

RECREATION OUTDOORS COALITION
4000 Beacon Drive
Anderson, CA 96007

June 17, 2009

Sierra National Forest
Attn: Travel Management Project Leader
1600 Tollhouse Road
Clovis, CA 93611-0532

Subject: Forest DEIS for Motor Vehicle Travel

Dear Supervisor Cole:

Thank you for the opportunity to comment on the Sierra National Forest Draft Environmental Impact Statement (DEIS) for Travel Management. 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.

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 Sierra National Forest (SNF). 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.

1) General Comments on the DEIS

- a) Impacts have not been fully evaluated for some resources such as Recreation and Transportation Facilities as explained in this letter. We suspect you will amend the alternatives and your effects analysis or consider new alternatives based on the public comments you receive on the DEIS. To this end, ROC recommends 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.¹
- b) The DEIS states 550 miles of unauthorized routes were inventoried in 2005.² The DEIS states:

“Comments regarding specific routes were also received during the public scoping period for the NOI. The disposition of these routes fell into two categories: routes brought forward for detailed study in alternative(s) and

¹ Based on our comments in this letter, ROC believes the SNF should issue a supplemental DEIS that provides the information currently missing and analyzes at least one more alternative.

² DEIS, Volume 1, page 2. The summary sheet of the DEIS alternatives states 558 miles were inventoried in 2005.

routes eliminated from detailed study. These decisions were made by the responsible official based upon the purpose and need, the scope of the EIS and issues raised by the public and the interdisciplinary team.”³

Appendix A, Summary of Route Specific Data, lists all unauthorized routes that were analyzed as proposed additions to the National Forest Transportation System (NFTS). A total of 243 miles of unauthorized routes (44 percent of the inventory) were analyzed for this project.⁴ Please display all unauthorized routes in Appendix A so the public understands why the rest were eliminated from detailed study and not proposed for designation. The analysis does not conform with NEPA Regulations to describe the reasons for eliminating routes or the social/environmental impacts from prohibiting motor vehicle travel.

- c) There is an inadequate range of alternatives. The four action alternatives propose to designate between 0 to 15.4 percent (or 0 to 85 miles) of your total unauthorized routes. ROC requests the SNF analyze a new alternative (#6) that would provide a better balance between public access and environmental stewardship. These two goals are not mutually exclusive. Our organization has developed a set of “Proven Principles” that will result in good travel management plans when there is effective collaboration with interested parties (Exhibit 1).

The first principle starts with a “Conceptual Plan” that will satisfy current and projected visitor and agency expectations. This plan cannot be developed without interaction with the public, looking at maps and discussing the value of each desired route. Where credible and specific issues warrant limitations to your existing system, the impacts to recreation and public access should be explained and mitigated where possible. With this kind of collaboration, you will engender public trust and have greater support for your preferred alternative.

2) Motorized Mixed Use on Other Public Roads through the Sierra National Forest

A key objective of travel management planning is: “To coordinate travel planning and analysis on NFS lands with federal, state, county and other local governmental entities and tribal governments and to allow the public to participate in the designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use.”⁵

Collaboration with other road management agencies is critical for the development of sound NF travel management plans. ROC is working with many counties to designate all unpaved county roads through NFS land for mixed use unless an exception exists for public safety, past accidents, resource impacts, user conflicts or other considerations that cannot be mitigated. Our goal is to have an interconnected transportation system for non-highway legal vehicles using unpaved county and National Forest System (NFS) roads. If County Boards choose to designate mixed use on their unpaved roads, please review the SNF’s final designations to provide a seamless transportation system for the riding public.

³ DEIS, Volume 1, page 51.

⁴ Presented during the 5/28/09 Webinar discussion of the Sierra NF DEIS.

⁵ Forest Service Manual 7702, Objectives (effective 01/08/2009).

3) Motorized Mixed Use on Unpaved National Forest System Roads

ROC asserts unpaved NFS roads are not “highways.” Our analysis of the Region’s mixed use policy and the California Vehicle Code supports this recommendation.

California Vehicle Code:

The Pacific Southwest Regional Forester has said all NFS passenger car roads (maintenance level 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 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.”

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.”⁶

“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 only 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:

“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 SNF roads are logging, fire or service roads and fall under the exemption from a “highway” in Section 38001 CVC. According to the DEIS:

“Most of the road network on the SNF was created in support of timber harvest activities beginning as far back as the late 1800s. A resurgence of timber harvest in the early 1960s through the late 1980s resulted in access roads into many new areas of the forest. Much of the road system was upgraded through timber sales and hydroelectric projects to support additional multiple uses including safe public access.”⁷

These types of roads are not “highways” under the CVC. Again, they are logging, fire access, and service roads. The term “highway” is not defined in Appendix F – Glossary. The only terms defined are “Arterial Road, Forest Road, Local Road, National Forest System Road, and Public Road.” These roads were “developed and operated for long-term land and resource management purposes and constant service; necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources; a road which serves a small area or a specific project.”⁸ We emphasize, again, the Forest Service manages roads, not highways.

Please correct the following two transportation assumptions in the DEIS.

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

⁷ DEIS, Volume 1, page 67.

⁸ DEIS, Volume 2, Appendix F.

“5. The California Vehicle Code (CVC) requires roads maintained for passenger cars allow only highway registered vehicles and be operated by licensed drivers. The CVC allows the operation of non-highway legal vehicles operated by unlicensed operators on roughly graded roads (ML 2).

7. Roads maintained for passenger cars are considered highways by the CVC and the operation of OHVs on those roads is not consistent with State law unless designed as combined use.”⁹

Regarding Assumption #5: The CVC does not address “passenger car roads” and does not restrict motor vehicle use on “passenger car roads” to only highway registered vehicles and licensed drivers. The only term used in Section 16.5, CVC, is “highways.” Please delete the CVC reference to passenger car roads.

Assumption #7 directly conflicts with CHP’s December 19, 2007 interpretation of the CVC for FS unpaved passenger car roads. 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. 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. Please delete Assumption #7.

Forest Service Passenger Car Roads:

ROC understands the FS definition of maintenance level (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.

The majority of the Forest’s ML 3 roads (289 miles) are generally unpaved (native surface or gravel), single lane with design speeds less than 25 mph. Their traffic service levels are generally C (flow interrupted, use limited) or D (slow flow or may be blocked) (Source: FSH 7709.56, 4.1, Exhibit 1; 4.2, Exhibit 5, and SNF INFRA Roads Data). They provide important links to the SNF’s maintenance level 2 road system and motorized trails. “Share the road” information, maps, speed limits, and/or road signs will greatly enhance visitor safety on all unpaved ML 3 roads designated for mixed use.

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

⁹ DEIS, Volume 1, page 62.

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 SNF has not conducted any statistically valid traffic counts for at least 15 years.¹¹ Absent recent traffic survey data and vehicle class information, ROC questions the need to maintain 289 miles of unpaved roads as ML 3 passenger car roads on the SNF. Information on how the action alternatives modify maintenance levels is missing from the DEIS. Maintenance levels will not be assigned to each road until after the decision.¹² The public can not evaluate how vehicle class restrictions on ML 3-5 “passenger car” roads will affect motorized recreation opportunities. In addition, unless maintenance levels are provided in the DEIS for each alternative, the effect on the Forest’s road maintenance budget is unknown. Please provide this information in the FEIS.

Motorized Mixed Use Policy for the Pacific Southwest Region:

The Region 5 motorized mixed use policy cites the CVC for prohibiting non-highway legal vehicle travel on ML 3-5 roads. However, agencies may propose “combined use” on highway segments if the procedures in Section 38026 CVC are followed and the CHP concurs. Since the Regional Forester says ML 3-5 roads are subject to the CVC, then the correct term to permit non-highway legal vehicles on NFS “highways” is “combined use,” not mixed use. If a Forest Supervisor assumes supremacy over the CVC in the management of NFS passenger car roads, the correct term would be mixed use. If the Regional Forester accepted CHP’s interpretation that the CVC does not apply to unpaved ML 3-5 “roads,” then the correct term to permit non-highway legal vehicles on these roads is also mixed use.

Engineering Analyses:

Under the Region’s current policy, Forest Supervisors are constrained from designating passenger car roads for “combined use” if road segments are greater than three miles (Section 38026 CVC). Forest Supervisors may exceed this length if they assume supremacy over the CVC 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:

“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.”¹³ (Underlining added for emphasis.)

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

¹¹ E-mail to Elizabeth Norton from Assistant Forest Engineer Tom Lowe, dated June 12, 2009.

¹² E-mail to Elizabeth Norton from Assistant Forest Engineer Tom Lowe, dated June 12, 2009.

¹³ Federal Register, Vol. 70, No. 216, Rules and Regulations, November 9, 2005.

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).”¹⁴

Per Forest Service national direction, an engineering analysis is required to assess the probability and severity of crashes on roads proposed for mixed use.¹⁵ Where the criteria in FSH 7709.55, 30.3 are met, the SNF 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 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.”¹⁶

The Regional Forester’s January 13, 2009 motorized mixed use letter of direction to the Forest Supervisors is a concern to ROC. The Region’s mixed use policy invalidates “combined use” proposals on passenger car roads greater than three miles unless you:

- 1) Lower the maintenance level;
- 2) Assume supremacy over (pre-empt) the CVC on these roads; or
- 3) Disregard the CVC.

Alternative 5 proposes to designate 47 miles as “combined use or mixed use” pending approval from the Regional Engineer, Regional Forester’s Team and the Office of General Counsel.¹⁷ ROC reviewed the engineering reports and found many roads are greater than three miles.¹⁸ One is 13.3 miles long (8S08).¹⁹ Please explain in the FEIS how the Regional Forester can cite the CVC to prohibit motorized mixed use on NFS passenger car roads, but then allow it on certain roads or road segments that are greater than three miles in conflict with Section 38026 CVC. It appears the Forest Service is applying as well as ignoring the CVC at its own discretion. This inconsistency is confusing to the public.

¹⁴ Forest Service Manual 7731.2, #1 and #3 (effective 10/07/2008).

¹⁵ See EM-7700-30, “Guidelines for Engineering Analysis of Motorized Mixed Use on National Forest System Roads.”

¹⁶ Forest Service Handbook 7709.55, 30.3, #5 (effective 01/08/2009).

¹⁷ Regional Forester’s letter, dated January 13, 2009.

¹⁸ DEIS, Volume 2, Appendices A and I.

¹⁹ DEIS, Volume 2, Appendix I, page 324. The road numbers in DEIS Appendices A and I are different than the road numbers the Forest’s INFRA Roads Database. This makes it very difficult for the public to crosswalk between the two sets of data (e.g. road # 10S13 in Appendix I is apparently 10S013 in INFRA; road # 8S08 in Appendix I is apparently 08S080 in INFRA, etc.).

Proposing “combined use” designations requires conformance with Section 38026 CVC and review by the CHP.²⁰ Segments must be less than three miles, which will prohibit non-highway legal vehicles on many unpaved ML 3 roads in the SNF.

The DEIS states:

“All the proposals for either mixed-use or combined-use for the Sierra NF’s Travel Management Analysis have been evaluated and only safe situations have been allowed to be included in any of the alternatives.”²¹

ROC requested a copy of these analyses, but was told they were incomplete.²² ROC did receive the draft combined use and mixed use “Traffic Engineering Report” for the Granite Creek Area. However, none of the analyses for each road comply with the procedures under CHP General Order 40.5 “Designating Combined-Use Highways”, revised December 2008. The SNF did not complete any traffic surveys to determine traffic volume (average daily traffic or ADT) and vehicle class.²³ Some of the roads data in the Report are different from the data in the Forest’s INFRA Roads Database such as the road numbers. Exhibit 2 displays these discrepancies with the colored text. We question the validity of some of the data. ROC agrees with the benchmarks or standard evaluation criteria that were used to determine the probability and severity of a crash.²⁴

If the Regional Forester continues to adhere to the Region’s mixed use policy, Forest Engineers will have to expend considerably more time and funds preparing combined use proposals that conform with Section 38026 CVC. With current forest budget constraints, we doubt many roads will be forwarded to CHP for their review. We also doubt the CHP has the personnel or funds to review many of these analyses. ROC has yet to see an acceptable “combined use” assessment in any of the DEISs we have read.

ROC recommends the SNF reclassify all of Forest’s unpaved passenger car roads to ML 2 to allow mixed use and reduce road maintenance costs. Most of these roads are single lane, slow speed roads (20 mph or less) with low traffic volumes and traffic service levels of C and D. According to many other DEISs we have reviewed: “Setting road maintenance levels and changing maintenance levels are administrative and not subject to NEPA.”²⁵ The Regional Forester’s January 13th letter describes the steps for reclassifying passenger car roads to ML 2. He is encouraging Forest Supervisors to consider this action.

If reclassification is not feasible, please analyze a new alternative that will designate all NFTS roads in Exhibit 4 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

²⁰ CHP Memorandum, dated January 13, 2009.

²¹ DEIS, Volume 2, Appendix I, page 308.

²² E-mail from Assistant Forest Engineer Tom Lowe to Elizabeth Norton, dated June 5, 2009.

²³ E-mail from Assistant Forest Engineer Tom Lowe to Elizabeth Norton, dated June 12, 2009.

²⁴ The mixed use benchmarks in Exhibit 3 were used by the Klamath National Forest in preparing their engineering reports. They provide an objective, quantifiable measure of crash risk. The SNF may wish to supplement their benchmarks with some of these measures prior to completing the Forest’s engineering reports and engineering judgments.

²⁵ From the Stanislaus NF DEIS, page 39.

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.

Public Safety on Mixed Use Roads:

ROC asserts the Forest Service does not have enough mixed use accident data from Region 5 national forests 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.²⁶ 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 has been one mixed use accident on the SNF in the past 15 years (from Region 5 accident data). There is no accident information in the DEIS to support a prohibition of non-highway legal vehicles on unpaved passenger car roads. Please provide this in the FEIS to validate the Agency's concern about public safety.

"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."²⁷ 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).²⁸ Unless a traffic study has been completed, we believe almost all SNF 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 the roads displayed in Exhibit 4 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 Regional Forester should follow Forest Service national direction and the agency's own guidebook for analyzing mixed use on FS passenger car roads.

Minor Operators on Mixed Use Roads:

The CHP, State Off-highway Motor Vehicle Recreation Division and ROC share equal concern with the Forest Service over the safety of minors driving non-highway legal vehicles on NFTS or other public roads. However, we believe State requirements for minor operators are sufficient. The answer is not to eliminate this use, but to mitigate it in the best way possible. As an example, the FS does not prohibit hiking, mountain biking, skiing, snowboarding, rock climbing, hunting, firearm use, driving with street legal vehicles or other recreational activities on the national forests. There are risks associated with all of these sports and, yes, some fatalities. The Forest Service should manage OHV risk, not eliminate the activity or prohibit youth under 18 or 16 years from participating. (Even FS employees have motor vehicle accidents!)

There are numerous safety training programs for youth offered by the State, vehicle

²⁶ Region 5 mixed use accident data, 1993-2008.

²⁷ Forest Service Handbook 7709.59, 41.7, #1.

²⁸ Forest Service Handbook 7709.59, 41.4. Also MUTCD, Section 5A.01 Function, page 5A-1.

manufacturers, state-wide OHV organizations, and local OHV clubs. If there are continued safety concerns, the FS should approach the California Highway Patrol and State OHMVR Division to determine if State safety requirements for minors need to be strengthened.

In accordance with FSH 7709.59, 23, the SNF should impose temporary road closures for certain vehicle classes (i.e. OHVs) when commercial traffic is present, such as log haul during timber sales. This is an appropriate mitigation measure for public safety.

4) Affordability Analysis and Road Maintenance Levels

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 of their maintenance. Grants, agreements, and volunteers may be used to extend Forest Service resources.”²⁹

Road maintenance expectations are listed in the DEIS:

“The SNF operates and maintains NFTS roads in a manner that meets road management objectives and provides for:

1. Safe and efficient travel;
2. Access for the administration, utilization and protection of NFS lands; and
3. Protection of the environment, adjacent resources and public investment.”³⁰

ROC is concerned about the Agency’s liability due to the lack of maintenance on NFS roads. “Deferred maintenance needs for roads on the Sierra National Forest are currently estimated to be \$102,300,000.”³¹ All alternatives require over \$10 million annually to maintain the SNF’s current road system to standard compared to an average annual road maintenance budget of \$425,000.³² The estimated annual road maintenance cost (but not to standard) is over \$2.4 million for each alternative.³³

The environmental consequences section describes the Forest’s road maintenance situation and the large gap between the SNF’s maintenance needs and anticipated annual maintenance budgets. ROC is unclear how the SNF can meet their road maintenance expectations with this deficit. The DEIS states:

“Neither the SNF road or trail budget is expected to increase in the foreseeable future.”³⁴

Reducing operational road maintenance levels should be seriously considered to bring the SNF’s road maintenance program in alignment with the Forest’s expected out year budgets. Describing road management objectives and re-classifying maintenance levels are administrative and not subject to NEPA. Since passenger car travel will not

²⁹ Forest Service Manual 7715.03, Policy, #6.

³⁰ DEIS, Volume 1, page 20.

³¹ DEIS, Volume 1, page 64.

³² DEIS, Volume 1, page 65-66.

³³ DEIS, Volume 1, page 66.

³⁴ DEIS, Volume 1, page 62.

be prohibited and operators can choose to drive their passenger cars on ML 2 roads, NEPA is not required.

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 SNF’s unpaved ML 3 and 4 roads to be passenger car roads or “highways.” Unless paved, they are “roughly graded” and becoming more so over time. The lack of road maintenance is a serious liability issue for the Agency.

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 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. Assign your operational maintenance levels commensurate with your use.

“The operational maintenance level is the maintenance level currently assigned to a road considering today’s needs, road condition, budget constraints, and environmental concerns; in other words, it defines the level to which the road is currently being maintained.”³⁵

Please provide information in the FEIS about the actual traffic volume and vehicle classes using SNF passenger car roads to justify your road maintenance levels and “traffic service levels” in INFRA. Again, this will help the public understand the SNF’s need to maintain 448 miles of ML 3 passenger car roads.³⁶ For example, why are many single lane, ML 3 roads with a traffic service level of C paved or chip sealed? What is the deferred maintenance on these roads? Can they be converted to unpaved roads to reduce your costs?

ROC suggests the SNF 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.”³⁷

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 SNF roads.

³⁵ Forest Service Handbook 7709.59, 62.31.

³⁶ RO SNF INFRA Roads Database, dated January 2009.

³⁷ Forest Service Manual 7715.5, #3.

- 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.

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 SNF'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.

Include a table that shows the road maintenance levels under each alternative in the FEIS. Display the miles of roads open to all vehicle classes or just highway legal vehicles. Under all the action alternatives, some roads are proposed for closure; maintenance levels will change on other roads; vehicles classes will change on several roads; and some new roads will be added. The reader cannot evaluate the effect of all these proposals on motorized recreation and road maintenance budgets without this information.

5) Proposed Conversion of Mixed Use Roads to Highway Legal Vehicles Only

Under Alternatives 2, 4, and 5, the SNF proposes to prohibit non-highway legal vehicles on 36 to 42 miles of NFS roads to "increase public safety by removing conflicts between passenger cars and unlicensed vehicles."³⁸ The DEIS does not describe what the conflict is or if previous mitigation measures have been unsuccessful in resolving the conflict such as education, engineering, signs, volunteer patrols or enforcement. Please include specific information on each road in an Appendix to the FEIS.

6) Proposed Road Closures

The alternatives in the DEIS propose to close between 196 to 433 miles of NFTS roads to all motor vehicle travel.³⁹ These figures differ from Table 166, which indicates 155 to 311 miles of roads are closed to motor vehicles year-round. Appendix A summarizes the need for these closures. While ROC supports the closure of low use roads to reduce maintenance costs or resolve resource concerns, the information in Appendix B lacks detail. Many roads have a Type Code of A for "Administrative Site Protection", but the reader does not know what this means. Other roads have a Type Code of O for "Other" which is the only justification for closing the road. There is no Type Code for many roads; the reason for closing them is unknown. ROC recommends the FEIS provide more specific information on why a road is proposed for closure as required under NEPA (40 CFR Parts 1502.14 through 1502.16).

³⁸ DEIS, Volume 1, pages 64, 70-72.

³⁹ DEIS, Volume 1, page 64.

The DEIS references a 1998 Closure Plan that is out of conformance with current National Forest Service policies and direction.”⁴⁰ Please clarify if this earlier “Closure Plan” is driving the proposed road closures and if NEPA has been completed for each road. The DEIS does not provide sufficient road-specific analysis and documentation to support the proposed closures. Describe whether these roads will be decommissioned and removed from the Forest’s transportation system and inventory or merely re-assigned as maintenance level 1 “closed” roads. There are no costs associated from closing 196 to 433 miles of NFTS roads.⁴¹ Explain how these roads will be closed to all motor vehicle travel (installation of barriers, signs, road engineering, etc.) and the cost to implement.

The DEIS is silent about the effects of the proposed closures on motorized recreation, other forest uses, and the road maintenance budget in the Transportation Facilities and Recreation Resources (Changes to the Existing NFTS) sections of the DEIS. This is a serious flaw and discussion is needed to comply with NEPA.

7) Implementation Schedule for Pre-Mitigation Measures

Appendix A displays specific data for each route analyzed for this project on a route card. According to the DEIS:

“ . . . the route card identifies the alternative(s) under which the route is proposed, the type of vehicles allowed, the season of use when the route would be open as well as any required mitigation measures that would be implemented on the route prior to publication on a MVUM and allowing public use.”⁴²

Of the 292 unauthorized routes and NFTS roads that were analyzed, 204 (70 percent) require pre-mitigation prior to opening them for public motorized use and displaying on your MVUM.⁴³ Under Alternative 5: “18 percent of the added roads, 30 percent of the added trails, and 2 percent of the added use areas are currently eroding.”⁴⁴ Some of these routes are not recommended for designation by resource specialists.

It appears considerable amount of restoration/maintenance work is needed on many routes. Please include a schedule in the FEIS when all pre-mitigation measures will be implemented for each alternative. 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.

⁴⁰ DEIS, Volume 1, page 69.

⁴¹ DEIS, Volume 1, page 66.

⁴² DEIS, Volume 1, page 52.

⁴³ DEIS, Volume 2, Appendix A.

⁴⁴ DEIS, Volume 1, page 254.

8) Parking and Dispersed Camping Off Roads

The DEIS states:

“There is a rough estimate of approximately 1,700 dispersed recreation sites on the SNF. These sites are scattered throughout the project area. The sites are accessed by existing roads and unauthorized routes.”⁴⁵

“Many dispersed recreation sites (an estimated 485 out of an estimated 1,700) remain accessible by the existing NFTS roads and proposed routes in this alternative” (Alternative 5).⁴⁶

Alternative 5 provides motor vehicle access to 28.5 percent of the Forest’s dispersed recreation sites; motor vehicle access will be prohibited to the remaining 71.5 percent. Even if walk-in access is allowed, this is a huge change in traditional recreational use on the SNF.

ROC understands the SNF and other forests in Region 5 must complete their FEISs by December 2009. Strict adherence to this timeline is not required by law, regulation or court order. It is a disservice to the public (and your interdisciplinary team) to restrict access to well used, dispersed recreation sites simply because specialists ran out of time to analyze them. ROC recommends the SNF team analyze the merits of each route that accesses a dispersed recreation site. If any routes are dropped from an alternative, display your rationale in an Appendix to the FEIS. There is insufficient analysis to close 71.7 percent of your dispersed sites to motor vehicles.

ROC urges continued motor vehicle access to all historically used dispersed campsites. The public does not want to stage one vehicle length from the edge of a road. They desire the security, privacy, solitude, and scenic amenities that dispersed recreation sites provide. If there were prior resource concerns, ROC assumes action would have been taken before now to address them. At some dispersed sites, please consider designating 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 the 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.

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.

⁴⁵ DEIS, page 85.

⁴⁶ DEIS, pages 82, 93.

The DEIS is silent on big game retrieval. During the hunting season, ROC recommends the SNF seasonally allow 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). 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. Vehicle operators causing damage to national forest resources can be cited. If not allowed, describe the effects of eliminating ATV use for big game retrieval in the FEIS.

9) Non-highway Legal Vehicle Travel within Developed Campgrounds

In the Forest's MVUM, please adopt a 5 mph speed limit for non-highway legal vehicles (if not all vehicle classes) within developed recreation areas if they are permitted to travel on these roads. Concern over excessive noise, public safety, and visitor conflicts can be avoided by requiring operators to "idle in" and "idle out" of developed campgrounds where this is allowed. There is no reason to go any faster.

10) Seasons of Use

ROC has never seen a more complicated "Seasons of Use" strategy as in the SNF DEIS. For example, under Alternative 5, there are 11 different seasons of use for 113 acres of use areas; 10 different seasons of use for the 85 miles of proposed unauthorized route additions; and 17 different seasons of use for 1,513 miles of existing NFTS roads. We predict the complexity of these use seasons will be difficult to understand, confuse to the public, and create an enforcement nightmare for your staff. It is not a workable strategy. We recommend you simplify it so the public has a reasonable chance of complying with the new rules.

11) 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 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 many miles of unauthorized routes will be closed to motor vehicle travel. Chapter 3, "Affected Environment and Environmental Consequences" section should describe the context of the proposed route additions in light of all these other activities.

12) ROC's New Action Alternative

Significant issue statement #1, Impacts to Motorized Access, in the DEIS states:

"There is a concern that the proposed action does not provide adequate motorized access to routes and other recreational use areas and would not provide a variety of types of motorized recreational experiences. Public comments indicate that motorized

access would be prohibited in areas including dispersed campsites, vistas, picnic areas, OHV staging and off-loading areas, equestrian parking areas, hang gliding, fishing and rock climbing areas which have been enjoyed by the public for many years. It is perceived that the proposed action does not provide enough opportunities specifically for motorcycles and ATVs or for loops and technical areas (hill climbs, rock crawling, etc.) and this limits the variety of recreational experiences the public desires.”⁴⁷

We believe there is an inadequate range of action alternatives in the DEIS to respond to this significant issue 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.

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.”⁴⁸

“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.”⁴⁹

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 . . .”⁵⁰

The lack of an acceptable range of alternatives is demonstrated by Alternative 5, which proposes the most opportunities for motorized recreation among the four action alternatives. However, ROC considers it a “minimalist” alternative.

⁴⁷ DEIS, Volume 1, page 12.

⁴⁸ 36 Code of Federal Regulations 220.5(e).

⁴⁹ Forest Service Handbook 1909.15, 14.

⁵⁰ NEPA Regulations in 40 CFR 1503.4.

<i>Alternative 5 - Proposed Activity</i>	<i>Miles</i>	<i>Percent of Forest Total</i>
Unauthorized roads and trails added to the NFTS	85	15.2 %
Roads closed to all motor vehicles	196 ⁵¹	7.4% ⁵²
Recreation sites open for motor vehicle access	485	28.5%
Proposed combined use or mixed use roads	47	10.4% of ML 3 roads only ⁵³
Roads converted to mixed use (all vehicles)	165	57% ⁵⁴

Alternative 1 does not count towards your range of alternatives since it is infeasible to select and implement. It does not comply with the SNF Forest Land and Resource Management Plan or the 2005 Travel Management Rule.⁵⁵ Please analyze a new Action Alternative (# 6) that provides a better balance between motor vehicle access, affordability and environmental protection in response to significant issue statement #1. This alternative has the following elements:

- a) Reclassify unpaved ML 3 roads (289 miles) to ML 2 to better align your road system with projected annual road maintenance costs. It appears you did this on many miles of roads, but without seeing the breakdown in maintenance levels by alternative, we cannot confirm this.
- 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) Based on valid traffic data, if you believe you cannot lower the maintenance levels of your passenger car roads, then designate all the ML 3 roads in Exhibit 4 for motorized mixed use unless a rare exception exists that cannot be mitigated. Designation of these roads will provide important connectors to your ML 2 road and motorized trail systems and loop opportunities.
- d) Designate all ML 2 roads for motorized mixed use (all vehicles) unless a rare exception exists that cannot be mitigated.
- e) Allow Rhino type, 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 Rhinos on these trails because they exceed the width definition by a mere four inches.

⁵¹ This number conflicts with Tables 23 and 166 in the DEIS, Volume 1, which display 155 miles of closed roads. ROC is unsure which number is correct.

⁵² This percent is based on January 2009 INFRA Roads Database from the Regional Office which shows a total of 2,647 miles of ML 2-5 roads on the SNF.

⁵³ ROC requested final Engineering Reports from the SNF, but did not receive them to verify if only ML 3 roads are proposed for combined use or mixed use. We made the assumption that they were all ML 3.

⁵⁴ ROC requests the SNF designate all unpaved ML 3 roads (a total of 289 miles) as ML 2 roads or ML 3 mixed use roads.

⁵⁵ DEIS, Volume 1, page 69, and SNF *Frequently Asked Questions*, which states: Alternative 1 “is in conflict with the 2005 Travel Management Rule, and therefore is not selectable.”

- f) The adoption of a) through e) 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.
- g) There are numerous opportunities for scenic access, and loops or connectors to NFTS roads using the unauthorized routes, but the majority are not proposed for designation. ROC, local OHV organizations and individuals are willing to work with SNF staff to develop a quality OHV system in line with the principles in Exhibit 1. We hope you will provide this opportunity to collaborate.
- h) Include all combined use/mixed use assessments (engineering reports) in an Appendix to the FEIS so the public understands why some routes may not be recommended for mixed use.
- i) Provide access to all historically used campsites.
- j) 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.
- k) 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. Prohibit cross-country travel at all other times.
- l) Implement wet weather closures for the lower, middle and upper elevation zones based on wet weather criteria, not on specific dates that have no relation to actual conditions on the ground. This is similar to how you manage your woodcutting program and implement fire restrictions. The dates vary based on weather conditions.

Conclusion: Again, thank you for the opportunity to submit ROC's comments. I would like to receive a hard copy of the FEIS and all the maps when it is issued.

Sincerely

/s/ Sylvia Milligan

SYLVIA MILLIGAN
Chair, Recreation Outdoors Coalition

Enclosures:

- Exhibit 1: Proven Principles for Travel Management Planning
- Exhibit 2: Sierra NF Draft Traffic Engineering Report Discrepancies
- Exhibit 3: Klamath NF Engineering Benchmarks
- Exhibit 4: Proposed Combined Use and Mixed Use Roads

cc:

Angela Coleman, Deputy Regional Forester

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

Tom Crimmins, National Off-highway Vehicle Conservation Council

Daphne Greene and Phil Jenkins, CA. Off-highway Motor Vehicle Recreation Division

Fresno County Board of Supervisors

Mariposa County Board of Supervisors