Helena and Lewis & Clark National Forests

Forest Plan Assessment

Chapter 12, Land Status and Ownership, Land Uses, and Access Patterns

2015

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Land Status and Ownership, Land Uses, and Access Patterns

Introduction

Federal regulations direct that during the assessment phase of a forest plan revision, the responsible official shall identify and evaluate existing information relevant to the plan area for land status, ownership, use, and access patterns (36 CFR 219.6(b)). Land ownership is the basic pattern of public and private ownership of both surface and subsurface estates. Land use is the current use of the land, such as residential, commercial, industrial, or agriculture use. Access is transportation access to or through the plan area, including pedestrian access; the agency usually refers to it as reasonable access.

Land Status and Ownership

Existing Information

Land status is the zoning for private lands and formal management status of public lands. Within and near the plan area, the counties of Lewis and Clark, Broadwater, and Jefferson in the western portion of the plan area and Cascade in the central portion of the plan area have the largest amount of residential acreages. The north and east portions of the plan area have smaller residential acreages, with the east having very low population densities and much of the land managed for agriculture. The north area shares borders with Glacier National Park, which is managed by the National Park Service; and the Blackfeet Indian Reservation, home to the Blackfeet tribe. The plan area contains 386,078 acres of wilderness.

Land ownership is the basic pattern of public and private ownership. Land ownership is defined as the condition of title of land or interest in land under the jurisdiction of the Forest Service. The following conditions are also included under this definition: the manner in which these lands came into federal ownership; encumbrances and restrictions that affect the administration of the land; interest owned by the government in private lands; and the interest in government lands held by others.

As established in 36 CFR 200.12, the Land Status Records System (LSRS) is the official repository for all realty records and land title documents for NFS lands. The LSRS is maintained at the regional office and is the electronic record for realty information backed up by hardcopy records maintained at the regional and forest offices. The LSRS is the system where the assembling and recording of land ownership and related information is made available to field personnel.

Maintenance of the LSRS includes the final review, processing, posting, and permanent retention of records that create any change in land ownership status. This compilation includes notation and filing of laws and executive orders affecting land ownership and jurisdiction; all land ownership adjustments (exchange, purchase, donation, transfer, boundary modification, title claims, sales, grants, excess encumbrances (rights-of-way acquired or granted, reservations outstanding rights, partial interests, easements); and changes attributable to resurveys.

Within the boundaries of the plan area, 2,879,887 acres are NFS lands and 328,921are owned by other individuals or entities (USFS Land Area Report, Sept.30, 2012). The Land Areas of the National Forest System Report (LAR) is an annual publication that tracks NFS land ownership and provides the latest statistics on land areas administered by the Forest Service. The report provides acreage figures for NFS lands in a variety of ways such as by forest, by state, or for wilderness areas and other special designations.

The plan area is comprised of 17 counties. The largest portion of the plan area is located in Lewis and Clark County. More detailed information on land ownership in each county is provided in the Land Ownership portion of chapter 6, Social, Cultural, and Economic Conditions.

Existing Condition

The HLC NFs comprise approximately 2,848,914 acres (USDA Forest Service 2012); in addition, a portion of the Beaverhead-Deerlodge National Forest in the Elkhorns GA (33,608 acres) is administered by the HNF. There are a large number of private inholdings of various sizes scattered throughout the plan area. For the most part, these private inholdings were created when mining claims and homestead entries were patented to private individuals. These scattered private inholdings create additional miles of irregular property boundary.

Land ownership status on NFS lands can change over time through land adjustments. Land adjustments involve transfer of fee title and result in a change in legal land ownership. Land adjustments can result from land exchange, purchase, donation, sale, transfer, condemnation, and interchange.

Ownership of NFS lands within the plan area has changed since the last planning cycle. Since 1986, NFS ownership has increased by 20,906 acres on the Lewis and Clark National Forest portion and increased by 5,257 acres on the Helena National Forest portion of the forests (USDA Forest Service 1986, 2012).

Trends and Drivers

One of the greatest trends affecting the management of land ownership status and land uses and access patterns is escalating housing development on private rural lands along forest boundaries. As more people chose to live at the urban fringe and in scenic, rural areas, open space lands, such as farms and ranches, including those adjacent to NFS lands, are being lost to development (USDA Forest Service 2007).

Counties with national forests and grasslands are experiencing some of the highest population growth in the nation as people move near public lands. Even within national forest boundaries, the number of housing units on privately held lands increased from 500,000 to 1.5 million between 1950 and 2000 nationwide (Stein et al. 2007). Between the years 2000 and 2030, a substantial increase in housing density is expected to occur on more than 21.7 million acres of rural private land (8% of private land) located within 10 miles of NFS lands (Stein et al. 2007).

As described in more detail in the social/economic section of this assessment, there has been a substantial increase in residential acreage since 2000, with residential acreage increasing by 55 percent. Broadwater County has had the largest percent change and Pondera County has had the smallest. However, although residential acreage has increased substantially, the primary 17 county area has a much smaller percentage of private land classified as residential (1.4) than the rest of the nation (16 percent).

Increased housing density in areas adjoining NFS lands can increase the potential for encroachment, trespass, and unauthorized use and occupation of the public's land and resources (Stein et al. 2007). Encroachments onto national forests can transform publicly owned land into privately claimed land for uses such as pastures, garbage dumps, and personal storage sites. Another notable impact from development on adjoining private lands includes illegal private road building and user-created off-highway vehicle trails on NFS lands.

As development on adjacent private lands and inholdings increases, Forests face management challenges associated with controlling property lines. Limited funding, resources, and workforce have not kept pace with increased development on adjacent private lands and the Forest Service estimates that control of property boundary lines for approximately 1 million acres of public land has been heavily compromised because of encroachment and trespass by adjoining landowners (Stein et al. 2007).

Developments occurring on inholdings can increase encroachment cases and the need for additional special use authorizations and can limit management options on adjacent federal lands. Increasing land adjustments can reduce the impacts to NFS management caused by increased development. An active land adjustment program can reduce the complications of managing NFS land where it is comingled with private lands.

Information Needs

To improve management of NFS land where it is comingled with private lands, land adjustment priorities should be identified during the forest plan revision process and documented in the HLC NFs Forest Plan.

Land Uses

Existing Information

Some uses of NFS lands are covered by special use authorizations, including permits, leases, and easements that allow occupancy, use, rights, or privileges within the plan area. Special use authorizations are legal instruments whose terms and conditions are fully enforceable when reasonable and consistent with law, regulations, and policy. The mission of the Forest Service special use program is to manage the use and occupancy of NFS lands in a manner that protects natural resources, promotes public health and safety, and is consistent with forest land and resource management plans.

The Forest Service uses the Special Uses Data System (SUDS) to create and administer special use authorizations. The data in SUDS is supported by hard copy files at ranger district and forest supervisor's offices. The information available from SUDS is only somewhat dependable based on the quality of the data input.

In April 2004, the U.S. Department of Commerce published a report titled, "Improving Rights-of-Way Management across Federal Lands: A Roadmap for Greater Broadband Deployment (Federal Rights-of-Way Working Group 2004)." The intent of the report was to identify and recommend changes in federal policies, regulations, and practices to improve the process of granting rights-of-way for broadband communications networks on lands under federal jurisdiction. The Working Group set forth recommendations in four key areas – information access and collection, timely process, fees, and other charges and compliance. The Forest Service has adopted some of the recommendations and continues to focus on improving the processing of broadband and other communication uses on NFS lands.

In June 2011, the Office of Inspector General (OIG) completed an audit report titled, Forest Service Administration of Special Use Program (OIG 2011). The OIG initiated the audit to assess the effectiveness of the special use program and to determine if Forest Service efforts are meeting the program's objectives. The Forest Service responded to the audit recommendations and the Washington Office prepared an action plan that was provided to regional foresters in September 2011. Regional offices are working with the field to meet action plan deadlines. Demand for use of National Forest System lands and lack of resources to properly administer the special uses program are issues that forests continue to struggle with.

Existing Condition

The Forest Service special use program authorizes the use and occupancy of NFS lands that provide a benefit to the general public and protect public and natural resource values. Currently, there are over 74,000 authorizations on NFS lands for over 180 types of uses (OIG 2011). Uses in the lands program include water transmission lines, telecommunications, research, and granting road and utility rights-of-way.

At the time of this assessment there were 607 special use authorizations issued within the plan area. Of these, 326 are lands uses and 281 are recreation uses. These include current authorizations and authorizations that have expired. In the instances of authorizations that have expired, the use is still occurring and annual fees are being collected. In cases where authorizations have expired and the use is still occurring, this is due to lack of resources in both special uses staff and resource staff to complete environmental analysis and process new authorizations.

Table 12.1 Special use authorizations

Type of Use	Number of Authorizations
Agriculture	82
Community and Public Information	11
Feasibility, Research, Training, Cultural Resources and Historical	12
Industry	2
Energy and Gas Transmission	22
Transportation	115
Communication Uses	41
Water	7
Military Training and Facilities	3
Recreation (outfitter/guide, recreation residence, resort, ski area and recreation event)	281

The majority of the land use authorizations are for transportation-related uses and the majority of recreation uses are for recreation residences. There are a large number of unauthorized transportation uses in the plan area. With recent travel plan decisions, roads accessing private land that were open to the public in the past have been closed to public use. Use of these roads by private landowners requires a special use authorization. At present, the Forest Service lacks the resources it needs to manage the special uses program (OIG 2011). For this reason, the Helena and Lewis & Clark special use program has not had the resources to process the large number of special use road authorizations which would allow legal use of these roads by private landowners.

In the current Forest Plans, utility rights of way and communication sites are not identified. The regional office has recommended that each forest plan include three basic elements to identify suitable utility corridors and communication sites: 1) text or reference in the plan itself, 2) maps, and 3) tables.

Trends and Drivers

The demand for special use authorizations is higher where public and private boundaries meet. Private land owners often require an authorization from the Forests for private road access, waterlines, and other utilities. The need to grant additional authorizations increases as private lands adjacent to or within the NFS boundary are subdivided, which increases the workload to the special uses program. At present, the Forest Service lacks the resources it needs to manage the special uses program (OIG 2011). An increase in special uses also influences management of the plan area because authorizations may limit resource decisions.

An additional driver of change in land uses is the ever-growing demand of technology in the field of communications. NFS lands often provide the highest points in rough country which are desirable from a coverage standpoint for uses such as internet and cell phone service. The request for communication sites on NFS lands has increased as these services expand to more remote locations. Communication sites are critical for the wireless industry, which has a growing need for additional antenna sites, including in remote communities once considered too isolated for the investment of infrastructure capital (Federal Rights-of-Way Working Group 2004).

In a master agreement dated September 30, 1988 between the Department of Defense and the Department of Agriculture, the Secretary of Defense and Secretary of Agriculture agreed to make National Forest System lands available for military training activities. The agreement states that “The Department of Agriculture, Forest Service is to ensure forest management plans include military training activities. Requirements for these activities should be coordinated with the Department of Defense during formulation and development of those plans.” In development of the HLC NFs forest plan revision, identification of military training areas should be considered.

Information Needs

In 1999 the Forest Service issued guidance that encouraged forests to consider including forest plan revisions, appropriate programmatic actions, and decisions that would improve efficiencies in project-level special use procedures and customer service. This direction was reiterated after the 2011 OIG audit of the Forest Service special use program in a Washington Office memo dated September 19, 2011 (Holtrop Memorandum 2011). Forest planning decisions that could improve special uses management efficiencies include land allocations for long-term use or occupancy, such as communication site designations. Other planning decisions to consider include establishing management standards and guidelines within each land allocation and forest-wide or area-wide standards and guidelines for special uses (USDA, Forest Service and BLM 1999).

For planning purposes, evaluating current and potential communication sites and energy right-of-way corridors on forests is necessary to determine if they should be designated in the forest plan revision. Designating communication sites, existing energy rights-of-way and potential new energy corridors in forest plan revision will help guide decisions related to the expansion of existing permitted sites and the authorization of new sites and new corridors. Additional demands will be placed on the Forest Service to accommodate these uses in the future.

Identifying roads that are used by landowners to access private land but are not authorized under a special use authorization is necessary to determine future workload.

Current forest plans for the plan area contain a number of resource management objectives that conflict with special uses. Some examples are power line hazard tree clearing conflicting with elk hiding cover standards, new road construction or road use conflicting with road densities in sensitive wildlife areas, and power line right-of-way and facility management in wilderness. Having clear direction in the forest plan for analysis of special uses would be beneficial to all resource areas.

Developing a special use layer that shows the locations of all special use authorizations would be helpful. GIS layers are not required for development of a forest plan, but would be a valuable tool for drawing conclusions related to land uses in the forest plan and determining if standards and guides would be helpful in specific areas.

Access Patterns

Existing Information

Access for this section refers to legal rights-of-ways acquired by the Forest Service across non-NFS lands for the management and use of NFS land. Access granted by the Forest Service to others across NFS land is covered in the “Land Uses” section.

As established in 36 CFR 200.12, the LSRS is the official repository for all realty records and land title documents for NFS lands, including acquired rights-of-way (see full discussion of LSRS above in “Land Ownership Status” section).

In April 1992, the General Accounting Office (GAO) completed a report titled, Federal Lands Reason for and Effects of Inadequate Public Access (GAO 192). The report uses GIS mapping to estimate the amount of public land acres in several western states that cannot legally be accessed by the public. The majority of these inaccessible lands are managed by the Forest Service and BLM.

Existing Condition

During the process of developing NFS roads and trails across the country, the Forest Service acquired approximately 30,000 rights-of-way across lands in other ownerships (FS Training Manual, September 1999). Access to 17.3 million acres that are managed by the Forest Service, primarily in the western states, is inadequate

(GAO 1992). Perfecting this access would entail the acquisition of approximately another 28,000 easements, involving approximately 7,500 miles of rights-of-way for both roads and trails (NCTC 1999).

The Center for Western Priorities (2013) reports the state of Montana as having 1,955,145 acres of land managed by the Forest Service and BLM that do not have public access. Of the western states reviewed in this report, Montana has the most inaccessible acres. Of the nearly 2 million acres, 37 percent are inaccessible because the public cannot cross corners, while 63 percent are fully landlocked by private lands. The report encourages federal agencies to take a more comprehensive approach to identifying closed-off public lands and enhancing access (Center for Western Priorities 2013).

Known trail and road access points to the plan area exist where obtaining permanent legal access would be valuable for improved recreational access and management opportunities. There is a continuing need to acquire permanent or temporary access on a project-by-project basis. The time and process required to acquire sufficient legal and physical access is often a challenge for meeting project deadlines.

Trends and Drivers

Private landowners' unwillingness to grant unrestricted public access across their land has increased as the public's use of federal land has increased (GAO 1992). Factors contributing to inadequate access were private landowners' concerns about vandalism, potential liability, and desire for privacy or exclusive personal use (GAO 1992). Though this report is somewhat dated, the same reasons are being given today by private landowners for their unwillingness to grant permanent public access across their land.

Working with private landowners to gain permanent legal access is getting more difficult where access to NFS lands was never perfected in the past. Being unable to gain permanent legal access has a negative effect on the plan area because it limits management options and the public's opportunities to access NFS land.

Information Needs

In 1991 the Forest Service issued guidance to field offices to improve access planning efforts. This guidance required that each forest plan include a transportation plan that would identify the access rights needed to support the resource objectives of the respective forest plan (GAO 1992). To accomplish the goals set out in this guidance, the forests would need to develop an inventory of roads and trails that provide access to the forests and evaluate if the forests have legal and physical access on these roads. Some of the forests access needs have been met through acquiring road and trail easements in some areas. There are still many areas where access rights have not been acquired. Records do not clearly indicate if an inventory was completed on either forest. Though dated, the 1991 guidance in regard to identifying access needs and preparing an inventory of those needs is necessary for future resource management objectives. For the revision process, the HLC NFs should complete an inventory of access needs and identify those needs in the HLC NFs Forest Plan.

References

Center for Western Priorities 2013. Landlocked: Measuring public land access in the West.

Federal Rights-of-Way Working Group 2004. Improving rights-of-way management across federal lands: A roadmap for greater broadband deployment. Washington, DC: U.S. Department of Commerce, National Telecommunications and Information Administration.

General Accounting Office (GAO) 1992. United States general accounting office briefing report to the chairman, subcommittee on national parks and public lands, committee on interior and insular affairs, house of representatives: Federal lands: Reasons for and effects of inadequate public access. Washington, DC: U.S. General Accounting Office.

Holtrop, J. D. to Regional Foresters, memorandum, 19 September, 2011. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office.

Master Agreement between Department of Defense and Department of Agriculture Concerning the Use of National Forest System Lands for Military Activity. September 30, 1988

National Conservation Training Center (NCTC) 1999. National lands training for line officers and program managers. Shepherdstown, WV: U.S. Fish and Wildlife Service, National Conservation Training Center.

Office of Inspector General (OIG) 2011 Forest service administration of special use program. Washington, DC: U.S. Department of Agriculture, Office of Inspector General.Nez Perce-Clearwater NFs Assessment 14-10

Stein, S. M., R. J. Alig, E. M. White, S. J. Comas, M. Carr, M. Eley, K. Elverum, M. O'Donnell, D. M. Theobald, K. Cordell, J. Haber, and T. W. Beauvais. 2007. National forests on the edge: Development pressures on America's national forests and grasslands. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. General Technical Report PNW-GTR-728.

United States Department of Agriculture, Forest Service. 1987. Land areas of the national forest system as of September 30, 1987. Washington. DC: U.S. Department of Agriculture, Forest Service, Washington Office, Lands.

United States Department of Agriculture, Forest Service. 2007. Forest service open space conservation strategy: Cooperating across boundaries to sustain working and natural landscapes. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office, Lands.

United States Department of Agriculture, Forest Service. 2012. Land areas of the national forest system as of September 30, 2011. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office, Lands.

United States Department of Agriculture and United States Department of Interior, Forest Service and Bureau of Land Management (Forest Service and BLM). 1999. Special uses reengineering implementation team final report. Washington, DC: U.S. Department of Agriculture, Forest Service; U.S. Department of the Interior, Bureau of Land Management.