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September 9, 2008

Randy Moore
Regional Forester, Pacific Southwest Region
USDA Forest Service
1323 Club Drive
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Dear Regional Forester Moore,

Lassen County is working with off-highway vehicle (OHV) enthusiasts to officially affirm our commitment to continuing to allow mixed use on county maintained non-paved roads per the letter from the California Highway Patrol to your agency dated December 19th, 2007. Many Lassen County dirt and gravel roads provide access to National Forest System (NFS) roads within the Lassen National Forest. Maintaining a consistent policy direction as to what types of vehicles may utilize these roads is in the best interest of both of our organizations.

The public has safely used county roads for decades to access NFS roads with off-highway vehicles. The route designation process should integrate both the County's and Forest Service's road management objectives to provide a seamless transportation system to the recreating public. With this goal in mind, we would like to know what direction you are providing Forest Supervisors to ensure reasonable and appropriate OHV access to national forest land.

On December 19, 2007, you received a letter from Department of California Highway Patrol (CHP) then Deputy Commissioner J. A. Farrow regarding mixed use on Forest Service maintenance level (ML) 3 roads. The Deputy Commissioner stated:

"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."

In his January 26, 2005 letter to former CHP Commissioner Michael Brown, former Regional Forester Jack Blackwell wrote:

"We would appreciate your opinion on whether Forest Service Level 3 and 4 maintenance roads are considered highways under the California Vehicle Code."

CHP's December 19, 2007 letter to you and the Forest Supervisors only addressed ML 3 roads and did not mention unpaved ML 4 roads. Clearly, the CHP is not concerned about maintenance level designations (as indicated in their letter of December 19, 2007), but is applying the exemption of California Vehicle Code section 38001 based on the condition of the road surface, and does not consider "gravel or other dirt or unpaved roads" to be highways.

This Board believes all NFS unpaved roads, regardless of maintenance level, are exempt from the definition of a "highway" under Section 38001 of the VC. The majority of these roads was constructed as logging or service roads and would be considered roughly graded roads by a prudent driver. In addition, "combined use" regulations under Section 38026 VC do not apply to these unpaved roadways. Under this interpretation, the Forest Service may designate any unpaved NFS road for mixed use. Restricting mixed use on these roads should be made on a case-by-case basis, and not because they are considered "highways" under the VC.

Prohibitions on OHV travel on unpaved NFS roads are inconsistent with this Board's desire to provide OHV recreation opportunities in the national forests on existing, maintained roads. The public, and even Forest Service employees, can not tell whether they are driving on an unpaved ML 3 or ML 4 road. They can, however, differentiate between a paved and an unpaved road.

We would appreciate knowing if you consider unpaved NFS ML 3 and ML 4 passenger car roads to be "highways" and subject to Section 38026 VC. If so, what criteria or parameters did you use to determine this? Please provide the Board with your justification and any supporting documentation.

I look forward to your reply.

Sincerely,

Jack Hanson, Chairman
Lassen County Board of Supervisors

Enclosures: CHP December 19, 2007 letter
Regional Forester Jack Blackwell's January 26, 2005 letter

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