

Middle Fork Sixteen Mile Road Relocation Project

Draft

Decision Notice and Finding of No Significant Impact

**Bozeman Ranger District
Custer Gallatin National Forest
Gallatin County, Montana**

May 2017

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USDA Forest Service

Responsible Official:

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Draft Decision Notice

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I. Introduction

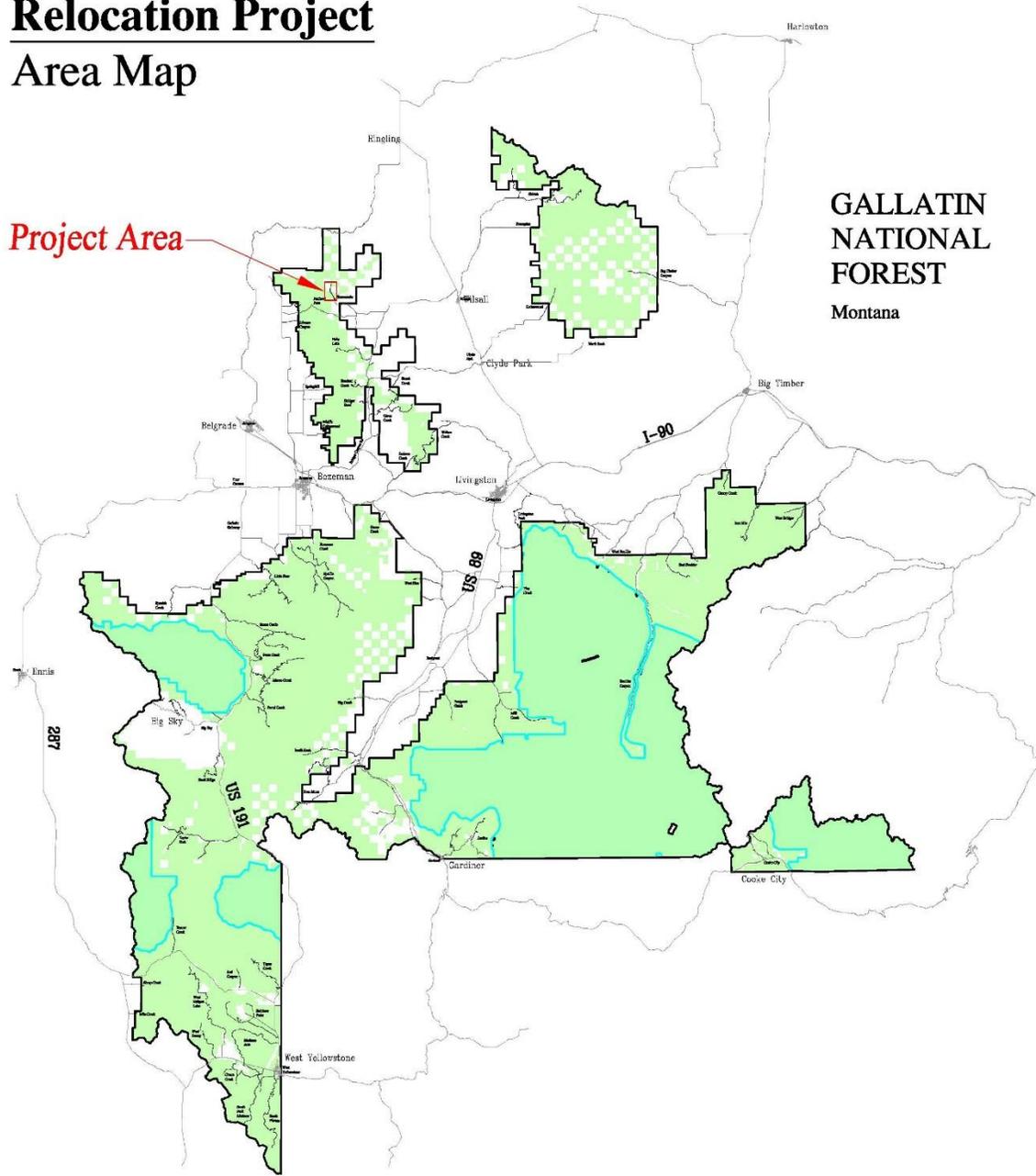
This Decision Notice documents my decision and “finding of no significant impact” for a proposed road improvement project to relocate a short section of Forest Service Road #642, the Middle Fork of Sixteen Mile Road, from private land onto National Forest System land in the NE portion of Section 16 and rejoin the original road location. After careful consideration of the impacts of the alternatives disclosed in the Middle Fork Sixteen Mile Road Relocation Project Environmental Assessment (October 2016), I have selected Alternative 1 (the proposed action) for implementation. More specifically, this alternative will:

- Relocate (new construction) approximately 1500 feet of road in T3N, R6E, Section 16, NE 1/4, from Milepost 5.474 to Milepost 5.748. The new road will be entirely on National Forest System (NFS) land and rejoin the original road location before continuing on to the Troy Creek Trailhead in Section 10. Currently this segment is partially located on private land in the NE ¼ of Section 16.
- Maintain and improve the road between the end of the county road at MP 2.9 and the Troy Creek TH at milepost 6.1 to provide a 3 season maintenance level 3 (passenger car) road. The road will continue to be single lane with turnouts and a 12 foot driving surface width. Road work could include additional drainage such as culverts and drainage dips, added signing, spot surfacing, and addition of turnouts.
- Employ Watershed Best Management Practices in the construction of the new segment of road, including revegetation of the cut and fill slopes and using available woody debris to reduce sedimentation and prevent cattle trailing across new vegetation.
- Close the current segment of road located on private land from (MP 5.47 to MP 5.75) to public use. The approach at milepost 5.748 will be eliminated and the old road on National Forest Lands will be decommissioned and restored.
- A short access from FR 642 at milepost 5.47 to the private land in Section 16 would be allowed to continue under a special use permit, if requested by the land owner, as the road relocation would be entirely on NFS land and would no longer intersect the private parcel to provide access.
- Posting additional signing identifying National Forest System lands.
- Restore and revegetate the old road segment on private land if the landowner no longer wants it.

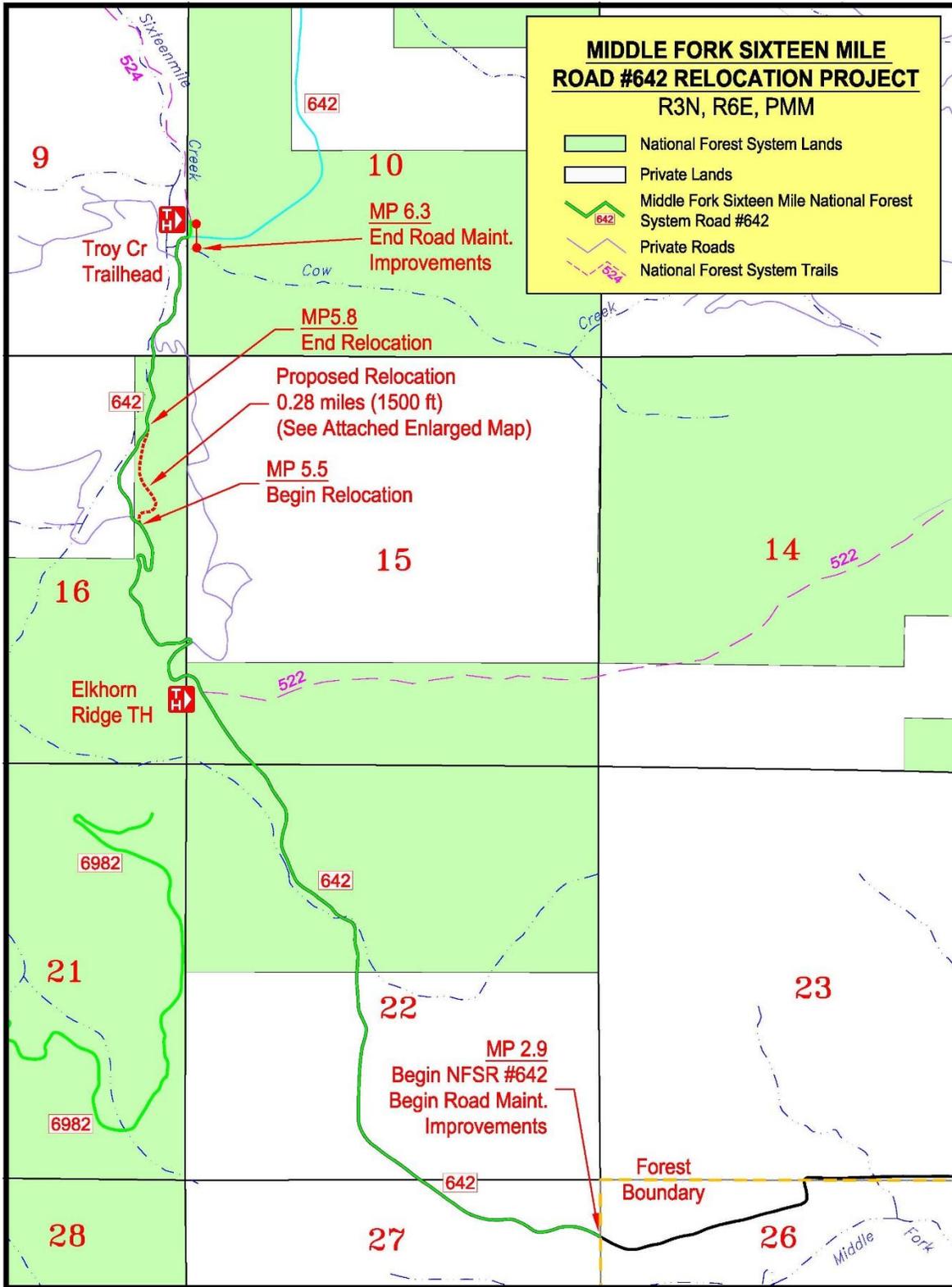
Work is expected to be completed in one season, including construction and restoration.

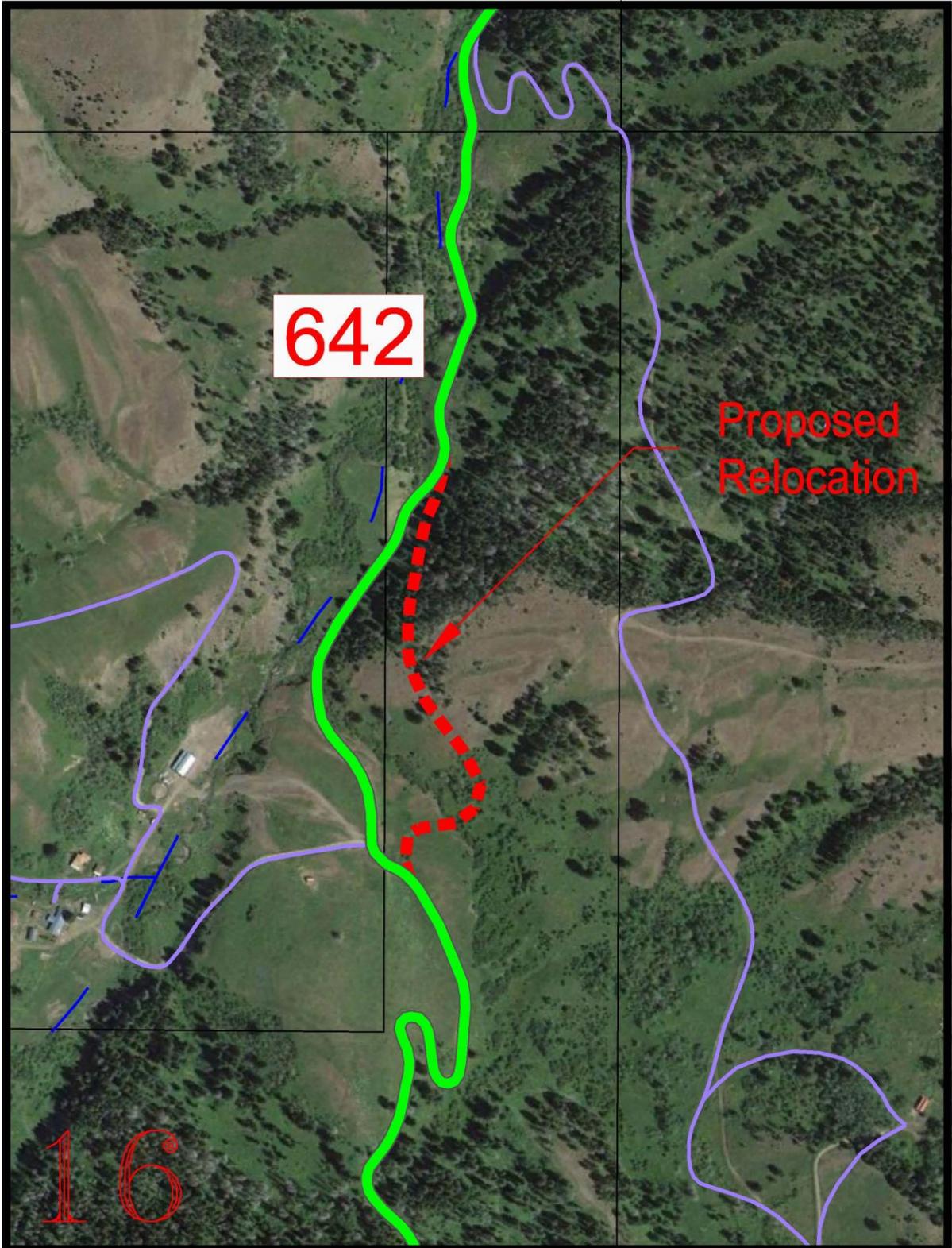
Middle Fork Sixteen Mile Road Relocation Project Area Map

Project Area



GALLATIN
NATIONAL
FOREST
Montana





II. Purpose and Need for Action

The purpose of this project is to create a more sustainable road in a more upland location that reduces erosion and maintenance costs and allows for better public access to National Forest System lands. The current road has a steep section on poor soils and is very close to the creek, causing sediment concerns. It can also be a difficult route for the public to travel during wet conditions. Much of the public use on this road is during hunting season and with horse trailers. There have been reported incidents of vehicles getting stuck on the road or slipping off the road into the ditch. The proposed location would reduce the grade and provide a better road surface for the public while reducing sediment delivery to Sixteen Mile Creek. Having a more sustainable road would also reduce long term maintenance costs, long term management costs and ultimately be a cost effective investment.

There is also a secondary purpose for moving this system road from private land to National Forest land. Although the Forest Service contends that the public has rights to travel this road and the road had been maintained by the Forest Service and is under its jurisdiction, it is good practice to put public uses on public lands where this is feasible. In this situation this is feasible and preferable for the reasons stated above. This action would prevent any future disputes with a land owner and ensure uninterrupted public use of the road. It would also negate any need for an easement, management or defense of easements and agreements for maintenance and the like.

III. Decision and Reasons for the Decision

A. Decision Criteria

In making my decision on the proposed relocation of Forest Road 642 I focused on the following criteria:

1. Whether the proposal provides a more sustainable road in a more upland location that reduces erosion and maintenance costs and allows for better public access to National Forest System lands.
2. Whether the proposal provides for adequate resource protection and results in no significant adverse environmental effects.

B. Decision and Rationale

After review of the description of Alternative 1 (the Proposed Action) and the predicted environmental consequences in Chapters 2 and 3 of the EA, it is my decision to implement the proposed action.

Under this alternative the activities described in the “Introduction” section (page 3) would occur. The section of the Middle Fork Sixteen Mile Road (#642) located on private land would be relocated and proposed maintenance work would be implemented. This alternative would also include the following mitigation to prevent sedimentation of nearby streams and minimize disturbance to the stream channel and riparian vegetation.

1. Obtain and comply with the requirements of 404 and 124 permits, including:
 - Employ short term BMP's to prevent sediment from entering streams; and
 - Provide long term soil stabilization (e.g., revegetation/mulching of disturbed soil surfaces and gravel surfacing of road bed) to prevent the new road segment from becoming a chronic sediment source to nearby stream/s.
2. Design road drainage system to maintain buffers between runoff from road bed/prism and streams.
3. Windrow slash at the base of fill slopes within the stream bottom area to filter/trap sediment.
4. Avoid new unintended cattle trails by designing a road alignment that minimizes switchbacks or other areas that cattle and riders tend to short-cut.
5. Protect seeded cut and fill slopes in close proximity to the unnamed stream or block cattle trails using project generated woody slash.
6. Minimize disturbance to stream channel and riparian vegetation.
7. Include in the project the revegetation/mulching of disturbed soil surfaces.
8. Surface the new road bed.
9. The area should be surveyed for the presence of nesting goshawks prior to road decommissioning or construction activities. If an occupied goshawk nest is found in the project vicinity; i.e. if the new road location is within an occupied nest stand or post-fledging area, then mitigation measures should be applied, which would restrict activity associated with new road construction during the breeding season of April 15 to August 15.
10. Conduct one herbicide treatment of the weeds within the project area prior to soil disturbance. If needed repeat herbicide treatment of the weeds in the project area for two years following disturbance.
11. Power-wash and inspect all off-road equipment prior to entering the Forest to remove all soil and plant material from equipment.
12. Use weed-free materials such as rock, pit-run, top soil, native grass seed mix and other plant materials brought to the site.
13. Native grass seed mixture – certified weed free - will be planted on all disturbed soil.
14. Monitor the site for seed establishment and replant if native vegetation does not establish on the site within one year.

My rationale for deciding to proceed with the proposed action is that:

- (a) It puts the Forest Road 642 in a more sustainable and less environmentally impactful location.
- (b) It puts Forest Road 642 on public land thereby avoiding any future disputes about easements, uses or public rights. Alternative 2 (no action) would leave the road in the current location across private land.

- (c) Implementing the road improvement and maintenance work and abandonment of the old road will result in a reduction in sediment long-term to the Upper South Fork of Sixteen Mile Creek (EA, page 10). Currently, and under Alternative 2 (no action), the old road alignment is a significant source of sediment to the Creek.
- (d) There would be no unacceptable impacts to other resources including water quality, threatened, endangered or sensitive species, other wildlife, recreation or heritage resources (EA, Chapter 3).

C. Consideration of the Issues

Scoping is an early and open process for determining the scope of issues to be addressed to a proposed action [40 CFR 1501.7]. Based on comments received and the environmental analysis disclosed in the EA, I found 3 issues in need of consideration in my decision. My conclusions about each of these issues are discussed below.

1. **Water Quality (EA, pages 10 and 11).** The proposed action would result in a short-term increase in sediment delivery to the unnamed stream crossed by the new road segment under the proposed action and likely to South Fork Sixteenmile Creek but there would be no long-term sediment effects. Conversely, under Alternative 2 (No Action) the existing alignment of the road would remain and this is currently a significant sediment source to Upper South Fork Sixteenmile Creek.
2. **Wildlife (EA, pages 11-15).** The impacts of proposed activities under Alternative 1 (the proposed action) to wildlife are limited to minor disturbance effects.
3. **Sensitive Plants and Heritage Resources (pages 15 and 16).** There are no sensitive plants or heritage resources present, therefore there is no effect.

IV. Public Involvement

An opportunity to comment on the Environmental Assessment was provided in November of 2016. Twenty two (22) comments were received. All comments were supportive of the proposal to relocate the portion of the Middle Fork of Sixteen Mile Creek Road (FR 642) to resolve a private land access issue. One also mentioned support for the proposed road improvement work. Refer to Appendix A for my response to the comments.

V. Finding of No Significant Impact

I have reviewed the direct, indirect and cumulative effects of the proposed activities and alternatives documented in the Environmental Assessment (EA) for the Middle Fork of Sixteen Mile Creek Road Relocation Project and determined that these actions will not have significant impacts on the quality of the human environment. Thus, an environmental impact statement will not be prepared. The implementing regulations for NEPA at 40 CFR 1508.27 provide criteria for determining the significance of effects. This provision requires consideration of both the context and intensity of predicted effects in determining significance. I based my finding on the following:

(a) **Context.** I have determined that the appropriate context for weighing the significance of impacts was within the general vicinity of the project area including the Middle Fork of Sixteen Mile Creek drainage. There would be no environmental impacts beyond the immediate geographic area.

(b) **Intensity.** In accordance with 40 CFR 1508.27(b) my determination that the severity of impacts were not significant was based on consideration of the following 10 factors:

1. **Beneficial and Adverse Impacts.** Based on the predicted impacts of the alternatives discussed in Chapters 2 and 3 of the EA, I have determined that both the beneficial and adverse impacts of this action will not be significant. As discussed earlier in this Decision Notice, I identified 3 issues to be relevant to this decision and concluded that the scope and magnitude of effects associated with these issues were limited and acceptable.
2. **The degree of effect to public health and safety.** My decision poses no risk to public health and safety.
3. **Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm land, wet lands, wild and scenic rivers or ecologically critical areas.** The project area was surveyed and no known cultural resource sites were found. The project area is not in the vicinity of any park lands. There are no farm lands, wet lands, wild and scenic rivers or other ecologically critical areas near the project area.
4. **The degree to which the effects on the quality of the human environment are likely to be highly controversial.** This factor pertains to disagreement between experts in a given field on the potential effects of this project. There are no known disagreements over the predicted effects of Alternative 1 or Alternative 2.
5. **The degree to which the effects on the quality of the human environment are highly uncertain or involve unique or unknown risk.** Forest roads have been constructed, reconstructed and relocated since the National Forest System has been established. There is nothing unique or unknown about this project.
6. **The degree to which the action may establish a precedent for future action which significant effects or represents a decision in principle about a future consideration.** This project is not unique or precedent setting. The road relocation under Alternative 1

simply accommodates existing uses. It will not lead to any new or different uses of the area.

7. **Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.** Cumulative effects are discussed in the earlier sections disclosing predicted environmental consequences related to the identified resource issues and in the specialist reports contained in the project file. In summary no significant cumulative effects were identified for either alternative.
8. **The degree to which the action may adversely affect districts, sites, highways, structure or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.** There are no historical districts or sites within the project area. A cultural heritage inventory was completed for the area; no sites were discovered during the inventory. If a site is discovered then the work will avoid the site until an archeologist can determine the best course of action.
9. **The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.** The potential effects to threatened and endangered species is discussed in the “Wildlife” section of the EA and in the Programmatic Biological Assessment available in the project file. Because grizzly bears are not currently known to use habitat in the project area, and the proposed action would have no effect on the proportion of secure habitat for potential future use of the area as a travel route, the proposed relocation under Alternative 1 would have *no effect* on grizzly bears. Canada lynx is the only species currently listed as threatened that the U.S. Fish and Wildlife Service has determined may be present in the Bridger Mountain Range. My decision *may affect, but is not likely to adversely affect* lynx or lynx habitat. The project is not within designated critical habitat for lynx, so there would be *no effect* on critical lynx habitat.
10. **Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.** The principle Federal laws applicable to this proposal include the National Forest Management Act of 1976 (as amended), National Environmental Policy Act of 1969 (as amended), and Endangered Species Act of 1973.

Compliance with the National Forest Management Act of 1976 (as amended) - The Act requires that all projects and activities be consistent with the Forest Plan, which was approved in 1987. This project incorporates all applicable Forest Plan standards and guidelines.

Compliance with National Environmental Policy Act of 1969 (as amended) – The process followed to create this Environmental Analysis and the supporting documents project file comply with NEPA.

Compliance with Endangered Species Act of 1973 - Under Section 7 of the Endangered Species Act, each Federal agency must ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any threatened or endangered species. If a threatened or endangered species, or species proposed for listing occurs in the area where a project is proposed, a Biological Assessment must be prepared. If the action would result in a “no effect” determination for the species, formal consultation with the US Fish and Wildlife Service is not necessary.

A determination of *may affect, but is not likely to adversely affect* for the Canada lynx was made but it was also found to meet the screening criteria for using a programmatic Biological Assessment (Dixon, 2016).

Environmental Justice – Executive Order 12898, Federal Action to address Environmental Justice in Minority Population and Low-Income Population, directs federal agencies to integrate environmental justice considerations into federal programs and activities.

The Forest Service has not identified any adversely impacted minority or low-income populations from my decision. Neither of the alternatives would have a discernible effect on minorities, low-income individuals, American Indians, women, or the civil rights of any United States citizen.

VI. Implementation

This decision will likely be implemented during the summer of 2017.

VII. Administrative Review (Objection) Opportunities

This draft decision is subject to the objection process pursuant to 36 CFR 218, subparts A and B. Objections will only be accepted from those who have previously submitted specific written comments regarding the proposed project during scoping or other designated opportunity for public comment in accordance with §218.5(a). Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after the designated comment opportunities.

Objections, including attachments, must be filed via mail, express delivery, or messenger service:

- Hard copy mail or hand-delivery (Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding holidays) to Objection Reviewing Officer, USDA Forest Service, Northern Region, 26 Fort Missoula Road, Missoula, MT 59804;
- FAX to (406) 329-3411;
- Email to appeals-northern-regional-office@fs.fed.us;

Objections must be submitted within 45 calendar days following the publication of notice in the Bozeman Daily Chronicle. The publication date in the newspaper of record is the exclusive means for calculating the time to file an objection. Those wishing to object should not rely upon dates or timeframe information provided by any other source. The regulations prohibit extending the time to file an objection.

The objection must contain the minimum content requirements specified in §218.8(d) and incorporation of documents by reference is permitted only as provided in §218.8(b). It is the objector's responsibility to ensure timely filing of a written objection with the reviewing office pursuant to §218.9. All objections are available for public inspection during and after the objection process.

At a minimum an objection must include the following (36 CFR 218.8(d)):

1. The objector's name and address, with a telephone number, if available;
2. A signature or other verification of authorship upon request (a scanned signature for Email may be filed with the objection);
3. When multiple names are listed on an objection, identification of the lead objector (verification of the identity of the lead objector shall be provided upon request);
4. The name of the proposed project, the name and title of the Responsible Official, and the name(s) of the National Forest(s) and/or Ranger District(s) on which the proposed project will be implemented;
5. A description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and
6. A statement that demonstrates connection between prior specific written comments on the particular proposed project or activity and the content of the objection.

If no objection is filed, approval of a project documented in a DN, may occur on, but not before the fifth business day following the end of the objection-filing period. This project may be implemented immediately after a decision is signed.

VIII. Contact Person

For additional information concerning this decision contact Steve Christiansen, Project Leader, at (406) 587-6701, schristiansen@fs.fed.us.

Draft Document
COREY LEWELLEN
Acting District Ranger
Bozeman Ranger District

Date

**GALLATIN NATIONAL FOREST
MIDDLE FORK OF SIXTEEN MILE CREEK
ROAD RELOCATION**

**RESPONSES TO
PUBLIC COMMENTS RECEIVED
DURING THE COMMENT PERIOD PROVIDED
ON THE ENVIRONMENTAL ASSESSMENT
(Appendix A to the Decision Notice)**

April 5th, 2017

LETTER #	SENDER	DATE
1	Adam McMurray	November 16th, 2016
2	Troy Paulson	November 30 th , 2016
3.	Mark Scofeld	November 30 th , 2016
4.	Chip Westerman	November 30 th , 2016
5.	Kathryn QannaYahu	December 1 st , 2016
6.	Kerry White	December 2 nd , 2016
7.	Fred Bell	December 5 th , 2016
8.	Steven Pulaski	December 6 th , 2016
9.	Steve Davenport	December 12 th , 2016
10.	Nancy Schultz	December 12 th , 2016
11.	Christian Appel	December 15 th , 2016
12	Amy Appel	December 15 th , 2016
13	Rob Gregoire	December 15 th , 2016
14	Shannon Taylor, Headwaters Sportsman Assoc.	December 15 th , 2016
15	Cordell Appel	December 16 th , 2016
16	Stan Cook	December 16 th , 2016
17	Jared Frazier	December 16 th , 2016

18	Matthew Lane	December 16 th , 2016
19	Shannon McCarthy	December 16 th , 2016
20	Adam Sepulveda	December 16 th , 2016
21	Don Walker	December 16 th , 2016
22	Jimmy Lewis	December 17 th , 2016

COMMENTS

All comments received were supportive of the proposal to relocate the portion of the Middle Fork of Sixteen Mile Creek Road (FR 642) to resolve a private land access issue (comments 1 – 22). One also mentioned support for the proposed road improvement work (comment 1). Some sample comments are provided below:

- I am writing in support of the USFS relocating the portion of Sixteen Mile Rd that crosses private property to resolve ongoing access disputes and increase the quality and maintenance of the road. It is important to all of us who utilize and enjoy the forest on a regular basis to have consistent access to our public land. Thank you.
- I'm writing in favor of the sixteen mile road relocation. I think this will be a good move by the forest service to keep public access to public lands. Thank you for your time.
- I am in favor of this proposal, it improves public access to my public lands.
- I am in favor of the proposed relocation of Forest Road #642. I also support legal actions by the Forest Service to defend easements in the future.
- After purchasing the property, Mr. Logan established an outfitting business, Big Sky Outfitters, on his property, cutting off access from the public being able to utilize this trail. I was contacted by one of these hunters last year and spoke with District Ranger in charge of this area about this possibility, I am glad to see that it is finally going forward to public comments. As a public trust advocate, I generally support fighting for our public access, including public prescriptive easements, but in this case, being so close, and a better grade, I feel your road moving project will benefit the public far better. It will also be able to better environmentally.
- We appreciate the opportunity to comment on the Middle Fork 16 Mile road relocation project. CBU urges the Forest Service to proceed with this project. We additional offer our help in construction and maintenance of this road through volunteers under the new HR 845 bill recently signed into law by President Obama.
- Private property rights are so important and we believe this solution to relocate FS Road 642 will be a win win situation for the Forest Service, the public, and the property owner.

A permanent public access to this area would be provided through this project with the relocation of this road and CBU is in full support of the project.

- Thank you for initiating a solution to benefit and maintain multiple use access in this area.
- I am writing in support of this project. My wife's family has moved cattle and sheep since the early 1940's along this road to access summer grazing in Troy Creek. I have used this access since 1971 to help move cattle, hunting, cutting firewood and marketing real estate. We appreciate your efforts to keep this road open.
- Forest Service road #642 should be located onto public land with financial consequences to the landowner who installed the locked gate. The issue with simply moving the road without consequence to the landowner is that it sets a precedent that encourages other landowners to block public access across their property.
- I fully support this proposal and believe it is imperative to the use of national forest by the public.
- This is a comment recommending the extension of the road in question which would allow a different approach to the trailhead beyond on the middle fork of 16 Mile Creek in the north end of the Bridger Range. I appreciate all the work that you and the forest have been doing to continue to protect public access to FS lands.

Forest Service Response

The Forest Service appreciates the comments supporting the proposed road improvement project to relocate a short section of Forest Service Road #642, the Middle Fork of Sixteen Mile Creek Road, from private land onto National Forest System land. We also understand the concern of some of you that simply moving the road rather than pursuing perfected access across private property sets a precedent that encourages other landowners to block public access across their property. However, one of the main purposes for this road project is to create a more sustainable road in a more upland location that reduces erosion and maintenance costs and allows for better public access to National Forest System lands. The current road has a steep section on poor soils and is very close to the creek, causing sediment concerns. It can also be a difficult route for the public to travel during wet conditions. Much of the public use on this road is during hunting season and with horse trailers. There have been reported incidents of vehicles getting stuck on the road or slipping off the road into the ditch. The proposed location would reduce the grade and provide a better road surface for the public while reducing sediment delivery to Sixteen Mile Creek. Having a more sustainable road would also reduce long term maintenance costs, long term management costs and ultimately be a cost effective investment. Merely pursuing perfected public access over the road in its current location would not achieve that purpose.

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