



Briefing Paper

United States
Department of Agriculture

Gallatin National Forest
P.O. Box 130
Bozeman, Montana 59771

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National Forest System Trails across Private Land

Purpose and Need: Many of the long standing National Forest System (NFS) trail segments that cross private lands lack recorded easements. In other words, rights to most existing trail segments across private lands have not been “perfected” by acquiring written (deeded) easements, or through legal (adjudicative) procedures. In some cases, however, trail easements have been acquired and recorded. And in a few instances, rights have been perfected through a court ruling that NFS trails across private lands are in fact public trails.

This paper summarizes the current situation on the Gallatin NF, and Forest Service direction and policy regarding existing NFS trails that cross private lands.

On the Gallatin NF, our system of trails crosses intermingled public and private lands throughout much of the Forest. This situation results from historic land ownership patterns, ie. private lands in the valleys, public lands in the mountains, the checkerboard land grants to railroads, homestead acts, and mining patents.

Most of the NFS trails on this Forest were constructed in the 1920's and 30's. Over the years, these trails have been maintained and signed by the Forest Service. The trails have been used by the public for recreation, and also by the agency, our permittees and contractors, for management purposes for decades. Forest Visitor Maps have displayed the NFS trail system across intermingled lands, with trail numbers and any Travel Management restrictions. A variety of other historic and current National Forest, BLM, USGS and GLO maps also display the system of trails across intermingled lands.

The growing demand for dispersed recreation on public lands, and the changes and trends in private landownership, have brought considerable attention to the trails issue on this Forest. At an increasing rate, landowners are questioning the status of trails across private land. Private land within and adjacent to this Forest continues to be sold. New owners may or may not recognize the existing public access through their lands. Some trails on private land are being lost through subdivision, closure or obliteration.

As a result, it is critical for the Gallatin NF to continue to have a strong and consistent policy and presence in: (a) signing and maintaining our trail system across private lands; (b) defending historic trail access rights if challenged; and (c) perfecting trail access rights across private lands whenever that opportunity exists.

Gallatin National Forest Situation: This Forest has made considerable progress over the past 20+ years in addressing the trail access issue. Numerous (perhaps 50) trail easements have been acquired from landowners by various means available to the agency. The Forest's land purchase and exchange programs, and reciprocal access agreements, have been particularly effective in recent years in securing legal access to existing trails. Since 1989, over 120,000 acres of private land inholdings, containing over 70 miles of existing system trails, have been consolidated into public ownership.

Today, our system of NFS trails consists of about 2,200 miles, excluding winter use trails. Despite the substantial progress made in consolidating lands, an estimated 200 to 250 miles of the Forest's trail system cross private and other non-federal land. And despite the numerous trail easements now of record, **the Forest Service has not perfected easement rights for the majority of NFS trail segments on private lands.** This situation occurs throughout most of the Forest, but is most prevalent in the Crazy Mountains, Paradise Valley, North Bridgers, Cinnabar/Tom Miner Basin, and north Madison, where most of the trails across intermingled private lands remain.

Two important local trail access cases directly affect the management of unadjudicated Gallatin NF trails across private lands today. A synopsis follows:

- (1) **Trail Creek litigation.** In the early 1980's, new owners of the Windy Waters Resort attempted to close the Trail Creek trail across ranch lands. This trail has been in existence for many years. It extends from Ennis Lake up to Cowboy's Heaven and Cherry Creek on the B-D NF and Gallatin NF (Bozeman RD). It has been signed and maintained by the Forest Service. Sportsman and access groups filed suit to keep this trail open, citing state prescriptive rights law. The court ruled that Trail Creek trail is in fact a Forest Service trail open for public use across private lands.
- (2) **Donahue Trail.** In this mid to late 1980s case, the new landowners of Point of Rocks Ranch threatened to close this historic trail system on the Livingston District. Negotiations with the owners to re-open the trails were not successful. The Gallatin NF, OGC and DOJ then compiled information about historic use and maintenance, and developed a legal position asserting that Donahue Trail was in fact a system trail across private lands. As DOJ prepared to file a complaint in federal court, the landowners conceded and granted permanent trail easements for this trail system.

Direction and Policy. National and Forest direction (FLPMA, FSM 5460, and Gallatin Forest Plan) is to acquire perpetual easements for all NFS roads and trails across non-federal lands. Deeded easements give the Forest Service management, jurisdiction and maintenance rights. We typically acquire twenty (20) foot wide trail easements. We strive to acquire all rights needed to manage the trail in the future, without restrictions, regardless of our current travel management plans. Easement language must follow the format approved by OGC. Any deviations require OGC approval. A formal right-of-way survey and exhibit (map) is required to record an easement.

Under FLPMA and FSM 5460 direction, the Forest Service uses a variety of methods to acquire and protect road and trail access: negotiate to acquire easements by purchase or donation, land exchange and purchase, cooperative and reciprocal access agreements, establish existing rights through adjudication, and as a last resort, condemnation.

In situations where an existing NFS trail crosses private lands, and no deeded easements exist, the Forest Service position is as follows:

The United States has acquired a right-of-way for the trail through development, maintenance and continuous use of the trail. As a matter of law, the Forest Service believes that there is a public access easement for the trail. The Forest Service is a beneficiary of this public right of access, will continue its efforts to defend the public's right of access.

In situations where an existing NFS trail crosses private lands, and no deeded easements exist, it is very important for the Forest and District to:

- (1) Protect and maintain historic evidence, including trail blazes, signs, maps, photos and maintenance records,**
- (2) Maintain and sign the trail on a regular basis, and keep records and photos of this maintenance, and**
- (3) Take prompt action in the event that landowners threaten or take action to close or obliterate the trail.**

Statements of Interest

Current policy (R-1 Supplement 5400-93-2, 7/1/93, 5460.2 - Policy) provides direction for filing “**Statements of Interest**” in the appropriate county, in situations where continued use of a historical access route across private land is or may be threatened. Statements of Interest are designed to provide **constructive notice** in the public record that the United States, on behalf of the public, claims an interest in a road or trail facility.

On the Gallatin NF, Statements of Interest were filed in the early 1990s on the extensive system of trails across Plum Creek (later sold to BSL) lands, across the other private lands in the Taylor Fork area, and in certain other areas. We have not filed Statements of Interest on most other NFS trails on this Forest, but this remains a viable tool.

Filing an SOI must be supported by evidence adequate to document the claim of interest and must be coordinated with RO Lands and OGC. We need to inform the landowner of our intentions to file an SOI. When filed, landowners need to be notified by certified letter, and provided a copy of the recorded SOI. A sample SOI is attached.

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STATEMENT OF INTEREST

The **UNITED STATES OF AMERICA** hereby asserts that it has and claims **EASEMENTS** for the **NATIONAL FOREST TRAILS** over and across the real property described below, located in **Gallatin County, State of Montana**.

The purpose of this statement is to:

1.Affirm that the **UNITED STATES OF AMERICA** does claim **EASEMENTS** under the jurisdiction of the Forest Service, and

2.Establish that said **EASEMENTS** for **National Forest Trails** traverse the following described real property, as shown on **EXHIBIT A** attached hereto and made a part hereof:

Township 8 South, Range 3 East, P.M., Gallatin County, Montana:

CINNAMON-BUCK TRAIL NO. 6:

Section 24: W1/2 0.6 mile

MEADOW CREEK-ALBINO LAKE TRAIL NO. 33:

Section 24: W1/2 0.6 mile

For additional information, contact the Forest Supervisor, Gallatin National Forest, Federal Building, P.O. Box 130, Bozeman, MT 59771. Phone (406) 587-6701.

Dated this _____ **day of** _____

UNITED STATES OF AMERICA

By: _____

Forest Supervisor
Gallatin National Forest
USDA - Forest Service