

BEFORE THE REGIONAL FORESTER, REGION 9, OF THE U.S. FOREST SERVICE

In re:)
Record of Decision for)
Long Rail Vegetation and Transportation)
Management Project)
Eagle River – Florence District)
Chequamegon-Nicolet National Forest)
)
)
Habitat Education Center,)
Environmental Law and Policy Center,)
David Zaber, Ricardo Jomarron and Don Waller) Appeal No. 07-09-13-0012 A215
)
Appellants)

APPEAL DISPOSITION AGREEMENT

WHEREAS, Appellants Habitat Education Center, Environmental Law and Policy Center, David Zaber, Ricardo Jomarron and Don Waller (“Appellants”), and the Forest Service desire fully to dispose of the pending appeal of these Appellants in connection with the Long Rail Vegetation and Transportation Management Project, Eagle River – Florence District, Chequamegon-Nicolet National Forest;

WHEREAS, Appellants have asserted various claims of insufficiencies in the Long Rail Environmental Impact Statement (EIS) relating to requirements of the National Environmental Policy Act, the National Forest Management Act, and the effects of the Long Rail timber sale on forest interior species of concern, their habitat and forest ecosystems;

WHEREAS, Appellants and the Forest Service have agreed to disposition of Appellants’ appeal and that it is in the interest of the public, the parties, and administrative and judicial economy to resolve these issues amicably on the basis set forth below; and

WHEREAS, the Forest Service will implement the Long Rail EIS and its Record of Decision consistent with the terms of this agreement

NOW, THEREFORE, the parties agree to this disposition of the Appellants’ appeal as follows:

1. The Forest Service will defer or modify the following aspen treatments in the Long Rail Project:

Stand No.	Action	Acres
03011014	Defer	4
03011022	Modified treatment	7
03020018	Modified treatment	43
03037001	Defer	38
03043005	Defer	17
03071021	Defer	9
03072009	Defer	13
03120005	Defer	12
03126013	Modified treatment	9
03170049	Defer	10
03171038	Modified treatment	8
03174011	Defer	21
03174035	Modified treatment	6

For the purposes of this agreement, “defer” means that no timber harvest will occur in the identified stands for a period of at least 10 years. After this period, the Forest Service may consider including these stands in a new timber sale project, which will then be subject to applicable procedures including public comment and administrative appeal.

Modifications will generally leave some older, larger aspen trees and more structure. Specific modifications will be determined based upon site-specific characteristics identified through field reconnaissance. Appellants and other interested parties will be invited to visit these stands along with district specialists to exchange information prior to prescriptions being drafted to meet the above stated objectives. Stand specific prescriptions will be shared with the Appellants prior to treatment.

2. The Forest Service will withdraw from the Long Rail Project all acres of opening maintenance in Management Area 2A, and maintenance of three openings in Management Area 2C as follows:

Opening No.	Management Area	Acres
03019101	2C opening	5.6
03040110	2C opening	20
03124103	2A opening	2.4
03124106	2A opening	3.2
03132031	2A opening	0.6
03132120	2A opening	0.8
03132121	2A opening	1.2

03161102	2C opening	5.7
03164101	2A opening	6.7
03164102	2A opening	7.7

3. The Forest Service will increase the buffers around northern goshawk nests in the Long Rail Project from 30 acres to 124 acres. This action will lead to the Forest Service deferring additional acres from timber harvest around specific nest locations. The parties agree to work together to develop a shared learning opportunity that includes additional monitoring of goshawk nest buffer effectiveness. Monitoring results may be used in further research.

4. The Forest Service will seek an easement over the 40-acre private parcel just west of Stand 03174027 near Rat Lake. If this easement cannot be obtained, the Forest Service will proceed with the 0.6 miles of road reconstruction as described in the selected action. If this easement can be obtained, the Forest Service will not proceed with the road reconstruction described. In addition, road construction and reconstruction mileage within the Long Rail Project area will be reduced to the extent that access to deferred stands is no longer necessary.

5. The Forest Service will revise management prescriptions for the Long Rail Project to create additional snags within red pine stands with an average stand diameter greater than 12 inches in dbh. This will occur within 408 acres of red pine thinnings that are adjacent to or near northern hardwood stands within the Long Rail Project. Forest plan guidelines for number of snags to be retained/created will be utilized. Appellants and other interested parties will be invited to visit these stands along with district specialists to exchange information prior to prescriptions being drafted to meet the above stated objectives. Stand specific prescriptions will be shared with the appellants prior to treatment.

6. The Forest Service will defer or modify the following northern hardwood treatments in the Long Rail Project:

Stand No.	Action	Acres
03009a06	Defer	38
03009b06	Defer	41
03009c06	Defer	40
03009d06	Defer	27
03009e06	Defer	39
03009021	Defer	21
03019028	Defer	276
03019035	Defer	186
03020005	Modified selection	55
03020012	Modified selection	135
03020014	Modified selection	52
03067040	Defer	7
03067042	Defer	89

03068010	Defer	17
03068022	Defer	13
03068027	Defer	21
03076026	Defer	61
03078014	Defer	9
03085042	Defer	12
03085043	Defer	36
03119008	Defer	58
03124004	Defer	16
03124013	Defer	74
03124021	Defer	6
03125036	Defer	15
03126020	Defer	36
03160003	Defer	115
03160013	Defer	41
03161003	Defer	45
03161006	Defer	146
03161007	Defer	159
03161015	Defer	6
03174015	Defer	30
03174040	Defer	35
03177002	Defer	74

For the purposes of this agreement, “defer” means that no timber harvest will occur in the identified stands for a period of 10 years. After this period, the Forest Service may consider including these stands in a new timber sale project, which will then be subject to applicable procedures including public comment and administrative appeal.

Treatment prescriptions for the modified selection action will be modified to leave 100 square foot per acre basal area (total, including submerchantable) while still allowing for effective treatment. Specific modifications will be determined based upon site-specific characteristics identified through field reconnaissance. Appellants and other interested parties will be invited to visit these stands along with district specialists to exchange information prior to prescriptions being drafted to meet the above stated objectives. Stand specific prescriptions will be shared with the appellants prior to implementation.

7. The Forest Service and the Appellants agree to meet, as well as discuss with a broader audience of interested, knowledgeable parties, to exchange information and discuss processes and methodologies relative to cumulative effects analysis.

8. By the signing of this agreement, the Appellants withdraw their appeal. This signed agreement constitutes notification to Randy Moore, Appeal Deciding Officer, of said withdrawal.

9. The undersigned representatives of the parties certify that they are fully authorized by the party or parties whom they represent to enter into the terms and conditions of this agreement and to legally bind the parties hereto.

10. This agreement contains all of the agreements among the parties and is intended to be and is the final and sole agreement among the parties concerning the complete and final resolution of all of Appellants' claims, including all claims for attorneys' fees and costs in this action. The parties agree that any other prior or contemporaneous representations or understandings relating to the Long Rail Vegetation and Transportation Management Project EIS and Record of Decision, or the appeal of Appellants, whether written or oral, not explicitly contained in this agreement are of no further legal or equitable force or effect.

11. This agreement does not constitute an admission or retraction by any party of any fact, claim, legal contention, or defense on any issue of Appellants' appeal.

IT IS HEREBY AGREED:

Howard Learner

Howard Learner, Appellants' Representative March 19, 2007
Date

Dennis D. Nith

For March 20, 2007

Jeanne Higgins, Acting Forest Supervisor Date