



Promoting opportunities for quality, human-powered winter recreation and protecting winter wildlands

Russell Hays, Supervisor  
Lassen National Forest  
2550 Riverside Drive  
Susanville, CA 96130

March 10, 2016

Re: Comments on Lassen OSV Designation

Dear Supervisor Hays:

This letter sets forth the comments of Snowlands Network and Winter Wildlands Alliance on the Draft Environmental Impact Statement for the Lassen National Forest Over-Snow Vehicle (OSV) Use Designation, issued January 25, 2016. We appreciate the time and effort you have spent on this project.

Snowlands Network is a membership-based organization that advocates for nonmotorized backcountry winter recreation. Snowlands' members often visit Lassen National Forest (LNF) in the winter seeking opportunities for clean and quiet recreation. Winter Wildlands Alliance (WWA) is a national non-profit organization dedicated to promoting and preserving winter wildlands, and a quality human-powered snowsports experience on public lands. WWA represents over 50,000 members and 35 grassroots partner organizations in 11 states, including Snowlands Network and Friends of Plumas Wilderness in Northern California. WWA's members visit the LNF for Nordic and backcountry skiing, snowshoeing and winter hiking. Members of both organizations will be significantly affected by the OSV Use Designation decision.

Snowlands Network and Winter Wildlands Alliance, together with the Center for Biological Diversity, were plaintiffs in one of the lawsuits that instigated the OSV planning effort, and as part of the settlement of that lawsuit obtained the right in the Settlement Agreement to submit an alternative to be considered in the analysis. Our alternative was submitted after careful consideration of the impacts to motorized recreation. We made a substantial effort to propose a reasonable alternative that allows extensive OSV recreation to continue while reducing recreational conflicts, significantly improving nonmotorized recreation opportunity, and providing enhanced protection for the environment. We presented our proposal to representatives from the OSV community and representatives of California State Parks (who provides funds for the grooming of OSV trails.) These representatives acknowledged our interests and appeared willing to accept the limited new restrictions we proposed. Our proposal has been substantially incorporated in the DEIS analysis as Alternative 3.

Alternative 3 provides a reasonable and balanced proscription for winter travel management that acknowledges all types of recreation, provides enhanced protection to the environment, and is most likely to enhance overall tourism revenues to the benefit of local communities. We urge the Forest Service to adopt Alternative 3, with the modifications we describe below, as its Preferred Alternative and Final Action.

However, in the Environmental Impact Statement (EIS) the Forest Service is required to show how each specific route and area designated for OSV use has been selected to minimize damage to natural resources, minimize conflicts with other uses (including non-motorized recreation), and minimize impacts to wildlife and wildlife habitat. This draft EIS (DEIS) doesn't show how the open areas, or designated routes, in each Alternative are located in a manner that minimizes the impacts listed above. The EIS must show how route and area designations are in compliance with the minimization criteria and OSV Rule. This may result in a further narrowing of the areas designated for OSV use in Alternative 3. Our more detailed comments follow:

1. The DEIS Does Not Apply the Minimization Criteria

While the LNF acknowledges the minimization criteria in the DEIS, it fails to explain how any of the alternatives apply or meet the minimization criteria.<sup>1</sup> The minimization criteria were initially referenced in Executive Order No. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972), as amended by Executive Order No. 11989, 42 Fed. Reg. 26959 (May 24, 1977). They require the Forest Service, when designating routes and areas open to motorized travel, to: 1) minimize damage to soil, watershed, vegetation, or other resources of the public lands; 2) minimize harassment of wildlife or significant disruption of wildlife habitats; and 3) minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands. These minimization criteria were codified in the 2005 Travel Management Rule, as amended by the 2015 Over-Snow Vehicle Rule.

The OSV Rule requires each National Forest unit with adequate snowfall to designate and display on an OSV use map a system of areas and routes where OSVs are permitted to travel; OSV use outside the designated system is prohibited.<sup>2</sup> Thus, rather than allowing OSV use largely by default wherever that use is not specifically prohibited, the rule changes the paradigm to a “closed unless designated open” management regime. This paradigm shift entails significant changes in how snowmobiles are managed on National Forest lands. Forests must apply and implement the minimization criteria when *designating* each area and trail where OSV use is permitted,<sup>3</sup> not as a means of justifying

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<sup>1</sup> See DEIS at p. 60 (Desired Condition), p. 119 (bare reference to Executive Orders that require minimization of conflicts), p. 121 *et seq.*

<sup>2</sup> 36 C.F.R. §§ 212.81, 261.14.

<sup>3</sup> 36 C.F.R. §§ 212.81(d), 212.55(b).

existing management. Any areas where cross-country OSV use is permitted must be “discrete, specifically delineated space[s] that [are] smaller . . . than a Ranger District” and *located* to minimize resource damage and conflicts with other recreational uses.<sup>4</sup> The minimization criteria must come first, followed by drawing lines on the map.

Application of the criteria requires the Forest Service to minimize impacts — not just identify or consider them — when designating areas or trails for OSV use, and to demonstrate in the administrative record how it did so. This duty was recently confirmed by the Ninth Circuit Court of Appeals in *WildEarth Guardians v. U.S. Forest Service*<sup>5</sup> in which the Court held that the agency must “apply the minimization criteria to each area it designated for snowmobile use” and “provide a more granular minimization analysis to fulfill the objectives of Executive Order 11644, which the [Travel Management Rule] was designed to implement.” More specifically, the Court held that “mere ‘consideration’ of the minimization criteria is not enough.” The Forest Service must show not just that impacts have been studied, but specifically demonstrate how effective each of the Alternatives presented in the DEIS is in minimizing impacts from OSVs. As one of the first forests to implement the new OSV rule, it is critical that the LNF properly apply the minimization criteria. Unfortunately this DEIS appears to have the same legal defects as the Beaverhead-Deerlodge EIS that was invalidated in the *WildEarth Guardians* decision—that is, assuming that an overall reduction in acreage open to OSVs across the forest will satisfy the minimization criteria. The Ninth Circuit explicitly rejected this approach.<sup>6</sup>

Under the OSV Rule, the LNF is also required to designate discrete areas as open to OSV cross-country travel. These areas must be smaller than a ranger district, and areas that are not specifically designated as open are closed to OSV use. However, the DEIS states that designated OSV areas on the LNF will be “located in any part of the Lassen National Forest where OSVs are not otherwise prohibited.”<sup>7</sup> Not only is this approach in direct contrast to the “closed unless designated open” framework set forth by the OSV Rule, it does not lead to area designations that are “discrete,” “specifically delineated,” and “smaller . . . than a ranger district.”<sup>8</sup> Rather than identify and delineate discrete open areas, the LNF has proposed to designate over 80% of the forest as open to OSVs.<sup>9</sup>

Common sense instructs the Forest Service not to designate areas or routes for motorized recreation in places where there is no demand or need. The DEIS repeatedly notes that most OSV use in the LNF is on groomed OSV routes and

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<sup>4</sup> 36 C.F.R. §§ 212.1, 212.81(d), 212.55(b).

<sup>5</sup> *WildEarth Guardians v. U.S. Forest Service*, 790 F.3d 920 (9th Cir. 2015).

<sup>6</sup> *Id.* at 930-31 (Forest Service is not allowed “to designate multiple areas for snowmobile use on the basis of a single forest-wide analysis and general decisionmaking principles.”)

<sup>7</sup> DEIS, p. 18.

<sup>8</sup> Definition of “area” at 36 C.F.R. § 212.1.

<sup>9</sup> DEIS at p. v.

that there is little-to-no use of OSVs more than 1.5 miles from an OSV trail.<sup>10</sup> Accordingly, there appears to be little reason for the LNF to designate the vast majority of the forest as open to OSVs, in particular when the LNF acknowledges that closing a particular area will provide a benefit to nonmotorized users. It appears that the LNF has elected to designate areas as open to OSVs on its own confidence that OSV use will nevertheless be extremely limited or non-existent beyond the designated route system. Such rationale is contrary to the minimization criteria and the winter travel management rule, which require designation of areas as open to OSVs only where and when appropriate.

Finally, the DEIS fails to consider how current management – much of which would be carried forward in Alternatives 1, 2 and 4 – has led to conflict between uses. Minimization of this conflict is a key component of the OSV Rule. For example, OSV use on and around the cross-country ski trails has created conflict between motorized use and non-motorized use in the McGowan area. Likewise, allowing OSV use in areas adjacent to Lassen National Park and the Caribou Wilderness has led to motorized incursions into each of these areas – a conflict between motorized use and other management uses on these lands.<sup>11</sup> The DEIS states that each Alternative includes groomed trails within one-quarter mile of Wilderness and Proposed Wilderness boundaries but does not describe how the location of these particular trails impacts these designated areas, nor does it provide any explanation of how these trails have, or could, be located to minimize impacts. Likewise, the DEIS provides no discussion of how designated OSV use areas bordering Lassen National Park, designated Wilderness, Proposed Wilderness, or other areas with non-motorized designations will impact these areas, or how the boundaries of OSV use areas have been located to minimize impacts to other land management uses or recreational uses.

To properly apply the minimization criteria and meet the requirements of the OSV Rule, we suggest that the Forest Service take the following approach, and document each step in the FEIS:

1. Identify those areas where OSV use is prohibited<sup>12</sup>; cannot occur due to physical limitations<sup>13</sup>; and areas which are closed to motorized vehicles under the governing Forest Plan documents; as well as areas where OSV use is clearly incompatible with existing uses, such as administrative areas, operating campgrounds, and areas leased for other uses.
2. Identify areas where OSVs must be prohibited in order to meet the minimization criteria - including areas where this is conflict with non-

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<sup>10</sup> *Id.* at p. 166.

<sup>11</sup> See for example,

[http://www.nps.gov/lavo/learn/news/nr09\\_snowmobile\\_riders\\_in\\_wilderness.htm](http://www.nps.gov/lavo/learn/news/nr09_snowmobile_riders_in_wilderness.htm), Lassen National Park press release describing illegal OSV use within the Park, which causes “significant intrusion to the beauty, peace and solitude for which the park was established to protect.”

<sup>12</sup> Such as designated Wilderness areas

<sup>13</sup> Such as cliffs, thickly-treed forests, etc.

motorized winter recreation<sup>14</sup> and other areas where OSV use should not be allowed due to resource concerns.<sup>15</sup>

3. Determine where there is a demand for designated trails. If there is a demand for designated trails within the areas identified above, determine whether it is possible to locate trails in a manner that minimizes impacts, or locate trails outside of the areas identified above.
4. Determine appropriate boundaries for OSV open areas outside of the areas identified above. Locate open areas where there is a demand for OSV use and define boundaries based on identifiable features such as ridgelines, roads and rivers. All OSV use areas should have at least one public access point from an established and plowed parking area.

## 2. The DEIS Does Not Consider a Full Range Of Alternatives

The DEIS does not consider a full range of alternatives. Regardless of whether it is referred to as a “no action” or “baseline” or “nonmotorized emphasis” alternative, the EIS should include an alternative under which no areas or routes would be designated as open to recreational OSV use, or at least an alternative that considers a scenario where OSV use is restricted comparable to current restrictions on wheeled vehicle use.<sup>16</sup> This alternative is necessary to provide an accurate comparison for analysis of the impacts associated with all of the area and route designations made in this winter travel plan—including those allowing continued OSV travel on existing routes. Unlike in a typical NEPA analysis where the no action alternative provides the baseline for comparison, the no action alternative for most winter travel planning efforts reflects a current management status quo that is contrary to the Forest Service regulations requiring a closed unless designated open regime.

This lack of baseline is similar to the situation in *Western Watersheds Project v. Abbey*, in which the Ninth Circuit overturned a BLM NEPA analysis that failed to analyze an alternative that would eliminate grazing in the Upper Missouri River Breaks National Monument.<sup>17</sup> Where both the no action and action alternatives permitted continued grazing, the court found the agency was “operating with limited information on grazing impacts,” in violation of NEPA.<sup>18</sup> Likewise, in *New Mexico ex rel. Richardson v. Bureau of Land Management* the Tenth Circuit invalidated a NEPA analysis that failed to analyze an alternative that would close the entire area to oil and gas development because, “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public

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<sup>14</sup> As described in the Alternative submitted by Snowlands and WWA and included in Alternative 3

<sup>15</sup> Areas such as crucial winter range or other important wildlife habitat, steep slopes prone to erosion, low-elevation areas that do not receive sufficient snow, etc.

<sup>16</sup> Specifically authorized or permitted OSV uses to, for example, access valid existing rights would still be allowed. See 36 C.F.R. § 212.81(a) (describing exempted uses).

<sup>17</sup> *Western Watersheds Project v. Abbey*, 719 F.3d 1035 (9th Cir. 2013).

<sup>18</sup> *Id.* at 1050-53.

involvement would be greatly degraded.”<sup>19</sup> Here, an alternative that designates no areas or routes for OSV use is necessary to facilitate a fully-informed decision regarding the impacts of each action alternative.

While we are not suggesting that the LNF must adopt such a restrictive alternative, consideration of such an alternative is necessary for a robust analysis. Both Alternatives 3 and 4 present alternatives that purport to present a fair balance of motorized use consistent with other objectives, rather than presenting an alternative that disfavors motorized recreation. For instance, under none of the alternatives considered would the LNF designate less than 76%<sup>20</sup> of the forest as open to cross-country motorized travel or less than 324 miles of groomed OSV trails. Thus, the LNF has not fulfilled its obligations under either NEPA or the Forest Service winter travel management rule. The requirement to consider a full range of alternatives is also set forth in the Settlement Agreement, and thus the LNF has also failed to fulfill its obligations under the Settlement Agreement. As the DEIS is currently written, there are very few differences between alternatives, as is evidenced in the various tables throughout the DEIS where one is supposed to be able to compare how each alternative affects different resources. In almost every table each column is identical, making a comparison between alternatives, or robust analysis of any single alternative, nearly impossible.

An alternative that truly favors nonmotorized recreation could be similar to the LNF’s current restrictions on wheeled vehicle use: it would designate specific routes for OSV travel that do not interfere with nonmotorized recreation, and would designate extremely limited areas where OSV travel is permitted cross-country. Such alternative might have strong reasons for adoption as the preferred alternative and, moreover, would demonstrate that Alternate 3, in fact, strikes a fair balance between over-snow motorized and nonmotorized recreation.

In most forests across the country, including on the LNF, cross-country OSV travel has been allowed by default across vast portions of the national forests, with the associated impacts never being subjected to a thorough NEPA analysis or application of the minimization criteria. The NEPA analysis for the travel plan must analyze – and minimize – the impacts of designations that allow continued OSV travel in those areas. Similarly, the Forest Service must analyze and minimize impacts associated with designating existing OSV routes that have not previously been subject to NEPA or the minimization criteria. To facilitate this required analysis and comply with NEPA, the EIS must include an alternative under which few, if any, areas and limited routes would be designated as open to recreational OSV use.

### 3. Alternative 3 is the Alternative Best Supported by the Analysis in the DEIS

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<sup>19</sup> *New Mexico ex rel. Richardson v. Bureau of Land Management* 565 F.3d 683, 708-11 (10th Cir. 2009).

<sup>20</sup> 878,690 of 1,150,020 acres.

Alternative 3 meets the desired conditions better than the other alternatives because it best addresses the needs of nonmotorized users and provides enhanced protection to the environment without significantly impacting nonmotorized recreation. Throughout the DEIS, the LNF acknowledges the impacts of OSV recreation, the incompatibility of OSV recreation with nonmotorized recreation, the importance of nonmotorized recreation,<sup>21</sup> and the resulting importance of confining OSV impacts so that nonmotorized recreationists can obtain the experiences they seek.<sup>22</sup> The DEIS acknowledges that the additional closures included in Alternative 3 would improve recreation opportunity for nonmotorized winter recreation users<sup>23</sup> with no recognized impact to the recreational experience of motorized users.<sup>24</sup> The DEIS also concludes that the closures included in Alternative 3 will not result in a negative socioeconomic impact<sup>25</sup> and will not reduce snowmobile tourism or overall recreation opportunity. On the contrary, Snowlands and WWA believe that the additional restrictions included in Alternative 3, by significantly increasing nonmotorized recreation opportunity, will provide *increased* socioeconomic benefits, given current trends in recreation demand.<sup>26</sup>

The DEIS notes that the great majority of OSV recreation on the forest is on the designated OSV trails, and Alternative 3 does not close any of these trails. The additional restrictions imposed by Alternative 3 are important to nonmotorized recreationists and relatively unimportant to motorized recreation opportunity. Other than the brief statement that the proposed Alternative 3 closures reduce motorized recreation opportunity to “some extent,” the DEIS does not indicate a single respect in which keeping these areas open is important to motorized recreation opportunity. These areas do not provide access to any destination terrain; the recreation opportunity they could provide motorized users is readily available at other locations throughout the forest without overcrowding. Thus, Alternative 3 clearly meets the mandate to minimize conflicts between uses better than the other alternatives, including the Proposed Action.

On the face of the analysis in the DEIS, Alternative 3 is preferable in several significant respects to Alternatives 1, 2, and 4.

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<sup>21</sup> National Visitor Use Monitoring data indicate that demand for just one type of nonmotorized winter recreation – cross-country skiing – has in the past substantially exceeded demand for snowmobiling. See DEIS at p. 129. These numbers do not appear to include the types of nonmotorized winter recreation that are seeing the most dramatic growth in recent years: snowshoeing and backcountry alpine skiing.

<sup>22</sup> *Id.* at pp. 9, 119-120.

<sup>23</sup> See, e.g., *id.* at p. 138.

<sup>24</sup> The DEIS acknowledges that the additional restrictions might impact OSV recreation “to some extent,” but that there will be no significant change to overall OSV recreation. As is evident from Table S-3 of the DEIS, Alternative 3 provides substantially the same motorized recreation opportunity as Alternative 2.

<sup>25</sup> DEIS at pp. 377, 380.

<sup>26</sup> See Snowlands/WWA comments.

a. Alternative 1

The Forest Service must reject Alternative 1 as it does not comply with the purpose and need of this project, nor does it comply with the OSV Rule.<sup>27</sup>

b. Alternative 2 (The Proposed Action)

Alternative 2 fails to comply with the OSV Rule: it does nothing to minimize conflicts between uses, nor does it adequately meet the other aspects of the minimization criteria.

While we appreciate that Alternative 2 would prohibit OSV use in areas of the forest that do not see substantial or consistent snowfall (areas below 3,500 feet) and would bring management of the Black Mountain Research Natural Area in line with the Forest Plan, Alternative 2 does not create a single area readily accessed from a winter trailhead where nonmotorized recreationists seeking a clean and quiet experience can recreate free from the impacts of OSVs. Instead, Alternative 2 continues to allow OSV recreation in areas of the LNF that have long been established for nonmotorized use. These areas – most significantly the McGowan and Colby areas, but also the area around the Bizz Johnson trail and the shoreline ski trails on Lakes Almanor and Eagle – contain trails that themselves are closed to OSVs, in recognition of the history and continuing importance of Nordic recreation in these areas. Indeed, the local OSV community largely (though not entirely) respects the nonmotorized nature of these areas. But the fact that some motorized users voluntarily avoid an area out of respect for nonmotorized users is not a reason to designate the area as open to OSVs—in fact, it argues for the opposite.

The DEIS discussion of OSV impacts makes clear that mere prohibition of OSVs from ski trails is not sufficient to mitigate most OSV impacts, including, noise, emissions, and disproportionate consumption of powder snow. The LNF has not stated a single reason why OSV recreation (beyond travel on the designated OSV routes provided by Alternative 3) should continue to be permitted in these areas that are cherished by local cross-country skiers and visitors seeking a clean and quiet recreation experience. It is clear from the DEIS that permitting OSV use within these areas would fail to meet the Forest Service’s substantive duty to minimize conflict between uses.

Alternative 2 fails to meet the purpose of the OSV Rule and does not comply with the Rule’s requirements. The Forest Service must not adopt Alternative 2 as the Preferred Alternative.

c. Alternative 4

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<sup>27</sup> DEIS at p. 13.

While we appreciate that Alternative 4 would limit motorized use within the McGowan cross-country ski area, many other elements of Alternative 4 make this alternative untenable. As with Alternative 2, Alternative 4 continues to allow OSV use across the vast majority of the LNF with little regard for how this use may impact other uses, natural resources, or wildlife. Indeed, even the McGowan closure area would be undermined by the designation of a new OSV route within the area. The DEIS gives no reason for why this dead-end route surrounded by a non-motorized area should be designated. The DEIS also fails to describe how the location of this route meets the minimization criteria. Likewise, the DEIS does not explain why Alternative 4 would allow OSV use below 3,500 feet nor does it provide any explanation for how any of the OSV use areas have been located to meet the minimization criteria. The Forest Service must designate OSV use areas based on these criteria, and not just allow OSV use everywhere except where expressly prohibited<sup>28</sup>— to do otherwise is in direct contravention of the OSV Rule.<sup>29</sup>

#### 4. The LNF Must Outline Strict Conditions Under Which OSV Travel on Designated Routes With Fewer Than 6 Inches of Snow May Occur

While we understand the Forest Service's rationale for allowing OSV travel on designated routes when there are 6 or more inches of snow, versus the 12 or more inches required for OSV travel otherwise, we have concerns with this management approach. The DEIS goes into great detail describing the many impacts that OSVs may have on forest resources without sufficient snowpack to protect these resources. In addition, DEIS is clear in explaining that 6 inches of snow is insufficient for resource protection.<sup>30</sup> Yet, the Forest Service is proposing to allow OSV use when there is just 6 inches of snow on designated routes. Given the Forest Service's limited enforcement resources, it will be impossible to patrol all of the designated routes to ensure that users are not venturing off these routes and into areas with insufficient snow. If the LNF wishes to allow OSV use on designated routes with fewer than 12 inches of snow in order to allow users to access higher-elevation areas with sufficient snow, the Forest Service must provide strict guidance on where this use is appropriate. We believe the approach described in Alternative 3 – where OSV use on roads with at least 6 inches of snow would be allowed on limited bases on specific, identified routes, as long as this use does not cause visible damage to the underlying surface and can be readily enforced<sup>31</sup> – is the only feasible way that the LNF will be able to allow OSV use during times of insufficient snow *and* minimize impacts to water quality, soils, vegetation, and wildlife habitat.

#### 5. Protection of the Pacific Crest Trail is Inadequate in this DEIS

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<sup>28</sup> See DEIS at p. 18.

<sup>29</sup> This criticism, as noted previously, applies to the entire DEIS.

<sup>30</sup> DEIS at p. 35

<sup>31</sup> DEIS at p. 22.

We support the LNF's proposal to designate OSV crossings on the Pacific Crest Trail to be consistent with the crossings identified for summer motorized use. However, we believe the Forest Service must do more to limit OSV impacts to this nationally-significant non-motorized trail.<sup>32</sup> Allowing OSV use up to the very edge of the Pacific Crest Trail impacts recreational use on this trail in the same manner as OSV use in close proximity to other non-motorized trails, both with regard to the limited winter use and with regard to impacts to vegetation and soils. Although such impacts may be minimal, even minimal impacts adversely impact the intended environment of the PCT. In order to minimize these impacts the Forest Service cannot allow OSV use up to the very edge of the PCT. Boundaries of OSV use areas should be drawn to avoid the Pacific Crest Trail. We suggest a ¼ mile non-motorized buffer on either side of the trail, with adjustments to accommodate local topography. The Forest Service should work with the Pacific Crest Trail Association to determine this buffer.

We believe the best way for the Forest Service to meet the non-motorized mandate of Pacific Crest Trail, and thus satisfy the travel planning requirement to minimize conflicts between OSV use and recreational uses of the same or neighboring federal lands, is to designate OSV use areas that do not border the trail except in those limited places with designated crossing points. Again, just as we have emphasized elsewhere in these comments, the Forest Service must apply the minimization criteria *first* and then determine the boundaries of appropriate OSV use areas.

6. The LNF Winter Travel Management Plan Must Provide for Effective Monitoring of Recreation Conflicts Resulting from Motorized Use

The proposed winter travel management plan contains inadequate provisions for monitoring for the effects of displacement of nonmotorized users.<sup>33</sup> The DEIS contains occasional references to monitoring of trailheads and groomed trail areas for user conflicts,<sup>34</sup> but this requirement must be incorporated into the more formal lists of monitoring actions.<sup>35</sup> We do appreciate that the monitoring plan includes monitoring of whether "OSV use restricted to designated routes is not encroaching outside the trail corridor" - this will be important if the preferred alternative includes areas where OSV travel is restricted to designated routes.

Formal monitoring actions should also include monitoring of recreation trends that impact recreation conflicts, including monitoring of the demand for nonmotorized and motorized recreation opportunity, and monitoring the relative extent of OSV impacts to nonmotorized users, through such trends as changes in

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<sup>32</sup> Per the minimization criteria requirement to minimize conflicts between motorized use and recreational uses of the same or neighboring public lands

<sup>33</sup> See DEIS at pp. 33, 162.

<sup>34</sup> *Id.* at p. 135.

<sup>35</sup> *Id.* at pp. 33, 162.

use levels, changes in types of machines (such as developments of new forms of OSVs which may have different or new impacts),<sup>36</sup> and changes in use patterns.

7. The DEIS Analysis Should Consider the Designation of Nonmotorized Trailheads and the Voluntary and Mandatory Impositions of BAT (Best Available Technology) Restrictions

The application of the minimization criteria is critical to the designation of routes and areas. One of such criteria is the minimization of recreational use conflicts, as between motorized and nonmotorized uses. Other criteria include minimizing impacts to wildlife and to air and water quality.

Designation of nonmotorized trailheads and imposition of BAT standards – both authorized by the rule<sup>37</sup> – are important techniques that allow minimization of conflicts and are thus entirely within the scope of the DEIS. Although the utilization of such techniques may not be necessary where OSV use is highly restricted, this is not the situation on the LNF. Designation of nonmotorized trailheads and BAT restrictions are thus important tools that may allow the LNF to leave more areas open to OSV use while meeting the minimization criteria. Although the LNF can choose whether to use these more creative management tools or rely on more restrictive techniques, their use is clearly within the purpose and scope of the project.

8. The DEIS Contains Misleading and Incomplete Statements

The multiple references in the DEIS to “approximately 148 miles of National Forest System trail closed to OSV use”<sup>38</sup> is misleading. 106<sup>39</sup> of these miles are the Pacific Crest National Scenic Trail (PCT). While the PCT is an important non-motorized trail and the Forest Service is legally obligated to manage it to protect its non-motorized nature, it has never been considered by the LNF as a winter recreation resource. The PCT is not groomed, marked for winter use, or particularly easy to follow in winter. Presumably for the above reasons, the PCT is not shown on the LNF’s current Winter Recreation Guide.<sup>40</sup>

In addition, *all* of the other winter nonmotorized recreation trails (and much of the PCT) are located in areas where OSV use is allowed and thus do not provide the nonmotorized user with a recreational experience free of the recognized noise and air quality impacts of OSVs. The Final EIS must include a fair comparison of the

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<sup>36</sup> One such type of machine is the snowbike, which has grown rapidly in popularity in the motorized community in the last several years. These machines are usually high-displacement dirtbikes that have been transformed to OSVs with a conversion kit. They have skids in place of the front wheel and a track in place of the rear wheel. They are often much easier to ride than traditional snowmachines for inexperienced riders, especially while sidehilling.

<sup>37</sup> 36 CFR § 212.81(a)

<sup>38</sup> See, e.g. DEIS at pp. 14, 19, 25, 59.

<sup>39</sup> *Id.* at Pp. 14, 19, 25.

<sup>40</sup> See *id.* at pp. 31, 45 (“the PCT is difficult to distinguish in the winter”).

amount of motorized and nonmotorized experiences offered to winter recreationists. It should note that Alternative 3, in particular (as compared to the Proposed Action), offers a substantially better recreation experience to users desiring to recreate on nonmotorized trails without changing the amount of designated trails available to either user group.

Throughout the DEIS, the LNF notes the number of acres in the LNF that are closed to OSVs. The LNF fails to also note that almost all this acreage is located far from winter trailheads with no practical way for nonmotorized users to access such areas. The DEIS does not describe how close (or how far) these areas are from winter trailheads, and that such distance precludes these areas from providing nonmotorized recreation opportunities. The Butte Lake closure included in Alternative 3 was specifically intended to provide nonmotorized users a route to Wilderness and other closed areas, thus allowing nonmotorized users to obtain their desired recreation experience right from the trailhead.

In describing several of the impacts of OSVs, the DEIS refers to OSV impacts as “unavoidable adverse effects.”<sup>41</sup> However, these impacts are avoidable if the LNF were to locate the boundaries of OSV use areas in a manner that avoids important non-motorized recreation areas. This is one of the purposes of travel management planning. In characterizing these impacts as unavoidable, the LNF appears to miss the purpose of this planning effort.

#### 9. The DEIS Insufficiently Analyzes OSV Impacts

We appreciate that the LNF included a noise analysis in the DEIS; however, this noise analysis does not provide much useful information. It has not been used to distinguish the various alternatives, nor has it been used to illustrate how boundary lines between open and closed areas can be drawn so as to minimize noise impacts. The techniques used in the noise analysis should be applied to determine which alternative provides the most separation of nonmotorized trails and areas from the noise impact of OSVs.

Likewise, while we appreciate that the LNF included an analysis of impacts to air and water quality in the DEIS, we don’t see where the Forest Service has actually applied these analyses in the decision-making process. The LNF could have used these analyses to determine appropriate boundary lines for OSV use areas (to minimize impacts to other uses, Class 1 airsheds, and water resources). Instead, it appears these analyses were simply cursory exercises. The only metric used to compare air and water quality impacts between the respective alternatives was the amount of acres open to OSV use in each alternative.<sup>42</sup> In *WildEarth Guardians, supra*, the Ninth Circuit expressly held that the Forest Service must analyze

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<sup>41</sup> *Id.* at pp. 395, 397, Table 137.

<sup>42</sup> Summarized in Table S-3 of the DEIS.

impacts on a granular level and not rely on a forest-wide reduction in open acres to satisfy the minimization criteria.<sup>43</sup>

Finally, the analyses of impacts to soil resources, botanical resources, and wildlife fail to meet the intent of a travel planning analysis. While the Forest Service describes the natural history of affected species in great detail across the board, and discusses the myriad of ways OSVs can impact soils, when it comes to comparing alternatives the Forest Service defaults to comparing acres open to OSVs. The DEIS contains no mention of how each specific OSV use area and each specific designated route within each alternative impact these resources, nor is there any discussion of how any of these routes or areas have been located to minimize these impacts. This is the main purpose of a travel planning EIS and the LNF has missed the mark completely.

Our additional comment letter, written with assistance from wildlife biologist Darça Morgan, delves into our concerns with the wildlife analysis in much greater detail.

We would be pleased to discuss any of our concerns with you. We hope to continue to work together with the LNF on a winter travel solution that best serves all users and best meets the objectives of the Forest Service.

Sincerely,



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<sup>43</sup> *WildEarth Guardians, supra*, 790 F.3d at 930-31 (The Forest Service is not allowed “to designate multiple areas for snowmobile use on the basis of a single forest-wide analysis and general decisionmaking principles” must “apply the minimization criteria to *each area* it designate[s] for snowmobile use,” and must “provide a . . . more granular minimization analysis to fulfill the objectives of Executive Order 11644.” ([Emphasis added].)

