

DECISION MEMO
Bonds Special Use Permit Trail

USDA Forest Service, Eastern Region, Hoosier National Forest
Brownstown Ranger District
Jackson County, Indiana
(T6N, R3E)

I. DECISION

A. Description of Decision

My decision is to grant a special use trail permit to Mr. Joe Bonds to connect from his property to the Hickory Ridge Trail system. The trail is approximately .8 of a mile in length on National Forest System (NFS) land and is located in Management Area 2.8. Mr. Bond and his family use his property for camping and horse riding, and it is not a commercial camp that is open to the public.

The trail has been in existence as an unofficial trail route for a number of years. Inspection of the route revealed that the trail already appears to meet Forest Service construction standards; therefore no construction activity is anticipated. Mr. Bond will be required to maintain the trail to USDA Forest Service standards.

This decision will be implemented through issuance of a special use authorization that meets the requirements of the decision and USDA Forest Service regulations. USDA Forest Service regulations require the applicant to: submit (or resubmit) an operation and maintenance plan that complies with the decision requirements; pay any necessary fees; post any necessary bonds; and secure any state or federal permits or authorizations required by law.

It is also my decision that a special use fee will be charged for this special use permit because Mr. Bond does not qualify for a fee waiver in accordance with Code of Federal Regulations Title 36 part 251, section 57(b)(1) (CFR 251.57(b)(1)).

The location of my decision is displayed on the attached map.

B. Purpose of Decision

The purpose of this decision is to respond to a special use permit application from an adjacent landowner that desires legal and safe access to the Hoosier National Forest designated trail system. Legal access is needed because the use of horses and bikes off of designated trails in the Hoosier National Forest is prohibited by Forest Order. This route also provides a route whereby riders may access the designated trail system safely by not having

to ride on a paved county road. The Hoosier National Forest Land and Resource Management Plan (Forest Plan) and Trail Program document provide guidance regarding adjacent landowners that wish to access the Forest's designated trail system by bike or horse (USDA Forest Service, 1991; 2002a). The guidance states that adjacent landowners may apply for a special use permit to construct and maintain a trail. The guidance also states that landowners with a legal right-of-way on adjacent property may apply for a permit. In this case, another landowner owns property in between Mr. Bond's property and the NFS land and has granted written permission to Mr. Bond to cross that property with his trail.

The Forest Plan allows a cumulative trail density of 2.5 miles of trail per square mile in Management area 2.8. The current density is .7179 miles of trail per square miles; this decision raises the trail density to .7229, which is well within Forest Plan limits.

II. REASONS FOR CATEGORICALLY EXCLUDING THE DECISION

Decisions may be categorically excluded from documentation in an environmental impact statement or environmental assessment when they are within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the USDA Forest Service in USDA Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2, and there are no extraordinary circumstances related to the proposed action.

A. Category of Exclusion

The project is within the category of exclusion found in the Forest Service Handbook (FSH) 1909.15, Section 31.2(1), that includes, "construction and reconstruction of trails."

B. Relationship to Extraordinary Circumstances

a. Threatened and Endangered Species or Their Critical Habitat, Proposed Species or Critical Habitat, Forest Service Sensitive Species -

The Endangered Species Act requires that Federal activities do not jeopardize the continued existence of any species Federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat. Potential effects of this decision on listed species have been analyzed and documented in a biological evaluation (Larson 2003a and b, Reynolds 2003a, b, c, and d). It was determined that this decision will have 'no effect' on listed species or their critical habitats.

b. Floodplains, Wetlands, or Municipal Watersheds -

Floodplains: Executive Order 11988 directs agencies to avoid adverse impacts associated with the occupancy and modification of floodplains. As defined by this order, floodplains are, "the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent [100-year recurrence] or greater chance of flooding in any one year."

The project is not located in or near floodplains as has been validated by map and site-review (Merchant 2003). It will not affect floodplains.

Wetlands: Executive Order 11990 directs agencies to avoid adverse impacts associated with destruction or modification of wetlands. Wetlands are defined by this order as, “. . . areas inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.” The project is not located in or near wetlands as has been validated by reviewing maps and the site (Merchant 2003). This decision will not affect wetlands.

Municipal Watersheds: USDA Forest Service manages municipal watersheds under multiple-use prescriptions in forest plans. This decision will not affect municipal watersheds. There are two municipal watersheds on the Forest. One is Patoka Reservoir, and the other is Monroe Reservoir. The permit area is not in a municipal watershed. This was validated by map and on-site visit (Merchant 2003).

c. Congressionally Designated Areas -

Wilderness:

This decision does not affect wilderness. The project is not in or near wilderness. Wilderness is identified on the Hoosier NF as Management Area 5.1 (*Forest Plan*, p. 2-36). The project is located in Management Area 2.8 (*Forest Plan*, p. 2-31). The closest wilderness, the Charles Deam Wilderness, is approximately 6 miles northwest of the project. This decision, with impacts limited to the immediate area of activity, will not affect wilderness areas.

Wilderness Study Areas:

No wilderness study areas are on the forest. This decision will affect no wilderness study area.

National Recreation Areas:

There are no national recreation areas on the Hoosier NF. This decision will not affect national recreation areas.

d. Inventoried Roadless Areas -

There are no inventoried roadless areas (RARE II or *Forest Plan*) in the decision area. This decision will not affect inventoried roadless areas.

e. Research Natural Areas -

There are no research natural areas in the decision area. This decision will not affect research natural areas.

- f. American Indian and Alaska Native Religious or Cultural Sites,
- g. Archaeological Sites, or Historic Properties or Areas -

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effect of a project on any district, site, building, structure, or object that is included in, or eligible for inclusion in the National Register. Section 106 of the NHPA also requires Federal agencies to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The Archaeological Resources Protection Act covers the discovery and protection of historic properties (prehistoric and historic) that are excavated or discovered in Federal lands. It affords lawful protection of archaeological resources and sites that are on public and Indian lands. The Native American Graves Protection and Repatriation Act covers the discovery and protection of Native American human remains and objects that are excavated or discovered in Federal lands. It encourages avoidance of archaeological sites that contain burials or portions of sites that contain graves through “in situ” preservation, but may encompass other actions to preserve these remains and items. This decision complies with the cited Acts. An analysis of the project by Forest Archeologist Angie Krieger indicated the work is not considered an undertaking according to the NHPA because the trail is existing and there will be no new ground disturbance. A “no properties affected” determination was made (Krieger 2002).

We have identified no other extraordinary circumstances related to the project.

III. PUBLIC INVOLVEMENT

Public involvement included a mailing of a scoping letter to 167 individuals on December 13, 2002. The letter was sent to the Hoosier National Forest interested party mailing list, leaders of trail groups, and adjacent landowners. The project was also announced in the February 2003 issue of the *Hoosier Quarterly* and was posted on the Forest website.

Two responses were received. One respondent agreed as long as the trail was maintained to standard and the public was allowed to cross Mr. Bond’s property. Another respondent asked how Mr. Bond and the Forest Service would handle the public on his land. The permit will require Mr. Bond to maintain the trail to standard. Hoosier National Forest guidance on special use permit trails states that the permit holder may allow or prohibit the public to use their land at their own discretion, but must allow public use of the portion of trail that is on NFS land.

There was a concern that this action would set a precedent for future requests. This action does not set a precedent because it merely follows guidance that was established after extensive public input in 1994. Any adjacent landowner may apply for such a permit and the permit is granted or denied based on the merit of the application.

There was a question regarding trail density. Trail density is addressed in Section I, Paragraph B.

There was a comment that Mr. Bond could access the designated trail system easily in another location rather than using a special use permit trail. The designated trail system does

intersect the paved county road a few hundred feet north of Mr. Bond's property. However, the use of the special use permit trail will keep users off of a paved county road.

The comments that we received were used to refine the analysis and consider making changes. Analysis of these comments indicated no need to change the project.

IV. FINDINGS REQUIRED BY AND/OR RELATED TO OTHER LAWS AND REGULATIONS

My decision will comply with all applicable laws and regulations. I have summarized some pertinent ones below.

Federal Land Policy and Management Act - This act allows the granting of easements across National Forest System lands. The regulations at 36 CFR 251 guide the issuance of permits, leases, and easements under this act. Permits, leases, and easements are granted across National Forest System lands when the need for such is consistent with planned uses and USDA Forest Service policy and regulations. This decision is consistent with this act.

Forest Plan Consistency (National Forest Management Act) - This act requires the development of long-range land and resource management plans (forest plans). The Hoosier National Forest Land and Resource Management Plan (*Forest Plan*) was approved in 1985, as required by this act. It has since been amended six times. The amended plan provides for guidance for all natural resource management activities on the forest. The act requires all projects and activities be consistent with the *Forest Plan*. The *Forest Plan* has been reviewed in consideration of this project. This decision is responsive to guiding direction contained in the Plan, as summarized in Section I of this document.

Vegetation Manipulation (National Forest Management Act) - This act and its implementing regulations require that vegetation manipulation of tree cover for any purpose must comply with seven requirements found at 36 CFR 219.27(b).

This proposal includes no vegetative manipulation of tree cover and therefore the requirements of 36 CFR 219.27(b) are not applicable.

Endangered Species Act - See Section II, Item B(a) of this document. In addition, the special use permit will contain two clauses as advised by the USDI Fish and Wildlife Service, Bloomington Field Office: 1) Maintenance of the trail will be conducted in a manner consistent with the conditions set forth in the July 31, 2001 programmatic BO, and 2) No snags great than 5 inches dbh will be cut along the special use permit trail without consultation with the USDA Forest Service, Hoosier National Forest who will coordinate with the USDI Fish and Wildlife Service, Bloomington Field Office.

Sensitive Species (USDA Forest Service Manual 2670) - This manual direction requires analysis of potential impacts to sensitive species, those species for which the Regional Forester has identified population viability as a concern. On February 29, 2000, the Regional Forester approved the sensitive species list available online at http://fsweb/r9.fs.fed.us/tes_lists.htm. Potential effects of this decision on sensitive species

have been analyzed and documented in a biological evaluation (Larson 2003a, Reynolds 2003c). This decision will have “no impact” on sensitive species.

Federal Cave Resources Protection Act - This act directs agencies to secure, protect, preserve, and maintain significant caves, to the extent practical. File reviews substantiate that no caves are in the decision area. (Reynolds 2003c). No known cave resources will be affected by this decision.

National Historic Preservation Act - See Section II, Item B(g) of this document.

Archaeological Resources Protection Act - See Section II, Item B(g) of this document.

Native American Graves Protection and Repatriation Act - See Section II, Item B(f) of this document.

Wild and Scenic Rivers Act –There are no wild or scenic rivers in the general area, and none will be affected by implementing this decision.

Environmental Justice (Executive Order 12898) - This order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this act. Public involvement occurred for this project, the results of which I have considered in making this decision. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.

National Environmental Policy Act - This act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this act.

V. ADMINISTRATIVE REVIEW OR APPEAL

This decision is not subject to a higher level of administrative review or appeal pursuant to 36 CFR 215.8. This decision is subject to appeal pursuant to 36 CFR 251 by those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands. An appeal for initial review may be filed by those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands. To appeal this decision under 36 CFR 251, a written Notice of Appeal must be postmarked or received within 45 calendar days after the date the notice for this decision is published in the Bloomington Herald Times newspaper of general circulation (Bloomington, Indiana). However, when the 45-day filing period would end on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day. The Notice of Appeal must be sent to: USDA, Forest Service, Hoosier National Forest, ATTN: Forest Supervisor, Kenneth Day; 811 Constitution Ave.; Bedford IN 47421. The Notice of Appeal may alternatively be faxed to: USDA, Forest Service, ATTN: Forest Supervisor, Kenneth Day (812 279-3423). A copy of the appeal must simultaneously be sent to the District Ranger, Tell City Ranger District, 248 15th Street, Tell City IN 47586.

VI. IMPLEMENTATION DATE

This decision may be implemented immediately.

VII. CONTACT PERSON

Further information about this decision can be obtained from

Les Wadzinski, Recreation Program Manager
Hoosier National Forest Supervisor's Office
811 Constitution Avenue
Bedford, IN 47421
Office 812 275-5987
FAX 812 279-3423

VIII. SIGNATURE AND DATE

I have concluded that this decision may be categorically excluded from documentation in an environmental impact statement or environmental assessment because the proposal has not changed since scoping, it is within one of the categories identified by the U.S. Department of Agriculture in 7 CFR part 1b.3 or one of the categories identified by the Chief of the Forest Service in USDA Forest Service Handbook (FSH) 1909.15 sections 31.1b or 31.2, and there are no indications of effects on extraordinary circumstances that would warrant further analysis and documentation in an environmental assessment. My conclusion is based on information presented in this document and the entirety of the planning record.

/s/Kelly Reynolds for _____
JAMES E. DENONCOUR
District Ranger

May 8, 2003
Date

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REFERENCES CITED

Krieger, Angie. 2002. Memorandum to Les Wadzinski dated December 10, 2002, Bonds horse trail special use permit. 1 p. On file with: Les Wadzinski, Hoosier National Forest, 811 Constitution Avenue, Bedford, IN 47421.

Merchant, Pat. 2003. Memorandum to Les Wadzinski dated February 7, 2003. Bonds special use trail permit. 4 p. On file with: Les Wadzinski, Hoosier National Forest, 811 Constitution Avenue, Bedford, IN 47421.

Larson, Kirk W. 2003a. Bonds special use permit trail biological evaluation Regional Forester's sensitive plant species. USDA Forest Service, Hoosier National Forest, Bedford, IN 6p.

Larson, Kirk W. 2003b. Bonds special use permit trail forest species of concern plant species. USDA Forest Service, Hoosier National Forest, Bedford, IN 10p.

Reynolds, Kelle. 2003a. Forest species of concern animals for Bonds trail special use permit. USDA Forest Service, Hoosier National Forest, Bedford, IN 3p.

Reynolds, Kelle. 2003b. Management indicator species evaluation for Bonds trail special use permit. USDA Forest Service, Hoosier National Forest, Bedford, IN 4p.

Reynolds, Kelle. 2003c. Regional Forester sensitive species- animal species biological evaluation for Bonds trail special use permit. USDA Forest Service, Hoosier National Forest, Bedford, IN 5p.

Reynolds, Kelle. 2003d. Threatened and endangered species biological evaluation for Bonds trail special use permit. USDA Forest Service, Hoosier National Forest, Bedford, IN 10p.

U.S. Department of Agriculture, Forest Service. 1991. Land and Resource Management Plan, Plan Amendment, Hoosier National Forest. 90 p.

U.S. Department of Agriculture, Forest Service. 1992. Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook.

U.S. Department of Agriculture, Forest Service. 2002a. Trail program Hoosier National Forest. USDA Forest Service, Hoosier National Forest, Bedford, IN 32p.

U.S. Department of Agriculture, Forest Service. 2002b. Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, Interim directive 1909.15-2002-2.