

Recreation Outdoors Coalition

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December 19, 2008

Travel Management Team
Tahoe National Forest
631 Coyote Street
Nevada City, CA 95959
Attn: David Arrasmith

Re: Comments on the Tahoe National Forest Draft Environmental Impact Statement for Motorized Travel Management

Dear Travel Management Team:

Thank you for the opportunity to comment on the Tahoe National Forest Draft Environmental Impact Statement (DEIS) for Motorized Travel Management. The Recreation Outdoors Coalition (ROC) is a non-profit 501(c)3 organization that supports the interests of both motorized and non-motorized recreation groups in the north State. We offer the following comments on the DEIS:

1) Motorized Mixed Use on Unpaved NFS Roads.

Forest Service Motorized Mixed Use Policy: The DEIS states all NFS passenger car roads (maintenance level or ML 3-5) are “highways” under the CVC and subject to the Highway Safety Act¹. The mixed use policy for the Pacific Southwest Region (Region 5) is inconsistent with the December 19, 2007 letter from the California Highway Patrol (CHP) and national direction for motorized mixed use analysis².

Unpaved national forest system (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.”

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

¹ DEIS, Volume III, Chapter 3, pages 569, 598. DEIS, Volume I, Summary, page 9.

² EM-7700-30, “Guidelines for Engineering Analysis of Motorized Mixed Use on National Forest System Roads”, and WO letter to the Regional Foresters, dated July 10, 2006.

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?

The State Off-highway Motor Vehicle Recreation (OHMVR) Division concurs with CHP’s interpretation; CVC 38026 only applies to paved highways³. ROC asserts OHV travel on unpaved county and NFS roads is legal.

The DEIS also states NFS passenger car roads are subject to the Highway Safety Act (HSA). Roads subject to the HSA have to meet certain safety standards as defined in FSM 7733.2 and FSH 7709.59. The HSA, however, does not prevent the Forest Service (FS) from designating these roads for travel by non-highway legal vehicles. Please remove references to the CVC and HSA in the FEIS as the reasons for prohibiting mixed use on passenger car roads.

Analysis of Motorized Mixed Use: According to FS and Region 5 policy⁴, the probability of a crash and severity of a crash must be evaluated when NFS roads are proposed for motorized mixed use. ROC has reviewed the engineering report for the DEIS and found only accident records from the American River Ranger District. Between 1993 and 2008, there were a total of four mixed use accidents or crashes on that District. There have been no documented mixed use accidents on the Klamath, Lassen, and Shasta-Trinity National Forests. There is very little information in the engineering report about these four accidents such as the road maintenance level, surface composition, estimated vehicle speed, road design speed, traffic volume, weather, and what mitigation measures could have reduced the probability or the severity of the crash.

There is no information in the DEIS about the number of ML 3-5 roads and miles that are currently used by non-highway legal vehicles. Please include this in the FEIS, Volume III, Chapter 3 under the Recreation and Scenic Values section, and discuss the effects each alternative will have.

Unpaved ML 3-5 passenger car roads on the TNF 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 can not be mitigated.

The TNF DEIS is proposing to designate 65 ML 3-5 passenger car roads for motorized mixed use⁵. We note many of these roads (approximately 50 percent) are greater than three miles in length. If Region 5 and the TNF consider these roads to be “highways” and subject to CVC, then combined use requirements in CVC 38026 apply.

³ Personal discussion with Tom Bernardo, OHMVR Division, 12/10/08.

⁴ EM-7700-30, “Guidelines for Engineering Analysis of Motorized Mixed Use on National Forest System Roads” and R5 Regional Forester letters, dated August 21, 2006, June 20, 2007, and September 8, 2008.

⁵ From the “Tahoe National Forest Motorized Mixed Use Analysis of National Forest System Roads – 2008”, pages are not numbered.

The proper term to allow both non-highway legal vehicles and highway legal vehicles to operate on the same roadway is “combined use” under the CVC. Please explain in the FEIS how the TNF 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 far greater than three miles in conflict with CVC 38026. It appears the TNF is applying as well as ignoring the CVC at its own discretion. This inconsistency is confusing to the public.

The TNF’s motorized mixed use analysis lacks evaluation criteria that would take the subjectivity out of the analysis. Standardized criteria should apply to all TNF roads. See ROC’s template for “Traffic Engineer Shared Use Assessment” in Exhibit 1 and the criteria used to evaluate the probability and severity of a crash on 75 miles of ML 3 and 4 roads on the Lassen NF in 2005. ROC sent the attached template to the Regional Forester as an example for conducting mixed use analyses.

See Exhibit 2 for our assessment of the 0085 Rattlesnake Road. For this particular road, the road’s average speed and posted speed limit is 15 mph. Traffic volume is less than 25 ADT on weekdays (no estimate was provided for weekend days). These two criteria indicate a low probability and low severity of an accident using the same benchmarks from ROC’s template.

ROC agrees the FS should not mix non-highway legal vehicles with commercial traffic. The TNF could mitigate the crash risk when there is commercial traffic on the road by temporarily prohibiting OHV use during log haul. This mitigation is not mentioned. Page 4 in the TNF’s Motorized Mixed Use Analysis for the 0085 road lists several other mitigation measures, but states: “With these mitigations, the probability of a crash remains moderate and the severity of crashes would remain high.” Under the “Conclusion” section of the Analysis for the 0085 road, it says: “Mitigations would reduce several of the factors attributed to the probability of a crash and could reduce the severity of a crash. These mitigations can be implemented without changing the serviceability of the road for highway legal vehicles or negatively affecting environmental considerations.”

EM-7700-30 states: “Generally, mitigation is necessary for road segments with high probability and high severity of crashes and for roads with low probability and high severity of crashes” (page 6).

0085 road mitigations include: improving sight distance, placement of road signs advising of mixed use, permitting the road surface to deteriorate to reduce speed, and having more law enforcement (visitor contacts, compliance checks, operator education, and citations).

The Preferred Alternative for the TNF DEIS, does not propose the 0085 road for mixed use due to a final rating showing a high accident probability and high accident severity.⁶ See also Appendix P.⁷ The TNF does not have accurate data on traffic volume, vehicle class or speed – just estimates are given. No evaluation criteria or

⁶ DEIS, Volume IV, Appendix S, page S-3

⁷ DEIS, Volume IV, Appendix P, page P-11.

benchmarks are presented to determine why the probability or severity of a crash is rated high. There should be some agreed benchmarks to objectively rate each ML 3-5 road proposed for mixed use such as the ones ROC used in 2005.

The DEIS say the 0085 road is consistent with the CVC since the FS considers NFS passenger car roads to be “highways.”⁸ The route is 11 miles long. This length is well beyond the three mile maximum under CVC 38026.

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 NFS 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, snow boarding, 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 this 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 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 see if State safety requirements for minors need to be strengthened.

2) Motorized Mixed Use on Other Public Roads Through the Tahoe National Forest.

There are many miles of other public roads displayed on your alternative maps, some of which may be unpaved county roads. Please display these roads by jurisdiction and road surfacing (if available) on the maps accompanying the Final Environmental Impact Statement.

There is no information in the DEIS to determine if TNF staff met with the county staff to provide an interconnected transportation system for non-highway legal vehicles (OHVs) using unpaved county roads. “Although, all of the counties acknowledge combined use is occurring on their roads within the Tahoe NF.”⁹ This coordination needs to occur.

ROC is requesting County Boards of Supervisors consider authorizing OHV travel on all unpaved county roads into and through the TNF unless an exception exists for some road segments due to public safety, resource concerns, user conflicts or other considerations that can not be mitigated. If County Boards choose to designate mixed

⁸ DEIS, Volume IV, Appendix S, page S-3.

⁹ From the “Tahoe National Forest Motorized Mixed Use Analysis of National Forest System Roads – 2008”, pages are not numbered.

use on their unpaved roads, please review your designations to provide a seamless transportation system for the riding public. It would be imprudent for the Forest Service to prohibit mixed use on NFS passenger car roads if the counties allow it on their roads within the TNF.

3) Alternative 2 with Modification.

Alternative 2 is ROC's preferred alternative, but should include the same wet weather seasonal restrictions as Alternative 6. Please analyze this modification in the FEIS. A wet weather restriction on native surface (dirt) roads is a reasonable mitigation to reduce erosion and sedimentation, and lower road maintenance costs. However, the application of these restrictions should be based on objective criteria such as amount of rainfall in an area and drying time, not on specific dates. Please manage these restrictions similar to the firewood cutting program and base them on weather-related criteria.

In addition we would like to see seasonal wheeled vehicle restrictions on all groomed snowmobile trails to prevent rutting of the trails and enhance the safety of snowmobilers. We suggest a wheeled vehicle prohibition from December 25 to March 31. Designate ungroomed roads or trails where wheeled vehicles can travel over snow and the amount of snow depth required before they are open to this use. Display these routes on the TNF motor vehicle use map.

ROC supports the proposed open riding areas in Alternative 2 including vehicle travel on dry soils below the high water line at Boca, Prosser and Stampede Reservoirs. ROC has reviewed the impact of motor vehicle travel below the high water line on heritage resources. With the exception of a few heritage sites, the direct effect on heritage resources is minor. The more severe effects to these sites are not associated with motor vehicles, but with wave action, deflation and boating access. Those factors are having moderate to major effects on the heritage sites as compared to the minor effect resulting from motorized use.¹⁰ ROC agrees, heritage monitoring should continue at these sites, while still allowing continued access during low water levels.

The DEIS states there are major effects from motor vehicle travel at two sites and moderate effects at eight others.¹¹ ROC would like to see these effects mitigated through signing, barricading, road engineering or other appropriate measures to minimize impacts.

We note, too, the DEIS Biological Evaluation says the effects of the OHV open areas on greater sandhill cranes and Lahontan Lake tui chub are “. . . not likely to result in a trend toward federal listing or a loss of population viability within the planning area of the Tahoe NF.” No mitigations are recommended.¹²

Alternative 6 proposes approximately 100 acres for OHV open riding at Prosser Pits.¹³

¹⁰ DEIS, Volume III, page 484.

¹¹ DEIS, Volume III, page 483

¹² DEIS, Volume IV, Appendix L, pages L-2 and L-4

¹³ DEIS, Volume II, page 32.

Alternative 2 offers 2,700 acres of open riding areas¹⁴. The proposed reduction in open areas under Alternative 6 closes 97 percent of these acres. Well established, existing use will be displaced to one, significantly smaller area resulting in over crowding, a higher probability of user conflicts or accidents, and a lesser quality experience. There is no visitor use data to know how many visitors will be affected by the proposed closures. There is insufficient discussion of the environmental and social consequences in the DEIS to explain the need for OHV area closures.¹⁵ If motor vehicle use had been a concern in the past, the TNF should have taken appropriate steps to mitigate it before it became an accepted practice.

4) Environmental Consequences Among the Alternatives.

With the addition of wet weather seasonal restrictions in Alternative 2, ROC noted the environmental consequences between Alternatives 2 and 6 would be very similar. With this in mind, Alternative 2 offers more miles of existing roads open to all vehicles, better connectivity, and 2,700 acres of OHV open riding areas. Alternative 6 will not serve the public well with the loss of open OHV areas and fewer roads open to all vehicles.

5) Undesignated Routes.

The TNF's April 11, 2007 Notice of Intent states there are 2,500 miles of unauthorized routes. The DEIS says there are a total of 1,388.9 miles of unauthorized routes¹⁶. What happened to approximately 1,100 miles of these routes?

The DEIS states the disposition of unauthorized roads and trails fell into two categories: a) routes that were brought forward for detailed study in an alternative(s); and b) routes that were eliminated from detailed study¹⁷. There is no information in the DEIS for us to know why routes were dropped from further consideration. Please include this information in the FEIS by each route's identification number and legal description. It would be helpful to have a map of undesignated routes in the FEIS map packet. In the future, some of these routes may be designated and a public record of their location is important.

6) Affordability Analysis and Road Maintenance Levels.

ROC is concerned about the Agency's liability due to the lack of maintenance of NFS roads. The DEIS states the TNF has approximately \$115,000,000 in deferred road maintenance.¹⁸ The TNF's annual road maintenance budget has mostly decreased over the last five years and increases are very unlikely in the future with current federal budget deficits. In recent years, the TNF's annual road maintenance budgets have not been sufficient to maintain the entire road system to standard.¹⁹

¹⁴ DEIS, Volume II, page 21.

¹⁵ DEIS, Volume III, page 584.

¹⁶ DEIS, Volume III, page 572; DEIS, Volume I, page 2.

¹⁷ DEIS, Volume III, page 25.

¹⁸ DEIS, Volume III, page 601.

¹⁹ DEIS, Volume III, pages 598-599.

ROC has documented and photographed numerous locations where the agency is not maintaining NFS roads to FS road maintenance standards. This lack of maintenance is evidenced by encroaching brush along road sides, lack of ditch and culvert cleaning, washouts, rock and tree hazards on roads, obscured sight distance on curves that prevent you from seeing approaching vehicles, deteriorating asphalt, and lack of road signing, etc. The Agency has ignored its own exposure to lawsuits/tort claims and risk on inadequately maintained roads that do not comply with its own standards.

Table 3.08-1 displays the average costs for annual road maintenance. The cost to maintain a passenger car road (ML 3-5) is almost 5 times the amount to maintain a ML 2, high clearance road (\$26,081 vs. \$5,772 respectively).²⁰ All alternatives require over \$22 million annually to maintain the TNF's road system.²¹

Under Alternative 2, 481 miles of passenger car roads are "approved" for mixed use to provide links to ML 2 roads and OHV trails, and opportunities for long distance touring.²² However, given the TNF's limited road maintenance budget, ROC recommends the Forest Service consider re-assigning more ML 3-5 roads to "objective" ML 2 roads.

There is no information in the DEIS regarding the vehicle classes currently using your passenger car roads. There is no information on the current "operational maintenance level" of these passenger car roads. During a traffic study ROC did on the Lassen National Forest on 75 miles of ML 3-5 roads, we found only 10 percent of the traffic was passenger car. Ninety percent was high clearance vehicles or OHVs. ROC asserts "prudent drivers in standard passenger cars" with P-rated tires almost always stay on paved roads.

The primary vehicle class using NFS roads should drive the assignment of "objective" road maintenance levels and not vice versa. It makes little sense to maintain roads to a higher ML if passenger cars are a minor component of the use. Unless the TNF knows the percent of passenger car traffic on NFS roads, the need to maintain 213 to 632 miles of passenger cars (among the different alternatives) is not justified. If the TNF needs to temporarily upgrade the "operational" maintenance level of a road for commercial haul or other purpose, do it at that time and then drop back to the lower ML to reduce your maintenance costs.

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

7) Parking, Big Game Retrieval, and Dispersed Camping Off Roads.

The DEIS does not discuss parking, big game retrieval or dispersed camping off designated roads, trails or areas under any of the action alternatives. Please modify

²⁰ DEIS, Volume III, page 598.

²¹ DEIS, Volume III, page 604.

²² DEIS, Volume III, page 583

some of the alternatives and analyze these activities 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.

ROC recommends continued access to all historically used dispersed campsites. At some campsites, please consider designating an area for vehicle parking to protect riparian areas, meadows or other sensitive resources.

ROC recommends dispersed camping be permitted within 100 feet of a designated road, trail or OHV area when it does not cause damage to national forest resources or facilities. (See FSM 7715.74 and FSM 7716.13.) Monitor impacts to see if access needs to be modified in some areas.

ROC also recommends the TNF seasonally allow cross-country travel 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. Vehicle operators causing damage to national forest resources can be cited.

Again, thank you for the opportunity to submit our comments. We would be happy to discuss these comments with you at any time. I would appreciate a hard copy of the FEIS when it is issued.

Sincerely

/s/ Sylvia Milligan

SYLVIA MILLIGAN
Chair, Recreation Outdoors Coalition

Enclosures:

Exhibit 1 – ROC Traffic Engineer Shared Use Assessment Form
Exhibit 2 - ROC Assessment of the Tahoe NF Engineering Analysis for
Motorized Mixed Use

cc:

Gregg Mumm, BlueRibbon Coalition
Don Amador, BlueRibbon Coalition
Dave Pickett, American Motorcyclist Association
Don Spuhler, Don Klusman, and John Stewart, California Association of 4 Wheel Drive Clubs, Inc.
Amy Granat, California Off-road Vehicle Association
Robert Reed, California League of Off Road Voters
Fred Wiley, Off Road Business Association
Tom Crimmins, National Off-highway Vehicle Conservation Council

Paul A. Turcke, Moore Smith Buxton and Turcke, Chartered
Daphne Greene and Phil Jenkins, State of California OHMVR Division
Alpine County Board of Supervisors
Nevada County Board of Supervisors
Sierra County Board of Supervisors