

Date: September 10, 2004

Mr. David Miehlike
Westside Trail Chairman
Cycle Conservation Club of Michigan
600 Sherman Oaks Court, #619
Ludington, MI 49431-2936

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 04-09-04-0033 A215

Dear Mr. Miehlike:

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



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 Environment Assessment Project, Cadillac-Manistee Ranger District, Huron-Manistee National Forest, Appeal 04-09-04-0033 A215

To: Forest Supervisor, Huron-Manistee National Forest

This letter constitutes my recommendation for the subject appeal filed by David Miehle of the Cycle Conservation Club of Michigan 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 Appellant 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).

Appeal Issues

The Appellant raised 14 main issues in this appeal of the Briar Hills Project Decision. The appeal points are answered in the order received from Mr. Miehle.

Issue 1: “I must appeal the appeals process. The public involvement is too complicated and time consuming. There is no impartial review when the reviewers are peers and fellow employees” (NOA, p. 1).

The Appellant alleges:

- “How can you expect public involvement in a process that is so complicated and time consuming?”
- How do you insure impartial review of these decisions when the reviewers are peers and fellow employees of the agency?”

Response: The appeal process cannot be appealed here since it is outside of the scope and decision of this project. Only the proposed project can be appealed through this appeals process.

Public involvement is based on law, policy, rules and regulations. The Code of Federal Regulations is very explicit in how the public is to be contacted and offered an opportunity to comment on the process (36 CFR 215). For this particular project, public contacts were through



mass mailing lists, e-mail messages, phone calls, and personal letters to both the appellant as well as other interested publics. The district also conducted radio talk shows, had open houses, had news releases and articles in newspapers, published the project information in the NEPA quarterly and sent the draft EA to participating members of the public for comment.

Impartial reviews are achieved by assigning expert-level employees who are not directly linked to the project or to its analysis process. The appeals reviewing officer has typically been involved with the creation of many environmental documents, and knows the process that must be followed. The other review team members are specialists in their own fields. All review team members come from different forests within the region. These team members have typically been involved as interdisciplinary team members on other environmental teams and they are aware of the laws, policies, and practices necessary for project planning and in the creation of environmental documents.

These individuals are unbiased and base their decisions on the documents that are provided in the Planning Record.

I find no violation of law, regulation, or policy in the public participation process of this project, nor do I find any violations in reference to the selection of the Standing Appeal Review Team members.

Issue 2: “The switch of authority of decision maker from Forest Supervisor to District Ranger was not documented” (NOA, p. 1).

The Appellant alleges:

- “Was ... appointing the district ranger as the responsible official documented?”
- “Was this switch an effort to circumvent review by the Regional Forester or the Chief?”

Response: On July 15, 2003, the Forest Supervisor delegated the authority of certain decisions on actions to implement the Huron-Manistee National Forests Land and Resource Management Plan (HMNF Forest Plan, or Forest Plan) to District Rangers (Folder 3, #39).

This action was not done in an attempt to circumvent upper management review but rather because the Forest Supervisor believes “the District Rangers have the on the ground knowledge....and have gained an understanding and level of experience in designing projects to implement Amendment 24 of the Forest Plan” (Folder 3, #39). The determination of whether or not to prepare an Environmental Assessment (EA) or a more detailed Environmental Impact Statement (EIS) is determined by the National Environmental Policy Act, and is linked to whether there are significant environmental effects. The Deciding Official then affirms this determination.

I find that the letter to the files that delegated this authority was timely, appropriate and was within the authority of the Forest Supervisor.

Issue 3: “An EIS should be considered due to the controversial issues in the area” (NOA, p. 1).

The Appellant alleges: “[d]ue to the controversial issues to be considered in this Project area an EIS should be considered mandatory...”

Response: In determining the significance of a proposed action, the Council on Environmental Quality regulations requires an agency to consider, “the degree to which the possible effects on the human environment are likely to be highly controversial.” 40 C.F.R. 1508.27(b)(5). However, “controversy” as set forth in this regulation does not equate with public opposition or controversy. Town of Orangetown v. Gorsuch, 718 F.2d 29 (2nd Cir. 1983); Foundation for Global Sustainability v. McConnell, 829 F. Supp. 147, 153 (W.D.N.C. 1993). If this were the case, opponents to any federal action could allege controversy and require an EIS for all projects. “Controversy” instead refers to the substantive dispute about the “size, nature, or effect of the major federal action,” rather than opposition to a use. Foundation for North American Wild Sheep v. USDA, 681 F.2d 1172, 1182 (9th Cir. 1982). Such dispute regarding the size, nature, or effect of this project is not existent with the Briar Hills Project.

There has been a considerable amount of public interest in the Briar Hills Project. More than 200 written and oral comments were received from the public during project scoping (EA, Folder 1, #4 and Response to Public Comments, Folder 2, #'s 10 & 11). The majority of the comments addressed the proposed road closures. The comments on this project ranged from eighty commentors who fully supported the road closures to one-hundred commentors who adamantly opposed closing any roads (EA, Folder 1, #7, pp. 1-6). Three public meetings were held to discuss this project. Most of the comments at the open houses also ranged from people who fully supported the road closures to those who opposed road closures. While there is substantial public controversy over the road closures, the long-term effects of the road closures are not likely to be a source of substantive controversial scientific disagreement. Accordingly, the disagreement concerning the Briar Hills Project is not a substantive dispute concerning the size, nature or effect of the proposed action but rather is a disagreement concerning the proposed use of the area.

The Planning Record supports the Responsible Official’s decision that there is no substantive controversy concerning the project.

Issue 4: “It is inappropriate to implement the old plan when the revision is underway. The old Plan was based on the Sierra Club agenda and not desired by most users. Why propose more road closures in the Briar Hills area when the majority of respondents don’t desire this. If the Forest Plan is followed, all of the inventory of these roads would be closed. Only the Sierra Club agenda is being followed” (NOA, p. 1-2).

The Appellant alleges:

- “It seems inappropriate to implement the old 1986 – defective and biased plan at this late date with the revision process under way!”

- *“Since there is some confusion as to the current plan we should not try to implement a plan or project based on faulty information! Lets take a time out and consider taking no action on any proposed project until we are all on the same page and understanding of current situation and desired future conditions, per NEPA.”*

Response: This issue was raised during the comment period for the Briar Hills Project and subsequently addressed in the Briar Hills Decision Notice Appendix I (Folder 1, #'s 3 & 4). The National Forest Management Act (“NFMA”) states Forest Plans, “shall be revised from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every 15 years....” 16 U.S.C. 1604(f)(5). The Huron-Manistee Forest Plan was approved in 1986. The Huron-Manistee published a notice of intent for the Plan revision in the Federal Register on September 9, 2003.

The Appellant argues, without supporting citation to statute, regulation, or policy, that the Briar Hills Project may not be implemented until the Huron-Manistee Forest Plan revision is completed. Taken to its logical conclusion, Mr. Miehke’s argument would halt all management and resource protection activities on the Huron-Manistee National Forest pending completion of an updated planning document. There is no express requirement in NFMA or its regulations to halt management activities if a Forest cannot meet the 15-year target in the statute.

Moreover, Congress did not intend management to cease if the 15-year target date for plan revision was not met. NFMA, Section 1604(c), illustrates this point. In the development of the original forest plans, Congress specifically allowed management of the forests to continue under existing resource plans pending approval of the first NFMA forest plan for each administrative unit. (See e.g. 16 U.S.C.A. 1604 note). This demonstrates Congress’ intent that on-the-ground forest management continue while the agency developed programmatic planning documents. On other occasions, Congress halted funding for forest plan revisions. Mr. Miehke’s arguments that the Briar Hills Project must be halted pending completion of plan revision are contrary to Congressional intent.

In addition, Congress stated (Consolidated Appropriations Resolution, 2004):

“Sec.320. REVISION OF FOREST PLANS. Prior to October 1, 2004, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Resources Planning Act (16 U.S.C. 1600 et seq.) or any other law: *Provided*, That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise the plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.”

A Forest Plan does not simply expire. The schedule for Forest Plan revision in no way affects the applicability of the current Forest Plan. I find the Forest is acting expeditiously and in good faith in revising the Forest Plan.

Issue 5: “When developing management alternatives, the Forest Service must recognize the public’s desire to keep existing opportunities open” (NOA, p. 2).

The Appellants allege: *“The planning team should develop alternatives that allow for additional access and additional recreational opportunities in suitable areas in order to manage the displaced use.”*

Response: The Appellant raised this issue in his response to the draft EA, as did many other individuals (Folder 1, #4). The Forest acknowledged in the Roads Analysis (Folder 3, #25), in the draft EA (Folder 1, #7, p. 3-9), and through public involvement (Decision Notice, Folder 1, #3, pp. DN-11 – DN-14 and Response to Comments, Folder 1, #4) that opportunities for motorized recreation would be limited under the chosen alternative. Further, it was stated that motorized access to the site would be maintained (though that access would be limited to a smaller number of road miles) (Decision Notice, Folder 1, #3, p. DN-7) and that ample opportunities for motorized use exist elsewhere on the Forest (EA, Folder 1, #7, p. 3-22, and Roads Analysis, Folder 3, #25). Thus, it appears the Forest has adequately considered displacement in their analysis of management prescriptions.

Mr. Miehke suggests closures of existing roads will lead to limitations on available recreation activities. As suggested on p. 3-9 of the EA (Folder 1, #7), the Forest views the closure and revegetation of roads as an expansion of available recreation opportunities, rather than a limitation on them. By following the principles of the ROS, they have stated the closure of roads and development of nonmotorized trails will enhance the available opportunities for semiprimitive nonmotorized types of recreation, which are currently in short supply. Put another way, by changing the nature of the recreation opportunities available in the Briar Hills area, there will be an increase in the breadth of possible activities in which individuals may participate.

In light of these facts, I believe the Responsible Official took displacement and diversity of recreation opportunities into consideration when selecting an alternative. I find that the Responsible Official did not violate any regulation, policy, or law.

Sub-issue 5A: “The elimination of much needed recreational opportunities is not reasonable without first exhausting all possible means of education” (NOA, p. 2).

and

Sub-issue 5B: “Emphasis should first be given to maintenance, reconstruction, and relocation of roads before closures are considered” (NOA, p. 2).

and

Sub-issue 5C: “Another standard should be to provide and maintain maintenance Level 2 roads to the lowest standard to meet management area objectives” (NOA, p. 3).

Response: These three sub-issues were raised by Mr. Miehke in his response to the draft EA (Folder 1, #4). They all relate to alternatives to closing existing roads. The fundamental logic behind these arguments appears to be that no closures should occur until attempts to ameliorate impacts have occurred. However, these suggestions seem to discount the primary reason stated for closing roads in the Briar Hills area. Whereas Mr. Miehke’s comments suggest issues of resource damage and erosion/runoff are the driving force behind closures, the Forest has stated in numerous places (e.g., HMNF Forest Plan, Folder 3, #29, p. IV-208; EA, Folder 1, #7, pp. 1-2 – 1-4 and pp. 3-6 – 3-11; Decision Notice, Folder 1, #3, pp. DN-7 – DN-8) that a primary impetus for any closures is an attempt to meet the standards and guidelines in place for MA 6.2. The opportunity to mitigate erosion and sedimentation issues was stated as a benefit of closing a number of roads, rather than the primary objective of the project.

In summary, the issues of educational efforts, relocation/maintenance/reconstruction of roads, and of minimal maintenance levels are all decisions to be made at the Forest Plan level, and are thus beyond the scope of this project (see the response to Issue 4 for a more detailed discussion of Forest Plan-level decisions). I find that the Responsible Official made a proper decision to use this project as a means for implementation of Forest Plan guidance.

Issue 6: “Impacts [of motorized use] should be evaluated and disclosed in a fair and unbiased manner and with a relative sense of magnitude” (NOA, p. 3).

The Appellant alleges:

- *“The current approach seems to be a preoccupation with documenting what impacts vehicle use ‘can have or may have’ to various resources, at various points in time, while ignoring the relevant environmental analysis.”*
- *“Analysis of vehicle use should be compared [sic] and contrasted [sic] to analysis of environmental effects of natural events including floods, wildfires, drought, etc. In reference to the Briar Hills area erosion [sic] and sedimentation are a natural disturbance regime and have been occurring since the last ice age in this particular area. What magnitude of disturbance is a [sic] acceptable level?”*

Response: The issue of questionable erosion/sedimentation impacts from roads was raised as part of Mr. Miehke’s response to the draft EA (Folder 1, #4, p. 1-68).

It appears the Responsible Official gave consideration to the potential for erosion and sedimentation of streams within the framework of the EA (specifically Folder 1, #7, pp. 3-11 – 3-17) and in the Roads Analysis (Folder 3, #25). The evidence from these documents, as well as professional opinions from the State of Michigan Department of Environmental Quality Soil Erosion and Sedimentation Control Program (Folder 1, #4, pp. 1-128 & 1-129) lead me to believe that soil erosion and sedimentation are legitimate, important concerns in this project and have been treated as such. That said, it does not appear that erosion and sedimentation were given undue significance relative to other issues that factored into the decision process.

More importantly, though, I refer to the response to Issue 4, which addresses the subject of Forest Plan-level decisions rather than project-level decisions. The issue at hand rests on the assumption that the Briar Hills Project decision was made primarily to reduce sedimentation and erosion from existing roads. Whereas the Appellant's comments suggest issues of resource damage and erosion/runoff are the driving force behind closures, the Forest has stated in numerous places (e.g., HMNF Forest Plan, Folder 3, #29, p. IV-208; EA, Folder 1, #7, pp. 1-2 – 1-4 and pp. 3-6 – 3-11; Decision Notice, Folder 1, #3, pp. DN-7 & DN-8) that the primary impetus for any closures is an attempt to meet Forest Plan standards and guidelines in place for MA 6.2. The opportunity to mitigate erosion and sedimentation issues was stated as a benefit of closing a number of roads, rather than the primary objective of the project.

In light of the treatment of erosion and sedimentation issues, as well as the importance of basing the decision on the purpose of fulfilling Forest Plan guidance, I believe the Responsible Official acted judiciously.

Issue 7: “There is speculation as to conclusions on invasives, black bears, Neotropical birds, brook trout. There is no supporting evidence” (NOA, p. 3-6).

The Appellant alleges,

- *“The highly speculative conclusions as to vectors for invasives is biased to favor road closures and is tantamount to scare tactics regarding the possible demise of the morel mushroom in this area.”*
- *The speculation...on black bears and neotropical birds is not supported by factual studies.*
- *“Speculation as to action alternatives effects on brook trout.”*

Response: The Biological Evaluation for the Briar Hills Project (Folder 3, # 25) evaluated the potential effects of the activities proposed in the Briar Hills Project within the Huron-Manistee National Forests (HMNF) on any federally listed or proposed species that may inhabit the Project Area or designated critical habitat within the Project Area. The Briar Hills Biological Evaluation (Folder 3, #21, p. 3) also evaluated the potential effects of this action on species on the Regional Forester Sensitive Species List for the Eastern Region (RFSS).

This evaluation served as the biological input to ensure compliance with the provisions of the Endangered Species Act of 1973 (ESA) as amended. The ESA requires federal agencies to ensure that actions authorized, funded, or carried out by the agency are not likely to jeopardize the continued existence of endangered or threatened species or result in destruction or adverse modification of critical habitat. The Briar Hills BE also provided a process to ensure that endangered and threatened species and their habitats received full consideration in the decision process (Folder 3, #21, p. 3). The BE ensured compliance with the legal, procedural, and biological direction in the Forest Service Manual for the conservation of endangered, threatened, and sensitive (ETS) species in land management and project planning. The BE was prepared by the Briar Hills Project Interdisciplinary Planner and by a Forest Service Wildlife Biologist and was approved by the Cadillac-Manistee Ranger District Wildlife biologist on December 4, 2003.

The Forest Service conducted plant surveys throughout the Project Area between 2000 and 2003 (Folder 3, #22). A noxious weed risk assessment was completed for the Briar Hills Project area (Folder 3, #22, pp. 4-5) and addressed in the Briar Hills EA (Folder 1, #7, p. 3-27 – 3-32). Portions of the Briar Hills Project Area were surveyed for wildlife species, in particular for federally listed species, Regional Forester's sensitive species, and Management Indicator Species in 2001 (Folder 3, #23, p. 1).

The regulations at 36 CFR 215 specifically state that, "it is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed." 36 CFR 215.14(a). An Appellant needs to show some rationale as to why he or she believes a decision should be reversed. A mere assertion by the Appellant that speculation was used for planning the Briar Hills Project does not meet the threshold to reverse a Responsible Official's decision. The Appellant also failed to offer alternative research methodologies that could have been followed. The Planning Record demonstrates that the anticipated effects of the Briar Hills Project are not uncertain, and do not involve unique or unknown risks.

Accordingly, I find that the Briar Hills Planning Record, (Biological Evaluation, Plant Survey Documentation, Wildlife Specialist Report, the Environmental Assessment specifically addressing Erosion and Sedimentation, Vegetative Composition, Endangered, Threatened, and Sensitive Species, Management Indicator Species, Wildlife and Fisheries, Project Planning Information, Decision Notice and Finding of No Significant Impact, and literature cited and referenced) clearly demonstrates that the Responsible Official incorporated the most pertinent information available for issuing a decision for the Briar Hills Project.

Issue 8: "We would like to see more vegetative treatments in the project area. The proposed treatments are so small as to be economically and ecologically insignificant. Active management should wait until revision" (NOA, p. 6).

The Appellant alleges:

- *"The costs involved in preparing the Briar Hills EA in both monetary and manpower cannot be justified at this small scale. There must be some common sense guidelines to suggest a [sic] economy of scale for these projects to maximize returns in monetary and wildlife habitat returns."*
- *"If there is any doubt as to the public's desired future condition for the forest this project should be paused through the forest plan revision process."*

Response: This economic comment was raised during the draft EA response period, and agency response emphasizes that the standards and guidelines of the Forest Plan, as amended, have been met (Folder 1, #4, pp. 1-68, 1-70, and 1-76 – 1-79). The standards and guidelines for Management Area 6.2 state that "the timber harvest blends with the characteristic landscape." These harvest areas are to "harmonize with the natural-appearing environment" and "future vegetative management will be minimal." (HMNF Forest Plan, Folder 3, #29, p. IV-200).

The Response to Comments further states “There are non-cost benefits associated with conducting the vegetative treatments other than for the revenue that is generated from the timber sale. Some of the non-cost benefits that would result from implementing the vegetative treatments include resolving erosion and sedimentation concerns, sustaining forest health, improving wildlife habitat and vegetative diversity, and improving semiprimitive nonmotorized recreational opportunities” (Folder 1, #4, p. 1-70). The benefits to forest health are expanded upon in the EA and Decision Notice, with specific references to opening the canopy in red pine and hardwood stands and reducing the unnatural row appearance in red pine stands (EA, Folder 1, #7, pp. 1-2 – 1-3; Decision Notice, Folder 1, #3, pp. DN-5 – DN-6).

The desired future condition for this management area was determined during the formulation of the existing HMNF Forest Plan. There may be individual publics who desire a different management emphasis. However, the desired forest condition is known and this project is aimed at helping the forest to meet that condition. “The Desired Forest Condition will be characterized by a predominantly natural or natural-appearing environment. Concentration and interaction between users is low, but there is often evidence of other users. The areas are managed in such a way that minimum on-site controls and restrictions may be present, but are subtle. Nonmotorized use is emphasized” (HMNF Forest Plan, Folder 3, #29, p. IV-199).

A Forest Plan does not simply expire (see the response to Issue #4 above for more detailed comments on this topic). The schedule for Forest Plan revision in no way affects the applicability of the current Forest Plan.

I find that the responses to the public comments, along with the reasons for the decision, the purpose and need for action as well as the standards and guidelines and the rules and regulations identified in 36 CFR 219.35(a) has adequately addressed these issues. The design of the harvest units coupled with the Decision Notice meet the Forest Plan standards and guidelines.

Issue 9: “We would like to see the roads that have been neglected for all the years be maintained, reconstructed, or relocated before closures are considered” (NOA, p. 7).

The Appellant alleges: “*After my survey days in the Briar Hills, I relayed to Patty by phone that I did not find any substantial damage or trash considering the amount of use this area gets.*”

Response: The lack of significant resource damage that could be attributed to motorized use in the Briar Hills area was raised in Mr. Miehle’s response to the draft EA, as was the idea of mitigation being a priority (Folder 1, #4, pp. I-68 – I-69).

As is the case in Sub-issues 5A, B, and C, with this issue, Mr. Miehle proposes alternatives to closing existing roads. Changing road maintenance, reconstructing or relocating these roads would imply changing the MA designation for the Briar Hills area. Doing so is a Forest Plan-level decision, however. A detailed response to issues related to Forest Plan-level decisions is contained in the response to Issue 4, above.

In this case, the argument centers on the lack of significant visible impacts from motorized use, leading to a suggestion of increased maintenance, reconstruction, or relocation of roads in order to mitigate possible erosion and sedimentation of streams as documented in the EA (Folder 1, #7, pp. 1-7 and pp. 3-11 – 3-17), Roads Analysis (Folder 3, #25, pp. 4-5), and Decision Notice (Folder 1, #3, pp. DN-8 – DN-14).

As stated in the response to Sub-issues 5A, B, and C, the fundamental logic behind this argument appears to be that no closures should occur until attempts to ameliorate impacts have occurred. However, again these suggestions seem to discount the primary reason stated for closing roads in the Briar Hills area. Whereas Mr. Miehke's comments suggest issues of resource damage and erosion/runoff are the driving force behind closures, the Forest has stated in numerous places (e.g., HMNF Forest Plan, Folder 3, #29, p. IV-208; EA, Folder 1, #7, pp. 1-2 – 1-4 and pp. 3-6 – 3-11; Decision Notice, Folder 1, #3, pp. DN-7 & DN-8) that the primary impetus for any closures is an attempt to meet Forest Plan guidance as laid out in the Standards and Guidelines for MA 6.2. The opportunity to mitigate erosion and sedimentation issues is stated as a benefit of closing a number of roads, rather than the primary objective of the project.

The suggestion of altering maintenance, reconstructing, or relocating roads in the Briar Hills area lies outside the purpose and need stated for the project. Thus, I support the Responsible Official's decision to enact road closures.

Issue 10: “We would like to see a comprehensive educational sign program to inform the various non-motorized users of Briar Hills, where their particular form of recreation can be enjoyed, at nearby locations on the forest [sic]” (NOA, p. 7).

The Appellant alleges:

- *“The non-motorized users have access to the great majority of the forest [sic] and should be informed of the opportunities available.”*
- *“The reference to proposing nonmotorized trails in the plan and the OA were basically ‘lip service’ in an effort to legitimize [sic] the SPNM area. After 18 years of non-management of this area I see no hiking, biking, or X-C ski trails in the area, apparently there are to [sic] many other suitable areas to recreate.”*

Response: The issue of displacing nonmotorized users to other, off-Forest areas was raised in Mr. Miehke's response to the draft EA (Folder 1, #4, pp. I-68 – I-69).

For the most part, this issue is one that is beyond the scope of this project. It is a Forest Plan-level concern, in that efforts aimed at displacing nonmotorized users to other areas would clearly imply a change to the MA designation that currently exists. (A more detailed discussion of considerations related to Forest Plan-level issues is contained in the response to Issue #4 above.) Current Forest Plan guidance holds the Briar Hills area as part of MA 6.2, which corresponds to the semiprimitive nonmotorized (“SPNM”) designation in the recreation opportunity spectrum (“ROS”). The Forest Plan Standards and Guidelines state that the desired future condition of SPNM areas be “...characterized by a predominantly natural or natural-appearing environment...”

The areas are managed in such a way that minimum on-site controls and restrictions may be present, but are subtle. Nonmotorized use is emphasized” (HMNF Forest Plan, Folder 3, #29, p. IV-199). Clearly, by these standards, the notion of de-emphasizing the availability of nonmotorized recreation opportunities in the Briar Hills area would run counter to guidance. Increased signage and concomitant attempts to relocate nonmotorized users either off-Forest or to other parts of the Forest also contradict the desired future condition of minimal regimentation as laid out in the current Forest Plan.

Thus, I see the decision not to include a signing and relocation element for nonmotorized users as a proper application of Forest Plan guidance in line with Briar Hills Project purposes and needs.

Issue 11: “There is a lack of scientific data and most conclusions are based on pure speculation” (NOA, p. 5).

The Appellant alleges: “*We would request that scientific data and quantitative analysis be provided and not to rely on emotional quality speculations and subjective conclusions or JUNK SCIENCE as a basis for decisions...*”

Response: The regulations at 36 CFR 215 specifically state, “it is the appellant’s responsibility to provide sufficient written evidence and rationale to show why the Responsible Official’s decision should be remanded or reversed” (36 CFR 215.14(a)). The regulation further states, that the appellant must demonstrate how the decision in question, “specifically violates law, regulation or policy” (36 CFR 215.14 (b)(9)). The Appellant asserts that a, “revisionist history is not acceptable and is morally and legally wrong” (Appeal # 04-09-04-0033 A215, p. 8). The Appellant fails to specify what law, regulation, or policy this assertion violates. The Appellant also failed to offer alternative research methodologies that could have been followed.

An appellant needs to show some rationale as to why he or she believes a decision should be reversed. A mere assertion by Mr. Miehle that “Junk Science” was used for planning the Briar Hills Project does not meet the threshold established in 36 CFR 215 to reverse a Responsible Official’s decision. The Planning Record clearly demonstrates that the anticipated effects of the Briar Hills Project are not uncertain, and do not involve unique or unknown risks.

I find that the Planning Record, Biological Evaluation (Folder 3, #21), Plant Survey Documentation (Folder 3, #22), Wildlife Specialist Report (Folder 3, #23), the Environmental Assessment (Folder 1, #7) specifically addressing Erosion and Sedimentation (Folder 1, #7, p. 3-11), Vegetative Composition (Folder 1, #7, p. 3-17), Endangered, Threatened, and Sensitive Species, Management Indicator Species, (Folder 1, #7, pp. 3-27 – 3-41), Roads Analysis Information (Folder 3, #25), Project Planning Information (Folder 3, #26), Decision Notice and Finding of No Significant Impact and Appendix 1 (Folder 1, #'s 3 & 4) and professional literature cited and referenced, clearly demonstrates that the Responsible Official incorporated the most pertinent information available for issuing a decision for the Briar Hills Project.

Issue 12: “We disagree with the decision on motorized access to within 0.6 mi. of the Tower site” (NOA, p. 9).

The Appellant alleges: “*The road should be kept open from the south right up to the tower site and could be moved or maintained up to the level of paving the last section for ease of maintenance.*”

Response: Mr. Miehke raised the issue of impacts and erosion in his response to the Environmental Assessment (Folder 1, #4, pp. 1-68 & 1-69). The issue of road closures was raised throughout the process and was a topic of numerous other public comments.

The Appellant suggests the road to the tower site should be improved such that it can remain open all the way to the tower, as opposed to being closed 0.6 miles from the site as determined in the Decision Notice. The Responsible Official took into consideration both the ecological and economic impacts of keeping this road open all the way to the site. Within the EA Affected Environment section, the issues of erosion and sedimentation from the road are raised, including an image of rutting that has occurred in that area (EA, Folder 1, #7, pp. 3-13 & 3-17). This issue was raised as a concern again within the Decision Notice (Folder 1, #3, p. DN-10) and in responses to numerous comments. Further, the Responsible Official took into consideration the costs of improving the road to minimum standards and of building in elements for erosion control. As stated on p. 3-20 of the EA (Folder 1, #7), the costs for road improvements needed to keep the road open all the way to the tower would be \$200,000, a fourfold increase over the road improvement costs in Alternative 4.

There was not a predominant viewpoint expressed through public comments on the EA. Those who commented on the EA registered significant support and significant opposition to the prospect of closing the road to the tower site. Thus, it cannot be reasonably argued that the Responsible Official ignored public sentiment.

In conclusion, the decision to close the road for the final 0.6 miles to the tower site was made for justifiable reasons, with consideration given to ecological and economic considerations. Per 36 CFR 215.14(b)(7) the Appellant does not explain his disagreement with this decision. Thus, I find the Responsible Official did not violate the law, regulation, or policy.

Issue 13: “We disagree with the nonmotorized trail in the southern section” (NOA, p. 9).

The Appellant alleges:

- “*Traditional use in this area has been of the motorized form we endorse multiple use of all trails where feasible [sic]...*”
- “*The NOI plans call for SPM designation of the southern unit, but since both unit [sic] have been managed for the past 18 years as roaded natural this designation is appropriate for both areas.*”

Response: Mr. Miehke raised the issues of Recreation Opportunity Spectrum (ROS) class designation and lack of recent vegetative treatment in his response to the draft EA (Folder 1, #4, pp. 1-68 & 1-69).

The lack of recent vegetative management and thus managing according to guidance that may come from a revised Forest Plan in the future is beyond the scope of this project. The Purpose and Need for the Briar Hills Project states that fulfilling Forest Plan guidance is a driving force behind undertaking the project. As the Briar Hills area is currently designated semiprimitive nonmotorized (SPNM), establishing nonmotorized trails is in keeping with Plan guidance and is thus an inherent part of the project. More detailed rationale for this response is listed above in the response to Issue #4.

The issue of appropriate ROS class designation has been addressed throughout the process. In the EA, it is stated that “Semiprimitive nonmotorized areas occupy approximately 5% of the Huron-Manistee National Forests” (Folder 1, #7, p. 3-9). Given that the SPNM class designation is applied to such a small proportion of Forest lands, it can be construed as important that those lands be managed according to SPNM prescriptions in order to assure that diversity of experience opportunities is provided across the Forest, beyond the Briar Hills area. Doing so will allow the Forest to comply with Forest Plan guidance (HMNF Forest Plan, Folder 3, #29, pp. IV-199 – IV-208). Further, it will allow the Forest to meet ROS guidelines. The ROS holds that an important aspect of recreation management is to provide a diversity of recreation experience opportunities.

The objective of managing the Briar Hills area according to SPNM prescriptions is mandated by the current Forest Plan, and fulfills the objectives of the ROS. Changing MA or ROS designation is beyond the scope of this project. Thus, I find that the Responsible Official did not violate policy or regulation.

Issue 14: “I believe that the substantive comments may have been read but were not considered since a majority of responses were against road closures [sic]” (NOA, p.9).

The Appellant alleges: *“I believe that the road closures were predecided and that alternative #1 was not a viable alternative [sic] from the start of the project after my witnessing the implementation at ID-56 road closure before the decision...”*

Response: This issue relates to 36 CFR 215.4(b)(8), which provides Mr. Miehke the right to appeal on the basis that he believes the “Responsible Official’s decision failed to consider the substantive comments.” However, 36 CFR 215.4(b)(8) also states Mr. Miehke must provide an explanation of why he believes substantive comments were not considered. In this case, the only rationale given for raising this issue is that the majority of public comments opposed road closures.

To state that a decision should or should not be made because a majority of public comments favored a particular alternative is to oversimplify the issue. In this case, when analyzing responses to the draft EA as summarized in the EA (Folder 1, #7, pp. 1-5 – 1-8) and contained in

the Planning Record (Folder 1, #4), as well as scoping comments received (Folder 2, #'s 10 & 11), it is clear that significant support exists for both sides of the road closure issue. But even this ignores the complexity of the project; the Responsible Official was required to consider numerous other issues related to this project in addition to potential road closures. Further, given the responses to public comments (Folder 1, #4), and the information contained in the Decision Notice (specifically Folder 1, #3, pp. DN-11 – DN-14), it appears that due deliberation was given to the comments submitted. Forest representatives' responses to each comment, in my estimation, reflected ample consideration to the content within each comment.

Given the breadth of issues to consider, the fact that it is not incumbent on the Responsible Official to make decisions based solely on the number of comments supporting or opposing an action, and most importantly that the Project Record contains adequate documentation of the degree to which public comments were addressed, I believe the decision made in the Briar Hills Project adequately reflected substantive comments.

RECOMMENDATION:

After reviewing the Project Record for the Briar Hills Project, and considering each 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