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Forest  
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File Code: 1570/2700/7100

Date: February 3, 2003

Jeffrey L. Hopkins  
7812 West Clayton Drive  
Phoenix, AZ 85033-2439

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 7000 2870 0000 1135 6084**

Re: Appeal #03-03-00-0010-A215, Blue John Private Access Easement, Bradshaw Ranger District, Prescott National Forest.

Dear Mr. Hopkins:

This is my review decision concerning the appeal you filed regarding the Decision Notice and Finding of No Significant Impact concerning the Blue John Private Access Easement on the Prescott National Forest.

### **BACKGROUND**

Forest Supervisor Michael King issued a decision on November 1, 2002 for the above-named easement. The Forest Supervisor is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.16, an attempt was made to discuss informal disposition of the appeal. The record reflects that informal resolution of the appeal was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal record, including recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer recommended that the Responsible Official's decision be affirmed and that your request for relief be denied. The evaluation concluded: (a) the decision logic and rationale were generally clearly disclosed; (b) the benefits of the proposal were identified; (c) the proposal and decision are consistent with agency policy, direction and supporting information; (d) public participation and response to comments were adequate; and finally, (e) all of the major issues raised by the appellant were adequately addressed in the project record.

The Appeal Reviewing Officer also recommended that the county and local residents with the assistance from the Forest Supervisor evaluate the adequacy of the north portion of Trail 67, in meeting the long-term emergency access needs of the Blue John Area.



**APPEAL DECISION**

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision concerning the Blue John Private Access Easement. I urge the county and local residents to assess the adequacy of the north portion of Trail 67 for emergency access and develop alternative access if needed.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Abel M. Camarena  
ABEL M. CAMARENA  
Appeal Deciding Officer, Deputy Regional Forester

cc: Mailroom R3 Prescott, Paul H Wachter, Bill G Woodward, Christina Gonzalez

## **Executive Summary:**

The Blue John Private Access Easement Decision was designed to provide safe legal access to the private lands in the Blue John Area near Walker Arizona.

The Blue John Project Area includes over forty private land parcels, made up primarily from patented mining claims, intermixed with National Forest System (NFS) lands near the area known as Walker, Arizona (*see map, page 6*). Old mine roads and trails generally provide access. Historically maps and records have inaccurately shown private land boundaries and road and trail locations. Access and boundary disputes have occurred between the landowners. The map on page 6 of this document reflects the best information available as to locations of private land boundaries and of existing roads and trails for the area.

Recent disputes involved potential encroachments on NFS lands (Lone Star property) and opposition to implementation of 1989 Resource Access and Travel Management (RATM) decisions. A BLM survey in 1996 on the Lone Star property revealed no encroachments on NFS lands. However, when implementation of RATM decisions began in 1996, issues surfaced concerning unauthorized-access to inholdings, safe road and trail standards, emergency access needs between Walker Road (County Road 57) and Spruce Mountain Road (Forest Service 52A), and FS access management direction that did not fit on the ground conditions. The Blue John Project Area environmental assessment (EA) addressed these issues.

Currently the roads and trails providing access to the private inholdings in the Blue John Area are not authorized under legal easement with the exception of 1/8 mile of Trail 67 intersecting FR52A west of the Lone Star private property. Access to NFS lands is not essential in the Blue John Area so most of the access routes would become private roads. The majority of the road access needs can be resolved through the issuance of reciprocal easements involving local property owners and the Forest Service.

The Blue John Private Access Easement Decision would significantly change road jurisdiction for the area, but overall use would remain similar to uses occurring now. Federal Land Policy and Management Act (FLPMA) easements would be issued for the south portion of Trail 67, Road 9404H, Zink Road (including the spur) and the King Pin Mine Road. A special use permit for emergency access would be issued on the north portion of Trail 67 to the Walker Fire Department. Table 1 summarizes current conditions analyzed and actions that would be taken as a result of implementing the EA decisions.

<b>TABLE 1</b> (see map on p. 6)		
<b>Route</b>	<b>Current Operational Status (may differ from RATM direction)</b>	<b>EA Decisions</b>
Trail 67 (from jct. w/52A to jct. w/unnumbered road to the east)	High clearance vehicle road under FLPMA easement to Lone Star/Mohawk Private Owners Assoc. (POA)	No change.
Trail 67 - North Portion	Non-motorized trail (Temporary special use authorization issued to Mr. Delany for vehicle use pending the outcome of this appeal)	Remove from trail inventory. Reclassify as a private 4-wheel drive <i>emergency</i> road. Issue special use permit to Walker Fire Dept.
Trail 67 - South Portion	High clearance vehicle road. Generally 4-wheel drive. Needs appropriate Rights of Way.	Remove from trail inventory. Reclassify as a private road. Issue FLPMA easement to new POA.
Road 9404H	Open – high clearance vehicles	Reclassify as a private road. Issue FLPMA easement to new POA.
Zink Road and spur	Open – high clearance vehicles	Reclassify as a private road. Issue FLPMA easement to new POA.
King Pin Road	Open – high clearance vehicles	Reclassify as a private road. Issue FLPMA easement to new POA.
East Pine Mtn. Road	Open – high clearance vehicles Maintained by County	No change.

Trail 67 extends north from the East Pine Mountain Road through several patented mining claims including Mr. Delany's and Mr. Hopkins' properties and intersects FS Road 52A west of the Lone Star private property. The north portion of Trail 67 from Mr. Hopkins' property to the Lone Star property would no longer be available for public use under this decision.

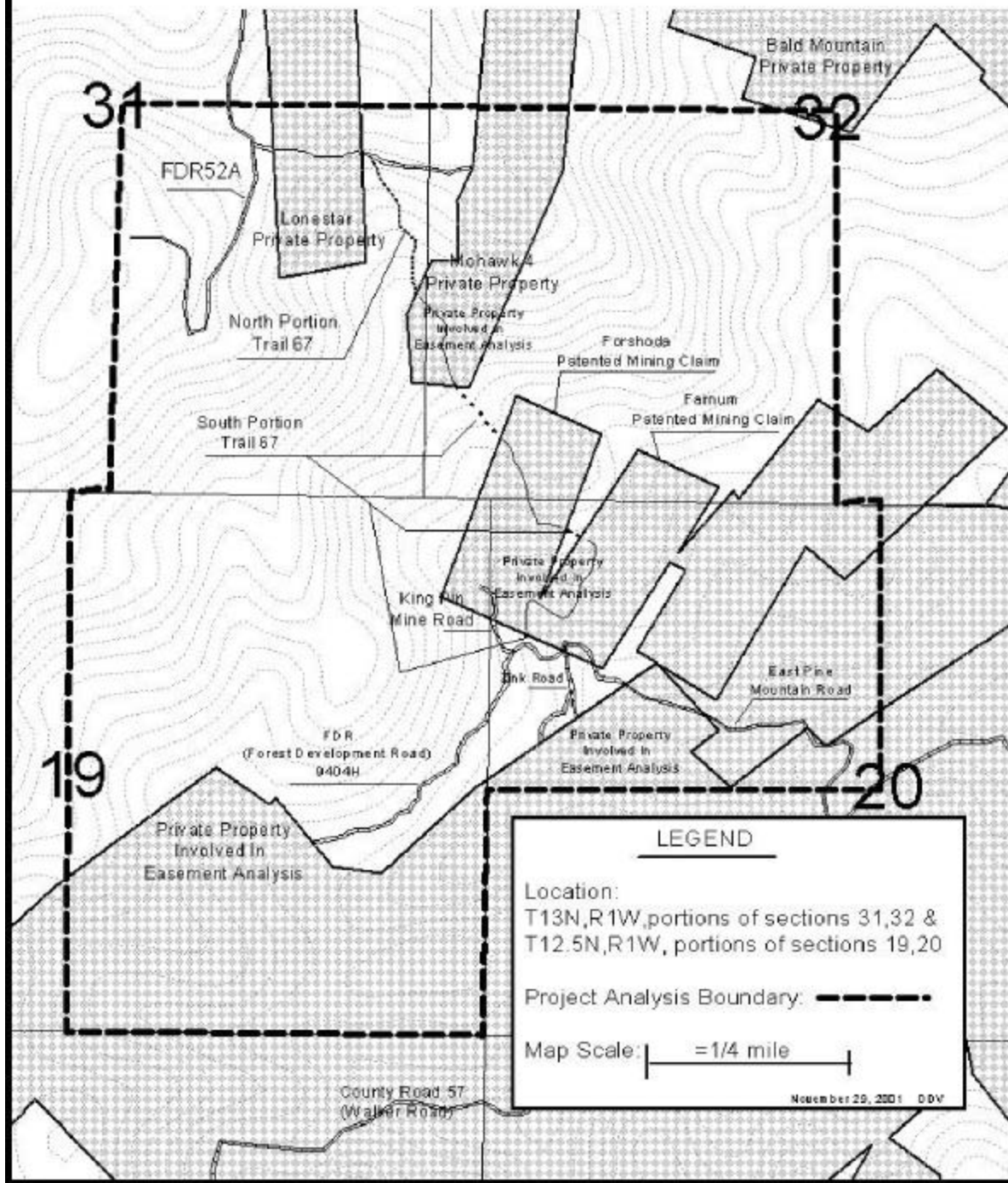
Specifically the Blue John Road Access decision removes the north portion of Trail 67 from the Forest Service Trail System and restricts the trail for public use with the exception of emergencies, because the trail is too steep for safe public access. The north portion of Trail 67 west of Mr. Hopkins' property has an average grade of over 23 percent with several pitches in excess of 35 percent. The average grade exceeds the recommended maximum standard of 18 percent for 4-wheel drive roads (FSH 7709.56). The steeper portions of the trail also exceed the recommended standard of 30 percent for non-motorized trails.

Mr. Delany and Mr. Hopkins, Appellants of this decision, are taking issue with the removal of the north portion of Trail 67 as a Forest Service (public) travel way. Mr. Delany and Mr.

Hopkins prefer to continue using the north portion of Trail 67 on a routine basis. The Appellants have used the north portion of Trail 67 for a number of years to visit each other. Mr. Delany has used North Trail 67 to access FS Road 52A on the way to Prescott, Arizona. Both Appellants feel that elimination of the trail for their use is a violation of law and is an unnecessary infringement on their use and enjoyment of private property.

This decision would provide legal access to Mr. Delany's and Mr. Hopkins' properties through reciprocal easements along the south portion of Trail 67. Mr. Delany and Mr. Hopkins would need to become members of the private property owners' association to be eligible for these easements. Mr. Hopkins currently has legal access to the remainder of his property via the Lone Star Mohawk FLPMA easement.

# Blue John Private Access Easement Project



## **Chronology Of Significant Events:**

Over 40 mining claims were patented within the Blue John Project Area between 1888 and 1961 (Southwestern Regional Office Status Records). Travel ways in the project area date back at least to the early 1900's when Walker, AZ was a mining boomtown. Most travel ways were never designed with current safety and resource considerations. Some alignments, like the East Pine Mountain Road, have been in their approximate location for over 100 years (PR 146).

There are indications on old maps that Trail 67 may have been in place by 1901. Subsequent maps vary in showing Trail 67 existing or not. Through the years, Trail 67 map designations varied between a trail and a 4-wheel drive road (PR 146). Many maps incorrectly reflect the actual location of Trail 67, including the 1974 USGS quadrangle map. In 1977, Trail 67 was identified as an all-purpose trail open to all uses, including vehicles. This designation was included in the FS trail inventory until 1989 (PR 146).

In 1989, Forest-wide direction for transportation and other facilities was revised and documented in Prescott National Forest (PNF) Plan Amendment #4. This revision affected travel management and signing, road closures, road inventories and trail management for recreation purposes. Some of these changes were made as a result of the RATM analysis process (Five-Year Review of the PNF Plan). One change resulted in Trail 67 (from the junction with East Pine Mountain Road on the south to the junction with road 52A on the north), being designated as a non-motorized trail. Non-motorized trail is the current management designation in the Transportation Atlas (INFRA Travel Routes database). It is that designation that is analyzed in the Blue John Project Area EA under the No Action Alternative (PR 146).

In 1992, the Prescott NF investigated potential private party encroachments on NFS lands resulting from a 1972 private survey conducted for private property owners on MS 694 and 695 (Discovery Location Lone Star Lode and Lone Star Lode First Extension). In 1996, a BLM survey revealed no encroachments on NFS lands, thus negating any need for a Small Tracts Act interchange (PR #48).

In 1998, the Prescott NF issued a FLPMA Easement to the Lone star and Mohawk Property Owners Association eastward from FDR 52A and terminating at west boundary of the Mohawk 4 private property. The FLPMA easement includes the first part of Trail 67 and an unnumbered road beyond that crosses NFS lands. In the process of implementing this easement, additional access needs were identified for the Blue John Project Area involving the remainder of Trail 67, Zink Road and spur, King Pin Mine Road and Road 9404H. Private land owners are accessing their private property via travel ways across NFS lands that are considered unsafe and/or unauthorized. This EA was implemented to identify a transportation system that supports resource goals and provides safe and legal access to private property (PR 146).

## **REVIEW AND FINDINGS**

**of Jeffrey Hopkins'**

**Appeal #03-03-00-0010-A215**

**Blue John Private Access Easement**

**ISSUE 1: The Prescott National Forest Plan is out-of-date, and is unreadable due to the quality of the reproduced copies. Page numbers are duplicated, skipped and missing making references to the Plan bordering on useless.**

**Contention:** The Prescott National Forest Plan was signed November 1986 and 15-year life of the plan ended November 2001. The plan is unreadable. There is no Table 2 on page 55 of the Prescott Plan.

**Response:** Plans are not out-of-date until revised. A recent court decision in Wyoming, upheld the use of the current Plan until revised (*Biodiversity Assoc. v. USFS*, decision September 30, 2002). Regulations (36 CFR 219.35g) spell out that a revision schedule for each Forest Plan will be published. Readability of the copy of the Plan reviewed by the Appellant cannot be ascertained from this record. The Appellant is correct that there is no Table 2 on page 55 of Plan, but there is no explanation in the appeal why this is important to the appeal issues.

**Finding:** The Prescott National Forest Plan (PNF Plan) is the current NFMA Plan direction for the Prescott National Forest and assigns management direction until it is revised or amended. The Appellant has not shown why it should not be referenced for NFMA direction in this project.

**ISSUE 2: The Trail 67 issues (mainly access and safety) are not adequately addressed in the EA/Decision.**

**Contention 2A:** Combining Trail 67 with other access issues in the area confuses the issues. Because of this confusion, specific approaches to resolving the road Trail 67 issues were never investigated. The Appellant objects to the inclusion of Trail 67 issues when Trail 67 is not defined in the *Background or Purpose and Need*.

**Response:** Trail 67 is identified in the EA introduction (page 1) as part of the existing condition. The Purpose and Need Statement is inclusive, "to change the existing condition of unsafe and unauthorized access to provide safe and legal access to private property while maintaining a transportation system that supports FS management of National Forest System lands."

**Finding:** Trail 67 issues are not confusing but are part of the whole access picture for the area. Approaches to Trail 67 issues are addressed in Alternative C (pages 5 and 7 of EA).

**Contention 2B:** The Forest Service is unwilling to discuss an agreement with property owners whose property Trail 67 crosses.



**Response:** A September 3, 2001, letter invited the Appellant and 31 other potentially affected property owners and a local fire protection association to an October 13, 2001, meeting to discuss the project, (PR 9). Private property owners, including the Appellant, local fire districts, county road managers, tribes, state, and county interests were sent a November 30, 2001, scoping letter (PR 194, page 4 of 20). An invitation for additional information and discussion was provided, (PR 194, page 8 of 20; PR 194, page 14 of 20, response 155.12).

**Finding:** The Forest Service provided numerous opportunities and invitations to discuss agreement(s) with property owners affected by Trail 67.

**Contention 2C:** The decision affects motorized travel between neighbors that pre-existed for years on road Trail 67. The decision would not allow continued travel between neighbors via the only practical route.

**Response:** Trail 67 is isolated between private land parcels. The Forest Service does not have access for public use across the private land parcels (PR 146, page 2). Private land owners use National Forest System (NFS) land to access their private property without authorization leaving them without legal access (PR 146, page 1). One private landowner has a letter authorizing temporary vehicle access across NFS lands on the north portion of Trail 67 to his private property pending the outcome of the appeal review (PR 25, page 3; PR 146, page 2).

**Finding:** The decision removes Trail 67 from the Forest Service Trail System. Legal access to the south portion of Trail 67 will be provided to a private property owners' association via an easement. Emergency access to the north portion of Trail 67 is to be provided via a permit to a local fire district. This north portion of Trail 67 would be available to the public in an emergency (PR 194, page 2 of 20). While there would be no everyday motorized access between neighbors on north Trail 67, the trail would be available to non-motorized travel (foot, horseback, mountain bike, etc.).

**Contention 2D:** There was an alternative that the property owner, of the south portion of the Mohawk 4, acquires a northern route to FDR 52A on NFS land. This alternative was not considered sufficiently. There was no discussion with the Appellant, whose property road Trail 67 crosses.

**Response:** Alternative E included having the property owner on the south end of Mohawk 4 build road access to private property across the National Forest from the north. This alternative was considered and dropped from further consideration for two reasons: (1) about one mile of new road construction would disturb 9 acres of land on steep slopes and create undesirable impacts to Mexican Spotted Owl (MSO) habitat (PR 142), and (2) suitable access exists from the south on NFS lands (PR 146, pg. 6).

A September 2, 2001, letter invited the Appellant and 31 other potentially affected property owners and a local fire protection association to an October 13, 2001, meeting to discuss the project (PR 9). Private property owners, including the Appellant, local fire districts, county road managers, tribes, state, and county interests were sent a November 30, 2001, scoping letter (PR

194, page 4 of 20). An invitation for additional information and discussion was provided (PR 194, page 8 of 20; PR 194, page 14 of 20, response 155.12).

**Finding:** Alternative E was considered and dropped from further consideration. The Forest Service provided the Appellant and other affected property owners numerous opportunities and invitations to discuss Trail 67.

**Contention 2E:** There is no calculation of potential use and the Forest Service does not know what the likely use would be. Past use is a better indicator. Considering daily potential use to determine effects on north Trail 67 makes little sense.

**Response:** The reports do not show analysis figures. However, the record does indicate that the daily use was based on the potential use in alternative C once a FLPMA easement is issued to a Private Owners Association (PR 194).

**Finding:** Estimates of potential use is an appropriate procedure for evaluating effects of alternatives in the NEPA process.

**Contention 2F:** The use of existing Forest Service roads [and trails] is permitted under 36 CFR 212.6. It is a federal requirement to allow residents to use the existing roads and trails to access property.

**Response:** 36 CFR 212.6 (a) *Policy in acquiring and granting access.* To assure effective protection, management, and utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent, the Chief shall as promptly as feasible obtain needed access thereto and shall grant appropriate access across National Forest and other lands and easements administered by the Forest Service to intermingled or adjacent landowners. Construction, reconstruction or maintenance of a road or highway requires written authorization.

36 CFR 212.6(b) *Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service.* Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service shall be permitted ingress and egress over the same and use of existing National Forest System roads and trails in order to reach their homes and to utilize their property: Provided, such ingress and egress or use shall conform to rules and regulations governing the protection and administration of the lands and the roads or trails to be used.

36 CFR 212.6(c) *Others.* Entering upon the National Forests and other lands administered by the Forest Service and use of existing National Forest System roads and trails shall be permitted for all proper and lawful purposes subject to compliance with rules and regulations governing the lands and the roads or trails to be used.

Forest Service Manual (FSM) addresses access at FSM 2701.1-15, dealing with Secretary of Agriculture authority under FLPMA to issue permits, leases, or easements to occupy, use, or

traverse NFS lands; FSM 2701.3-3, regarding 36 CFR 251, Subpart D governing procedures by which landowners may apply for access across NFS lands, and the terms and conditions governing authorizing permittees such access; FSM 2730 covers policies, authorities, and direction for granting rights-of-ways for roads and trails across NFS lands and interests in lands; FSM 2730.3 addresses broad policy concerning granting rights-of-way for roads and trails across NFS lands; and FSM 5403.3 addresses (1) the FS avoiding any appearance of regulating private property use, and (2) long-standing FS policy to be a "good neighbor" to adjacent or intermingled non-Federal landowners.

In 1998, the Prescott National Forest issued a FLPMA Easement to the Lone Star and Mohawk Property Owners Association across NFS lands eastward from 52A and terminating at the west boundary of the Mohawk 4 private property (PR 1). Other than the 1998 FLPMA Easement, no evidence is presented either in the appeal or the Project Record that any other legal access across NFS lands exists. The selected alternative removes Trail 67 from the Forest Service Trail System and places the route under special use permit leaving no "existing" trail or road under either 36 CFR 212.6(b) or (c). However, in conformance with 36 CFR 212.6(a) and (b), the Appellant will have legal access to his property from the south by becoming a member of the private property owners' association (PR 144, page 2; PR 194, page 1 of 20).

**Finding:** The Appellant has legal access to his property to the north via the Lone Star Mohawk Property Owner Association FLPMA Easement. The Appellant will also have legal access to his property from the south via the south portion of Trail 67 by becoming a member of the private property owners' association (PR 144, page 2; PR 194, page 1 of 20). The decision meets the requirements of 36 CFR 212.6.

**Contention 2G:** In referring to ANILCA regulations, the decision takes away reasonable use and valid existing right of access. It does not provide the most direct, economical or convenient route to access the southern part of the Appellant's property or to visit neighbors to the south in the Blue John area.

**Response:** Disposing the public domain through sales, homesteading, mining patents, and grants resulted in private holdings being intermingled with NFS lands. Congress recognized private landowner's basic access needs by providing, in ANILCA, access rights across NFS lands subject to terms and conditions of the Secretary of Agriculture. Granting a "rights-of-way" usually authorizes such access.

ANILCA, Section 1323(a). Notwithstanding any other provisions of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, The Secretary shall provide such access to non-federally owned land within the boundaries of the National Forest System *as the Secretary deems adequate* (emphasis added) to secure to the owner the reasonable use and enjoyment thereof: *Provided*, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

36 CFR 251.110 (c). Subject to the terms and conditions contained in this part and in parts 212 and 293 of this chapter, as appropriate, landowners shall be authorized such access as *the*

authorized official deems to be adequate (emphasis mine) to secure them the reasonable use and enjoyment of their land.

36 CFR 293 applies to Wilderness and Primitive Areas that are not part of this appeal.

FSM 2734.6 states that “The access to which the landowner is entitled need not be on the most direct, economical, or convenient route for the landowner.” FSM 2734.6 also states that “Adequate access may not be road access in all cases, and alternate modes of access may be considered. The appropriate mode or type of access selected should be one that is both reasonable for the planned use of the private land and, insofar as possible, compatible with the Forest land and resource management plans for the National Forest System lands.”

What constitutes reasonable use and enjoyment of private land is case-specific, and includes considering State and local laws and zoning restrictions, along with typical uses of similarly situated private land in proximity to the land for which access is requested. Land managers must make judgments on a case-by-case basis what is the access type that is adequate and commensurate with the reasonable use and enjoyment of non-federal land, taking into consideration the conventional, traditional access to similarly situated non-federal land for similar uses and enjoyment in proximity to the land for which access is requested (36 CFR 251.114(a)).

**Finding:** There is nothing in the record nor has the Appellant provided any information that there is a "valid existing right of access."

In compliance with ANILCA, the Responsible Official deemed that the Appellant has reasonable use and enjoyment with legal access to the north via the Lone Star Mohawk Property Owner Association FLPMA Easement (PR 144, page 2; PR 194, page 1 of 20). The Appellant will have legal access from the south by becoming a member of the private property owners' association under the Blue John project. While there would be no motorized access between neighbors on north Trail 67, the trail would be available to non-motorized travel (foot, horseback, mountain-bike, etc.). The decision is consistent with ANILCA by providing safe and legal access adequate and commensurate with the reasonable use and enjoyment of the Appellant's property.

**Contention 2H:** The decision is inconvenient for all private property owners whose property Trail 67 crosses, not just some. North Trail 67 is needed to alleviate the need for new road construction and additional easements. There is no agreement with the property owners whose property Road Trail 67 crosses, so no maintenance can be done.

**Response:** Limiting access on the north portion of Trail 67 in Alternatives A and B may cause some inconvenience for some property owners. They would be limited in the routes they may access by vehicle. People in Walker would have to access their property via Highway 69 and the Walker Road rather than up Senator Highway and over Spruce Mountain. Also, people in Walker would have to drive out the Walker Road to Highway 69 to Prescott and up Senator Highway to visit friends on Spruce Mountain. In Alternative C, using the north portion of Trail 67 to access Spruce Mountain, while convenient, would be contingent upon securing public

access across Lone Star private property at the west end of the Lone Star Mohawk Easement (PR 146, page 9, paragraph 4).

Alternative D, having the south end Mohawk 4 property owner seek access across adjacent private property, was dropped from consideration because (1) new road construction on steep slopes would create undesirable resource damage to both soil and adjacent MSO habitat, and (2) suitable access exists from the south on NFS lands (PR 194, page 3 of 20). Alternative E, having the south Mohawk 4 property owner seeking access across the National Forest, was dropped from consideration because (1) about one mile of new road construction would disturb 9 acres of land on steep slopes and create undesirable impacts to MSO habitat (PR 142), and (2) suitable access exists from the south on NFS lands (PR 194, page 4 of 20).

**Finding:** The Appellant has legal access to his property to the north via the Lone Star Mohawk Property Owner Association FLPMA Easement (PR 144, page 2; PR 194, page 1 of 20). By becoming a member of the private property owners' association under the Blue John project, the Appellant and all private property owners would also have legal access to their property from the south via the south portion of Trail 67.

**Contention 2I:** There will be no means to access other areas of the Mohawk and Lone Star neighbors to the north. Suitable access from the south on NFS lands does not exist.

**Response:** The Appellant has access to other areas of Mohawk and Lone Star neighbors to the north via the Lone Star/Mohawk FLPMA easement. By becoming a member of the private property owners' association, access to neighbor's on the south is provided by through Prescott and accessing south neighbors via the south portion of Trail 67.

**Finding:** Although it is a longer route, the Appellant does have access to neighbors, both to the north and south with the existing FLPMA easement and this decision.

**Contention 2J:** The decision has significant effect because it prohibits reasonable access to the lower portion of the Appellant's property thereby inhibiting future development or sale of that area. It reduces the value of the property. The FLPMA easement on the north does not access the lower part of the Appellant's property.

**Response:** Under the Decision, the Appellant would have access to the lower portion of his property via the south portion of Trail 67 when he becomes a member of the Property Owners Association. There is nothing in the record to indicate nor has the Appellant provided any documentation to support the claim that property value would decrease.

**Finding:** Under the Decision, the Appellant will have access, both to the north and south parts of his property, with the existing FLPMA easement and this decision. There is insufficient evidence in the record to support the claim that this decision inhibits future property development, sale or reduces value.

**Contention 2K:** The decision says that Forest Service road 9404H does not need to be open to public. The Appellant objects, saying multiple-access is desirable.

**Response/Finding:** The Forest Service does not need this road. Under the Decision, the Appellant would have access to road 9404H by becoming a member of the Private Property Owners' Association.

**Contention 2L:** The Appellant disagrees that he has access absent the Trail 67. The FLPMA easement that leads onto Appellant's property is dependent on Trail 67 that feeds the FLPMA easement several hundred yards to the west. The FLPMA easement is not a direct access route to the Appellant's property, refers to attached map.

**Response:** The Lone Star Mohawk Property Owners Association members, including the Appellant, have legal access across National Forest land eastward from Road 52A via a FLPMA Easement. The FLPMA easement includes the first part of Trail 67 (not the north portion) from the junction with Forest Service road 52A and west to the boundary of the Mohawk property along an unnamed and unnumbered road. The FLPMA Easement leads onto the north side of the Appellant's property. The entire eastern edge of the Appellant's property is accessed by a 25-foot private easement that is currently not developed.

**Finding:** The Appellant has legal access to his property via a FLPMA easement. He will also have legal access to the south part of his property via the south portion of Trail 67 by becoming a member of the POA.

### **ISSUE 3: Safety**

**Contention:** The decision has significant adverse effects by reducing availability of rapid ingress and egress to and from Spruce Mountain top in case of fire and emergencies. It decreases public safety by having no one to check and maintain Trail 67 north from the south portion of Mohawk 4. .

**Response:** The availability of the north portion of Trail 67 is a primary concern for safe access for homeowners on both sides of Spruce Mountain. There is concern about being able to get out on either side of the mountain, particularly in case of a wildfire (PR 7, 45, 51, 59, 71, 72, 77, 79, 99, 114, 117, 120, 167A-E, 168, 170-177, 179, 180, 182, 183, 185-186, 188, 190). Selected Alternative A provides for issuing a special use permit to the Walker Fire Department for emergency use of the north portion of Trail 67 with crash gates at the junction with your property at (1) the south portion of Mohawk 4, and at (2) the north junction with the Lone Star Mohawk Property Owners' Association FLPMA easement (PR 194, p.1 of 20). The north portion of Trail 67 would be available to everyone for emergency use (PR 194, p. 2 of 20). Crash gates are an acceptable industry standard to provide emergency access but to prevent routine access (some minor damage to vehicles could occur when breaking through the gate).

**Finding:** Selected Alternative A provides emergency access through a special use permit to the Walker Fire Department. Emergency use would be available to everyone.

### **ISSUE 4: The EA has inadequate analysis upon which to base a decision.**

**Contention 4A:** The Forest Service did not respond to social and economic considerations.

**Response:** No issues were identified that related to social and economic analysis for the proposed action (see Scoping Summary PR 105 and EA page 5). Also see EA Response to Comments attached to Decision Notice (PR 194). In the comment response to 155.4, safety and convenience issues were addressed in the EA and these were the only social and economic related issues. Impacts to individuals were not addressed per se, see comment response 155.8, and comment response 187.7.

**Finding:** Economic and social considerations were not important to the nature of this road access decision. That determination by the Responsible Official follows direction for the scope of social and economic analyses in FSM 1973.03, FSM 1972, and FSH 1909.17, chapters 30.1 and 21.1.

**Contention 4B:** The DN has references wrong. There is no Map 2 on page 11 or Map 1 on page 10 or Table 2 on page 12. The Appellant says the map is inaccurate; the position of the Lone Star and Mohawk properties is different from the Yavapai County GIS web site, the Forest Service Maps, and Map 1 on page 9 of the Decision. Road Trail 67 is drawn inaccurately.

**Response:** The DN does contain erroneous references. Map 1 is found on page 9, not 10; Map 2 is found on page 10, not 11; and, Table 2 is found on page 11, not 12. Many maps incorrectly reflect the actual on the ground location of roads and trails and also private lands, including the USGS maps.

**Finding:** The DN references noted above are out of sequence by one page. However, all referenced material is included in the DN and easily found. Maps used in the assessment were the best maps available.

**Contention 4C:** The negative impacts on soil (from Alternative C) are unfounded as there would be no daily use. Impact on wildlife is only a “maybe” and would be no more than any impact during the past 100 plus years that the road has existed (Specific Objection 3). The concern with frequent use and negative resource impacts is unfounded. Typically, one or two round trips per month might be normal.

**Response:** Soils: EA page 7, resource impact chart, shows daily use on steep pitches of Road Trail 67. Pages 8, 9, and 10 describe existing soil condition, and effects. The effects section talks about “potential” daily use. The Soil Report (PR 138) states that frequent monitoring on Alternative C would be needed. It also states “Frequent disturbance may resulting increased runoff and erosion and decreased watershed productivity.”

Wildlife: The wildlife report (PR 143) discloses that the MSO is the only species known to occur in the project area or have habitat in the project area. The analysis states under Alternative C allowing daily use on the upper portion of TR 67 by the association members would disturb MSOs that may use that portion of the Protected Activity Center (PAC). While no owls have been detected in the area during MSO monitoring, this in no way confirms that MSO do not use the area at some time during breeding season.

**Finding:** The soils report describes a potential effect from allowing daily use on Trail 67. The wildlife report describes possible effects on a listed species if daily use is allowed. The analysis reports do not have use figures, but the DN does indicate that evaluating effects of daily use was based on what would be permitted under the alternative. The appeal offers no new information on why the soils or wildlife reports should not be used in the decision-making.

**Contention 4D:** The Appellant objects to Alternative D being dropped from further consideration.

**Response:** The reasons for dropping alternative D were stated in the EA (page 6). The reasons are (1) new road construction on the north end (following safety standards) would create resource damage, and (2) suitable access already exists from the south.

**Finding:** Eliminating an alternative from further consideration is within the authority of the Responsible Official. This follows CEQ guidelines (40 CFR 1502.14(a) and FS Handbook direction for NEPA (see FSH 1909.15 sections 10.4(6), 12.3c and 14.3).

**Contention 4E:** Alternative E was not considered sufficiently. There are some good points in Alternative E.

**Response/Finding:** See answers to Contention 4D on Alternative D that was eliminated from detailed analysis. Response and Finding are the same.

#### **ISSUE 5: PNF Plan Standards should not apply.**

**Contention 5A:** The standard refers to electronic site permits only (PNF plan page 55). The Prescott NF Plan standard J02 makes little sense where multiple routes already exist. J02 states: “Allow only one access road for subdivision unless natural features dictate otherwise...” Road Trail 67 is a connector road to the FLPMA easement, not a direct access. The J02 standard applies to electronic site subdivisions, not to other site subdivisions or individual property.

**Response:** Page 55 of PNF Plan lists several standards besides electronic site permits. There are standards pertaining to land exchange, special uses, private access, mineral activities, and landline (see JO1, JO11, JO6). Although it has no subheading to delineate it, the standards on this page also cover more than just electronic sites. The Amendment 7 insert on page 54 is limited to electronic site management.

Standard JO2 reads: “Allow only one access road for subdivision access unless natural features dictate otherwise and where there is no suitable private land alternative or where additional access is needed for public safety.”

**Finding:** The PNF Plan standard J02 does apply.

**Contention 5B:** PNF Plan Standard & Guideline (in Purpose and Need statement) says to replace or improve improvements where they no longer serve intended purpose and/or present a



public health or safety standard. Appellant says there is no public health or safety hazard as road has been in use for decades without problems.

**Response:** The north portion of Trail 67 exceeds accepted grade standards for both 4-wheel drive roads and non-motorized trails. It is considered unsafe as a routine 4-wheel drive road (PR 144). Survey data prepared on north Trail 67 confirms an average 23 percent grade with several pitch grades in excess of 35 percent.

The ability of a vehicle to traverse a particular grade depends on vehicle weight, horsepower and the traction coefficient of the driving surface. If steep road grades are necessary, the maximum recommended is 18 percent for high clearance and four-wheel drive vehicles (FSH 7709.56,4.32). The maximum road grade recommended for use in mountainous terrain by the American Association of State Highway and Transportation Officials is 17 percent.

The maximum grade recommended for non-motorized trails is 30 percent (FSH 2309.18).

**Finding:** The north portion of Trail 67 exceeds accepted grade standards for both 4-wheel drive roads and non-motorized trails. It is considered unsafe as a routine 4-wheel drive road. The determination that the north portion of Trail 67 is unsafe due to excessive grades is consistent with accepted guidelines and practices.

**Contention 5C:** Reference to Prescott NF Plan reference, Amendment 11, page 26 is confusing. There are two different page 26s. The first page is titled Dispersed Recreation. The area in question is not a recreation area.

**Response:** This page 26 (added in Amendment 7) of the Forest Plan is titled Dispersed Recreation, and it includes the access policy for the Forest. It identifies the visitor map as the access map, limits motor vehicle use, limits to trail access, and restrictions to cross-country travel by vehicles. This section is pertinent to the entire Forest. Other similar resources (heritage, visuals, etc.) follow the same format. The introduction to this section on page 24 states that these Management Prescriptions apply Forest-wide.

**Finding:** The standards referenced in the Forest Plan are pertinent and applicable to the project notwithstanding the "Dispersed Recreation" subheading. The standards are not limited to a particular management area.

#### **ISSUE 6: Other access needed if Trail 67 is not available in future.**

**Contention 6A:** The Appellant disagrees that there are no future projects connected to this project as a result of the decision. The Forest Service failed to request information about future projects from the private landowners. The Appellant purchased his property in the 1970's with the understanding that the lower portion of his property could be developed in the future and/or sold. Access via the northern portion of road Trail 67 is needed for either of these. Southern access is across private property where no easement exists.

**Response:** The southern access is addressed in the cumulative effects on access on page 9 of the EA. Whether or not future subdivisions of the lands occurred, the alternatives were analyzed in terms of access from the south or north. The analysis process does not need to get future speculative property development plans to have enough information to make a decision on access options.

**Finding:** The Appellant did not raise planned future development of his property during scoping, or in responding to the EA. Nor was it necessary in making a decision on access options.

**Contention 6B:** The Appellant disagrees that additional road construction is not necessary. If the northern portion of road trail 67 is not available a 25-foot easement across the Dunning property may be required to have a new road constructed on it.

**Response:** The Lone Star Mohawk Property Owners Association members, including the Appellant, have legal access across National Forest land eastward from Forest Service road 52A via a FLPMA Easement. The FLPMA Easement leads onto the north side of the Appellant's property. A 25-foot undeveloped easement parallels the entire east side of the Appellant's property (Appellant's Attachment 1a).

**Finding:** The Appellant has legal access to the north portion of his property via a FLPMA easement. By becoming a member of the private property owners' association under the Blue John project, the Appellant would also have legal access to his property from the south. What becomes of the 25-foot undeveloped easement is a matter to be resolved by the private landowners involved.

#### **ISSUE 7: FS Handbook misapplied to this decision.**

**Contention 7:** Grade limitation standards, using an upper limit of 30 percent, (FSH 2309.18), are for new construction. Road Trail 67 has existed and been in use as a motorized road for over a century. The steepness exceed FS safety standards for both roads and trails (in EA Response to Comment 151.3), but Appellant asks why doesn't Forest Service then modify the road to reduce the grade.

**Response:** The Forest Service decision in the EA was that Trail 67 was no longer needed for Forest Service access. Therefore, the Forest Service has no need to modify the steep grades.

**Finding:** The Forest Service decision in the EA was that Trail 67 was no longer needed for FS access.

#### **ISSUE 8: FS is giving access to other parties without landowner permission.**

**Contention 8A:** The selected alternative would issue a special use permit to the Walker Fire Department for Emergency. The Appellant objects, claiming the Forest Service has no legal

right to issue a permit for the use of road Trail 67 without consent of the property owners whose property road Trail 67 crosses.

**Response:** Trail 67 is isolated between private land parcels. The Forest Service would only be issuing a FLPMA easement across NFS lands. Access across the private land parcels would come through the reciprocal agreement granted by the private property owner's association (PR 146, page 2).

**Finding:** The selected alternative provides for issuing a special use permit across National Forest land to the Walker Fire Department (PR 194, page 1 of 20).

**Contention 8B:** Appellant objects to Forest Service granting access across Appellant's property on Forest Service Trail #67 without his consent. Refers to all EA statement to grant access to members of the road association to FDR9404H, King Pin Mine Road, Zink Road and Forest Service Trail #67 (north and south). Forest Service plans to give access to north end of Forest Service Trail #67 but not on Lone Star/Mohawk Easement or across the Lone Star private property.

**Response:** Alternatives A and C included issuing a FLPMA Private Road Easement to a private property owners' association for using FD9404H, King Pin Mine Road, Zink Road, and the portions of Trail 67 as these roads occur on National Forest land (PR 194, page 3 of 20). The Forest Service roads involved are isolated between private land parcels. The Forest Service does not have access across the private land parcels.

**Finding:** Alternative C was not selected because it did not provide the best option from a resource management perspective and because of the potential negative impacts to soil and wildlife. Alternative A calls for issuing a special use permit for emergency purposes to the Walker Fire Department on north Trail 67, and a FLPMA Easement across National Forest lands for south Trail 67, FD9404H, King Pin Mine Road, and Zink Road to a private property owners' association. There would be reciprocal easements across private properties for members of a private property owners' association and the Forest Service on affected lands (PR 194, page 1 of 20). The Blue John Private Access Easement Decision provides for reciprocal easements among the landowners.

**ISSUE 9: There is the appearance that the Forest Service is regulating use of private property with this decision.**

**Contention:** By making Trail 67 unavailable to property owners the Forest Service is illegally regulating private property use. The Forest Service's actions are not promoting a policy of being 'a good neighbor'.

**Response/Finding:** The Forest Service is not regulating private property use. The Forest Service is being a "good neighbor" by providing legal access across NFS lands to affected property owners in the Blue John Project Area (ANILCA, section 1323(a); 36 CFR 212.6(a)(b)(c); 36 CFR Subpart D; FSM 2734.6).