



United States  
Department of  
Agriculture

Forest  
Service

Pacific  
Southwest  
Region

Regional Office, R5  
1323 Club Drive  
Vallejo, CA 94592  
(707) 562-8737 Voice  
(707) 562-9130 Text (TDD)

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**File Code:** 7700/2350

**Date:** DRAFT

**Route To:**

**Subject:** Motorized Mixed Use on NFS Roads

**To:** Forest Supervisors

On August 21, 2006 and June 20, 2007, this office issued letters under file code 7700/2350 concerning Region 5 policy for motorized mixed use on NFS roads. This letter updates that policy relevant to the December 19, 2007 and February 20, 2008 letters from the California Highway Patrol (CHP). These letters clarify the operation of non-highway licensed vehicles on unpaved passenger car roads.

In his December 19, 2007 letter, the CHP Deputy Commissioner concludes: "It was never our intent to imply that the USFS could not designate their ML 3 roads for legal off-highway vehicle (OHV) use. We are not familiar with all the ML 3 Forest Service roadways, but if they are gravel or other dirt or unpaved roads that have been operating as mixed use roads for years, it is our belief these roads would fall under the 'roughly graded trails and roads upon which vehicular travel by the public is permitted' portion of Section 38001 and would, therefore, be eligible for your mixed-use definition." VC 38001 states: "For purposes of this division, the term 'highway' does not include fire trails, logging roads, service roads regardless of surface composition, or other roughly graded trails and roads upon which vehicular travel by the public is permitted."

CHP's February 20, 2008 letter states: "The intent of my December 19, 2007 correspondence was to impress upon the Forest Service, that they have the authority to designate their roads appropriately, following their mandated route designation process." In addition, the CHP letter cites Forest Service Handbook 7709.58, which says "the distinction between maintenance levels is not always sharply defined. Some parameters overlap two or more different maintenance levels."

Region 5 policy is to operate the road system under our jurisdiction in compliance with State law. Given CHP's two recent letters, maintenance levels are not useful indicators of whether non-highway legal vehicles may operate on NFS passenger car roads under State law. A more appropriate indicator is road surface type and the road definitions in Section 38001 of the California Vehicle Code. We have determined it is legal for non-highway vehicles to operate on all unpaved NFS roads. The use of non-highway legal vehicles on NFS paved roads must conform to State law. Mixed use designations that conflict with State law should only be proposed where they are needed for public access and to meet Forest Plan goals (route designation) consistent with the 2005 Travel Management Rule.

Please follow these revised guidelines for mixed use analysis.



**1. Qualified Engineer:** Motorized mixed use guidance requires an engineering analysis be performed by a qualified engineer prior to designation of NFS roads for mixed use. Region 5 policy on designation of qualified engineers for performing mixed use analysis is:

**A) Unpaved Mixed Use Roads Maintained for High Clearance Vehicles and Unpaved Mixed Use Roads Maintained for Passenger Cars**

The Director of Engineering will designate individuals on a Forest who have the skills necessary to perform mixed use analysis at the Forest Supervisor's request. Forest Supervisors should provide the Director with a narrative describing how the individuals meet the WO guidelines for qualified engineers.

**B) Paved Roads Maintained for Passenger Cars**

The Director of Engineering will retain the qualified engineer designation in the Regional Office for NFS paved roads. Forest Supervisors proposing mixed use designation on paved roads maintained for passenger cars or in conflict with State law will respond to items 1 through 8 in the Regional Forester's August 21, 2006 letter. Submit the engineering analysis to the Director of Engineering for review.

**2. Motorized Mixed Use Analysis:**

**A. Consistent with the proposed directives, the July 10, 2006 WO letter, and the WO "Guidelines For Engineering Analysis Of Motorized Mixed Use On National Forest System Roads" (EM-7700-30), motorized mixed use analysis is not required when all the following conditions are met:**

- 1) The proposed designation is consistent with State and local law.
- 2) The road being considered for designation currently has motorized mixed use.
- 3) There is not documented crash history involving motorized mixed use on the road or similar roads in the vicinity (from EM-7700-30).

Even when the above three conditions apply, documentation of engineering judgment without a full engineering report is subject to the discretion of the qualified engineer. The qualified engineer shall document the above facts and include documentation in the route designation project record. Use the "engineering judgment form" in the Mixed Use Guide with a statement in the comment field that the road(s) meet the conditions above and a mixed use analysis was not performed. No NEPA analysis is needed for National Forest System roads and current motor vehicle uses on those roads unless changes in travel management are proposed.

**B. For roads that do not meet the conditions listed above:**

- 1) Perform motorized mixed use analysis when:

- a) The road is currently paved, maintained for passenger cars, and the proposed lowering of the maintenance level would allow non-highway licensed vehicles to operate on the road legally under State law.
- b) There is a proposal to allow motorized mixed-use on a road where motorized mixed-use is currently prohibited under State law.
- c) Crashes involving motorized mixed use have been documented.
- d) Based on other available information, the qualified engineer determines that performing mixed use analysis is appropriate.

### **3. Completion of Motorized Mixed-Use Analysis:**

Motorized mixed use analysis required above must be completed prior to issuing a Motor Vehicle Use Map (MVUM).

### **4. Authorizing Motorized Mixed Use:**

Only the responsible official may authorize motorized mixed use. Consult with the Regional Forester prior to authorizing motorized mixed use on roads where it is currently prohibited under State law.

RANDY MOORE  
Regional Forester

cc: Marlene Finley  
Kathy Mick  
Colleen O'Brien  
Gary Lybrand  
pdl r5 forest engineers  
pdl r5 rec officers  
pdl r5 route designation  
Robert H Shuker