

**Recreation Outdoors Coalition
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To: State Media, County Supervisors, State Elected Officials, OHV Organizations

Subject: Forest Service Travel Management Planning in California's National Forests

From: Sylvia Milligan, Chair, Recreation Outdoors Coalition
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Summary: The Recreation Outdoors Coalition (ROC) believes the Forest Service's (FS) travel management planning

- is based on flawed interpretation of the California Vehicle code and unsubstantiated concern for public safety;
- has failed to meaningfully consider public input when developing national forest travel management proposals.
- has failed to coordinate with counties on road management strategies that will affect motorized recreation and public access.

As a result, thousands of miles of existing system roads as well as unauthorized roads and motorized trails in the State's national forests will be closed to motor vehicle travel. This is coming at a time when the popularity of motorized recreation has never been higher. Many counties and the general public are unaware of these proposed changes and the effects they will have on recreational opportunities in the forests. Rural communities and local businesses that provide recreational services will also be affected economically.

The enclosed paper provides more detailed information and research about our concerns with the FS travel management planning process. I hope you find it helpful.

Sincerely,

/s/ Sylvia Milligan

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True Collaboration Needed for National Forest Travel Planning

The Forest Service's travel management planning process falls short of providing a balance of motor vehicle access with environmental protection.

Setting the Framework for Travel Management Planning: In November 2005, the Forest Service (FS) issued new travel management regulations that apply to all national forests in the country. Under the new regulations, each national forest must publish a map displaying the roads, trails, and areas where all motor vehicles can travel. Once the map is published, motor vehicle travel off mapped routes or areas will be prohibited.

California has 4.99 million off-highway vehicle (OHV) users 16 years or older, accounting for almost 12 percent of the US total.¹ As California's population has grown, so too has the demand for outdoor recreation in the national forests. Motorized recreation is also important economically in many rural areas. There were 1,101,980 all terrain vehicles (ATVs) and OHV motorcycles registered in California in 2007, up 307 percent since 1997. Visitation at State Vehicular Recreation Areas was 4,222,386 in 2007, a 274% increase from 1997.²

The increase in use is also associated with environmental impacts when operators travel off-road or off-trail and create their own routes. Many national forests have large areas where cross-country OHV riding has been legal. This will end when routes and small riding areas are designated.

The Forest Service has a number of policies, regulations, and laws that require the Agency to coordinate with other federal, State, and local agencies as well as involve the public when proposed projects affect them. County governments may request cooperating agency status during the preparation of Forest Service environmental impact statements for travel management to ensure integration of county plans with those of the Forest Service.³

The Forest Service travel management planning process in California has not promoted collaborative engagement with local jurisdictions or the public. Forest Service policies will significantly reduce motor vehicle access in the national forests. The following sections explain this further.

¹ Forest Service National Survey on Recreation and the Environment, February, 2008.

² California Off-highway Motor Vehicle Recreation Division, 2008.

³ Code of Federal Regulations at 40 CFR 1508.5

1. FS regional policy regarding motorized mixed use⁴ in California⁵ supersedes national FS policies and State traffic law. The Region's policy will restrict non-highway legal vehicle travel on thousands of miles of existing national forest system roads.

Background: Existing regional direction to all the Forest Supervisors in California allows motorized mixed use only on national forest system (NFS) roads currently maintained for high clearance vehicles where passenger car traffic is discouraged (letters dated 8/21/06, 6/20/07, 3/27/08, 9/8/08 and 1/13/09). This equates to only maintenance level 2⁶ roads being available for mixed use. These roads are generally short, dead end spur roads. The Regional Forester cites the California Vehicle Code as the reason for prohibiting non-highway legal OHVs on NFS passenger car roads⁷ with a maintenance level (ML) of 3, 4 or 5. There are 8,903 miles of ML 3, 4 and 5 roads in California, most of which are unpaved.⁸ This represents 21.5 percent of all NFS road miles in Region 5. Many of these roads have been safely used by OHVs for decades. Implementation of this direction will require trailering OHVs between ML 2 roads.

Some forests such as the Lassen National Forest have implicitly permitted OHV travel on all their unpaved roads, subject to officer discretion for enforcement. As a result, OHV use is well established on the Forest's maintenance level 2-4 roads and on unpaved county roads through the Forest.

The Regional Forester has said all NFS passenger car roads are "highways" under the California Vehicle Code (CVC). This conflicts with the December 19, 2007 letter from the California Highway Patrol (CHP). There is no definition for a "highway" or "public highway" or "forest highway" in Forest Service Manual 7700, except in chapter 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 660.15. 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

⁴ Motorized mixed use is a Forest Service term for authorizing travel by both highway legal and non-highway legal vehicles on the same NFS road.

⁵ California is located within Region 5 or R5 of the Forest Service. It is known as the Pacific Southwest Region.

⁶ Maintenance levels are described in Exhibit 1.

⁷ The FS defines ML 3, 4, and 5 roads as being "passenger car roads" used by prudent drivers of standard passenger cars. ROC disagrees. Prudent drivers of standard passenger cars (with P rated tires) will almost always stay on ML 5 paved roads. Most unpaved ML 3 and 4 roads are too rough for standard passenger cars. Throughout this analysis, the terms "passenger car roads" and "ML 3-5 roads" mean the same.

⁸ FS roads data, January 2009.

Highway Administration that a State or local government agency will assume jurisdiction and maintenance responsibility upon completion of improvements.” (Underlining added for emphasis.)

“Road” is the only term used throughout the FS directive system. 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 the California Vehicle Code 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.⁹

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 road 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 roads are exempt from the definition of a “highway” under the California Vehicle Code.

Conclusion: The Region’s policy regarding motorized mixed use on unpaved ML 3-5 roads does not conform with the California Vehicle Code. It was adopted without public involvement or interagency collaboration. Forest Supervisors in California continue to issue Notices of Intent (Klamath, Modoc, Shasta-Trinity National Forests) and Environmental Impact Statements (Eldorado, Inyo, Modoc, Plumas, and Tahoe National Forests) that say motorized mixed use is prohibited on ML 3, 4, and 5 roads under State traffic law.

Unless the Region’s policy is amended, motorized mixed use on ML 3, 4, and 5 roads will be limited to three miles or less under CVC 38026 and OHV riders must be licensed and have insurance. ROC drafted revised regional policy for motorized mixed use and forwarded it to FS staff in the Washington and regional offices for their consideration. We recommend it be adopted.

⁹ Personal communication with Tom Bernardo, State Off-highway Motor Vehicle Recreation Division, 12/10/08.

2. Opportunities for the public to participate in FS travel management planning have been limited.

Background: During the inventory phase of travel management planning, the public was asked to provide information on the non-system routes¹⁰ they used. Maps of all of these routes were then prepared and the public was asked, again, which were the most important ones to designate. On some national forests (Lassen NF, Plumas NF, Shasta-Trinity NF, Tahoe NF), over a thousand miles of unauthorized roads or OHV trails were inventoried on each forest. However, when their Notices of Intent (NOI) were issued, the Lassen NF proposed to add only 37 miles of routes to the NFS system (3.2 percent of their inventory) and the Shasta-Trinity NF proposed to add 43 miles (3.5 percent of their inventory). The Klamath NF proposed to add 68 miles or 17 percent of their inventory. In their Draft Environmental Impact Statement (DEIS), the Tahoe National Forest proposed to add only 70.3 miles or 5 percent of their inventory under their Preferred Alternative. The Plumas NF proposed to add 280 miles or 25 percent of their inventory under their DEIS Proposed Action.¹¹ Many unauthorized routes are not proposed because they cross from national forest land onto private land. Many of these routes have a long history of public use and road agreements or landowner “permission to pass” may exist. These opportunities should be explored by the Forest Service before they are eliminated from consideration.

Conclusion: FS proposals that close 75 to 97 percent of the inventoried, unauthorized routes on a forest do not reflect a reasonable balance between public access and environmental protection. ROC has submitted alternatives to the Humboldt-Toiyabe, Lassen, and Shasta-Trinity NFs for their consideration in their Draft Environmental Impact Statements. Of the 1,145 miles of unauthorized routes on the Lassen NF, ROC recommended 202 miles be designated, mostly as low maintenance motorized trails. Counties and local OHV users should be at the planning table with the FS to develop transportation alternatives that better reflect public desires.

3. The Forest Service has not engaged the counties in travel management planning. This lack of coordination will result in conflicting road management policies and foregone opportunities to have interconnected road systems that make sense to the public.

Background: There are miles of maintained, unpaved county roads within the national forests in California. OHV use is a long-standing accepted practice on many unpaved county roads.

¹⁰ Non-system routes are called unauthorized routes in the 2005 Travel Management Rule. They are roads and motorized trails that are not part of a forest’s official transportation system unless they become designated. Many are old logging roads and skid trails.

¹¹ Plumas NF DEIS Proposed Action would designate 364 miles of unauthorized routes, However, 85 miles of proposed routes were eliminated due to “extreme” resource risks that cannot be mitigated.

In the past year, ROC has met with several County Boards and local user groups to share information and encourage their participation in the FS travel management planning process¹². Many Boards were unaware of the Region's restrictive policy regarding motorized mixed use on NFS passenger car roads. On December 10, 2008, Shasta County hosted a county round table to share their concerns about the process with other supervisors. Five county supervisors signed a letter to the Regional Forester with specific recommendations to meet their planning objectives. They called for: 1) a bias for recreation; 2) strengthened coordination with the counties; 3) renewed public input into the planning process; and 4) a desire for a greater balance between public access and environmental protection.

Conclusion: Many unpaved county roads link with NFS passenger car roads. Without integrated planning and agreement on road management strategies, there will be major inconsistencies in how each agency provides for OHV recreation. The riding public will be confused. The Forest Service should fulfill their legal obligation to coordinate with counties and develop seamless transportation plans.

4. The Regional Forester says public health and safety is his reason for restricting motorized mixed use on existing NFS passenger car roads. Region 5's policy is not substantiated by the facts.

Background: In his September 8, 2008 letter of direction to the Forest Supervisors, R5 Regional Forester Randy Moore wrote:

“As an agency, we have recognized the need to conduct motorized mixed use analysis of our road system because we have identified a public health and safety concern when we mix highway legal vehicles such as passenger cars and log trucks, and non-highway legal vehicles such as all-terrain vehicles and off-highway motorcycles on the same roadway.”

Until ROC requested mixed use accident data on November 18, 2008, none existed in the Region. In January 2009, the Regional Safety Officer sent a memo to the national forests asking them to submit their accident data. ROC received the data on February 6, 2009. 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 FS roads in California.¹³ Three accidents involved FS employees running into an OHV; 1 involved a County Deputy Sheriff hitting an OHV. The data does not indicate the road maintenance level where these accidents occurred. ROC asserts unpaved ML 3-5 roads should be open to all vehicle classes unless an 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.

¹² ROC has met with the Butte, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity County Boards of Supervisors and/or their staff.

¹³ Region 5 mixed use accident data, 1993-2008.

The reference to logging trucks (or any commercial traffic) in the Regional Forester’s September 8, 2008 letter is a misnomer. The Forest Service can and should impose temporary road closures for certain vehicle classes (i.e. non-highway legal vehicles) when commercial traffic is present, such as log haul during timber sales. This is an appropriate mitigation measure for public safety.

The data in Table 1 is from a traffic survey and an engineering analysis ROC did on a sample of the Lassen NF’s unpaved ML 3 and 4 roads during the summer of 2005. Vehicle classes are displayed. Only 10% of the use on the Forest’s “passenger car” roads was passenger cars.

Table 1: Vehicle Classes on ML 3-5 Roads, Lassen National Forest (ROC, 2005)

Highway Legal Vehicles					Non-highway Legal Vehicles		
Car	Sport Utility Vehicle	Pick-up	Motorcycle	TOTAL	Dirt Bike	ATV/Quad	TOTAL
10%	26%	47%	0%	83%	3%	14%	17%

The average speed ranged from 10-27 mph, on 72 miles of ML 3 and 4 roads observed during the summer of 2005, as determined by a prudent driver with a recording GPS unit. Average daily traffic, using a Federal Highway Administration recording formula, ranged from 5-16 vehicles per day. There is no reason to prohibit motorized mixed use on most unpaved roads in the Lassen or other national forests.

ROC believes user education, “shared use” road signing, adequate road maintenance, good travel maps, and temporary closures of roads with commercial traffic will greatly enhance public safety on NFS passenger car roads (even though there have been few mixed use crashes without these measures). If concerns about risk develop later, they can be addressed for that particular road segment. Forest Supervisors should have the flexibility to manage public use on their road systems based on local demand, road conditions, and public safety.

Conclusion: Allow motorized mixed use on all unpaved NFS roads per the California Vehicle Code unless there is documented crash history or other safety concerns that cannot be mitigated¹⁴. Involve the public in engineering analyses for mixed use when safety issues are raised. Seek collaborative solutions to mitigate the risk prior to prohibiting mixed use on a road.

5. The Forest Service is concerned about their liability if minors are allowed to operate their OHVs on NFS passenger car roads (ML 3, 4 and 5).

Background: Motorized mixed use on NFS roads also authorizes the operation of non-highway legal vehicles by minors. The State Vehicle Code has specific requirements for safety and liability when motor vehicles are operated by minors. In addition, most State and national OHV organizations actively promote and host safety programs for youth.

¹⁴ Forest Service direction to meet Safety Standards requires an inventory of each accident by road and location or mile post.

Manufacturers also provide safety programs and riding tips for youth. Local OHV clubs sponsor their own safety programs for new riders. In short, safety is on everyone's radar screen.

Conclusion: The State and ROC share equal concern with the Forest Service over the safety and liability of minors driving non-highway legal vehicles on unpaved NFS or other public roads. However, we believe State requirements for minors are sufficient. The Forest Service does not prohibit hiking, mountain biking, skiing, snowboarding, rock climbing, hang-gliding, 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 FS does not manage these risks by eliminating the activity or prohibiting youth under 18 or 16 years from participating.

ROC encourages the Forest Service to work with the California Highway Patrol and State Off-highway Motor Vehicle Recreation (OHMVR) Division to determine if State safety requirements for minors need to be strengthened. The FS's pattern of issuing regional policy without collaboration eliminates the possibility of shared solutions.

6. The Forest Service entered into a Memorandum of Intent with the State Off-highway Motor Vehicle Recreation Division to create a system of designated roads and trails for OHV use.

Background: On August 11, 2003, the Forest Service signed a Memorandum of Intent (MOI) with the State OHMVR Division and the State OHMVR Commission to inventory and designate routes for motor vehicle travel on the national forests in California. All routes were to be designated and motor vehicle use maps published by September 2008¹⁵. This partnership also provided \$12 million (to date) in State OHV grants for the Forest Service to inventory non-system routes and fund the planning process. A total of 10,257 miles¹⁶ of non-system routes were inventoried. However, few of these miles are proposed for designation. ROC doubts this was the State's intent when they entered into the MOI.

Conclusion: The State OHMVR Division and OHMVR Commission funded an expensive 5-step planning process that eliminates thousands of miles of unauthorized roads and trails on the national forests in California. If you combine this with the Region's motorized mixed use restrictions on 8,903 miles of passenger car roads (ML 3-5), riding opportunities for non-highway legal vehicles will be significantly reduced at a time when the demand has never been higher. This irony has resulted in a loss of public trust in travel management planning. Obligations for public involvement under the MOI should be fulfilled to design "smart" travel management alternatives.

¹⁵ The Klamath and Shasta-Trinity National Forests have one additional year to complete their route designations.

¹⁶ This regional total can not be verified as individual forest data is different than the 7/21/08 data ROC received from the Regional Office.

Summary: The Forest Service's travel management planning process in California's national forests invites the participation of all those who care about the future of outdoor recreation and the environment. ROC believes change is needed in how motor vehicle travel is managed in the national forests. We all have a collective responsibility to cultivate the health of our public lands and community well being.

What should be an externally focused planning process is more internally focused with the Forest Service issuing regional policies without collaboration. Balanced solutions for travel management can be achieved when other agencies, county governments, and the public are invited to participate. Shared planning and decision-making also encourages shared actions to successfully implement the coming change. There are thousand of volunteers willing to help the Forest Service transition to their new travel management plans if they have ownership in the outcome.

Submitted by:

/s/ Sylvia Milligan

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Exhibit 1

Forest Service Maintenance Levels

FS 0577 1205-SDTCD (12/05), FS-643 (8/99) Roads Analysis Report and Forest Service Manual (FSM) and Forest Service Handbooks (FSH) define road maintenance levels (ML) as follows:

Level 1 – Closed for more than 1 year. Not subject to the Highway Safety Act.

Level 2 – High-clearance vehicles. Not subject to the Highway Safety Act.

Level 3 – Passenger vehicles, surface not smooth. User comfort and convenience are low priorities.

Level 4 – Passenger vehicles, smooth surface with a moderate degree of user comfort and convenience. Most roads are aggregate surfaced.

Level 5 – Passenger vehicles, dust free, possibly paved.