

**DECISION MEMO**  
**Forest Road #193 Road Easement**

USDA -- FOREST SERVICE  
UINTA NATIONAL FOREST  
PLEASANT GROVE RANGER DISTRICT  
Utah County, Utah

**1. INTRODUCTION**

Forest Road 193 is characterized as being steep and narrow, with many sharp curves, and consists of a native aggregate-covered surface suitable for four-wheel drive and Off-Highway Vehicles (OHVs). This road provides motorized public access to National Forest System lands and access to private property owned by Acme Corporation. The Forest Road Easement will be issued for a road right-of-way located within the NE1/4, Section 30, T 3 S., R 3 E., S.L.B.M., beginning at about the 9,400-foot elevation mark on Forest Road 193.

Forest Road 193 provides a passageway from Forest Road 008 at Silver Lake Flat to a road on private property owned by Acme that surrounds the Earl Eagle Mine. Forest Road 193 ends where this private property begins at about the 9,500-foot elevation mark north of the Silver Lake Flat Reservoir. The old mining roads on the private property were never engineered for safe travel and have further deteriorated over the years. Private property owners have installed several gates and posted the area closed to motor vehicles because of public safety concerns; however, within several days of installation these control devices have been vandalized.

Fatalities and critical injuries have occurred off these old mining roads. Property owners are extremely concerned about the public's safety and their liability affiliated with unauthorized motorized activity on their private land. They have requested Forest Service assistance in controlling this unauthorized motorized use coming from the National Forest on to their property.

**2. PROPOSED ACTION**

Pleasant Grove Ranger District, Uinta National Forest, proposes to issue a Forest Road Easement to Acme for a portion of Forest Road 193 that provides access to their property. As part of the permit, the existing terminus of Forest Road 193 will be modified by using a heavy-duty metal gate to restrict unauthorized motorized traffic from leaving Forest Road 193 onto private lands.

The project consists of:

1. Issuing a Forest Road Easement for about 400 feet of Forest Road 193 to be used by Acme to access their property and the Earl Eagle Mine. The permit holder will be responsible for the annual road maintenance of that portion described in the permit authorization, as well as the gate.

2. Closing a 4' by 12' iron-pipe gate across Forest Road 193 at about the 9,400-foot elevation point to limit motorized vehicle access from National Forest System lands on to private land located in upper North Fork American Fork Canyon.
3. Installing information and motorized traffic control signs.
4. Providing an area large enough to accommodate a vehicle “turn around.”

### **3. PURPOSE AND NEED**

The purpose of the Forest Road Easement is to assist with regulation of unauthorized motorized access onto neighboring private lands. Fatalities and critical injuries have occurred off these old mining roads. The private property owners are extremely concerned about the public safety and their liability affiliated with unauthorized motorized activity on their private land. They have requested Forest Service assistance in controlling this unauthorized motorized use coming from the National Forest on to their property.

The private landowners have taken numerous measures to prohibit this unauthorized motorized travel on their land unsuccessfully, principally because the terrain allows people to breach the control devices. The securest control point for limiting motorized entry is about 400 feet south of the National Forest - private property boundary.

In addition, public use of the roads on private land is providing opportunities for the public to pioneer new roads on to the National Forest where motorized access is not allowed. This unauthorized use is causing resource damage. The remote location makes those restrictions difficult to enforce.

### **4. CATEGORICALLY EXCLUDING THIS PROPOSED ACTION**

The proposed action is categorically excluded from documentation in an environmental impact statement or environmental assessment. Forest Service Handbook 1909.15 states that “a proposed action may be categorically excluded from documentation...only if the proposed action” ... “is within a category listed in section 31.1b or 31.2; and there are no extraordinary circumstances related to the proposed action.” (FSH 1909.15, section 30.3 (l)) The proposed action is specifically listed as one of the Forest Service Chief’s categories for categorical exclusion (Forest Service Handbook 1909.15, Section 31.2(3):

*Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land.*

The proposed action fits this category because it is a minor special use of National Forest System lands that is not over five contiguous acres.

Forest Service Handbook, Section 30.3 (WO Interim 1909.15-2002-2) lists the following as

extraordinary circumstances:

- a. **Steep slopes or highly erosive soils:** Forest Road 193 is located on a steep site but the Forest Road Easement or closure of the gate will not cause any additional ground disturbance. Minor disturbance occurred from installation of the gate.
- b. **Federally listed Threatened and endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species --** The project area does not contain any critical habitat for threatened and endangered species. The Forest Service has determined that this project will not adversely affect any federally protected species or critical habitat (Hartman 2004).
- c. **Flood plains, wetlands, or municipal watersheds:** No floodplains, wetlands, or municipal watersheds will be affected by the Forest Road Easement or gate closure because the project area does not occur within a flood plain, wetland, or municipal watershed and only minor ground-disturbance occurred from installation of the gate.
- d. **Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas:** The project area does not reside in, and the project will not have any direct, indirect or cumulative impacts on, any congressionally designated areas.
- e. **Inventoried roadless areas:** The issuance of a Forest Road Easement or gate closure will have no effect on inventoried roadless areas because the project area is not within an inventoried roadless area.
- f. **Research Natural Areas:** The issuance of a Forest Road Easement or gate closure will have no effect on Research Natural Areas because none exist in the affected area.
- g. **Native American religious or cultural sites, archaeological sites, or historic properties or areas:** The elevation and location on a steep side slope greatly reduces the potential for an archaeological or historical site to exist in that area. Historic mines can occur on relatively steep slopes, but there is no mine in the area of potential effect on this proposed project. In addition, the project location is largely within an existing disturbance zone created when the road was cut across the hill slope. As a result, the project will not have any effect on archaeological or historic sites.

## 5. SCOPING AND PUBLIC INVOLVEMENT

The Forest Service sent out a letter soliciting comments regarding the issuance of a Forest Road Easement to 35 individuals and organizations on October 20, 2003. This mailing list included OHV and four-wheel drive organizations. Comments were received from the following:

Utah Environmental Congress  
USDI Fish and Wildlife Service  
Wasatch Mountain Club

In addition, Acme representatives spoke with more than 50 individuals during the Fall of 2003

informing them that their property is closed to motorized activities. Acme representatives also spoke with several OHV user groups advising them of the proposed access change. They explained to those contacts that no trespassing signs will continue to be maintained at the private property boundaries. It was the impression of the land owners that these conversations were constructive and all involved seemed to agree with the necessity for gating and posting this property.

Following are the comments received from the public announcement and response to those comments:

**COMMENT 1:** It would make more sense to put the gate at the intersection of Forest Road 193 and Forest Road 008. Once someone has driven to the 9,500-foot level, it is unlikely they will stay on the Forest Road. Unwanted trespass on Forest Service land will now occur, instead of on private property.

***RESPONSE:** Forest Road 193 is a popular route for motorized recreation. We believe that we have no basis to discontinue offering this route to motorized recreation users. We share your concern over off-road travel. We do and will continue to monitor the motorized use to ensure that vehicles are staying on designated roads. By assisting the private land owner in controlling access to their property, we are also limiting user-created routes that are being established off the private land by people who are attempting to extend the existing roads on to the National Forest.*

**COMMENT 2:** The special use permit should specify that use should be restricted to immediate family members of the owners or that users be accompanied by family members. For profit uses, such as pay for ORV use should be prohibited.

***RESPONSE:** The terms of the Forest Road Easement specify that commercial use of the road will not be allowed unless acceptable arrangements are agreed to by the Grantor of the permit (USDA Forest Service). The Acme Corporation has not indicated their intent to use the road for any commercial activity.*

**COMMENT 3:** Why does installation of the locked gate require relinquishing public rights to a section of our public land to a private corporation?

***RESPONSE:** During the past five years, increased unauthorized motor vehicle activities, beyond the terminus of Forest Road 193, have created many dangerous, off-road, two-track paths on the private lands. Private property owners have installed several gates and posted the area closed to motor vehicles; however, within days of installation these control devices have been vandalized. The securest control point for limiting motorized entry is about 400 feet south of the National Forest - Private property boundary. This control point provides a safe vehicle turn around for people traveling up Forest Road 193.*

**COMMENT 4:** It's entirely within the Forest's authority to install the proposed locked gate and

not issue a road right-of-way special-use permit to Acme Corporation.

**RESPONSE:** *Installation of a gate to eliminate public access to the 400 feet of Forest Road 193 is warranted based on the safety concerns of private land owners from public use of old mining roads on their property. The private land owners have made many unsuccessful attempts to control public motorized use on their lands. Their success has been hampered by the lack of a good control point on their lands. The gate location on the National Forest will provide a more successful control and turnaround point for people who travel to that location. The private land owner has the right to reasonably access their property. The Forest Road Easement will permit them to legally access their property, while prohibiting general public use of 400 feet of Forest Road 193.*

**COMMENT 5:** The special use permit should be limited to a specific amount of time, perhaps 1 to 3 years, after which all rights automatically revert back to the public land management agency. When the permit expires, the Forest can then re-evaluate the situation and consider the issuance of another permit with any modifications that may be deemed necessary at that time.

**RESPONSE:** *The Forest Road Easement will be issued for a period of 10 years. At the end of that period, modifications and new conditions or stipulations may be added at the discretion of the Forest Service. The Forest Service may take action to suspend, revoke, or terminate the easement under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings.*

**COMMENT 6:** Include explicit language stating that issuance of the special use permit shall not constitute any acknowledgement or recognition by the Forest of permanent private rights associated with 400 foot section of road after the expiration of the special use permit.

**RESPONSE:** *See response to Comment 5 above.*

**COMMENT 7:** Include language that explicitly state that issuance of the proposed special use permit shall in no way be acknowledgement of private or county rights associated with R.S. 2477 claims that may or may not have been made for any roads on the Pleasant Grove Ranger District.

**RESPONSE:** *Where roads are necessary for access to private property within a National Forest, the Forest Service is obligated by law to provide reasonable access, and may issue authorizations to the owners of such property. We do not believe it is necessary to explicitly state the Forest Road Easement does not imply a basis for R.S. 2477 claims. The R.S. 2477 concern is outside the scope of this decision.*

## 6. DECISION

I have decided to recommend to the Forest Supervisor to issue a Forest Road Easement to Acme Corporation for a portion of the upper Silver Lake Flat Road (a.k.a. Forest Road 193) and install a gate to assist in controlling public access to private land.

## 7. REASON FOR MY DECISION

The private land owners have taken numerous measures to prohibit this unauthorized motorized travel on their land unsuccessfully, principally because the terrain allows people to breach the control devices. I have concluded that the securest control point for limiting motorized entry is about 400 feet south of the National Forest - private property boundary. I believe it is appropriate for us to assist with control of the unauthorized motorized activity on the private land to help prevent possible future critical injuries and fatalities from the use of these old mining roads.

In addition, public use of the roads on private land is providing opportunities for the public to pioneer new roads on to the National Forest where motorized access is not allowed. This unauthorized use is causing resource damage. The remote location makes those restrictions difficult to enforce.

The proposed action will be of limited context and intensity and capable of producing little or no significant environmental effects (**40 CFR 1508.4**) individually or cumulatively on the quality of the human environment; is within a category listed in FSH 1909.15, Section 31.2; and there are no extraordinary circumstances related to the proposed action.

- **Need to prepare an Environmental Assessment or Environmental Impact Statement:** There are no impacts to “extraordinary circumstances” that require preparation of an environmental assessment or an environmental impact statement. The description of projects that may be categorically excluded from documentation in an EA or EIS may be found in the Federal Register Vol. 67, No. 164/ Friday, August 23, 2002/Notices Section 30.3, paragraph 5.

## 8. FINDINGS REQUIRED BY OTHER LAWS

The Forest Road 193 is within the American Fork Management Area as identified in the 2003 Uinta National Forest Land and Resource Management Plan (2003 Forest Plan). The proposed project is consistent with Forest-wide and Management Area specific direction. The 2003 Forest Plan states the following:

### **Forest-Wide Goals**

Forest infrastructure, including facilities and transportation systems, is safe and responsive to public needs and desires; has minimal adverse effects on ecological processes and ecosystem health, diversity, and productivity; and is in balance with needed management actions. **FS-Goal-9, 2003 Forest Plan, page 2-1**

A safe, effective, and economical transportation system is planned, designed, operated, and maintained to provide appropriate access associated with movement of people and materials to and through the Forest, and to support movement of materials associated with management, use, and administration of the Forest. **Sub-Goal-8-1, 2003 Forest Plan, page 2-21**

Roads and trails are managed to protect or minimize impacts on resources. **Sub-Goal-8-3, 2003 Forest Plan, page 2-22**

### **American Fork Management Area Direction**

Motorized activities are limited to existing roads in the main canyon bottoms and trails in the Mineral Basin and along the western front of Mount Timpanogos. **2003 Forest Plan, page 5-18**

### **Management Area Prescriptions**

Two management prescriptions border Forest Road 193:

- 3.1 Aquatic, Terrestrial and Hydrologic Resources to the east: Emphasis is on maintaining or improving existing quality aquatic, terrestrial, and hydrologic conditions through limited to moderate management activity. **2003 Forest Plan, page 4-4**
- 3.3 Aquatic and Terrestrial Habitat to the west: These areas are managed for quality habitat to contribute toward maintenance and/or recovery of plant and animal species. **2003 Forest Plan, page 4-5**

### **Recreation Opportunity Spectrum Class**

The Recreation Opportunity Spectrum (ROS) for the areas are:

- Semi-Primitive Non-motorized on the west side of the road. This ROS class is closed to motorized use including over-the-snow vehicles. **2003 Forest Plan, page 3-35**
- Semi-Primitive Motorized on the east side of the road. This ROS class allows for motorized recreation use; however, that use is limited to the classified road system and those parts of the inventoried trail system designated for motorized use. **2003 Forest Plan, page 3-35**

There are no floodplains or wetlands within the project area, and none of these areas will be impacted. The project site is located away from streams and springs and will not impact water quality. The project is consistent with the Clean Water Act.

There are no threatened, endangered, sensitive species within the project site. A Biological Evaluation/Biological Assessment was completed (Hartman 2004), and a determination of “no effect” and “no impact” to threatened, endangered, or sensitive species was made. No adverse impacts on birds are anticipated, and this decision is consistent with the Migratory Bird Treaty Act.

No cultural resources will be affected by the proposed action. The decision is consistent with the National Historic Preservation Act, the American Indian Religious Freedom Act, and the Native American Graves Protection and Repatriation Act.

In accordance with Executive Order 12898, this action will not result in any disproportionate impact to minority or low-income populations.

Implementation of this proposal is consistent with other Federal, State, and local laws for the protection of the environment.

## **9. IMPLEMENTATION DATE**

This decision may be implemented immediately.

## **10. ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES**

Pursuant to 36 CFR 215.8 (a)(4), this decision is not subject to a higher level of review or appeal.

## **11. CONTACT PERSON**

For further information about this decision or project, please contact Pam Gardner, Pleasant Grove District Ranger, Uinta National Forest, 390 North 100 East, Pleasant Grove, UT 84062, telephone (801) 342-5241.

## **12. Signature**

The responsible official is Pamela J. Gardner, District Ranger, Pleasant Grove District, Uinta National Forest.

*/s/ Pamela J. Gardner*

*August 18, 2004*

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PAMELA J. GARDNER  
Pleasant Grove District Ranger

DATE