



United States
Department of
Agriculture

Forest
Service

Huron-Manistee National Forests

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File Code: 1570-1

Date: April 11, 2008

Mr. David Miehlike
Westside Trails Chairman
Cycle Conservation Club of Michigan
600 Sherman Oaks Ct. # 619
Ludington, MI 49431

RE: Appeal of the Decision Notice and Finding of No Significant Impact for the Toman School Project Environmental Assessment, Cadillac-Manistee Ranger District, Huron-Manistee National Forests, Appeal # 08-09-04-0042 A215

Dear Mr. Miehlike:

On March 3, 2008, you filed a notice of appeal pursuant to 36 C.F.R. § 215, on the Toman School Project Environmental Assessment on the Cadillac-Manistee Ranger District, Huron-Manistee National Forests. District Ranger Jim A. Thompson signed this decision on January 17, 2008. The legal notice was published in the *Manistee News Advocate* on January 19, 2008. I have reviewed the Appeal Record and have also considered the recommendation of the Appeal Reviewing Officer (ARO), LaCroix Ranger District, Superior National Forest, District Ranger, Nancy Larson, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official 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 Toman School Project proposes the following activities within an analysis area of approximately 10,950 acres: red pine, white pine, jack pine, aspen, and hardwood timber harvest treatments; wildlife and fisheries habitat improvement; non-native invasive plant species control; timber stand improvement; and management of the transportation system on National Forest System lands within the project area.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The ARO found the decision responded to comments raised during the analysis process and public comment period and adequately assessed the environmental effects of the selected action. In addition, she found the issues raised in your appeal (i.e., Road Abandonment/Relocation/Obliteration, Forest Road Closures, Road Stream Crossing



Improvements, Vegetative Treatments and Non-Native Invasive Plants) were addressed, where appropriate, in the decision documentation. Based on this review, the ARO recommended affirming the Responsible Official's decision.

DECISION

After careful review of the Project Record and appeal, I concur with the ARO's analysis and findings regarding your appeal issues. To avoid repetition, I adopt the ARO's rationale as my own, and refer you to the enclosed ARO's recommendation letter, dated April 8, 2008, for further details. It is my decision to affirm District Ranger Jim A. Thompson's January 17, 2008, Decision Notice and Finding of No Significant Impact for the Toman School Project on the Huron-Manistee National Forests.

This project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR § 215.9(b)).

Pursuant to 36 C.F.R. § 215.18(c), this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Jerry Bird

JERRY A. BIRD

Appeal Deciding Officer

Acting Forest Supervisor

Enclosure

cc: Jim A Thompson, Nancy S Larson, Joel Strong, Patricia R Rowell, Lauri Hogeboom



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File Code: 1570-1

Date: April 8, 2008

Route To:

Subject: Appeal of the Decision Notice and Finding of No Significant Impact for the Toman School Project, Huron-Manistee National Forest

To: Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Dave Miehle on the Toman School Project, Cadillac-Manistee Ranger District of the Huron-Manistee National Forests. Jim Thompson, District Ranger was the Responsible Official for this decision. His Decision Notice was signed on January 17, 2008. The legal notice for the decision was published on January 19, 2008 in the *Manistee News Record*, Manistee, Michigan. The Notice of Appeal (NOA) was filed electronically on March 3, 2008.

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 Forests (HMNF). My recommendation is based upon review of the Project Record (PR) including but not limited to the scoping letter, public comments, Environmental Assessment (EA), Decision Notice (DN), and Finding of No Significant Impact (FONSI).

Appeal Issues:

Mr. Miehle raised five main issues in this appeal of Toman School Project. Many of the larger issues contained numerous sub-issues. All issues were submitted to the Responsible Official during the scoping or 30-day comment period unless otherwise noted.

The PR (Tab 6, Appendix A1, Response to Comments) contains extensive documentation, indicating that District Ranger Thompson was in contact with Mr. Miehle by e-mail after the 30-day comment period closed, including a letter from Acting Forest Supervisor Jerry A. Bird dated February 22, 2008 to Mr. Miehle responding to his February 11, 2008 information request. The Responsible Official continues to try and resolve this appeal informally. However, as of this date attempts have been unsuccessful.

Issue 1: “**Road Abandonment/Relocation/Obliteration**”: Mr. Miehle claims, “*The USFS primary rationale for this subproject was to reduce erosion and sand load into Smail Creek along 24 mile road (USFS FR 5227) and 11 1/2 road (USFS FR 7100).* “[An] EIS [should] be prepared [e.g., significant major road construction/obliteration subproject].”



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Response: The National Environmental Policy Act (NEPA) requires that federal agencies follow certain procedures to examine the environmental impact of their proposed actions. If an agency proposes a "major federal action [that] significantly affect[s] the quality of the human environment," NEPA requires the agency prepare an environmental impact statement (EIS) that, among other things, details "the environmental impact of the proposed action" (42 U.S.C. § 4332(C)). An EIS, however, is not required if the agency first prepares an EA providing "sufficient evidence and analysis" that no EIS is necessary because the proposed action will not significantly affect the quality of the human environment (See 40 CFR § 1508.9). In those circumstances, the agency issues a "Finding of No Significant Impact" (FONSI) rather than preparing an EIS (40 CFR § 1508.13).

The Council on Environmental Quality (CEQ) has promulgated regulations detailing how agencies should fulfill these NEPA obligations. CEQ's regulations require consideration of context (significance of an action) and intensity (severity of impact). Intensity is further subdivided into 10 items that agencies should consider when taking a "hard look" at whether a project will have "significant" environmental impacts. These include:

- beneficial and adverse impacts,
- the degree to which the proposed action affects public health and safety,
- the degree to which the action may adversely affect an endangered or threatened species,
- the degree to which the effects on the quality of the human environment are likely to be highly controversial,
- the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks,
- the degree to which the action may establish a precedent for future actions,
- whether the action results in cumulatively significant impacts,
- the degree to which the action may adversely affect scientific, cultural, or historical resources,
- whether the action threatens a violation of federal, state, or local law, and
- the unique characteristics of the geographic area such as proximity to park lands or wild/scenic rivers (40 CFR § 1508.27).

If an agency takes a "hard look" and determines that the proposed action has no "significant" environmental impact, an EIS is unnecessary.

The Toman School Project is tiered to the 2006 Huron-Manistee National Forests Land and Resource Management Plan (LRMP). Chapter 1, Purpose and Need, Management Direction, in the EA describes this project within the context of the LRMP (EA, p. 1-2). The LRMP clearly states under Forest-wide Goals and Objectives and Desired Future Condition, Natural Resources, "Reduce non-point pollution to the extent feasible and protect the hydrologic functions of watersheds, including both surface and groundwater systems" (LRMP, p. II-5). Additional justification for the project can be found under LRMP Forest-wide Standards and Guidelines. Standards and Guidelines define which management practices to follow to meet the intent of the various management prescriptions. The terms "Standards and Guidelines" are defined in the National Forest Management Act and implementing regulations. Standards (S) are required actions to achieve goals, objectives, and desired conditions. Guidelines (G) are preferable or

advisable actions to achieve goals, objectives, and desired conditions. The Standards and Guidelines provide the framework to guide activities on the Huron-Manistee National Forests. Some Standards and Guidelines are detailed in nature and are subject to change as more information becomes available through implementation and monitoring. Chapter IV of the LRMP explains how the Forests will implement and monitor these requirements. Appropriate guidelines for this project are detailed as follows (The letter G stands for Guidelines):

- G - WATERSHED MANAGEMENT, 6 Water Quality, “Do not permit management practices which seriously or adversely affect water conditions – surface and groundwater, or fish habitat.” (LRMP, p. II-21).
- G - IV MANAGEMENT INDICATOR SPECIES, E Brook Trout, 2 Conservation Activities: “Stream habitat protection and restoration will be promoted through conservation practices such as...sediment removal,...and improvement of transportation systems, ... and the use of best management practices in riparian corridors and the Streamside Management Zone.” (LRMP, pp. II-33 through II-34).
- G - 7700 TRANSPORTATION SYSTEM, II, Provisions for Facilities, A, 3, Special Restrictions for Water Quality, d: “Select locations and design water crossings where aquatic organisms’ passage will not be restricted.” (LRMP, p. II-40).
- G - 7700 TRANSPORTATION SYSTEM, II, Provisions for Facilities, A, 3, Special Restrictions for Water Quality, h: “Water crossing designs should not adversely impact the hydrologic characteristics of an area.” (LRMP, p. II-40).

The Michigan Department of Natural Resources has designated four creeks in the project area as trout streams. They include Smail Creek, as well as Slagle, Cripple, and Seaton. Baseline information was collected on the streams within the project area, and is described in the EA (PR, Tab 15, pp. 3-60 through 3-62). The EA specifically states and supports with field analysis the fact that many of the roads are prone to erosion and are major sediment contributors (PR, Tab 15, EA, pp. 1-4). Sediment threats to the watershed are described on page 3-61, and include sediment input at road stream crossings and habitat fragmentation from impoundments and road stream crossings. Studies have documented negative effects of excessive sediment to aquatic organisms. The EA and PR also contain other references to negative impacts (PR, Tab 20, ID Team Meeting Notes and Field Review Notes; Tab 21, Project Planning Analysis Info, Maps, Photos; Tab 22, Travel Management Analysis Information; Tab 29, Wildlife Project Info (Wildlife and MIS); and Tab 30, Fisheries Project Info).

All proposed road and stream crossing projects were analyzed in detail (PR, Tab 22, Travel Management Analysis Information – Roads Analysis for the Toman School Project). The net effect of the proposed road activities will include less erosion and sedimentation. This is supported by the road analysis, which noted that the roads to be decommissioned and/or obliterated were badly eroded, contributing to resource damage, effecting wildlife species, or were not needed for management activities.

The EA and associated documents provide sufficient evidence and analysis showing that none of the predicted effects would have an impact deemed significant to the quality of the human environment (PR, Tab 15, EA, pp. 3-30, 3-58, 3-60, 3-62 through 3-66, and 3-74), contrary to Mr. Milekie's claim. The FONSI section of the DN (PR, Tab 5, DN/FONSI, pp. DN 11 through DN-13) clearly summarizes and refers to the EA when assessing the ten "intensity" items that constitute the "hard look" required by NEPA. Although Mr. Miehike may believe that an EIS is required, I find otherwise and agree with the Responsible Official's conclusion. I find no violation in the NEPA.

Sub-Issue 1A: *"The USFS ... rationale FOR THIS SUBPROJECT is flawed "...[D]ue to a (error of facts/maps/assumptions in the analysis) that show/assume Smail creek as viable perennial stream southeasterly of the NW 1/4 of the SW 1/4 of section 26 of Springville Twp."* (NOA, p. 1).

- *"Note, Map Manistee District supplied with Wildlife Habitat Improvement Projects 2007 dated 1/3/07 file code 1950/2600, C.52 incorrectly shows Smail Creek as a solid line depiction SE of the Cedar Swamp and Private lake in section 27 and 26 which by personal observation should be a intermittent drainage/ravine depiction."* (NOA, p. 2).
- *"Personal inspection of the area east of the (above noted Smail source location) in the valley along (FR 5227) shows that there are two identifiable EPHEMERIAL stream/spring flows approximately individually 1/4 to 1/2 mile long, that start in higher terrain (near abutting Sections 31 and 36) and terminate and are totally absorbed into the sandy soil along 24 1/2 road or (FR 5227)."* (NOA, p. 2).
- *"I objected to the non-standard depiction of streams on the analysis maps as dotted lines as confusing and not verifiable on the ground as perennial, seasonal drainages/ravines or subterranean water flow."* (NOA, p. 2).
- *"Appendix A1 Page A1-52 thru A1-62, prepared by Conservation Resource Alliance dated Sept 1997; rather dated material. The information is contradictory and shows a lack of knowledge or information."* (NOA, p. 2).
- *"Little or no sand migration could be noted downslope from the W-42 area towards the cedar swamp source of Smail Creek through the mesick red pine plantation valley near/through area 52/2."* (NOA, p. 2).

Response: A review of the Record indicates that maps were available to use in commenting on this project. These maps included relevant stream and waterway information. The Alternative Maps (PR, Tab 15, EA, Appendix B, Road Activity Descriptions) have streams clearly labeled. Due to maps being re-produced in black and white, streams were depicted by a dotted line to help the readers in their review. Public involvement for the project included listing in the HMNFs' Schedule of Proposed Actions and the HMNF website, and a direct mailing of a scoping letter on February 5,

2007 to approximately 365 individuals, organizations, and adjacent landowners (EA, p. 1-6). Comments from Forest Service specialists were also solicited. During the scoping period, 40 responses were received. These are extensively addressed in the Project Record (PR, Tab 17, Scoping Letter Comments: Tab 15, EA, p. 1-7, Table 1; and Tab 6, DN, Appendix 1 – Response to Comments).

The scoping package (PR, Tab 15, Scoping Letter and Scoping Mailing List) included project maps. Each map contained unique information (e.g., proposed harvest treatment areas, road closures/obliterations, and erosion control sites) that gave the reader a relative sense of the project area location and various elements.

I find the maps provided are in fact adequate, especially if used in the context of previous information. It is also important to note that the District Ranger and members of the Interdisciplinary Team (IDT) were available to answer questions, clarify any confusion, and if necessary meet on the ground to address Mr. Miehke's concerns (PR, Tab 6, DN, Appendix 1, Response to Comments, p. A1-31). It is clear the IDT conducted on-site reviews of the road/stream crossing sites (PR, Tab 20, ID Team Meeting Notes and Field Review Notes; Tab 21, Project Planning Analysis Info, Maps, Photos; and Tab 23, Travel management Analysis Information). These field reviews confirmed earlier inventory work completed by Conservation Resource Alliance (PR, Tab 6, p. A1-48 to A1-52, Appendix 1, Response to Comments). Although Mr. Miehke may feel otherwise, the Project Record does not support his personal observations. For further discussion, refer to Issue 1B. I find no violation of any law, regulation or policy.

Sub-Issue 1B: *“The W-42 noted culvert does not exist/not discernable, and there is no vegetative type/soils evidence that water or sediment has traveled across the road from the damp drainage area on the south side of 24 1/2 Rd to the valley NW of that location.”* (NOA, p. 2).

Response: Field notes specifically address Mr. Mielke's comments regarding the W-42 culvert (PR, EA, Appendix 1, Response to Comments pp. A1-50 through A1-51). This field review was conducted by the Zone Biologist and District NEPA Coordinator, which utilized the 1997 Conservation Resource Alliance data as baseline information (PR, Tab 6, DN Appendix 1 - Response to Comments). A photo in the 1997 report showed the stream flowing. Since that time, the downstream side of the where a channel once existed is now filled with sediment. Based on this review, which included all road/stream crossings proposed for the project, it was recommended that all crossings be kept (PR, Tab 15, EA, Appendix 1, Response to Comments, p. A1-51). Based on my review of the Project Record, I find Mr. Mielke's claim unsupported.

Sub-Issue 1C: *“On page DN-7 it is noted in the analysis, the costs of the subproject are very high [NOT CLEARLY NOTED/REVEALED (possibly hidden in timber sale costs) IN THE EA COST BREAKDOWN TABLE], and there is no demonstrated need for the large scale earthmoving project with the potential for major erosion in this very sandy hilly area,*

given the [error of facts/MAPS/assumptions] re: location of the viable perennial Smail Creek.” (NOA, p. 2).

Response: The cost of implementing the project was considered during analysis (EA, p. 3-71 through 3-77, and Table 3-22, p. 3-74), but is not the only consideration. As regards “potential for major erosion”, appropriate LRMP Standards and Guidelines, as well as Best Management Practices would be implemented as mitigation measures. I reviewed the Responsible Official’s rationale for his decision (DN/FONSI, p. DN-7 through DN-8). His assessment was based on professional experience and that of his IDT members (which included among others, two biologists and a civil engineering technician), along with on-site verification of existing conditions. This is illustrated throughout the Project Record. I find that Ranger Thompson used solid rationale in selecting Alternative 4.

Sub-Issue 1D: *“Legal implications of the joint claims of the Wexford county Road commission/USFS on the 2 roads proposed for abandonment have not been resolved.” (NOA, p. 3).*

Response: The EA clearly states that both the Forest Service and Wexford County claim jurisdiction to the road in question (EA, p. 1-4). However, there is no documented record of an issue existing between the Forest Service and Wexford County regarding “legal” jurisdiction anywhere in the PR that hinders project implementation. To the contrary, both the Forest Service and the Wexford County Road Commission cooperate and coordinate on roads management. The Commission was consulted regarding this project. They supported the project, wanted to work with the Ranger District in 2008 in implementing the transportation components, and offered to provide labor (PR, Book 1 of 2, Tab 17, Memo to the File, Personal conversation of February 2, 2008, with Wexford County Engineer).

Sub-Issue 1E: *“Creation of a “de-facto” roadless area with the excessive subproject closures, abandonment and obliteration, would eliminate access to many observed dispersed camping areas as well as limiting driving for pleasure opportunities and mushroom/firewood gathering which are highly rated in the local area, District and HMNF.” (NOA, p. 3).*

- *“The cumulative negative effects of this project road closures/obliteration as well as the recent similar road closure actions on adjacent COLFAX, BRIAR HILLS, WAGON WHEEL PROJECTS has a detrimental social-economic effect on the Mesick, Yuma Harrietta and Boon area.” (NOA, p. 3).*
- *“The ‘defacto non-motorized area creation’ should be subject to due process of Forest Plan amendment and not made at the project level.” (NOA, p. 3).*

Response: A project objective included the management of the transportation system in the project area. The resulting system of roads and trails was designed to reflect

administrative and public needs while minimizing resource damage and more closely meeting LRMP direction for management Prescriptions 2.1, 4.2, and 4.4 (LRMP, pp. III-2.1-2 through 4.2-15, and 4.4-1 through 4.4-17; and PR, Tab 15, EA, p. 1-5).

Managing access is discussed in detail in the EA (PR, Tab 15, EA, pp. 3-13 through 3-13, and pp. 3-29 through 3-33). That discussion is based on extensive planning across the entire Forest (PR, Tab 23, Forest-Scale Roads Analysis for the HMNF) and within the boundaries of the Ranger District (PR, Tab 21, Project Planning Analysis Info, Maps, Photos; and Tab 22, Travel Management Analysis Information). Guidance and direction for conducting these analyses is found in the LRMP (LRMP, pp. II-39 through II-40):

- Identify Forest Service existing roads and determine those needed for administrative and public use. Roads not needed would be obliterated.
- Complete obliteration of temporary roads within one year after the need for them has ceased.

The public was afforded the opportunity to express their ideas and views through comment on transportation elements of the Toman Project (PR, Tab 5, DN/FONSI, pp. DN-10 through DN-11; and Tab 6, DN, Appendix 1 – Response to Comments). The Responsible Official considered those comments, agency policy, Forests direction, specialist reports, and IDT input in making his decision. The EA discusses and analyzes the effects of Toman Project transportation management elements in each of the four alternatives on recreation and visual quality (PR, Tab 15, EA, pp. 3-65 through 3-72). Direct, indirect and cumulative effects were assessed. “The proposed road closures would reduce the amount of roads to access the Project Area for driving for pleasure; however, between 67 and 73 miles of National Forest, state, and county roads would remain open to provide access to recreation activities within the Project Area.” (EA, p. 3-70). Cumulatively, analysis indicates that dispersed camping along open Forest Roads is expected to remain at current levels. Closed roads would provide more areas for quiet recreation and foot travel. The rationale for the decision is clearly stated in the DN/FONSI (PR, Tab 5, DN/FONSI, pp. DN-7 through DN-10).

I find no creation of a “de facto” non-motorized area as Mr. Miehike claims. The Responsible Official, through an IDT process, conducted an appropriate analysis. This is supported by the Project Record (PR, Tab 20, ID Team Meeting Notes and Field Review Notes; Tab 21, Project Planning Analysis Info, Maps, Photos; Tab 22, Travel Management Analysis Information; Tab 29, Wildlife Project Info (Wildlife and MIS); Tab 30, Fisheries Project Info; and Tab 6, DN, Appendix 1, Response to Comments, pp. A1-52 through A1-62)). Based on my review, I find no violation of any law, regulation or policy.

Issue 2: “*Forest Road Closures*”: Mr. Miehike contends:

Sub-Issue 2A: “*The road closures are excessive and unwarranted in most cases in the Toman project area, inadequate road monitoring and maintenance over the past 20 years has led to some problems. Inadequate analysis of the roads in the project area is evident*”

by the lack of inclusion of the following roads noted# on carsonite markers; 7561, 7583, 7567 7610, 7538, 7542, 5684, 7335, 7546, 7551, 7518 at 7561, portions of 7541 and 7122.” (NOA, p. 3). *“The proposed closures would be premature without further analysis of the M55 M115 and M37 designated driving loops for street legal vehicles.”* (NOA, p. 3).

Response: While Mr. Mielke offers the opinion that road closures are *“excessive and unwarranted”* the documentation states otherwise. The EA, (p. 3-14) references and tiers to Forest Plan guidelines where management direction for the Transportation System specifies: *“Identify Forest Service existing roads and determine those needed for administration and public use. Roads not needed would be obliterated. (Forest Plan, p. II-39).”* Following Forest Plan direction, the Purpose and Need of the Toman School Project includes managing the transportation system in the project area (PR, Tab 15, EA, p. 1-4). Specifically, this project proposed to relocate portions of two roads prone to erosion and rutting, close approximately 5 miles of existing Forest road, and close approximately 10 miles of unauthorized illegal user-developed trails. The road segments identified and represented in the Proposed Action were *“badly eroded, contributed to resource damage, or not needed for management purposes or public access.”* (PR, Tab 15, EA, Chapter 3). This project was not designed to designate travel routes; however, effects to access were addressed. It is important to note that not every project can fulfill all users’ desires.

Mr. Mielke’s statement about *“inadequate road monitoring and maintenance over the past 20 years”* (NOA, p. 3) was specifically addressed by the IDT for the Toman School Project in Appendix 1, Response to Comments, pages. A1- 42, 11.6 (PR, Tab 6). Here the Responsible Official agreed that the signing and *“general condition of the roads has declined ...”* The response describes the budget allocation and prioritization process used for maintenance and signage of roads.

Mr. Mielke maintains that there was an *“Inadequate analysis of the roads in the project area.”* Mapping issues and road closures are addressed in Response 11.6 by explaining the District was in the beginning stages of validating and updating information in order to implement national direction outlined in the Travel Management Rule. While this analysis was not complete, *“the roads information utilized in the planning process for this project was adequate to analyze the transportation system and effects of the alternatives in the EA.”* (PR, Tab 6, Appendix 1, Response to Comments, p. A1- 42, 11.6). My review of the PR confirms the Responsible Official’s statement. In fact, the analysis of the transportation system for the alternatives in the EA as described under *“Manage the Transportation System to Provide Motorized Public Access and Reduce Resource Damage”* (PR, Tab 15, EA, pp. 3-13 to 3-20) and the associated maps for those alternatives (PR, Tab 15, EA, Chapter 2, Figure 1 through Figure 4) are more than adequate for the purpose and need of this project.

The analysis area used for indirect and direct effects of the alternatives as well as for cumulative effects takes into account past and foreseeable future actions. A rationale for road closure was provided during the scoping phase of the project, and is reflected in Proposed Action (Alternative 2). Roads in Alternative 2 were *“badly eroded, contributed to resource damage, or not needed for management purposes or public access.”*

Alternatives 3 and 4 were based on variations to Alternative 2; including; “forest roads left open, roads closed, new road construction and roads obliterated.” These alternatives were specifically designed “to address the public issues concerning the transportation system and to address resource concerns.” As noted in the EA, Alternative 3 does not include the road relocation/abandonment project and leaves more roads open. Alternative 4 however includes the road abandonment/obliteration project and leaves more roads open than Alternative 2, and less than under Alternative 3. The analysis describes by alternative, impacts to road density, motorized access, and non-motorized use. It also identifies the needs for construction, reconstruction or improvements based on a commensurate level of timber hauling. The PR includes the baseline information summarized in the EA. (PR, Tab 24).

Mr. Miehle expressed an interest in the “*driving for pleasure loops*” as part of the Toman School scoping response (PR, Tab 17, 03/13/2007 email). Mr. Miehle contends in his appeal (NOA, p. 3) that “*the proposed closures would be premature without further analysis of the M55, M115, and M37*” The IDT did in fact discuss the possible designation of loops comprised of existing open forest roads as driving routes between state highways M-55, M-37 and M-115 in their analysis of cumulative effects (PR, Tab 15, EA, pp. 3-19 to 3-20). The PR (Tab 35) also contains copies of a November 30, 2006 scoping letter for this separate project that seeks input from the public on issues, concerns and types of use relating to an OHV route system; a February 24, 2007 summary of comments received; and information about travel management and the off-highway vehicle program. As noted in the November 30th letter, the District will “gather this information and use it for the creation of an OHV route system using existing roads.” This is considered a separate project outside the scope of the Toman School proposal.

Information included in the EA and the PR further indicates that the IDT considered the possibility of designated driving loops on existing roads between M-55, M-37 and M-115 even though the Toman School Project did not designate such routes. “Future projects would analyze and manage the transportation system on National Forest System lands to identify resource concerns and to achieve the desired conditions for Transportation Management in the Forest Plan.” (PR, Tab 15, EA, p. 3-20). Please refer to my discussion in Sub-Issue 2B for more information on this issue.

Contrary to Mr. Miehle’s belief, I find that the road closures in the Toman School project are neither excessive nor unwarranted. In addition the effects analysis conducted was complete and contained the required elements including direct, indirect, and cumulative effects. Based on my review, I find no violation of any law, regulation or policy.

Sub-Issue 2B: “*We believe that the current stance on motorized recreation trails is unreasonable/unsupportable and negates/needs with lip service given to the M55, M115 and M37 designated driving loop consideration for street legal vehicles.*” (NOA, p. 3).

- “... [H]uge/disparity” between different mixes of use [snowmobile, ATV, motorcycle].

- “... Trends/studies ... passed the notice of recreational planners.”
- “Designated and signed non-motorized trails are very lacking/non-existent in and adjacent to Toman and Briar Hills.”
- “The rationale [DN-9/10] that there is a ‘sufficient amount of motorized trails in and near the Project area’ is not supportable”
- “The notion that there will be (‘anticipated unacceptable resource damage’) is unsupportable as a rationale unless the object is zero tolerance.”

Response: As noted in Sub-Issue 2C, the PR contains information regarding resource damage at road stream crossings in a document entitled, “Manistee River Watershed, Road/Stream Crossing, Inventory Report, prepared by the Conservation Alliance in cooperation with the Huron-Manistee National Forest (A copy of the inventory report is in Appendix 1, Response to Comments, pp. A1-52 through A1- 62 and pertinent pages as it pertains to fisheries project information, PR, Tab 30). In addition, members of the IDT, specifically the Interdisciplinary Planner and the Fisheries Biologist, conducted a field visit to further document the existing condition of the stream crossings. (10/17/07 field notes located in PR, Tab 30 and in PR, Tab 6, Response to Comments, Appendix A1, pp. A1-48 through A1-51).

The purpose and need for the Toman School Project is outlined in the EA (PR, Tab 15, EA, 1-3 and 1-4). As noted in Issue 2A, there is another project being considered at the District that addresses driving loops between M-55, M-37 and M-115. The designation of this loop system is not part of the Toman School Project. As noted above however, these designated driving loops were appropriately considered in Chapter 3 of the EA.

As also noted in the EA, the “Decision to be Made” is “based on the analysis of the environmental effects in the EA” where the Responsible Official “must decide whether or not to implement the *proposed* management activities and decide on the amount, type, and location of these activities” (emphasis added) (PR, Tab 15, EA, p. 1-6). The proposed management activities in the Toman School Project did not include the designation of the uses of trails or roads nor the creation of loops for specific uses as Mr. Miehke desires. Nevertheless, the EA did address an alternative in “Alternatives Considered but Eliminated from Detailed Study” (i.e., “Develop summer motorized motorcycle/ATV trails within and adjacent to the Project Area). This alternative notes that the Forest developed a full range of summer and winter trail systems, including hiking, horseback riding, mountain biking, motorcycle, ATV, cross-country skiing and snowmobiling systems. The Cadillac-Manistee Ranger District itself currently has approximately 400 miles of various trails, including about 230 miles of snowmobile, 40 miles of motorcycle trail, 17 miles of horse trail, 45 miles of cross-country ski /mountain bike trail, 36 miles of hiking/mountain bike trail, and 40 miles of hiking/bicycling trail (PR, Tab 15, EA, pp. 2-10 to 2-11). Clearly, the Forest and District has been responsive to those groups of users requesting these types of use. The IDT provided additional rationale for eliminating this alternative from detailed study because “motorized trails already occur in and near the Project Area, across the

Huron-Manistee National Forests, and because of the anticipated unacceptable resource damage, and law enforcement concerns associated with a new motorized trail development.” (PR, Tab 6, Response to Comments, Appendix 1, pp.A1-14).

Based on my review of the PR, I find no violation of any law, regulation or policy. I concur with the Responsible Official that the designation of trails and roads for specific uses, as Mr. Miehke desires, is outside the scope of the Toman School Project purpose and need.

Sub-Issue 2C: “*The designation of unplowed FS roads for snowmobile use (was not/should have been) considered in this project level decision with the site-specific EA ‘as instructed by the Chief’*” (NOA, p. 4).

Response: While Mr. Miehke requests the designation of unplowed Forest Service roads for snowmobile use, he does not say why this should be done in the context of the goals and objectives of the Toman School Project. Yes, the Toman School Project is a site-specific EA; however snowmobile routes and their management is not part of the project *except* for relocation of segments due to resource concerns associated with the snow free season. The Chief’s direction does not require that every site-specific EA consider the designation of unplowed roads for snowmobile use. Again, Mr. Miehke is attempting to expand the scope of the project. “The purpose of the Toman School Project is described in the EA on pages 1-3 and 1-4 and states it is designed to meet the goals and objectives of the Forest Plan for Management Areas 2.1, 4.2, and 4.4, and accomplish the following project objectives (PR, Tab 6, Response to Comments, Appendix 1, p. A1-32, Response 7.5 that responds to a 09/21/2007 email from Mr. Miehke):

- Sustain forest and ecosystem health,
- Provide early successional habitat, maintain the aspen forest type, and improve aspen age-class diversity,
- Improve aquatic habitat,
- Manage the transportation system in the project area.

As noted in the EA on page 3-14, there are approximately 7 miles of snowmobile *trail* within this project area. The PR (PR, Tab 6, Response to Comments, Appendix 1, p. A1-31, 7.4) clearly provides an explanation of why the Responsible Official did not see a need to evaluate snowmobile use on unplowed roads “when *designated* snowmobile trails *already* exist within and outside the Toman School Project Area.” It further states that “snowmobile use was not identified as a relevant issue or need for *this* project.” (Emphasis added with italics). Based on my review of the PR, the Responsible Official’s decision is supported. I find no violation of any law, regulation or policy.

Sub-Issue 2D: “*The signed snowmobile trail on the old railroad grade from Yuma to Mesick was not included or mentioned in the EA. This could have been considered as a summer motorized access route if allowed by law.*” (NOA, p. 4).

Response: The PR contains copies of correspondence received from Mr. Miehke for the Toman School Project. Neither in response to the scoping email from Mr. Miehke (PR, Tab 17, 03/13/2007 email) nor in the two emails received during the 30-day comment period (PR, Tab 6, Appendix 1, A1-7 and A1-8 to A1-10, 09/11/2007 email and 09/15/2007 email, respectively) did he make reference to “*the signed snowmobile trail*”.

In further review of the eight emails received from Mr. Miehke after the 30-day comment period (September 17, 2007 through October 22, 2007), and the associated 34 comments addressed in Appendix 1 (PR, Tab 6, Appendix 1, pp. A1-26 through A1-51), there is only one mention of this potential trail by Mr. Miehke and it pertains to the placement of culverts (i.e., “[j]ust north of 24 or 24 ½ Rd on snowmobile trail to Boon, Yuma, and Mesick 11 ½ or 13 mi Rd.”). The IDT responded by stating, “The culverts along the side of the road you describe are not associated with the road relocation project in the Toman School Project, or any other Forest Service Project.” (PR, Tab 6, Response to Comments, Appendix 1, pp. A1-42, 11.3)

As stated previously, the designation of trails and roads for specific uses as Mr. Miehke desires is outside the scope of this project. Snowmobile use was not identified as a relevant issue or need for this project. I find no violation of any law, regulation or policy.

Issue 3: “Road Stream Crossing Improvements”: Mr. Miehke states, “*Opposed to culvert work at W-85, W-38, W-39, W-81 pages ... after observing actual conditions at these locations, should be considered a low priority and not a cost effective use of taxpayer funds.*” (NOA, p. 4).

Response: The IDT included an outdoor recreation planner, resource information specialist, botanist, forester, fisheries biologist, interdisciplinary planner, silviculturist, wildlife biologist and archaeologist (PR, Tab 15, EA, Chapter 4). As noted in the EA, the purpose and need for a project is arrived at by addressing the differences between the existing condition and the desired condition as outlined in the Huron-Manistee National Forests LRMP. Specifically, the IDT developed the Toman Project School to improve aquatic habitat among other objectives (PR, Tab 15, EA, pp. 1-3 to 1-4).

The IDT identified the existing condition such that “some streams in the Project Area are impacted by sand bedload which reduces instream water quality. The sand bedload is a result of eroding banks, poorly designed roads and trails, and road/stream crossings. Some culverts at road/stream crossings are perched and contributing sedimentation to streams within the Project Area.” The desired condition is such that “culverts at road/stream crossings are properly aligned, functioning, and contributing little to no sediment into streams. Sand bedload is reduced and high quality aquatic habitat occurs.” As a result of the difference between the existing condition and the desired condition, the IDT identified a “need to repair or realign perched culverts and improve road/stream crossings to reduce erosion and allow for fish passage.” (PR, Tab 15, EA, p. 1-4). The Proposed Action identified specific management activities that would achieve the purpose and need objectives; specifically, “road/stream crossings would be improved at approximately 8 locations within the Project Area” (PR, Tab 15, EA, p. 1-5).

The treatments for all the road stream crossing improvements are described in the EA (PR, Tab 15, EA, Appendix A, pp. A-50 through A-54). As mentioned previously, the PR contains additional information regarding the road stream crossings in a document entitled, “Manistee River Watershed, Road/Stream Crossing, Inventory Report, prepared by the Conservation Alliance in cooperation with the Huron-Manistee National Forests (See Sub-Issue 2B). In addition, members of the IDT, specifically the interdisciplinary planner and the fishery biologist, conducted a field visit to further document the existing condition of the stream crossings including “W-85, W-38, W-39, [and] W-81”. (10/17/07 field notes located in PR, Tab 30 and in PR, Tab 6, Response to Comments, Appendix A1, pp. A1-48 through A1-51).

The analysis included a thorough cost estimate for road stream crossings (PR, Tab 32). This information was included in the Social Economics Analysis section in the EA. (PR, Tab 15, EA, pp. 3-71 through 3-77). While Table 3-22 (PR, Tab 15, EA, p. 3-74) quantified the actual cost to the work at the stream crossings, these costs are clearly outweighed by the intangible benefits associated with restoring the aquatic habitat (PR, Tab 15, EA, 3-60 through 3-64). If in fact, Mr. Miehle had made himself available to go to the field with members of the IDT like he offered in his September 22, 2007 email (PR, Tab 6, Response to Comments, Appendix A1, p. A1-33 PR; Tab 6, Response to Comments, p. A1-43), he would have had the opportunity to see first hand, discuss thoroughly with IDT members, and possibly resolve his concerns surrounding these actions.

Based on information in the Project Record, on the methodical process of developing prescribed treatments to improve aquatic habitat, and the resource expertise exhibited and represented by the Toman School Project IDT, I find that there is more than adequate information to identify and justify the proposed actions “at W-85, W-38, W-39, and W-81”.

Issue 4: “Vegetative Treatments”: Mr. Miehle claims, “*Most treatments in recent Projects I have been involved in are very small and hard to justify on a cost effective commercial basis. The input/cost containment to federal treasury seems to take second place to zealously moving the Forest toward the (desired future condition) / THE FOREST PLAN 2006 a SUBJECTIVE value judgment, unduly influenced by preservationist NGO’s and ESA/RFSS and PRFSS refuge proponents.*” (NOA, p. 4).

Response: The legitimacy of the LRMP has been resolved in the Record of Decision (ROD, p. 33) and resolution of appeals to the ROD (June 22, 2007). The LRMP was a very public process over an almost four year period. The IDT used the best science available in the analysis of the Forests’ capabilities to describe various benefits and the likely environmental effects. The ROD struck a balance among competing interests, opinions, and beliefs expressed by resource professionals within and outside the Forest Service, other federal agencies, local and state governments, interest groups, the general public, and tribal governments.

The Forest Service has considerable discretion under the National Forest Management Act (NFMA) and the Multiple Use Sustained Yield Act (MUSYA) to weigh and decide the

appropriate uses of particular areas of the National Forests and to “*Be best suited to the multiple-use goals stated in the Forest Plan.*” MUSYA, 16 U.S.C. § 529, states:

“The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained there from. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas”

MUSYA, 16 U.S.C. § 528 states, “[I]t is the policy of Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” Indeed, MUSYA provides considerable discretion to the Forest to balance competing uses just as the district has done here.

In a time of rising Federal deficits, the issue of wisely spending limited dollars concerns everyone. However, there is no legal or other requirement that a project must show a positive cost-benefit analysis. Economics and social impacts of the project are discussed on pages 3-71 through 3-77 of the EA, and have been tiered to the analysis completed for LRMP. As such, the EA (p. 1-2), in tiering to the Forest Plan FEIS, reasonably concludes that the economic and social/cultural impacts of the project would be minimal. This project has a net timber sale revenue of \$956,300. After 25% payment to Wexford County for schools and project specific elements (i.e., road closures/obliterations NNIP species control, and timber-related, trails and opening projects), the project still has a net benefit of approximately \$500,000 (PR, Tab15, EA, P. 3-74). Notwithstanding these projected dollar benefits, the value of any timber management program extends beyond a comparison of costs and revenues. The real measure of the worth of the project is not net cost versus revenues, but costs versus public benefits. Some of these benefits can be measured as receipts; others are the dollar value of benefits for which revenue is not received, such as improved aquatic habitat through reducing erosion and sedimentation as this project will accomplish.

Mr. Mielke has not provided any evidence of a legal violation. The Responsible Official’s decision weighs the competing needs of various resources based upon his expert knowledge of local conditions, input from the public, and the input of other resource professionals. His decision (PR, Tab 5, DN/FONSI, pp. DN 2- through DN-6) is well-reasoned and will achieve the purpose and need (PR, Tab 15, EA, pp. 1-3 through 1-4). I find the Responsible Official had ample information provided by the IDT regarding economic, social and cultural impacts of the project needed to make an informed decision.

Issue 5: “NNIP [Non-Native Invasive Plants]”: Mr. Mielke states, “*Some of the listed plants such as Scotch pine may serve some purpose such as wildlife cover and wind breaks etc. There are many tree farms in/adjacent to the project are that may have this species, how do you address this issue?*” (NOA, p. 5).

Response: Invasive species are present in the project area and do pose a threat to forest health and biodiversity (PR, Tab 15, EA, p. 1-8 and 2-12). Species found on National Forest land are listed in the EA, on page 3-5, Table 3.1: Native Invasive Plants and Forest Priority Ranking (e.g., Scotch pine). LRMP Goals and Objectives for Natural Resources include:

- Reduce non-native invasive species infestations and prevent new invasive species from becoming established (LRMP, p. II-4).
- Wildlife and fisheries habitats and plant communities shall be managed to maintain viable populations of existing native and desired plant communities (LRMP, p. II-4).

LRMP Guidelines (G) include:

- G - Maintain a Forest-wide list of non-native invasive plant and animal species of concern (LRMP, p. II-9).
- G - Identify infestations of non-native invasive plant and animal species at both project and Forest-wide levels (LRMP, P. II-9 through 10).

This project proposes a combination of plant control techniques using both mechanical and chemical means on 41 acres (PR, Tab 5, DN and FONSI, p. DN-3). The species and treatments are discussed in the EA (PR, Tab 15, pp. 3-5 through 3-7, 3-9 through 3-13, 3-20 through 3-21, 3-30 through 3-31, 3-33 through 3-34, 3-45 through 3-46, 3-57, and 3-59, as well as Appendix A, Treatment Unit Descriptions, p. A-10). Analysis indicates that non-native invasive plant populations would be reduced in the project area regardless of the action alternative selected. By properly implementing project-level design criteria and mitigation measures, the Responsible Official anticipates slowing the possible spread of NNIP associated with project activities.

Untreated NNIP infestations on private lands are expected to continue to grow in size, particularly adjacent to public roads and on adjacent private lands (PR, Tab 15, EA, pp. 3-12 through 3-13). The Forest Service will continue to expand its partnerships with agencies and landowners whose property serves as a source of non-native invasive plant species, including County Road Commissions. No other public agencies are known to be actively addressing terrestrial weeds in Wexford County; however, a cooperative weed council to address garlic mustard in the adjacent counties was established in 2005. Other efforts to control and eradicate NNIP plants are underway in areas such as Sleeping Bear Dunes in Benzie County, and properties of Land Conservancies in Benzie, Leelanau, Manistee, and Grand Traverse Counties (PR, Tab 15, EA, pp. 3-12 through 3-13).

Based on my review of the Project Record, I find no violation of any law, regulation or policy. Although some plants may be viewed by Mr. Miehke as a lower priority to eradicate, the Responsible Official is following LRMP direction. Further, I find the documents have properly disclosed the potential effects of this project on NNIP. Measures have been incorporated into project design to reduce the risk of introducing and spreading these plants in the project area (PR, EA, Tab 15, EA, pp. 3-5 through 3-13; and PR, Tab 5, DN/FONSI, pp. 3-4 through 3-7).

RECOMMENDATION:

After reviewing the PR for the Toman School Project including the new DN/FONSI rendered on January 17, 2008, and carefully considering each point raised by the Appellant, I find adequate documentation supporting the analysis. I find no violation of law, regulation or policy. Mr. Miehlike simply disagrees with the decision. I recommend that District Ranger Jim Thompson's January 17, 2008 DN/FONSI be affirmed.

/s/ Nancy S. Larson
NANCY S. LARSON
District Ranger

cc: Patricia Rowell, RO

cc: Patricia R Rowell
Shannon L Swaziek
Joel Strong
Jerry Bird