

**RECREATION OUTDOORS COALITION
4000 Beacon Drive
Anderson, CA 96007**

November 20, 2009

Edward Monnig
Forest Supervisor
Humboldt-Toiyabe National Forest
1200 Franklin Way
Sparks, Nevada 89431

Subject: Forest DEIS for Motor Vehicle Travel Management

Dear Supervisor Monnig:

Thank you for the opportunity to submit additional comments on the Humboldt-Toiyabe National Forest Draft Environmental Impact Statement (DEIS) for Motor Vehicle Travel Management for the Bridgeport Ranger District. We appreciate the additional time to review the data you sent Elizabeth Norton after the original comment period ended. The information you sent was very helpful.

The Recreation Outdoors Coalition (ROC) is a non-profit organization created to promote responsible access, multiple use, stewardship, tolerance and safety for those recreating on our public lands. We support local, State and federal land management policies while advocating environmentally sustainable recreation use. **Please replace the letter we submitted to you earlier (dated September 14, 2009) with this one.**

ROC has, in general, been very supportive of route designation. We believe a well designed and managed, sustainable off-highway vehicle (OHV) program is necessary to provide quality riding experiences on the Humboldt-Toiyabe National Forest (HTNF). After review of the DEIS, we recommend your staff analyze a new alternative to comply with National Environmental Policy Act (NEPA) and to provide a better balance between motor vehicle access, affordability and environmental stewardship. Please consider the following comments as you prepare your Final Environmental Impact Statement (FEIS).

1) Unauthorized Route Inventory

The November 2008 NOI states “approximately 800 miles of unauthorized routes” were inventoried in the Bridgeport Ranger District (BRD). The DEIS says 630 miles of unauthorized routes were inventoried. There is no explanation in the DEIS on the reduction of 170 miles from the original 800 miles of unauthorized routes. Please include this information in the FEIS.

2) Evaluation of Routes Receiving Public Comments

The DEIS states:

“In December of 2008, the Notice of Intent to prepare an EIS was published and we began public scoping under the NEPA regulations. The IDT reviewed all comments and discussed each road segment during IDT meetings.”¹

Appendix A of the DEIS lists all unauthorized routes that were analyzed as proposed additions to the National Forest Transportation System (NFTS). Under the Proposed Action Alternative, a total of 210 miles of unauthorized routes (33.3 percent of the inventory of 630 miles) are proposed for designation.²

Many routes submitted by ROC on December 30, 2008 were, apparently, not evaluated by your interdisciplinary team (IDT). Examples include 32092, 32203, 32137, 42027A, 42027E, BP37, BP38, C-BP35, C-BP36, DP013, DP015, DP027, MJ009, MJ009A, MJ023, MJ024A, MJ024B, etc. For some routes, the explanation of “need not determined” is given as the reason for eliminating them. Other routes are not even listed in Appendix D of the July 2009 Travel Analysis Process (TAP).³

For example, 32092 and 32203 would provide a loop opportunity if designated to connect with existing NFS roads. These routes were not evaluated in Appendix D. For other routes such as PM21, the evaluation in Appendix D appears to be incorrect. This route is far longer than .09 miles and was not displayed as a non-motorized trail on the BRD’s west map. This route also passes through a private parcel. There is no information in the DEIS if the private landowners were contacted for authorization to use the route. This kind of collaboration is needed during travel management planning. PM02 was also not displayed on the west map as a non-motorized trail. If these routes are truly unauthorized non-motorized trails, why didn’t the symbology in map legend display them as such?

We are re-submitting our proposed routes, again, as Exhibit 1. As described on the spreadsheet, these routes are desired because they all provide a recreation opportunity. The label “need not determined” for so many routes is erroneous. It casually dismisses public input without the rigorous analysis required under the National Environmental Policy Act (NEPA).

In the FEIS, please display all routes (unauthorized and NFTS) requested by the public so they understand why most were eliminated from detailed study and not proposed for designation. The analysis in the DEIS does not conform with NEPA regulations to describe the reasons for eliminating routes.

3) Motorized Mixed Use on Unpaved National Forest System Roads

ROC asserts NFS roads are not “highways.” The Forest TAP validates this.

“National Forest System (NFS) roads are not public roads in the same sense as roads that

¹ DEIS, page 14.

² DEIS, page iii and Appendix A.

³ HTNF Travel Analysis Process, Appendix D, July 2009.

are under the jurisdiction of State and county road agencies. These roads are not intended to meet the transportation needs of the public at large. Instead, they are authorized only for the use and administration of national forest lands. Although generally open and available for public use, that use is at the discretion of the Secretary of Agriculture. Through authorities delegated by the Secretary, the Forest may restrict or control traffic to meet specific management direction.”⁴

The TAP further states:

“Many roads crossing the Humboldt-Toiyabe fall under the jurisdiction of agencies other than the Forest Service. In 1997, the Forest Service and the Federal Highway Administration (FHWA) signed a Memorandum of Understanding. The document describes general procedures for the planning, programming, environmental studies, design, construction and maintenance of designated Forest Highways.”⁵

A summary of forest highways currently designated on the HTNF are included in the TAP.

“The Forest Highway Network contains 21 routes amounting to 513.55 miles forestwide stretching through all of Nevada and into California. The Forest Service facilitates management of these roads, but jurisdiction for their repair and maintenance lies with State and country road agencies.”⁶

The HTNF and BRD are located within the Intermountain Region of the Forest Service (Region 4). In looking at the District map, it appears almost half of the BRD’s 900,000 acres lie in California (Region 5). The DEIS is silent on motorized mixed use and whether Region 4 or Region 5 mixed use policies apply to BRD lands in California. ROC believes Region 5’s mixed use policy is inconsistent with Forest Service national policy regarding “forest highways” and the California Vehicle Code. Under this policy, non-street legal vehicles in California’s national forests are prohibited on maintenance level (ML) 3-5 or passenger car roads.

California Vehicle Code:

The Pacific Southwest Regional Forester has said all NFS passenger car roads (ML 3-5) are “highways” under the California Vehicle Code (CVC). This conflicts with the December 19, 2007 letter from the California Highway Patrol (CHP).

Forest Service Manual (FSM) 7740.5 (8/24/2000) defines a “forest highway” as:

“Forest Highway. A designated forest road under the jurisdiction of, and maintained by, a public authority that is subject to the Highway Safety Act.”

Roads subject to the Highway Safety Act (HSA) have to meet certain safety standards as defined in FSM 7733 and Forest Service Handbook (FSH) 7709.59, 40. The HSA, however, does not prevent the Forest Service from designating these roads for travel by non-highway legal vehicles.

The term “forest highway” is used, again, in Forest Service Manual 7741.1, which

⁴ HTNF Travel Analysis Process, Appendix C, pages 27- 28, July 2009.

⁵ HTNF Travel Analysis Process, Appendix C, page 36, July 2009.

⁶ HTNF Travel Analysis Process, Appendix C, page 27, July 2009.

states:

“Forest highways are a special classification of forest roads. They are specifically designated State or local government roads that meet the criteria listed in 23 CFR 660.105. The designation of forest highways is not intended to form a ‘system’ of roads. Instead, the purpose of the designation is to identify State and local government roads that qualify for construction and reconstruction funding under the forest highway program.

To qualify for designation as a forest highway, a forest road must:

- 1) Be a State or local government road that is open to the general public. A forest development road may have the designation of a forest highway, provided that the Forest Service assures the Federal Highway Administration that a State or local government agency will assume jurisdiction and maintenance responsibility upon completion of improvements.
- 3) Serve one or more of the following uses:
 - a) Local needs, such as schools, mail delivery, commercial supply, and private property within the National Forest System.” (Underlining added for emphasis.)

In reference to “forest highways,” Forest Service Manual 7703.3 says:

“Wherever possible, transfer jurisdiction over an NFS road and associated forest transportation facilities (FSM 7705) to the appropriate public road authority when the road meets any of the following criteria:

- a) More than half of the traffic on the road is not related to administration and use of NFS lands.
- b) The road is necessary for mail, school, or other essential local governmental purposes.
- c) The road serves yearlong residents within or adjacent to NFS lands.”

R5 Regional Engineer George Kulick confirmed the description of “highways” in the Forest Service Manual:

“In California, we have about 3,000 miles of Forest Highways officially identified. These highways are generally state or county roads that serve to connect National Forests.”⁷

“Road” is the only term used throughout the FS directives. By its own Manual direction, the Forest Service manages roads, not highways. Any link to the CVC term “highway” is incorrect. Only State and local agencies manage highways.

Unpaved NFS roads (regardless of maintenance level) are not considered “highways” under CVC 38001, which states: “For the 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.” CVC 38026 generally applies to paved highways. OHV travel on unpaved NFS roads is legal.

The Deputy Commissioner of the California Highway Patrol sent a clarifying letter to the R5 Regional Forester on December 19, 2007, which said in part:

⁷ E-mail from George Kulick to Elizabeth Norton, dated April 6, 2009.

“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 roadways 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 VC and would, therefore, be eligible for your mixed-use definition.” (Underline added for emphasis.)

FS maintenance levels are irrelevant to the CHP and the public. The most distinguishing characteristic of a road is its surface composition. Is it paved or not? Unpaved NFS roads are not “highways” under the CVC.

In ROC’s view, most HTNF roads are roughly graded, logging, fire or service roads and fall under the exemption from a “highway” in Section 38001 CVC. These types of roads on the HTNF are not “highways” under the CVC.

ROC reviewed the Travel Management DEIS for the Rogue River-Siskiyou National Forest, based out of Medford, Oregon in the Pacific Northwest Region or Region 6. This forest also manages public land in California as does the HTNF. Their DEIS states:

“Portions of the Siskiyou Mountains and Wild Rivers Ranger Districts are located in California, which has similar (*traffic*) laws as Oregon. According to the California Highway Patrol (Farrow 2007), mixed use is allowed on unpaved maintenance level 3 roads (*passenger car roads*) “that have been operating as mixed use roadways for years” under Section 38001 of the California Vehicle Code.”

Region 6 and the Rogue River-Siskiyou National Forest have the opposite interpretation of the CVC than Region 5. Region 6’s interpretation is consistent with the CHP’s December 19, 2007 letter to R5 Regional Forester Randy Moore. ROC asserts Region 4 and HTNF lands in California should conform with Forest Service policy and CHP’s interpretation of the CVC. OHV operation is legal on unpaved ML 3-4 roads in California.

According to the July 2009 Travel Analysis Process, there are 100 miles of ML 3 roads on the BRD.⁸ INFRA Roads data show 203.4 miles of ML 3 roads, of which only 4.2 miles (2 percent) are paved. The DEIS does not indicate how many of these miles are in California. Mixed use is not addressed under any of the alternatives. In our response to the Notice of Intent, ROC requested the HTNF analyze an alternative that would allow mixed use on all unpaved roads on the BRD. This alternative was not considered in detail. The DEIS says:

“This suggestion was to allow all motorized vehicles on routes, which are currently open only to highway-legal vehicles under the California State Vehicle Code. Those who suggested this alternative did not proposed (*sic*) any specific routes and the TAP did not document any need for conversion of routes to mixed use. This action is beyond the scope of the Proposed Action. In California, opening passenger vehicle routes to mixed use would effectively pre-empt the State Vehicle Code, which requires additional analysis, documentation, and coordination with the State.”⁹

⁸ Travel Analysis Process, Chapter 1, July 2009, page vii.

⁹ DEIS, page 18.

This is not what ROC requested. We asked the HTNF to consider mixed use on all unpaved roads, regardless of their maintenance level. This request is not beyond the scope of your analysis, but is integral to it to provide linkages to the Forest's high clearance road and trail systems. In our opinion, and with CHP concurrence, unpaved passenger car roads are not "highways" under the California Vehicle Code. Travel by non-street legal vehicles is legal on unpaved NFS roads. Please correct this statement in the FEIS.

DEIS maps do not display NFS roads by maintenance level. The public does not know if there are vehicle class restrictions on any BRD roads. Please describe where mixed use will be allowed in the FEIS and display any vehicle class restrictions on all FEIS maps.

Forest Service Passenger Car Roads:

ROC understands the FS definition of ML 3, 4, and 5 roads as being passenger car roads. However, our interpretation of current Forest Service Manual and Handbook direction is this: Prudent drivers of standard passenger cars, in nearly all cases, stay on ML 5 (paved) roads. We believe all paved (asphalt, chip seal, etc.) roads should be ML 5 roads.

Based on our evaluation of the BRD's 10/05/09 INFRA Roads database, most of the District's ML 3 roads (totaling 203.4 miles) are unpaved (native material or improved native material), single lane with design speeds from 5-25 mph. Most of the "improved native material" ML 3 roads are maintained by a county. BRD's ML 3 roads have traffic service levels of B (congested during heavy traffic), C (flow interrupted, use limited) or D (slow flow or may be blocked). Their functional class is primarily local or collector roads. These ML 3 roads provide important connectors to the BRD's maintenance level 2 road system and motorized trails.

Based on a traffic survey ROC did on 72 miles of unpaved ML 3-4 roads on the Lassen National Forest in 2005, we believe almost all traffic on unpaved NFS passenger car roads is high clearance vehicles (pick up trucks, sport utility and trail rated vehicles). It is a misnomer for the FS to continue to refer to unpaved ML 3-4 roads as "passenger car roads." The reference to "passenger car roads" is a carryover from the 1950's when there were few high clearance, 4-wheel drive family vehicles (today's sport utility vehicles and trucks). On the Lassen National Forest, only 10 percent of the use on ML 3-4 roads was actually passenger car. The rest were high clearance vehicles or non-highway legal vehicles.¹⁰

The DEIS and the TAP do not indicate if any traffic counts have been conducted to the level ROC provided for the Lassen NF in 2005. Absent recent and statistically valid traffic survey data and vehicle class information, ROC questions the need to maintain 203.4 miles of ML 3 "passenger car" roads on the BRD.

Engineering Analyses:

Forest Supervisors may assume supremacy over State traffic law in accordance with 36 Code of Federal Regulations (CFR) 212.5(a)(1) and the response to public comments to the 2005 Travel Management Rule, which state:

¹⁰ Lassen National Forest Traffic Study and Engineering Analysis, 2005.

“Under the current rule, traffic on roads is subject to State traffic laws where applicable, except when in conflict with the Forest Service’s prohibitions at 36 CFR Part 261. If there is a conflict, the agency’s prohibitions preempt State traffic laws. To ensure that the agency’s intent with respect to designation of roads, trails, and areas is fully effectuated, the proposed and final rules also provide for preemption of State traffic laws when they conflict with those designations.”¹¹ (Underlining added for emphasis.)

Forest Service directives say:

“The use of motor vehicles on NFS roads is subject to State traffic law where applicable, except when in conflict with motor vehicle designations (36 CFR 212.51) or with the rules at Title 36, Code of Federal Regulations, Part 261 (36 CFR 212.5(a)(1)). On NFS roads, designations for motor vehicle use take precedence over conflicting State traffic laws. The Forest Service may designate some NFS roads under Title 36, Code of Federal Regulations, section 212.51 as open to a vehicle class that would normally be precluded from public roads under State law (for example, NFS roads could be designated for all motor vehicles, where State law allows only highway-legal vehicles).”¹²

Per Forest Service national direction, an engineering analysis is required to assess the probability and severity of crashes on roads proposed for mixed use.¹³ Where the criteria in FSH 7709.55, 30.3 are met, the HTNF may prepare an engineering judgment instead of an engineering report. These three criteria are:

“When all of the following conditions exist, a qualified engineer may document engineering judgment that an engineering report is not needed to designate a road for motorized mixed use:

- 1) The proposed designation is consistent with State and local law (*and it is for unpaved NFS roads in California regardless of maintenance level according to the CHP*).
- 2) The road being considered for designation currently has motorized mixed use.
- 3) There is no documented crash history involving motorized mixed use on the road or similar roads in the vicinity.”¹⁴

ROC supports the HTNF’s proposal to reclassify 170 miles of NFS roads to motorized trails in your Proposed Action Alternative.¹⁵ The DEIS does not indicate if any of these are ML 3-4 roads. ROC recommends the HTNF reclassify the BRD’s unpaved ML 3 roads to ML 2 to allow motorized mixed use and to reduce road maintenance costs. Most of these roads are single lane, slow speed roads (25 mph or less) with low traffic volumes and traffic service levels of B, C and D. Setting road maintenance levels and changing maintenance levels are administrative and not subject to NEPA.¹⁶

Fire access has been used as one argument against reclassifying ML 3 roads to ML 2, high clearance roads. Fire access is very important, but ROC disagrees with this argument. Most fire engines are 4-wheel drive and designed to travel on just about any road, including cross-country travel. Fire access should seldom be used as a reason to

¹¹ Federal Register, Vol. 70, No. 216, Rules and Regulations, November 9, 2005.

¹² Forest Service Manual 7731.2, #1 and #3 (effective 10/07/2008).

¹³ See EM-7700-30, “Guidelines for Engineering Analysis of Motorized Mixed Use on National Forest System Roads.”

¹⁴ Forest Service Handbook 7709.55, 30.3, #5 (effective 01/08/2009).

¹⁵ DEIS, page 15.

¹⁶ DEIS, page 26.

keep roads at a higher maintenance level. Air tankers and helicopters are often the fastest way to initiate fire suppression efforts.

If reclassification is not feasible, please analyze a new alternative that will designate all unpaved ML 3 roads on the BRD for motorized mixed use, and prepare engineering judgments when the three criteria in FSH 7709.55, 30.3 are met. Explain why mitigations would not be effective if a road is not designated for motorized mixed use. Include all engineering reports in an Appendix to the FEIS so the reader understands why some roads may not be recommended for non-highway legal vehicle travel. Document which ML 3 roads have had motorized mixed use in the past and the volume of OHV use on those roads. Provide an opportunity for the public to review and comment on these analyses before they are finalized.

Public Safety on Mixed Use Roads:

ROC requested, but was unsuccessful in obtaining mixed use accident data from the HTNF. Based on data from R5 national forests, ROC asserts the Regional Forester does not have sufficient mixed use accident data to adopt a regional policy that prohibits motorized mixed use on thousands of miles of unpaved passenger car roads in California. We found Region 5's mixed use accident information does not substantiate the agency's concern about public safety. In the past 15 years, there have been 11 mixed use accidents on 41,501 miles of NFTS roads in California.¹⁷ Three accidents involved FS employees running into an OHV; one involved a County Deputy Sheriff hitting an OHV. The data does not indicate the road maintenance level where these accidents occurred.

There is no mixed use accident information in the DEIS or TAP. Please provide this in the FEIS to validate any concern about public safety on mixed use roads.

“On low-volume roads, crash history is seldom a reliable indicator of significant safety problems. Accordingly, use common sense and judgment to determine safety deficiencies and the priority for corrective action.”¹⁸

Based on the Forest Service Handbook and Manual on Uniform Traffic Control Devices (MUTCD), low volume roads are any roads with less than 400 average daily traffic (ADT).¹⁹ Unless a traffic study has been completed, we believe all HTNF ML 3 roads have less than 400 ADT. Accidents related to human factors (alcohol, medical emergency, reckless driving, etc.), weather, time of day or mechanical failure may have nothing to do with road safety. The occurrence of an accident is not necessarily an indictment of the road or the public safety risk.

ROC asserts all unpaved ML 3 roads on the BRD should be open to all vehicle classes unless a rare exception exists for some road segments due to public safety, past accidents, resource concerns, user conflicts or other considerations that cannot be mitigated. The HTNF should follow Forest Service policy and the agency's guidebook for analyzing mixed use on NFS passenger car roads.

¹⁷ Region 5 mixed use accident data, 1993-2008.

¹⁸ Forest Service Handbook 7709.59, 41.7, #1.

¹⁹ Forest Service Handbook 7709.59, 41.4. Also MUTCD, Section 5A.01 Function, page 5A-1.

4) Affordability Analysis and Road Maintenance Levels

The HTNF currently manages and maintains approximately 5,846 miles of NFTS roads open to motor vehicle travel.²⁰ In addition, there are 630-800 miles of unauthorized routes.

The Forest Service Manual states:

“Consider maintenance and administrative obligations and capability in the context of future budgets and staffing. Administrative units and ranger districts should avoid adding routes to the forest transportation system unless there is adequate provision for their maintenance. Grants, agreements, and volunteers may be used to extend Forest Service resources.”²¹

The HTNF’s August 8, 2008 Notice of Intent states:

“In meeting these needs the proposed action should also achieve the following purposes:

Provide for adequate maintenance and administration of designations based on availability of resources and funding to do so. .”

The DEIS is silent on how these goals and Manual direction will be met under the alternatives. In our December 30, 2008 response to the Notice of Intent, ROC requested you identify the significant issue of “Affordability” to develop the action alternatives. This recommendation was not included in the DEIS. There is no section that discusses the state of the HTNF’s “Transportation Facilities.” The Forest’s road maintenance budget, annual estimated road maintenance need, and backlog of deferred maintenance are not described in any of the alternatives. ROC requested, but was unsuccessful in obtaining this data. Based on our review of other forest DEISs, we assume the HTNF has a significant budget deficit and backlog of road maintenance.

During the past nine years (2000-2008), 4 to 12.5 percent of the HTNF’s road system was maintained (between 248 to 897 miles in any given year).²² Only 54 percent of the Forest’s roads meet their road management objectives.²³ According to BRD road maintenance reports, an average of 39.28 miles of roads were maintained on the District over the past nine years (2000-2009) out of a total of 1,411.12 miles. This equates to only 2.78 percent of the BRD’s road system receiving annual maintenance. The condition of BRD roads and the HTNF’s road maintenance deficit should be described in the FEIS.

The FEIS should also describe gap between the HTNF’s road maintenance needs and anticipated annual road maintenance budgets. Discuss the public safety, recreational, and resource consequences of this gap.

Reducing operational road maintenance levels should be seriously considered to bring the HTNF’s road maintenance program in alignment with the Forest’s expected out year

²⁰ Travel Analysis Process, Appendix C, July 2009, page 33.

²¹ Forest Service Manual 7715.03, Policy, #6.

²² Travel Analysis Process, Appendix C, July 2009, page 33.

²³ HTNF 2006 Road Maintenance Report

budgets. Describing road management objectives and reclassifying maintenance levels are administrative and not subject to NEPA. Since passenger car travel will not be prohibited and operators can choose to drive their passenger cars on ML 2 roads, NEPA is not required.

ROC requests the HTNF follow the criteria in FSM 7715.5 for roads when assigning road maintenance levels, which state:

- “In addition to the general criteria in FSM 7715.5, consider the following for NFS roads:
- a. Speed, volume, composition, and distribution of traffic on roads; and
 - b. Compatibility of vehicle class with road geometry and road surfacing.”²⁴

Also consider the factors listed in FSH 7709.59, 62.31 when selecting maintenance levels. It makes little sense to keep roads at a higher maintenance level if passenger cars are a minor component of the traffic. ROC believes “prudent drivers in standard passenger cars” with P-rated tires almost always stay on paved roads. The primary vehicle class using the road should drive the assignment of operational road maintenance levels and not vice versa. ROC does not consider the HTNF’s unpaved ML 3 roads to be passenger car roads or “highways.” Unless paved, they are becoming roughly graded roads.

In describing the Forest’s ML 3 roads, the TAP says:

“The road surfaces are generally hard, stable, and bumpy, but are passable with most passenger cars having reasonable ground clearance. The majority of traffic on these roads is pickup trucks or sport utility vehicles, which offer even better ground clearance. These roads are graded only as necessary for proper drainage or for safety concerns such as severe wash boarding.”²⁵

Given the above statement, why is the HTNF assigning a maintenance level of 3 to these roads? Please provide information in the FEIS about the actual traffic volume and vehicle classes using BRD passenger car roads to justify your road maintenance levels and “traffic service levels” in INFRA. Again, this will help the public understand the Forest’s need to maintain 203.4 miles of ML 3 passenger car roads on the BRD.

Absent traffic survey data, ROC highly recommends these steps to bring your road system in alignment with your projected annual road maintenance budgets:

- Set the operational maintenance level on all unpaved roads as ML 2.
- Begin monitoring actual use according to accepted protocols for traffic surveillance to determine volume, distribution and type of traffic actually flowing on HTNF roads.
- Adjust the operational maintenance level up when passenger cars, recreational vehicles or cars pulling trailers exceed 50 percent of the total traffic on individual roads and the ADT is at least 100.

As an option to reduce your maintenance costs, temporarily raise the operational ML of a road to provide more economical commodity haul (or for some other management

²⁴ Forest Service Manual 7715.5, #3.

²⁵ Travel Analysis Process, Appendix C, July 2009, page 34.

purpose), then lower the operational ML when the activity has ended. Consider converting some ML 2 roads with low use to motorized trails to further reduce your maintenance costs. ROC asserts your operational maintenance levels should be assigned commensurate with your use.

Another option is to close ML 2 roads that provide no recreational opportunity and serve no administrative purpose. ROC supports the closure of low use roads to reduce maintenance costs, reduce road densities in highly roaded watersheds and habitats, and mitigate resource concerns. These roads can be re-assigned from an objective ML 1 (closed) status to an operational ML 2 status if future project access is needed.

When motorized mixed use is designated on a road in California, State OHV Trust Funds may be used to maintain the road. They will help reduce the HTNF's backlog of road maintenance if the FS chooses to apply for these grants. This is another reason for lowering your maintenance levels and allowing mixed use.

Please address the opportunity to use volunteers to maintain roads if they are designated for mixed use (e.g. remove vegetation encroachment). Describe your current OHV volunteer program and its potential to assist with the Forest's future road and trail maintenance through such programs as Adopt-a-Trail or Adopt-a-Road.

5) Parking and Dispersed Camping Off Roads

Parking:

The DEIS provides no information on the distance vehicles may park off designated routes (or ROC could not find it). Please describe in the FEIS.

ROC recommends parking be permitted within 30 feet from any designated road, trail or open OHV area when it does not cause damage to national forest resources or facilities. This is consistent with the new FS travel management directives found in FSM 7716.1. Regulations in 36 CFR 261.15 allow FS officers to issue violation notices for damage to national forest resources. Monitor use and determine if this length needs to be modified in some areas.

Dispersed Camping:

ROC urges continued motor vehicle access to all historically used dispersed recreation sites unless there is no evidence of recent use. The public desires the security, privacy, solitude, and scenic amenities that these sites provide. If there were prior resource concerns, ROC assumes action would have been taken before now to address them.

The DEIS does not describe how many dispersed camp sites are located on the BRD and how many will be still accessible by motor vehicles under each of the alternatives. ROC recommends the HTNF team analyze the merits of each route that accesses a dispersed recreation site. If any routes are proposed for closure, display your rationale in an Appendix to the FEIS.

At some dispersed sites, please designate an area for vehicle parking to protect riparian areas, meadows or other sensitive resources. Monitor these sites to determine if other mitigation is required.

ROC recommends motor vehicle access for other dispersed camping (separate from historically used campsites) be permitted within 100 feet of a designated road, trail or OHV area when it is feasible to do so and does not cause damage to national forest resources or facilities. (Refer to FSM 7715.74 and FSM 7716.13.) Monitor impacts to see if access needs to be modified in some areas.

Motor vehicle access off road for parking and dispersed use is limited by topography, vegetation, water, road design and other physical barriers. The HTNF also has considerable resource data in their GIS database and other records to determine where there are potential conflicts with motor vehicle travel within 100 feet of a road or trail. This preliminary screening is well within your organizational capacity and budget to perform. Please analyze motor vehicle travel up to 100 feet off road for the purpose of dispersed camping in one of the FEIS action alternatives.

6) Big Game Retrieval

There is no information in the DEIS on whether cross country travel for big game retrieval will be allowed or prohibited. Executive Order 13443 signed by the President on August 16, 2007 directs:

“The purpose of this order is to direct Federal agencies that have programs and activities that have a measurable effect on public land management, outdoor recreation, and wildlife management, including the Department of the Interior and the Department of Agriculture, to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat.

Federal agencies shall . . .

- (a) Evaluate the effect of agency actions on trends in hunting participation . . .
- (b) Consider the economic and recreational values of hunting in agency actions . . .
- (d) Work collaboratively with State governments to manage and conserve game species and their habitats . . .
- (g) Seek the advice of State and tribal fish and wildlife agencies, . . .”

Compliance with the EO and collaboration with State Departments of Fish and Game are not described in the DEIS. Please provide this information in the FEIS.

ROC recommends the HTNF include at least one alternative that seasonally allows cross-country travel with all-terrain vehicles (ATVs or Rhinos) for the specific purpose of big game retrieval (barring any wet weather, fire-related or other off-road closures already in place during the hunting season). See FSM 7715.74 and FSM 7716.13 for designations for big game retrieval. This is a reasonable accommodation to hunters if desired by the public and State Fish and Game Departments concur. Vehicle operators causing damage to national forest resources can be cited. If cross-country travel is not allowed, describe the social/economic and environmental effects of prohibiting ATV use for big game retrieval in the FEIS.

7) Non-highway Legal Vehicle Travel within Developed Recreation Sites and Campgrounds

The DEIS does not describe if OHV travel within developed recreation sites such as campgrounds will be allowed to access adjacent NFS roads and trails. Please analyze

this in the FEIS. If permitted and displayed on the MVUM, ROC recommends the HTNF adopt a 5 mph speed limit for non-highway legal vehicles (if not all vehicle classes) within developed recreation sites. Concern over excessive noise, public safety, and visitor conflicts can be avoided by requiring OHV operators to “idle in” and “idle out” of developed campgrounds where this is allowed. There is no reason to go any faster.

Prohibit non-highway legal vehicle travel within developed sites where there are no adjacent NFTS roads to ride on. In this scenario, users would have to trailer their OHVs and drive to a NFTS route/staging area to off load. Do not encourage OHV use on private land or State/county roads without the concurrence of the landowner or road management agency.

8) Seasons of Use

Several seasonal designations are included in the Proposed Action, but there is no other information in the DEIS to know where (which routes) and when these restrictions will be applied. Please describe how the Forest will implement your proposed “Seasons of Use” strategy so the public has a reasonable chance of understanding and complying with the new rules.

9) Implementation of Pre-Mitigation Measures

The DEIS does not describe if any unauthorized routes require pre-mitigation prior to opening them for public motorized use and displaying on your MVUM. Most likely, some routes will require pre-mitigation. Please list the routes, type of mitigation needed, and include a schedule in the FEIS when all pre-mitigation measures will be implemented. Describe the cost to perform the mitigation and how this work will be accomplished. Unless this schedule is provided, the public does not know when/if the proposed route additions or changes to the NFTS will truly be available for motor vehicle use.

10) Environmental Consequences of the Alternatives

General Comments:

ROC believes the overall impacts from adding unauthorized routes are so minor, that when aggregated with other impacts occurring across the forest landscape (existing NFTS roads/trails, vegetation management, wildfires, mining, grazing, etc.), they are imperceptible and discountable. These routes are already in place and are being used. Ground disturbance and other resource impacts have already occurred and will likely remain the same if designated. The adverse effects from route designation are minor compared to the impacts from cross-country travel, which will now be prohibited. Overall, the effects from designation are an improvement over the existing situation since most unauthorized routes will be closed to motor vehicle travel. Chapter 3, “Affected Environment and Environmental Consequences,” should clearly describe the context of the proposed route additions (0-210 miles) in light of all these other activities.

11) ROC’s New Action Alternative

Significant issue statement #1, “Access and Motorized Recreation Opportunities” in the DEIS states:

“Implementation of the proposal would restrict motor vehicles to designated roads and trails on the approximately 900,000 acres that are currently open to cross-country travel on the district. These actions would affect opportunities for motorized recreation.”²⁶

We believe there is an inadequate range of action alternatives in the DEIS to respond to significant issue #1 in compliance with NEPA Regulations, which require:

“Alternatives included the proposed action.

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail. . .”²⁷

Forest Service regulations specify the following in developing and analyzing alternatives.

“The EIS shall document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed action.”²⁸

“Reasonable alternatives to the proposed action should fulfill the purpose and need and address unresolved conflicts related to the proposed action. Be alert for alternatives suggested by participants in scoping and public involvement activities.”²⁹

After the receipt of public comments on the DEIS, the agency shall:

“Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond to one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analysis.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response . . .”³⁰

The lack of an acceptable range of action alternatives is demonstrated by Proposed Action Alternative, which proposes the most opportunities for motorized recreation among the two action alternatives. However, ROC considers it a “minimalist” alternative. The site-specific effects of such a significant reduction in public access has not been adequately disclosed in the DEIS for NEPA sufficiency. It would have been reasonable and viable to consider 1-2 other action alternatives with increased motorized recreation opportunities.

²⁶ DEIS, page 12.

²⁷ NEPA Regulations in 40 CFR Part 1502.14

²⁸ 36 Code of Federal Regulations 220.5(e).

²⁹ Forest Service Handbook 1909.15, 14.

³⁰ NEPA Regulations in 40 CFR Part 1503.4.

Humboldt-Toiyabe National Forest	<i>Alt. 1 – No Action (or Status Quo)</i>	<i>Proposed Action Alternative</i>	<i>Current System Alternative</i>
Acres available for cross-country travel	900,000	0	0
Acres of open OHV riding areas	unknown	85	0
Miles of unauthorized roads and trails added to the national forest transportation system	630-800 inventoried	210 proposed to add	0
Number of dispersed recreation sites with motor vehicle access	Not described in DEIS	Not described in DEIS	Not described in DEIS
Miles of ML 3 roads proposed for mixed or combined use (all vehicles)	Not described in DEIS	Not described in DEIS	Not described in DEIS
Distance allowed off designated routes for vehicle parking	Not described in DEIS	Not described in DEIS	Not described in DEIS
Seasonal restrictions for some routes and applicable dates	Not described in DEIS	Not described in DEIS	Not described in DEIS
Cross-country travel allowed for big game retrieval	Not described in DEIS	Not described in DEIS	Not described in DEIS

Alternative 1 does not contribute towards your range of alternatives since it is infeasible to select and implement.

Please analyze a new Action Alternative (# 4) that provides a better balance between motor vehicle access, affordability and environmental protection in response to significant issue statement #1. Add a significant issue to address the affordability of your NFTS. This alternative has the following elements:

- a) Based on valid traffic data, reclassify most of the HTNF's unpaved ML 3 roads to ML 2 to better align your road system with projected annual road maintenance costs and current vehicle use.
- b) Convert many of your ML 2 roads to motorized trails (open to all vehicle classes) to, again, better align your road system with projected annual road maintenance costs.
- c) Designate all ML 2 and unpaved ML 3 roads for motorized mixed use (all vehicles) unless a rare exception exists that cannot be mitigated.
- d) The adoption of a) through c) above will eliminate short OHV roads and trails that go nowhere when they terminate at the intersection of a road where non-highway legal vehicles are prohibited.

- e) Allow side-by-side vehicles (54 inches wide) on all “ATV trails” which are formally defined as 50 inches or less in width. It would be imprudent to prohibit “Rhino-type” vehicles on these trails because they exceed the width definition by a mere four inches.
- f) Include all combined use/mixed use assessments (engineering reports) in an Appendix to the FEIS so the public understands why some roads may not be recommended for mixed use.
- g) Provide access to all historically used recreation sites unless there is no evidence of recent use.
- h) Allow parking 30 feet from a designated route and allow vehicle access for dispersed camping within 100 feet from a designated route consistent with FSM 7715.74, FSM 7716.1, and FSM 7716.13.
- i) Allow cross-country travel by ATVs only for the sole purpose of big game retrieval during the hunting season if desired by the public for certain zones or all zones. Obtain concurrence from California and Nevada Departments of Fish and Game. Prohibit cross-country travel at all other times except in the 85 acre open riding area.
- j) Close unneeded roads to reduce your road maintenance costs and mitigate road-related resource impacts.

We would like to work with your IDT on this alternative. To provide meaningful comments, your maps will need to display all unauthorized motorized and non-motorized routes, NFS roads by maintenance level and any vehicle class restrictions on them, and the boundaries of inventoried roadless areas. Neither the NOI nor DEIS maps provided this information. The public cannot propose a logical OHV system without this information.

12) Opportunity for Public Comment on the Final Environmental Impact Statement.

We urge you to consider at least one new alternative based on ROC’s and the other public comments you receive on the DEIS. To this end, ROC requests you provide a minimum 45 day public comment period on the FEIS prior to issuing the Record of Decision (ROD). This will provide the public with another opportunity to review the changes in the FEIS and to submit their comments for your consideration in the ROD.³¹

We also request you print enough hard copies of your FEIS maps for those who need them to understand your proposals and provide comments.

Conclusion: Again, thank you for the opportunity to update and re-submit ROC’s comments.

³¹ Based on our comments in this letter, ROC believes the HTNF should issue a supplemental DEIS that provides the information currently missing on requested routes and analyzes at least one more alternative.

I would like to receive hard copies of the FEIS and the Alternative 1 and “preferred alternative” maps when they are issued.

Sincerely

/s/ Sylvia Milligan

SYLVIA MILLIGAN
Chair, Recreation Outdoors Coalition

Enclosure:
Exhibit 1: ROC’s proposed route additions

cc:
Gregg Mumm, BlueRibbon Coalition
Don Amador, BlueRibbon Coalition
Dave Pickett, American Motorcyclist Association
Robert Reed, John Stewart, and Amy Granat, California Association of 4 Wheel Drive Clubs, Inc.
Fred Wiley, Off Road Business Association
Bill Dart
Ken Knull, Friends of the High Lakes
Tom Crimmins, National Off-highway Vehicle Conservation Council
Daphne Greene and Phil Jenkins, CA. Off-highway Motor Vehicle Recreation Division
Mono County Board of Supervisors