Bitterroot Quiet Use Coalition
P.O. Box 802
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November 9th, 2009

Travel Planning Project - Comments
Forest Supervisor's Office
Bitterroot National Forest
1801 N. First
Hamilton, MT 59840-3114

RE: Bitterroot National Forest Travel Planning Project – DEIS Comments

Dear Responsible Official,

On behalf of the Bitterroot Quiet Use Coalition (BQUC) and Winter Wildlands Alliance please accept these comments for the Draft Environmental Impact Statement for the Bitterroot Travel Plan. The BQUC includes the Selway – Pintler Wilderness Backcountry Horseman, Wildlands CPR, the Montana Chapter of the Sierra Club, Friends of the Bitterroot, the Montana Wilderness Association, Burnt-Ridge Homeowners and the Montana Backcountry Alliance. Together these organizations represent hundreds of regional and local residents who regularly recreate within the Bitterroot National Forest and have a vested interest in protecting our public lands from the impacts caused by off-road vehicle[1] use.

First, we want to acknowledge and thank all the travel planning staff for their hard work, and the bold decision to protect the Sapphire Wilderness Study Area from summer motorized use. Also, while we have some serious concerns with the environmental analysis and the preferred alternative, we recognize the difficult and resource intensive nature of Travel Management Planning. With additional analysis and some changes in the alternatives, the Bitterroot National Forest (BNF), has an excellent opportunity to produce a great travel plan and will do so if it chooses a modified version of Alternative 4. Such modifications are listed throughout these comments and summarized in the conclusion.

The Forest Service should commit to complying with subpart A of the Travel Management Rule, including identification of the minimum road system, through a single, comprehensive process.

We believe that if Bitterroot National Forest chooses a modified Alternative 4, it will have taken an important step toward getting ORV use under control in accordance with Subpart B of the Travel Management Rule (TMR).[2] However, we are extremely disappointed that the Forest failed to take the opportunity to meet its obligation to right-size the roads system under Subpart A.[3] Despite reminding the BNF of its regulatory obligations during scoping and in conversations with Forest Service staff, the DEIS's purpose and need did not include identifying the minimum road system and decommissioning opportunities, as required by 36 C.F.R. § 212.5. We believe identification of the minimum road system and decommissioning opportunities logically should have preceded completion of the Travel Management Plan, which not only represented a broad-scale NEPA process through which to implement closures and obliteration of roads identified as unneeded through a minimum road system identification, but which will also set up user expectations on the Forest for years to come.

[1] As a special note, throughout this document we refer to off-road vehicles (ORVs) and motorized use in a broad context that includes any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.
[2] 36 C.F.R. § 215.55.
[3] *Id*. § 212.5(b).

Notwithstanding these very real concerns, given the amount of time the Forest Service has already expended on this planning effort and the fact that we are within reach of a decent plan if the Forest Service chooses Alternative 4 with the modifications suggested in these comments, we are willing to accept that the Forest Service will not meet its regulatory obligation to identify a minimum road system in the current travel planning effort.

However, we urge the BNF to change its current proposal for meeting its nearly nine-year obligation to complete a comprehensive, science-based analysis of its travel system, identify its minimum road system, and roads for decommissioning. The DEIS describes the Forest Service's intention as follows: "Identifying and implementing a minimum road system on the Bitterroot National Forest will follow the regional strategy for identifying unneeded roads through project level or watershed level analyses." (p. 1-9). In our meetings with the Regional Engineer and now Chief Tidwell, there was mention of this approach, but we were unaware the Forest Service had settled upon it as the "regional strategy" for coming into compliance with Subpart A. Typically, a "strategy" is defined as a carefully devised plan of action to achieve a goal. But it is the very lack of a plan that gives us pause and raises questions as to how the BNF will meet its legal obligations. A project or watershed level analysis will not lead to a minimum road system, as defined by 36 C.F.R. § 212.5(b)(1). Moreover, only a comprehensive analysis, along with an established timeline to decommission roads, will allow the Forest to meet the intent of the 2001 Roads Rule and TMR that the transportation system come into line with long-term funding expectations and minimize adverse environmental effects.[4]

From the very beginning of this travel management planning process, we have urged Bitterroot National Forest to conduct a comprehensive travel analysis process (TAP) that will inform a minimum road system identification. This TAP should include an assessment of risks and benefits of each route's effects on water quality and quantity, soils, watersheds, wildlife, connectivity, habitat fragmentation, carbon sequestration, cultural resources, recreation, the Forest's budget, and other appropriate factors, as well as a valuation of whether each route is high-, medium-, or low-risk and high-, medium-, or low-value. Quite clearly, low-value/high-risk routes should not be part of the minimum road system, and should be identified for decommissioning. High-value/high-risk routes may be appropriate for the minimum road system, but should be prioritized when apportioning maintenance and mitigation funds. Low-value/low-risk routes should not be included in the minimum system (and should be identified for obliteration) because they provide little benefit to the public, and the environmental risks of the route and future maintenance requirements will likely only increase over time as maintenance dollars are directed at higher-value/higher-risk routes.

When the Forest Service finally proceeds with the required comprehensive travel analysis and minimum road system identification, we are concerned that the BNF will be tempted to use the Motor Vehicle Use Map (MVUM), to be published at the end of this process, as the starting point for complying with Subpart A. We must stress that the MVUM is an inappropriate place from which to start this analysis. For instance, the BNF proposed a massive road to trail conversion of over 600 miles, while providing no plans to physically decommission the roads or redesign the routes so that they meet trail characteristics specified in the Forest Service Handbook.[5] The end result is that there will essentially be 600 miles of intact, unmaintained roads on the ground that are at risk for causing environmental harm. Meanwhile, these routes will be displayed on the MVUM as trails, and we are concerned that the Forest Service will fail to consider whether they legitimately make up part of the minimum travel system. It is unacceptable to assume these routes should be part of the system when the Forest Service has never conducted the science-based travel analysis and minimum system identification required by the 2001 Roads Rule, now Subpart A

[4] 36 C.F.R. § 212.5(b). When assessing transportation system costs, the Forest Service should include both the cost of maintaining roads and motorized trails, as well as costs associated with managing the motorized recreation systems, such as signage, trailhead management, enforcement, monitoring, and map production.
[5] See FSH 2309.18.

of the TMR.[6] The Forest Service cannot forego the requirements of the rule by simply pushing the analysis further and further downfield. **Therefore, we ask that the BNF commit to a timeline in the final travel plan decision to identify the minimum road system and decommissioning opportunities based on completion of a science-based travel analysis that includes roads that have been converted to trails without proper road decommissioning.**

In addition to our practical concerns that the project or watershed level analysis in the "regional strategy" will not allow the Forest to identify or achieve the minimum road system, the United States Congress echoes these concerns. In report language accompanying the FY 2010 Appropriations Act, Congress provided:

> Senate Language (Appropriations Act of 2010, S. Rep. No. 111-038, page 69): *The Committee believes that the Forest Service must continue to show progress toward meeting its travel management regulatory requirements, including its requirements* ***to conduct a science based analysis*** *of the roads system,* ***identify unneeded roads****, and comply with appropriate criteria to designate roads and trails, as defined by 36 CFR 212.5 and 212.55.* ***Within 60 days of enactment, the Service is directed to provide a report to the Committee outlining the process that it will use, by region, to ensure compliance with these requirements, including a timeline for implementation.***
>
> House Language (Appropriations Act of 2010, H. Rep. No. 111-180): *The Committee remains interested in the travel management planning process.* ***It is vital for the Service to look at the entire road system on a National Forest and determine those roads that are unneeded or which may be harming the environment.*** *The Committee also feels that the implementation of the travel management plans needs to be user-friendly. The designation of open and closed roads and trails needs to be easily understood by the public.* (emphasis added).

Through this language, Congress emphasized that it expects the Forest Service provide a real plan for how it intends to complete a comprehensive, science-based travel analysis and identify a minimum road system, including identification of roads for decommissioning.

For the past three years, Congress has also dedicated funds necessary for completing Travel Analysis and resulting decommissioning efforts through the Legacy Roads and Trails Initiative. Recently, Congress nearly doubled the appropriation for this program over the previous two years to $90 million. Thus, Congress has demonstrated its serious and enduring commitment to ensuring the Forest Service's successful implementation of Travel Analysis to identify the minimum necessary system, as well as prompt decommissioning of unneeded roads.

These existing Congressional funding commitments dovetail nicely with the Forest Service's own priorities, which recognize the significant fiscal and environmental benefits that will accrue from completing Subpart A of the Travel Management Rule. Regarding Presidential initiatives for the FY 2010 Budget, former Forest Service Chief Gail Kimbell emphasized the need to "right size" the Forest Service's transportation system. She testified to Congress that identification of unneeded roads constitutes a key priority for the agency:

[6] FSM 7712.3.4. Once NFS roads, NFS trails, and areas on NFS lands have been designated for motor vehicle use on an administrative unit or a ranger district and those designations are reflected on an MVUM, additional broad-scale travel analysis is not necessary for each subsequent travel management decision.

> *The National Forest System has a transportation system that is not suited to its modern needs and requires realignment to "right size" the system for the future*.
> * * *
> This initiative demonstrates the Forest Service's commitment to maintaining a healthy environment by addressing critical maintenance and operational components of the Forest Service. These funds will be a cornerstone for sustaining a healthy environment, and will be focused on [among other things] *implement[ing] travel management plans with an emphasis on decommissioning unnecessary roads*. . . . These strategic investments will reduce the agency's overall maintenance and operational costs in future years, result in infrastructure that is more energy efficient, and reduce potential harm to the environment. (emphasis added).[7]

Additionally, Secretary Tom Vilsack recently stressed the importance of rightsizing the transportation system in order to restore the National Forests, when he stated, "In many of our forests, restoration will also include efforts to improve or decommission roads, to replace and improve culverts, and to rehabilitate streams and wetlands."[8]

Similarly, in June 2008, the Western Governors' Association underscored the importance of the identification and implementation of a minimum, sustainable road system:

> Western Governors urge Congress and the Administration to fund and implement a sustainable roads program. This program should include inventories, identification of roads still needed, upgrading roads to modern construction standards including fish passage, and decommissioning roads causing environmental damage or roads no longer needed.
> * * *
> Western Governors urge the US Forest Service (USFS) to complete an accurate prioritized inventory of federal forest system roads that is sustainable in each state taking into account the needs for fish and wildlife habitat, outdoor recreation, timber and mining and fire suppression/mitigation.[9]

Accordingly, within the past two years, every relevant authority has clarified that the Forest Service should proceed immediately to conduct a comprehensive Travel Analysis and minimum system identification on each Forest, making sure not to designate routes beyond this system and decommissioning existing routes that are no longer needed or sustainable. Even with the additional funding provided by Congress, we recognize that conducting travel analysis, including identification of the minimum system, requires significant staff time and fieldwork. We would like to extend an offer to assist you and your staff with any aspect of this task that you deem appropriate for our involvement. We are truly interested in helping the Forest Service develop a sustainable road and trail network that minimizes harm to the environment and reflects long-term funding expectations.

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[7] Statement of Abigail Kimbell, Chief, U.S. Forest Service, before the House of Representatives Committee on Appropriations, Interior, Environment, and Related Agencies Subcommittee Concerning the US Forest Service Fiscal Year 2010 Budget, May 12, 2009.

[8] Tom Vilsack, Secretary of Agriculture, Speech on the National Vision for America's Forests, Seattle, WA (Aug. 14, 2009), *available at* http://www.fs.fed.us/video/tidwell/vilsack.doc.

[9] Western Governors' Association Policy Resolution 08-3, "Restoring and Maintaining a Sustainable Road System on National Forest Lands."

The Forest Service did not establish an accurate No Action Alternative or Baseline Condition.

The DEIS explains that the No Action alternative "would not implement the Travel Management Rule, and would not result in a MVUM; it would defer implementing the rule until decisions regarding "unauthorized" (user-created) trails can be made," (p. 2-9). The DEIS also explains that this is one of two interpretations, (the other being not to change current management direction), and while we would have preferred the other interpretation, we recognize the BNF has the option to define the No Action Alternative as shown in the DEIS. However, we believe that not only must the Forest Service identify in the No Action Alternative the existing condition, but it also must establish, within the No Action Alternative, an accurate baseline of *currently designated* motorized routes; such a baseline would include only those roads and trails supported by prior NEPA analyses and associated decisions, and would exclude all non-system routes, including those identified under the 2001 Tri-States ROD.[10] Where non-system routes are included as part of the No Action Alternative, the BNF must acknowledge this fact and identify those routes separately on any maps made available to the public. For routes in the No Action Alternative that were identified under the Tri-State ROD, the BNF must include evidence that supports the route's existence in 2001 and also provide site specific analysis of the impacts of these routes before designating them on the MVUM.

Including such a baseline would inform the public that the "no action" alternative comprises a route network that is larger than the legally designated system and to establish a basis of comparison between the designated system proposed in each action alternative as well as the existing system. Any routes lacking documentation (including routes which were constructed or came into being before NEPA was enacted) should have site-specific and verified analysis to compensate for the fact that there is no record of administrative decision or analysis addressing the environmental impacts of motor vehicle use on these routes. Unfortunately, the DEIS fails to provide such analysis. Not only would this baseline and subsequent analysis of routes comply with the mandates of the NEPA to disclose and analyze impacts of a proposed action, but this baseline would also help the BNF determine changes in maintenance and administrative costs associated with the proposed alternatives as required by the TMR.

Unfortunately, the BNF's No Action Alternative does not include an accurate baseline of legally designated roads and trials. Instead it includes many roads closed to the public but inaccurately listed as open to off-road vehicles.[11] Some of these roads were closed in prior decisions as a result of specific analysis under the NEPA, while others are maintenance level (ML) 1 roads that have been administratively closed in response to specific resource concerns. All of these roads are currently managed as ML 1 roads, and as such were never supposed to be open to motorized use regardless of vehicle type, as is discussed in more detail below. Therefore, these roads should not be listed as open to off-road vehicles in the No Action Alternative. While this current travel management planning process is the appropriate place to consider changing the designation of these closed roads to a designation that allows ORV use, there must be an accurate starting place by which to disclose and compare potential environmental impacts of these changes between the No Action and action alternatives. The No Action Alternative fails to meet this requirement because it lacks disclosure of the legally designated system of roads and trails.
In determining the ML 1 roads open to off-road vehicles, we used the spreadsheet provided by the BNF on its website titled, "Bitterroot National Forest Travel Routes Database." In using this spreadsheet, we compared Motor Vehicle Use Map (MVUM) codes, where zero is closed and all others are open in some form to motorized use, to those on the BNF 2005 Visitor and Travel Map (hereafter Visitor Map); see Table 1. After comparing these two categories we found many roads with resource issues and some that

[10] These are those routes that existed on the ground in 2001 at the time of the Tri-States decision. It is currently legal to drive on these routes, despite the fact that they have not yet been designated. This does *not* include routes created by users after the Tri-States decision, which are illegal and should be identified as so.
[11] The BNF released a spreadsheet in 2004 titled, "OHV - Opportunity Spreadsheet Roads Open to OHV's and Closed Yearlong to Full Size Vehicles."

were supposed to be closed to all motorized use yearlong; see Table 2. If the Forest Service included these roads because ORV users illegally travel on them at present, the agency must make note of this and exclude these routes from the designated baseline system the agency must identify within the No Action Alternative.

Table 1. Road Restriction Codes from Visitor Map

R-1	Closed yearlong. Provide for public safety, reduce soil erosion, or protect wildlife
R-2	Protect wildlife and provide wildlife security during hunting season
R-3	Provide wildlife security during hunting season
R-4	Reduce soil erosion or protect wildlife, and provide wildlife security during hunting season
R-6	Reduce soil erosion
R-7	Protect wildlife and provide wildlife security during hunting season.
R-11	Reduce soil erosion

Table 2. Maintenance Level 1 Roads in No Action Alternative[12]

Visitor Map Code	Amount of Roads
R1	5
R2	3
R3	2
R4	282
R6	52
R7	86
R11	2

It is important to note that 32 ML1 roads are classified as "Code 90," and may or may not be gated, but they are shown as open to vehicles less than 50 inches wide; there is an exception for FDR #62866, which is listed as open seasonally to highway legal vehicles.

Additionally, 35 decommissioned roads have existing MVUM codes 7 and 8 meaning they are managed as trails open to vehicles 50 inches or less. It is unclear if these roads have been physically removed from the ground or at what level they were decommissioned, but they receive no maintenance and were determined not to be needed as part of the transportation system. In any event, these roads should not have been open to off-road vehicles unless they were physically converted to trails and analyzed through the NEPA process for this use. Information on the history of these decommissioned roads should have been disclosed in this DEIS, and the conversion to motorized trails should have been analyzed as a new action, if it had not been analyzed in a previous NEPA document.

Finally, the No Action Alternative contains 51 non-system routes as documented by the MVUM codes on the aforementioned spreadsheet.

In looking at the results shown in Table 2, it is clear that five of these roads should never have been open to any motorized use based on the "R1" category, but they were being managed as open based on the MVUM code. Furthermore, a majority of these roads appear to have been closed in response to concerns over soil erosion and to protect wildlife, yet they are now available to off-road vehicles. This is contrary to Forest Service Directives and in some cases contrary to previous decisions made through the NEPA process.

[12] See Appendix A for a complete list of all ML1 roads open to vehicles 50 inches or less included in DEIS Alt. 2.

For example, the White Stallion Final Environmental Impact Statement (FEIS) noted that road #1392 was constructed and authorized under the Upper Sleeping Child EA in 1983, (White Stallion FEIS at App. A-3). This decision closed the road to all vehicles from June 15 through November 30, and allowed snowmobiles from December 1 through June 14, (White Stallion FEIS at II-10 – II-11; IV-21; III-7). Yet the Travel Route Database spreadsheet lists this road as open seasonally to vehicles 50 inches or less from Dec. 2nd through Oct. 14th with a Visitor Map code R-4 to protect soil resources since this road is in an area of sensitive soils on the BNF Sensitive Soils Map. The original reason given for the prohibition against all vehicle use was to reduce open road density because "elk will likely be precluded from using the high road density areas unless motorized vehicle access is restricted" (White Stallion FEIS at IV-20). More specifically, the Forest Service believed that road closures were "required to meet the Forest Plan standard of 50% elk habitat effectiveness in each third order drainage" (White Stallion FEIS at V-12). When the BNF changed the management of road #1392 from closed to all motorized vehicles to open to vehicles under 50 inches, no NEPA was done to evaluate how the change in use would impact elk. While this current travel planning process can ultimately decide to designate this road for ORV use, this change in use should be evaluated during this process as if it were a newly authorized use.

Another example is the 1988 Lairdon Gulch Timber Sale Decision Notice and Findings that state, "New system roads in the vicinity of Cold Spring Hill would be closed to public use year-round, except for temporary openings during dry periods to allow fuelwood gathering." The decision and associated maps illustrate roads #13216 and #13217 were "new roads" built for the project on Cold Spring Hill. However, the Travel Route Database spreadsheet shows these as ML 2 roads with existing MVUM codes 3 and 4 meaning they are open to highway legal vehicles with some seasonal restriction. Also, the 1993 Buck-Little Boulder EA shows road #74239 "closed yearlong to all motorized vehicles" on Table II-1 of the ROD. The Travel Route Database spreadsheet shows this ML 1 road as currently open seasonally to vehicles 50 inches or less; MVUM code 8.

These examples bring into question the rest of the roads included as part of the No Action Alternative that appear on the Visitor Map. In fact, all ML 1 roads listed as open to off-road vehicles may be in violation of previous NEPA decisions. These roads should either be cross referenced with all past NEPA decisions to determine the original rationale for closing these roads to motorized use and whether that reason still exists, **OR** all ML 1 routes that are now open to motorized use should be analyzed as if that use had never occurred on the route so that all resource problems are fully disclosed and taken into account in this management decision. The FEIS should then contain site-specific analysis of any of these roads it proposes to open in any of the action alternatives.

At the very least, the availability of ML 1 roads to motorized use runs counter to the Forest Service Directives' definition of maintenance levels:

> Level 1. Assigned to intermittent service roads during the time they are closed to vehicular traffic. The closure period must exceed 1 year. Basic custodial maintenance is performed to keep damage to adjacent resources to an acceptable level and to perpetuate the road to facilitate future management activities. Emphasis is normally given to maintaining drainage facilities and runoff patterns. Planned road deterioration may occur at this level. Appropriate traffic management strategies are 'prohibit' and 'eliminate.' Roads receiving level 1 maintenance may be of any type, class, or construction standard, and may be managed at any other maintenance level during the time they are open for traffic. However, while being maintained at level 1, they **are closed to vehicular traffic**, but may be open and suitable for nonmotorized uses. (Emphasis added).[13]

[13] Forest Service Transportation System Maintenance Handbook 7709.58 Chapter 12.3(2)(a).

This direct contradiction between management directives and on the ground management must be explained and accounted for in the NEPA analysis.

It is a reasonable assumption that there is some rationale behind the closure of these ML 1 roads to vehicle traffic, most likely resource concerns related to vehicle use or decreased maintenance funds that were allocated to more important roads. As such, these routes should be analyzed fully before the BNF designates them for motorized use.

There is also no scientific justification to treat off-road vehicles differently from full sized vehicles. Rather, there is a growing body of scientific literature that demonstrates ORV impacts to a variety of forest resources are very similar to that of full sized vehicles, a fact acknowledged in several places throughout the DEIS.[14] For example, the analysis states, "However, several authors (Canfield et al. 1999, Toweill and Thomas 2002, Graves 2002) suggest that the effects of open motorized trails to wildlife are likely similar to those resulting from open roads," (p. 3.5.-8).

Broad, Forest-Wide NEPA Cannot Change Earlier Site-Specific NEPA Decisions Without Further Analysis

In addition to our concerns outlined above that prior site-specific NEPA decisions have not been accounted for in the No Action Alternative, we are concerned that the Forest Service is overriding prior NEPA decisions without conducting the requisite site-specific analysis to undo those decisions in this travel management plan. As described above, we have identified several routes for which there is a conflict between this current NEPA analysis and earlier, site-specific NEPA analyses, where the earlier site-specific analyses determined a road (or roads) should be closed due to resource issues. It is our position that a broad NEPA analysis (such as that being conducted for this Travel Plan) cannot open roads that were closed under earlier, site-specific NEPA. Because the Travel Plan analysis is so broad and does not analyze the impacts of specific roads, it cannot "trump" any earlier site-specific NEPA decisions to close roads.

The Supreme Court has long required an agency to "cogently explain why it has exercised its discretion in a given manner." Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto., 463 U.S. 29, 48 (1983). Particularly, when an agency changes its course, it "is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." Id. at 30. See also Nw. Envtl. Def. Ctr. v. Bonneville Power Admin. (NEDC v. BPA), 477 F.3d 668, 687 (9th Cir. 2007) ("An agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion, it may cross the line from the tolerably terse to the intolerably mute.") (citing Greater Boston Television Corp. v. FCC, 44 F.2d 841, 852 (D.C. Cir. 1970)). The administrative record needs to contain evidence that the agency considered the relevant facts and used a rational process in making their change in decision . NEDC v. BPA, 477 F.3d at 688.

The No Action as well as all of the action alternatives would open roads that had been closed by earlier site-specific NEPA. The Ninth Circuit has firmly held the agency needs to provide a "reasoned analysis" to "cogently explain their decision" to make such a change in course. Id. at 690. The failure to follow these past decisions that reached conclusions contrary to the possible direction of the TMP, if left uncorrected at the end of the NEPA process, will fail to satisfy the Forest Service's basic obligations under NEPA and the APA. We urge the BNF, at the very minimum, to have the roads that have been closed by earlier site-specific NEPA decision remain closed, in compliance with past site-specific NEPA findings. For those routes the Forest Service determines it wants to open despite prior NEPA decisions, please

[14] See literature cited and corresponding full studies in the enclosed documents.

provide the requisite site-specific analysis and explanation of how either conditions have changed or mitigation efforts will be completed in order to address prior findings of resource damage.

Recommended Wilderness and Wilderness Study Areas

Recommended Wilderness

We fully support the BNF's decision to manage recommended wilderness areas as non-motorized and non-mechanized, consistent with Region One guidance. We know there has been pressure from a small, but vocal group of mountain bikers to reverse this decision, but please note many members belonging to groups in the Bitterroot Quiet Use Coalition mountain bike and support the Region One guidance. Specifically, we have members that use trails in the Bitterroot, and recognize that the eight trails proposed for closure will not significantly impact their trail riding opportunities.

We found it particularly encouraging to see the acknowledgement in the DEIS that, "…allowing uses that do not conform to wilderness attributes creates a constituency that will have a strong propensity to oppose recommendation and any subsequent designation legislation," and that "It is important that when wilderness recommendations are sent to Congress that they be unencumbered with issues that are exclusive to the wilderness allocation decision," (p. 3.3-4). We are pleased the BNF has taken seriously its obligation to manage these lands so as not to impair Congress's prerogative to designate wilderness.

Wilderness Study Areas (WSAs)

First we wish to congratulate the BNF for taking the bold and controversial step in protecting the Sapphire WSA from summer motorized impacts; this is an action that has our full support and one which we will defend on behalf of the agency should it be challenged. Such defense comes easy with the recent ruling by US District Judge Molloy on the Hyalite-Porcupine-Buffalo Horn WSA[15]. In light of this ruling we believe Alternative 4's proposed management best meets the intent and language of the Montana Wilderness Study Act[16]. The court observed, "But while the agency's administrative directive compels reasonable accommodation of the public's desire for increased motorized and mechanized recreation, there is an irreconcilable statutory pronouncement forbidding such action," (p. 7). Therefore, the Forest Service must retain 1977 wilderness characteristics in these WSAs, given the overriding statutory mandate to do so until Congress determines whether to designate these areas as Wilderness.

Table 3.3-2 in the DEIS relied in part on the WSA wilderness character assessment reports to determine current WARS attributes. For the Sapphire WSA the report states, "While the amount of snowmobile use in the WSA has increased since 1977 the areas being used by snowmobiles in 1977 and at present remain essentially the same."[17] Additionally, with regard to the preferred alternative the DEIS explains, "The primary effects to roadless/wilderness characteristics in alternatives that have more open snowmobile areas are effects to natural integrity, primarily relating to stresses caused to wintering wildlife (see the wildlife issues) and reduced opportunities for solitude and a sense of remoteness," (DEIS, p. 3.3-23). Since snowmobile use levels increased compared to 1977, and that use negatively impacts wintering wildlife thereby decreasing the area's natural integrity, it is logical to conclude that allowing snowmobile use inside the Sapphire WSA is a violation of the MWSA. Even if the BNF protects only portions of the WSAs, it still needs to demonstrate how such action meets the MWSA requirements. Judge Molloy

[15] *Montana Wilderness Ass'n v. McAllister*, No.07-cv-00059-DWM (D. Mont. Sept. 29, 2009).
[16] Pub. L. 95-150, § 3(a), 91 Stat. 1243 (1977) ("[Wilderness Study Areas designated by the Act] shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.").
[17] USFS. 2006. Sapphire Wilderness Study Area Wilderness Characteristics Assessment. p.10

explained, “Judge Lynch found that the Travel Plan violated the Wilderness Study Act and NEPA not because the Forest Service relied upon the Rating System, but because it failed to explain how, in light of these increases, the reconfiguration achieves the requirements of Wilderness Study Act,” (p. 11). This explanation is crucial in light of the DEIS’s statement, “In the Blue Joint WSA along the 37.4 miles of routes designated for motorized use: If motorized user numbers remain constant the use will be concentrated on 60% of the existing trails,” (p.3.3-22). With such a concentration of use, the BNF does not explain how it will meet MWSA requirements in these open areas.

The BNF has the same management conundrum with mountain bikes inside WSAs as it does for motorized use in that use levels increased since 1977, and that such use does not conform to wilderness attributes. The observations made in the DEIS for recommended wilderness apply, which explains that an entrenched anti-wilderness constituency would oppose Wilderness designation (p.3.3-4), and thereby reduce the potential for inclusion into the Wilderness Preservation System in violation of the MWSA.

Additionally, we have a specific concern with Trail #313 on the Beaverhead-Deerlodge National Forest, and request clarification as to whether or not the BNF has jurisdiction for management of this trail. If indeed the BNF is responsible, we ask that the final travel plan decision not designate Tr. #313.6 for motorized use. Alternative 4 would designate a portion of this trail for vehicles 50 inches or less, and Alternative 1 would do this as well as designate the trail up to the Anaconda-Pintler Wilderness boundary for single track motorized use. In the latter case, we believe it is inappropriate to designate parts of a continuous trail for both double and single track motorized use as this creates an enforcement problem, and encourages trail widening as double track trails tend to push past the point where the single track begins; it is also at this point that the trail will most likely need a turn-around for larger vehicles, thereby creating more trail impacts. Furthermore, the preferred alternative is not consistent with the Beaverhead-Deerlodge Revised Forest Plan, which shows Tr. #313.6 south of Frog Pond Basin as being within a year round non-motorized area. Therefore, Tr. #313.6 should not be included on the MVUM, and it would be illegal to do so under NFMA without a plan amendment.

Lastly, our comments below regarding wolverines and mountain goats in the Sapphire WSA highlight the fact that these species are negatively affected by snowmobile use, thereby reducing the area's natural integrity in clear violation of the MWSA.

In light of these facts, and Judge Molloy’s recent ruling, we urge that the BNF protect the Blue Joint and Sapphire WSAs from both motorized and mechanized use until such a time that Congress resolves the matter or that the BNF can prove such use complies with the MWSA.

Travel Management Rule Violations

Dispersed Camping Exemption to the Prohibition on Cross-Country Travel

The BNF originally proposed eliminating the current 300 ft allowance for motorized cross-country access for dispersed camping, stating that it would instead designate existing routes to campsites: “Existing motorized routes to dispersed camp sites will be included in the proposed action in the Draft Environmental Impact Statement unless substantial environmental, social or cultural concerns exist.”[18] While we had concerns about designating user-created routes, we generally supported this action since to do otherwise would make enforcement of authorized routes difficult, if not impossible, and would lead to wide swaths of impact as motorized use would be authorized off the road or trail at any point along the route system. The Forest Service is having difficulty adequately maintaining the route systems currently in

[18] BNF Travel Plan Proposed Action Scoping Document, p. 10.

place, and allowing users to travel off of a route to access a camping spot would likely result in a proliferation of unauthorized routes and create additional management difficulties.

Therefore, we were especially disappointed that the BNF abandoned its original proposal and chose to include the dispersed camping exemption to the ban on motorized cross-country travel. We recognize that the responsible official has some latitude to "include in the designation the *limited use* of motor vehicles within a specific distance of *certain* designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping…"[19] However, in former Forest Service Chief Bosworth's memo entitled "Implementation of the Travel Management Rule,"[20] he directed officials to apply the rule "sparingly" rather than issue blanket exceptions. Moreover, the preamble to the TMR states: "The Department expects the Forest Service to apply this provision *sparingly*, on a local or State-wide basis, to avoid undermining the purposes of the final rule and to promote consistency in implementation."[21] Unfortunately, none of the action alternatives apply the exemption sparingly or along "certain" routes. Rather, the BNF proposes that all designated routes have a dispersed camping exemption, even when the analysis shows specific impacts that will occur from such action. We are confident that the BNF will find more specific impacts once it addresses its flaws in the analysis.

In several places, the DEIS explains that impacts from the exemption are significant:

- "Driving and parking in dispersed campsites affects streams by creating areas of compacted soils, which tend to grow native vegetation poorly, inviting noxious weed establishment. They are also prone to erosion, which results in sedimentation," (p. 3.7-3). We would add that these impacts are not limited to just the campsites, but also to the total area available under the exemption.
- "Dispersed campsites are often located in flat areas, which are also good for fish as lower-gradient streams allow for more large pools and meandering channels. Examples of these sites can be found in Threemile, Burnt Fork, Willow, Daly, Skalkaho, Tin Cup, Lost Horse, Hughes, Overwhich, and Nez Perce Creeks," (p.3.7-4). Given this specificity, it would seem that the BNF did not need to provide a blanket exemption, but rather could designate specific routes or exclude routes from the exemption.
- "Small roads and trails that lead to the dispersed sites have sometimes become areas of illegal OHV use. For example, fords and small OHV play areas have been recently rehabilitated in Skalkaho and Threemile creeks," (p. 3.7-4).
- "…dispersed camping, which has the potential to directly or indirectly impact areas where sensitive plants may be located. Direct adverse impacts could occur if dispersed camping takes place on top of sensitive plant populations; indirect adverse impacts could occur on sensitive plant habitat through the spread of invasive plants or the introduction of new invasives," (3.9-6). Given the level of detail in mapping areas of sensitive plant species, we urge the BNF not to allow motorized cross-country travel in these areas.

Not only do these examples highlight our concerns, but they demonstrate the need to apply the exemption only on "certain" routes where there is little potential to introduce weeds, cause erosion and sedimentation, or damage riparian areas.

Furthermore, the DEIS explains that for all action alternatives, "Site-selection must be completed by non-motorized means and accessed by the most direct route causing the least damage," (p. 2-7). Yet this is the same direction mandated by the 2001 Tri-States OHV ROD, and the DEIS describes how ineffective this policy was in preventing resource damage: "Though this language sounds protective, the most direct route is often a twisting network of roads because of the topography and other obstacles between the designated

[19] 36 C.F.R. § 212.51(b) (emphasis added).
[20] Referenced in the June 8, 2006 letter "Travel management, Schedule for Implementation"
[21] 70 Fed. Reg. 68,264, 68,285 (Nov. 9, 2005) (emphasis added); *see also* FSM 7703.11(4).

road and the selected campsites," (p. 3.7-4). This direction also creates an enforcement problem since there is so much discretion in determining what causes the least damage.

Additionally, the DEIS explains that for each action alternative the MVUM will display approximately 30 dispersed campsites with motorized access allowed greater than the cross-country exemption of 300 ft for Alternative 1 and 3, and greater than 150 ft for Alternative 4, (p. 3.2-24, 30, 34). In describing current access to these sites, the DEIS states they, "…typically had well established two track routes leading to the dispersed site that was not causing any resource damage but were also at times greater than 300 feet from a road or trail," (p. 3.2-24). Given this it would seem appropriate to designate these routes rather than provide cross-country motorized access to them.

Given the known impacts from cross-country motorized travel, past lack of compliance with the 2001Tri-States OHV decision, and failure to properly analyze impacts described in the sections below, we urge the BNF to abandon the dispersed camping exemption and only allow vehicles to park one vehicle length from designated routes. For known campsites with well-established routes that are not causing resource impacts or concerns, the BNF should designate them in the final travel plan decision.

The Forest Service and BLM have elsewhere recognized that designating routes to dispersed campsites and not allowing a motorized cross-country exemption is a feasible and reasonable way to reduce harmful effects on the environment. In fact, the BLM Uncompahgre Field Office in Colorado recently adopted a new dispersed camping policy in the Dry Creek Travel Management Plan, which represents a good example for the BNF. The TMP directs:

> ***Parking:*** In order to minimize resource impacts and help prevent new user-created routes, users are allowed to park motorized or mechanized modes of travel immediately adjacent and parallel to available designated routes for any purpose. Parking is limited to one vehicle-width from the edge of the route. Users are encouraged to park motorized or mechanized modes of travel in already disturbed areas whenever possible, consider safety, and keep routes passable for other users.
>
> ***Camping:*** Short spur routes leading to popular dispersed campsites are designated and identified. Dispersed camping is allowed in other areas, consistent with parking requirements described above.

Bureau of Land Management Uncompahgre Field Office, U.S. Department of the Interior, DECISION RECORD CO-150-2008-33 EA, at 3.[22]

The BLM clarified that it was not limiting dispersed camping, just requiring people to park within a car length of designated routes and then walk to their sites. *Id*. at 187.

Finally, while the Forest may not want to consider designation of routes to undeveloped campsites within this travel plan process, the reality is that motorized dispersed camping does involve off-route driving, and results in proliferation of compacted, denuded, and weedy off-route sites; sloughs sediment into creeks and streams, reducing functional riparian areas; compacts and reduces understory in conifer stands; and compacts and reduces biodiversity in the Forest's wet meadows.

Maintenance and Administration

[22] http://www.blm.gov/pgdata/etc/medialib/blm/co/field_offices/uncompahgre_field/documents.Par.68009.File.dat/DCTMP%20EA%20Decision%20Record%20for%20Sallys%20Signature%2003092009.pdf.

As noted in the above comments, the BNF failed to analyze trail costs with addition of so many ML 1 roads to the system, and the costs to enforce the proposed designations under each alternative. Not only was this a violation of the NEPA, but also a violation of the TMR. In the Omnibus Appropriations Act of 2009,[23] Congress directed the Forest Service to comply fully with the criteria for designation in 36 CFR 212.55(a) and (b). The regulatory text in subsection (a) requires the Forest Service to consider the management requirements and costs of proposed motorized designations and the agency's ability to meet those costs. Specifically, the regulation states:

> "…the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration."

[Emphasis added] 36 CFR 212.55 (a)

The BNF needs to fully comply with this direction by analyzing impacts to the trail budget from each alternative and the availability of funds to adequately enforce the travel plan. We recognize that Table 3.4-7 displays the trails budget for capital improvement as well as operations and maintenance, but the DEIS provides no explanation of what the impact will be to this budget will be from each alternative, or what number of trails this budget can adequately manage.

Monitoring is another administrative action and central to the adaptive management described in the DEIS in section 2.4. The BNF should analyze its ability to adequately monitor the designated transportation system under each alternative.

Executive Order 11644 as Amended

All current direction and authorities that allow, restrict, and prohibit vehicle use off roads on National Forest lands are tiered from Executive Order (E.O.) 11644, signed by President Nixon in 1972, and modified by President Carter's E.O. 11989 in 1977 [hereinafter Executive Order 11644]. Executive Order 11644 provides the foundation for the travel management rule (36 C.F.R. § 212.55(b)) and states that route designation procedures "will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands."[24] In accomplishing this broad goal, the Executive Orders specifically require that the designation of motorized areas and trails shall be in accordance with the following:

1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.
2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.
3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

[23] 155 Cong. Rec. H2089-01 at H2110. (Feb. 23, 2009)
[24] Executive Order 11644 § 1 (1972) as amended by Exec. Order 11989 (1977) – Use of Off-Road Vehicles on Public Lands.

We agree with the strong language above; off-road vehicles should be permitted *only* where they do not excessively interfere with other recreational uses or negatively impact natural resources. Each route designation requires a detailed analysis of the effect of that designation on the above factors and for other issues raised by staff and the public during comment periods. The analysis should include an explanation of how that particular route minimizes damage, harassment and disruption of wildlife, and conflicts.

In making the final decision, the responsible official must ensure compliance with the mandates outlined in the Executive Order and TMR. Simply following NEPA procedures does not satisfy the Forest Service's substantive requirements under Executive Order 11644. Additionally, simply considering the potential effects to forest resources, as defined in 36 CFR 212.55(b)'s criteria, does not satisfy the order's requirements, the intent of which is to minimize the impacts of off-road vehicle use on forest resources and other recreationists and neighbors. Simply claiming that impacts were considered and providing cursory rationales for a specific decision does not meet the requirements to minimize those impacts.

In choosing Alternative 1 as the preferred alternative, the BNF failed to minimize damage to soils, vegetation and watersheds; or to minimize wildlife harassment and habitat disturbance; or minimize conflicts in relation to individual routes and collectively over the entire Forest. Alternative 4 provides the best protection of resources, and we explain throughout these comments how the Forest Service can fully satisfy its obligations under Executive Order 11644 by modifying this alternative to eliminate certain routes from designation. For this reason, we urge the BNF to choose a modified version of Alternative 4 in the final travel plan decision. At the very least, the BNF needs to demonstrate how its final decision fully complies with the Executive Orders and Subpart B of the TMR, and document on the record how individual routes minimize damage to forest resources, wildlife, and quiet recreationists.

Best Management Practices

In order to help the BNF meet the requirements of Executive Order 11644, we urge the BNF to incorporate the publication, "Best Management Practices for Off-Road Vehicle Use on Forestlands: A Guide for Designating and Managing Off-Road Vehicle Routes," developed by Wildlands CPR and the Wild Utah Project, which we included in our scoping comments. These BMPs are all grounded in peer-reviewed science and provide a comprehensive ORV management approach; please see our scoping comments for these BMPs. Unfortunately, the preferred alternative does not follow its recommendations and we urge the BNF to either incorporate the BMPs or explain what other course of action it will take to meet the requirements in Executive Order 11644. The following are specific BMPs that we feel should be addressed in the Final EIS:

1.1.1 Planning and Decision-Making BMPs for Forest Soils

- Locate routes only in areas with stable soils; avoid highly erodible soils.
    - Table 3.8- 3 in the DEIS shows that the preferred alternative designates motorized use on 253 miles of sensitive soils with 101 miles on soils with a high erosion potential. Conversely, Alternative 4 designates 216 miles on sensitive soils, with 88 miles on soils with a high erosion potential. The BNF needs to explain how it plans on minimizing damage if it chooses to designate these routes.
- Do not locate routes to climb directly up hillslopes. Route grades should be kept to a minimum and not exceed a 15% grade.
    - The DEIS does not provide specific information on how many or which routes are on slopes with a 15% grade or greater. Therefore we urge the BNF to provide this information and explain how it will prevent erosion along these routes if the final decision is to designate motorized use on them.
- Close and restore routes that cause high levels of erosion (e.g., raise sedimentation above Total Maximum Daily Loads (TMDL) and reduce native fish population potential).

- As shown in Table 3 of these comments, several routes fall within 300 ft of 303(d) listed streams that are water quality limited due to sedimentation. The DEIS does not show how many of routes these routes have highly erodible soils, though we do recognize the DEIS's index of "Routes Considered with Rationale" does show specific ones that have soil concerns. However, this information does not disclose how many affect 303(d) listed streams.

2.1.1 Planning and Decision-Making BMPs for Vegetation

- Locate routes in areas that do not have sensitive, threatened, or endangered plant species.
  - Table 3.9.3 in the DEIS shows that the preferred alternative would have 46 routes with sensitive plant and Species of Interest occurrences; Alternative 4 would have 35 routes. Additionally, the preferred alternative would have 150 acres nearby or within dispersed campsites, and Alternative 4 would have 80 acres. However, these numbers could be higher since the analysis did not include the total acres open to motorized cross-country travel due to the dispersed camping exemption. The routes displayed in this section 3.9.4 of the DEIS should either not be designated or the BNF needs to explain how it will minimize impacts to TES plants.

3.1.1 Planning and Decision-Making BMPs for Wildlife

- Set levels of acceptable disturbance that are compatible with maintaining species viability or recovery.
  - We are concerned about the level of impacts to mountain goat populations in the Stony Mt. IRA and the Sapphire WSA as well as wolverine. Additionally, fisher and marten were excluded from analysis so we were unable to comment on how motorized use would impact these species. We urge the BNF to address these problems and demonstrate how it will ensure viable populations of these species throughout the planning area. We believe the BNF cannot permit discrete populations to extirpate from one area just because they occur on other places on the forest.
- Do not locate routes in areas with concentrated or particularly important ungulate fawning or calving areas.
  - In the Routes Considered with Rationale spreadsheet, Tr. #511 shows a seasonal closure for elk calving in Alternative 4, but not in the preferred alternative. Unfortunately the DEIS did not contain any other information on elk or other ungulate calving areas. This could be especially important for moose populations.
- Locate routes a minimum distance (as listed below) from waterbodies and wetlands:[25]
  - Fish-bearing streams and lakes – 300 ft., Permanently flowing non-fish-bearing streams – 150 ft., Ponds, reservoirs, and wetlands greater than one acre – 150 ft.
    - Table 3 of our comments shows routes within 300 ft of 303(d) listed streams that are water quality limited due to sediment. Additionally, Appendix B has a complete list of all routes in the preferred alternative located within 300 ft of 303(d) listed streams. At a minimum the BNF should explain how it will minimize impacts along these routes if it chooses to designate them in the final travel plan decision.
    - Additionally, the BNF needs to provide how many routes and which ones fall within RHCAs, and either not designate them or explain how it will minimize damage and disruption to riparian wildlife habitat. In addition to not designating these routes, the BNF should also prohibit any cross-country motorized travel in these areas.

4.1.1 Planning and Decision-Making BMPs for Special Ecosystems

[25] These BMPs are based upon Forest Service Riparian Habitat Conservation Areas (RHCA) standards.

- Do not locate routes in roadless areas, Research Natural Areas, citizen or agency proposed Wilderness, Wilderness Study Areas, and other lands with Wilderness character. Close and rehabilitate those routes that exist on the ground in these areas.
    - The preferred alternative designates routes in the Bitterroot-Selway, Allan Mt. and Sleeping Child IRAs as well as the Blue Joint WSA. The DEIS did explain in section 2.5.11 that routes must be designated in these special places in order to meet the purpose and need. However, the BNF must demonstrate how such action preserves each area's roadless and wilderness character as explained in these comments.
    - During our 2008 monitoring season we documented trail damage on several routes in IRAs, some that need active rehabilitation. See Appendix C and D to for our report and presentation on these trails.

Trail Specific Comments

While we support Alternative 4 generally, there are specific road and trail protections that we wish to emphasize and urge that, at a minimum, be adopted in any final travel plan decision in order to ensure compliance with legal authorities. Specifically we request the following routes be closed to motorized use based on the Forest's acknowledgement and documented significant resource conflicts in the DEIS:[26]

FDR 62067: Identified as steep and sediment concerns. Forest Plan Goal 2.c.5 clearly intends such routes to be closed, by stating "Off road vehicle use will be controlled to prevent soil degradation."

FDR 62613: Identified as having wetland damage and sensitive plants. The Forest plan states "Provide a safe trail system that protects soil and water resource."

FDRs 73211, 73212. 73213, 73214, 73215, and non-system routes OHV1-05, OHV2-08, OHV2-02: All identified as high resource concerns and weed spread. The Forest Plan states "Roads will be closed to public use if adequate road maintenance funds are not available" (Standard 2.j.2)

74788: Identified as having existing resource damages. The Forest Plan states "Roads will be closed to public use if adequate road maintenance funds are not available" (Standard 2.j.2)

Trail 313.1: This trail segment should be closed to motorized use yearlong to be consistent with Lolo Elk Management as well as eliminate this ridge top route that has particularly adverse effects on elk habitat

Trail 313.5: This trail segment should be closed yearlong to motorized use because of stated effect on mountain goats and elk

Tr SURD 03, 04, 05: These routes should be closed yearlong due to identified weed spread issue, and ideally removed from the ground with appropriate weed treatment. Weeds are one of the largest threats to our mountain ecosystem. In particular, the Forest Service should be implementing direct steps on currently motorized routes within big game winter range to contain such weeds as leafy spurge, sulphur cinquefoil, spotted and Russian knapweed. Even in wet mountain meadows, spread of oxeye daisy threaten productivity and plant communities of these meadows.

In addition to these issues cited above from the DEIS, comments from MTFWP also reveal resource problems for specific routes, and we urge the BNF not to include these in any final travel plan decision:[27]

[26] See DEIS attachment titled "Summary of All Routes Screened During DEIS Preparation."
[27] See Project File Wild-020

1. Trail 44 winds its way along a ridge top through prime elk and mountain goat summer range in the Palisade Mountain/Skalkaho Basin area and should be closed to motorized use.
2. Trail 86 in the Skalkaho Basin area should be closed to motorized 'use between Trail 44 and the end of Road 714 to provide security for elk and mountain goats. FWP biologist John Vore has been in this area several times and cannot see how this trail could be considered as part of a loop or thoroughfare because there does not seem to be an OHV suitable route over Skalkaho Mountain.
3. If the above recommendations were to be adopted, then Trails 88 and 300 should also be closed, as they would lead only to closed trails.
4. Trails 105, 159, 160 and 161 in the upper Sleeping Child drainage should be closed to provide a large block of secure summer range for elk, and to avoid pushing elk from public land onto private.
5. Trails 39,313 and 168 in the Chain of Lakes area go through prime conifer forest and alpine elk, bighorn sheep and mountain goat summer range. Trail 313 should be closed for its entire length because it runs along the Sapphire Divide.

After analyzing the Preferred Alternative we found several routes that, if closed, would significantly improve wildlife security and traditional non-motorized hunting opportunities. Most are single track routes that enable motorcycle riders to penetrate some otherwise large scale wildlife habitat at the expense of security and non-motorized hunters. We request closure of the following routes to all motorized use.

Trails 205 and 177 to Overwhich Falls and Porcupine Creek: These are popular stock and/or mountain bike trails that are inappropriate for motorized use due conflict associated with user experience and safety.

Trails 673, 606, 650, and 17: Together these single track trail closures would significantly enhance wildlife habitat security and traditional non-motorized hunting opportunities.

Trails 171 and 172 in Upper Meadow Creek

Trails 223 (Razorback Ridge), 138 (Chicken Cr), and 139 (Deer Cr): Trail 138 is especially important because it is located on the same ridge that forms the boundary of the Blue Joint WSA.

Trail 650 along Upper Hughes and Straight Creeks

Trails 103 and 205 along Upper Warm Springs Creek

The Forest Service violated NEPA in key respects.

The DEIS contains an Inadequate Range of Alternatives.

NEPA "mandates that agencies 'study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." *Pit River Tribe v. U.S. Forest Service*, 469 F. 3d 768, 785 (9th Cir. 2006) (quoting 42 U.S.C. § 4332(2)(E)); *see also* 42 U.S.C. § 4332(2)(C)(iii) (agency must consider "alternatives to the proposed action"). The alternatives analysis guarantees that "agency decision makers '[have] before [them] and take [ ] into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance.'" *Bob Marshall Alliance v. Hodel*, 852 F. 2d 1223, 1228 (9th Cir. 1988) (citations omitted). "Informed and meaningful consideration of alternatives . . . is thus an integral part of the statutory scheme" and "critical

to the goals of NEPA even where a proposed action does not trigger the FEIS process." Id. at 1228-29. The BNF failed to give meaningful consideration to alternatives as it relates to elk habitat effectiveness and the motorized cross-country allowance for dispersed camping.

We believe that there should be at least one Travel Plan alternative that would not require a 'project-specific' Forest Plan amendment for EHE standards. This would help disclose the scope and degree of the EHE issue by clarifying what would be required in travel planning to actually meet the Forest Plan EHE standard. Simply enforcing authorized travel management closures of ML 1 roads would probably improve EHE more than any of the alternatives presented. Therefore, the Forest Service should analyze this alternative in the FEIS.

Additionally, The BNF's failure to consider an alternative without a motorized dispersed camping provision—or at least one that limits the exception to specific routes in a sparing fashion—also violates NEPA. An agency may not define its objectives in such unreasonably narrow terms that only one course of action would satisfy the purpose and need. *See, e.g., Citizens Against Burlington v. Busey,*, 938 F.2d 190, 196 (D.C. Cir. 1991); *Envtl. Protection Information Ctr. v. Blackwell*, 389 F.Supp.2d 1174, 1199 (N.D. Cal. 2004) (holding purpose and need must not be so narrow as to make selection of an alternative a "foreordained formality"). Because the statement of purpose and need sets the stage for the range of alternatives an agency must examine, it must not be so narrow as to artificially limit the alternatives considered. *See, e.g., City of Carmel-by-the Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997). Because the alternatives analysis is the "heart" of NEPA, "'an agency must *on its own initiative* study all alternatives that appear reasonable and appropriate for study at the time, and must also look into other significant alternatives that are called to its attention by other agencies, or by the public during the comment period afforded for that purpose.'" *Dubois v. Dep't of Agriculture*, 102 F.3d 1273, 1291 (1st Cir. 1996), *quoting Seacoast Anti-Pollution League, v. Nuclear Reg. Comm'n*, 598 F.2d 1221, 1231 (1st Cir. 1979) (emphasis from *Dubois* court). This is even more true where, as here, the commenters have suggested a more limited dispersed camping provision.

The DEIS Contains Insufficient Analysis with Regard to Key Issues.

Transportation

Funding

We would like to commend the BNF and the travel planning team for the attention and focus on the forest's road system. The DEIS does an excellent job in describing the current conditions, providing historical reference and explaining priorities for road maintenance, though we would still liked to have seen a baseline with only the legally designated system. The DEIS explains that the "Transportation analysis will focus on comparing the potential impacts of implementing the various alternatives on the road system (trails will be discussed in the Recreation section of this chapter), specifically on the relative costs to maintain the routes for the designated use(s)," (p. 3.1-1).

Unfortunately, we were unable to find any further mention of the relative costs in actual dollar amounts. Specifically, the DEIS should have determined what road system the BNF can actually afford to maintain given past and reasonably foreseeable levels of road funding, and compared that with each alternative. Tables 3.1-4, 5 & 6 do a good job of showing how many miles the BNF maintained in previous years, and how many Ml 2 & 3 roads will be designated by alternative, but it did not provide how much funding was needed for each maintenance level. We do recognize the challenge of providing cost estimates due to the variability of site-specific conditions as explained in the DEIS: "Road construction and maintenance costs are difficult to estimate for the five road levels…," (p. 3.4-24). However, even with this difficulty the BNF

can use past expenditures and known conditions to provide a general estimate of its road maintenance needs, and it can use its deferred maintenance backlog.

Another alternative is to use a model developed by Dr. Michael Wing, Professor of Engineering in the Forest Engineering Department at Oregon State University. Dr. Wing developed this easily reproducible model for estimating the costs of a travel management alternative. We have provided the model in Appendix E, along with an explanation of the model in Appendix F.

Using the numbers provided by the Bitterroot NF in their DEIS for existing (Alternative 2) maintenance levels (Table 3.1-3) and motorized trails (Table 2-14), we ran the model for specific fields.

In total, the calculations show that the summer motorized transportation system being proposed by the Bitterroot NF will cost, at a minimum **$5,003,398** annually. This does not include any backlog maintenance figures, the cost of signs, road monitoring, law enforcement, or trailhead management. It does include the cost of publishing MVUMs based on motorized visitation figures from the NVUM survey findings for the Bitterroot NF, projected maintenance costs of roads by maintenance level, maintenance and monitoring costs associated with motorized trails.

We recommend that you adopt this cost analysis model as you conduct travel planning, as we believe it provides the most comprehensive approach developed to date for calculating the actual cost of a proposed motorized travel system and provides a rational way to consider budgetary constraints, as required by 36 C.F.R. § 212.55(a). If you choose not to utilize this model, please provide an explanation for why you have chosen not to, and provide an alternative rational method for estimating the costs of managing the proposed motorized system along with the estimated costs.

Designation of Maintenance Level 1 Roads

Also we have a concern with the repeated assertion that some ML 1 roads are available for off-road vehicles 50 inches or less contrary to previous decisions or Forest Service Directives, (see above section on the No Action Alternative and Baseline Condition, as well as the section that follows). We would like to have seen how many ML 1 roads would remain open to motorized use by alternative, and how many would remain closed to all vehicular traffic.

Recreation and Trails

This section does a good job of capturing the wide range of issues, though we still have some concerns with the analysis in regards to maintenance, noise, and enforcement.

Maintenance

One of our top concern focuses primarily on the capacity for trail maintenance since each alternative adds so many new routes to the trail system, and this maintenance is crucial to mitigate motorized impacts. The DEIS acknowledges the increased pressure this will have on the trails program:

"However, there are nearly 500 miles of roads currently closed to full size vehicles which would be technically converted to seasonal and year-round use by ATVs, less than 50 inches in width, under some of the travel planning alternatives. This would not impact the current roads maintenance, but it would potentially increase the maintenance costs for the trails program," (p. 3.4-24).

The Forest Service should analyze, by alternative, the trail maintenance budget required to properly maintain these motorized trails in the FEIS. Also, in regards to roads being converted to trails, unless these

are decommissioned and physically converted to trails, these routes will have impacts similar as roads. This is especially problematic for ML 1 roads that were never put into storage and had their culverts removed.

The DEIS discusses trail classifications and Table 3.2-2 shows the percentage of trails in each class, but fails to delineate between different trail types, (p. 3.2-11). This is important because a class 3 pack and saddle trail has different design parameters than a class 2 motorcycle trail.[28] Table 3.2-2 does not illustrate which types of trails fall under each classification. Even more, when disclosing the environmental consequences (DEIS 3.2.4), the analysis uses miles of motorized routes and fails to differentiate between roads and different trail types.[29] This constrains the analysis and omits impacts on trail maintenance needs from each alternative. The DEIS explains why such an omission is unacceptable:

> "Standards for maintenance and reconstruction for motorized trails differ from foot and horse trails. Motorized trails require more frequent clearing and drainage maintenance to prevent resource degradation. Trails originally designed for foot and horse traffic often require reconstruction to accommodate motorized use. This amounts to a substantial investment that requires protection through regular maintenance. Motorized trails need to be maintained twice a year at a minimum."

(p. 3.2-15)

Given the need for such a high frequency of maintenance for motorized trails versus non-motorized, the DEIS should have included maintenance cost as one of the effects indicators. In Table 3.4-10, the DEIS shows trail maintenance costs for those available to motorized use, but this section fails to disclose the current trails program budget or how each alternative would impact it. Using Dr. Wing's model provided in Appendix E and the information in Table 2-14, we determined the preferred alternative would cost $937,272 annually for just maintenance; monitoring and enforcement would be added costs.

Furthermore, with so many roads being moved into the trail system for vehicles 50 inches or less, it is especially important to disclose the BNF's ability to maintain these trails and how it will impact maintenance on other trails. Our concern is not hypothetical since there are specific natural resource impacts associated with lack of adequate maintenance capacity. The DEIS explains,

> "A study of ATV traffic effects to trails and resources concluded that ATV traffic adversely affects natural resources regardless of ATV type, size, or tire type. The study suggests "that to simply limit ATV traffic to trails is not enough to protect the natural resources. Trail planning and design, particularly trail location, are key considerations for limiting disturbance to natural resources" (Foltz and Meadows 2007) All new trail segments, and unauthorized trail conversion to system trail, was subject to review under these considerations."

(p. 3.2-13).

While it is commendable that the BNF analyzed new trail segments and unauthorized trail conversions, it is unclear if the BNF analyzed all proposed road to trail conversions with this criteria. Furthermore, trail planning and design are clearly not available for those routes already on the ground, and the BNF does not explain how it overcame this constraint. For these reasons, trail maintenance capacity becomes even more important.

[28] See FSH 2309.18 Ch. 23

[29] While this is problematic for determining maintenance needs, we do support using motorized route densities when measuring impacts to wildlife, water quality or other natural resources.

Ultimately, the BNF needs to show what road and trail system it can actually afford and provide a comparison between alternatives in order to demonstrate that it has complied with 36 C.F.R. § 212.55(a)'s requirement that route designations take into account "the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration." Where there is insufficient funding to provide maintenance, the BNF needs to avoid designating those routes for motorized use or, at the very least, include mitigation measures to address resulting impacts. This should include provisions within specific road or trail management objectives that direct managers to close the route when lack of maintenance leads to resource impacts. Towards this end, we request the final travel plan decision include an adaptive management plan that directs automatic closures when monitoring finds resource impacts. These "closure triggers" would ensure compliance with the Executive Order 11989.[30]

Noise

The DEIS goes to great lengths explaining the current regulations addressing noise associated with off-road vehicles, and how such noise is measured. It also explains, "Noise carries differently in the natural environment depending on topography, vegetative cover, ambient conditions, and snowpack. Flat terrain with little vegetative cover and crusty snowpack creates conditions for sound to carry longer distances than does terrain with more relief, vegetative cover and either fresh snow or no snow cover (USDI 2003)." Table 3.2-3 even shows the audibility of snowmobiles in open and forested terrains. However, in reading the DEIS, it is unclear how this information was used in choosing the preferred alternative or to what extent noise informed the development of the specific alternatives.

The Forest Service must consider "compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors."[31] Properly managing for noise emissions is also crucial to address conflicts with other recreational uses and impacts to wildlife.[32] While the DEIS does discuss noise, it does not actually measure it for specific trails or areas, and therefore it is apparent that the DEIS's discussion cannot properly inform the analysis.

Many spatial models and software packages are available for analyzing potential noise propagation from transportation systems, including a GIS model that The Wilderness Society (TWS) recently developed for the specific purpose of analyzing noise propagation from off-road vehicles in forest landscapes. This model is based on the System for the Prediction of Acoustic Detectability (SPreAD), a workbook issued by the Forest Service and Environmental Protection Agency for land managers to "evaluate potential … acoustic impacts when planning the multiple uses of an area."[33] TWS adapted the SPreAD model to a GIS environment, so that potential noise impacts could be integrated with other variables being considered in the travel management planning process, like type of vehicle, engine stroke, etc. We have included the user's guide for the SPreAD-GIS model in Appendix G, and we would be happy to provide an up-to-date version of the software at your request. The SPreAD-GIS model can be implemented in your existing ArcGIS software at no additional cost.

We recommend that the BNF use TWS's SPreAD Model to evaluate the potential acoustic impacts on the planning area from engine noise in this process, and recommend the BNF take appropriate action to reduce route density and ensure quiet landscapes based on the findings from your noise propagation analysis. We believe that incorporating such an analysis will allow the Forest Service to more faithfully execute its

[30] Executive Order 11644 as amended by 11898 Sec.9(a)
[31] 36 C.F.R. 212.55(b)(5).
[32] Executive Order 11644 (Sec. 3(a)); 36 C.F.R. § 212.55(b)(2)-(3).
[33] Reed, S.E., J.P. Mann and J.L. Boggs. 2009. SPreAD-GIS: an ArcGIS toolbox for modeling the propagation of engine noise in a wildland setting. Version 1.2. The Wilderness Society, San Francisco, CA.

obligations under the Executive Orders, TMR, and NEPA, as well as demonstrate on the record that it has done so.

Enforcement

We were pleased to see a discussion on law enforcement and the explanation of how the BNF will change from the current approach of open unless posted closed to one where a route is closed unless shown on the MVUM. The DEIS explains,

> "The Forest has the ability to change priorities to increase law enforcement patrols depending upon the allocated funds and forest emphasis items. This would most likely occur through two options. First, the forest can determine which programs, such as developed recreation, travel management enforcement, wildlife, etc., should be emphasized and allocate the funds to accomplish objectives related to those priorities. Another method is to prioritize the work of existing permanent staff so that there is increased emphasis on enforcement of travel management violations."

(p. 3.2-19).

This paragraph begs the question of which approach the BNF plans to use in enforcing the MVUM, or if both are to be used. We would certainly support any effective law enforcement efforts, but would like to know travel management is a priority. Towards this end, the DEIS should have included some discussion on current law enforcement funding, and what funding levels would be needed under each alternative. This is important because many of the conclusions reached in the environmental consequences discussion under each section assume compliance with the MVUM. In places where forest resources could be negatively impacted, law enforcement capacity becomes a natural resource concern.

Furthermore, it is unclear how law enforcement capacity affected the decision to choose the preferred alternative or the development of the others. The DEIS explains that several approaches can be used to ensure compliance with the MVUM, one being, "designing a recreational road and trail system that helps people stay on the designated routes," (p. 3.2-19). However, in looking at the preferred alternative, it is clear that many motorized routes dead-end in remote places, or are adjacent to protected areas such as Wilderness Areas. For example, Tr. #313.1 from Cinnabar Saddle to Tr-SCOP-30 near Cleveland Mt. runs along the Welcome Creek Wilderness boundary; Tr-SCOP-09 appears to be on the Anaconda-Pintler (AP) Wilderness boundary; and roads #13660 and #73588 both end at the AP Wilderness border. Incursions into designated wilderness from these routes will be hard to prevent without active patrols with appropriate funding.

Dispersed camping is another example where all the action alternatives create an enforcement challenge. The DEIS states, "Motorized access to and from dispersed campsites would be allowed for a specified distance on either side of designated motorized routes provided no streams are crossed and no wet meadows are damaged," (p.3.2-22). The provision in this approach will certainly create an added need for more enforcement, and most likely will create enforcement ambiguities. For example, how wet must a meadow be and what level of damage must occur before a person is held responsible. Also, if an officer does not see an individual actually causing damage, then a person can simply claim someone else was responsible. In other words, this provision is unenforceable and the BNF could eliminate the ambiguity by simply not allowing the cross-country exemption. While the law enforcement discussion was valuable, the DEIS failed to demonstrate how the discussion influenced the analysis or the decision to choose the preferred alternative.

Hunting

We were particularly impressed by the attention given to hunting, and especially bow hunting, which is an increasingly popular Bitterroot activity. Secure hunting areas are as important to bow hunters during the archery season as they are to general season hunters. In an effort to provide successful archery hunting opportunities for elk, we request reanalysis of elk security during the archery season using methodology consistent with the analysis of elk security analysis displayed for the rifle season.

The DEIS states, "Elk are therefore not very vulnerable to archery hunters in open situations where hunters are relatively conspicuous and easy to avoid, whereas elk in open situations are very vulnerable to rifle hunters capable of shooting effectively from long range. Instead, elk are more vulnerable to archery hunters in denser cover because archers can get closer to elk without being detected," (p. 3.5-36).

We disagree with the premise that cover is not important to elk during the archery season to avoid archers. Once detected, bow hunters readily pursue elk wherever they are found, causing displacement from their preferred habitat. Areas with more cover reduces the likelihood that elk will be discovered and pursued as frequently during the archery season, therefore resulting in higher elk security. Displacement rather than mortality is the issue that must be assessed here. Elk that are detected and pursued during archery season behave similarly to elk during the rifle season. Enough pressure and they are displaced, often eventually to private land where hunters cannot follow. Grigg (2007) documented that many elk in his study area were no longer available to public land hunters by the end of archery season because they had been displaced to private land.

In addition, we request that ALL motorized routes that are currently closed in mid October for wildlife security be modified to be closed August 31. The effect of archery hunters on elk and other big game is similar to general season hunters and should be regulated the same way. In addition, general season hunters are shortchanged in opportunity when insufficient wildlife security in archery season fosters large scale movement of elk to private lands where they are not available to public land hunters. In addition, leaving roads open to ATVs and motorcycles but closed to full sized vehicles during the hunting seasons is basically encouraging more hunters to buy and use ATVs and motorcycles, and creates a caste system favoring those who own and use these machines.

Wilderness, Recommended Wilderness, Inventoried Roadless and Wilderness Study Areas

Inventoried Roadless Areas

The DEIS explains, "The Bitterroot National Forest contains four areas managed for their "wilderness character": Designated Wilderness, Recommended Wilderness (as described by the 1987 Bitterroot National Forest Plan), Inventoried Roadless Areas (IRAs), and Wilderness Study Areas (WSAs)," (3.3-2). While we support the agency's efforts to preserve wilderness character in these areas, we remind the BNF that it must also closely analyze Inventoried Roadless Areas based on the criteria in the 2001 Roadless Rule in its NEPA analysis.[34] These include:

- High quality or undisturbed soil, water, and air;
- Sources of public drinking water;
- Diversity of plant and animal communities;
- Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land;
- Primitive, Semi-Primitive Non-Motorized, and Semi-Primitive Motorized classes of dispersed recreation;
- Natural appearing landscapes with high scenic quality;

[34] Federal Register / Vol. 66, No. 9 / Friday, January 12, 2001 / Rules and Regulations – p.3245.

- Traditional cultural properties and sacred sites; and
- Other locally identified unique characteristics.

We recognize and appreciate the travel planning team's effort to crosswalk these characteristics in Table 3.3-1to the WARS; this is a logical approach and while we do not challenge this methodology, we do believe that it was not carried far enough because the analysis fails to actually discuss specific characteristics and the effects of specific routes in each IRA on roadless characteristics.

For example, the Natural Integrity category matches up with the "high quality or undisturbed soil, water, and air" characteristics. However, in looking at Table 3.3-2 under the Natural Integrity column for the Sleeping Child IRA, there was no mention of soil, water or air quality. Yet, the south fork of Sleeping Child Creek along Tr. #84 is water quality limited due to nitrogen levels. Another example is habitat for "species dependent on large, undisturbed areas of land." We know the Allan Mt. IRA is an important linkage zone for wolverine traveling to the adjacent Wilderness area, and it is core habitat for fisher; also Overwhich and Hughes Creek drainages are major wintering areas for moose.[35] Yet, there was no mention of habitat quality in the Natural Integrity column. If the BNF wishes to use the WARS as a proxy for assessing IRA characteristics, it must show how it incorporates those characteristics into the WARS, accounting for each attribute; a chart is not sufficient for this purpose. This is important since the DEIS uses roadless character as an effects indicator, and in analyzing the preferred alternative, the BNF concludes, "**Natural Integrity** will improve to the extent that motorized-induced changes to the areas are able to recover," (p. 3.3-21). Simply put, this statement is too general and raises questions. What are the current motorized-induced changes to each IRA that this alternative will improve? To what extent are areas able to recover without active restoration? Appendix C and D contains our 2008 monitoring report and presentation where we found damage on Tr. #105 in the Sleeping Child IRA that is in need of active rehabilitation. Without answers it seems the analysis is too general with unsupportable conclusions. At the very least, the BNF should not lump all IRAs together since some have greater or less levels of protection depending on the alternative.

We also have a concern with the assumption that, "Snowmobiles do not currently access all areas that are unrestricted due to physical constraints (steep, timbered terrain) or lack of consistent snow cover," (DEIS, p. 3.3-23). The idea that steep terrain would limit vehicle use in some wildlife areas may be valid if there were more information, but the BNF does not provide any details as to where the terrain would be too steep and even more, what degree of slope would be too steep for technologically improved snowmobiles. Also, the DEIS does not quantify what vegetative density actually limits use. Every year in Jackson Hole, Wyoming the Snow King Ski Resort hosts the World Championship Snowmobile Hill Climb, with riders competing to climb the 1,571-vertical foot slope that tops out at 45 to 60 degree angles. The BNF cannot simply assume that steep terrain is going to effectively limit over-snow vehicles. In Appendix M we include several supporting studies on impacts snowmobiles have on wildlife and the abilities of new models. We ask these studies be incorporated into the Final EIS. This is necessary to show that areas designated for winter motorized use will negatively affect roadless character in the IRAs.

Wildlife

We have some general and specific concerns with the wildlife analysis, evaluation and resulting conclusions. In general, the approach used in the DEIS discounts wildlife habitat and focuses solely on populations; the DEIS states,

[35] American Wildlands. 2009. Priority Linkage Assessment: The Hub Conservation Area. Technical Report. Version 1.0. http://www.wildlands.org/programs/corridors/pla. See Appendix H

> "Since motorized use and associated habitat effects such as firewood gathering already occur on or along these routes, we expect no additional affects to wildlife habitat from continued motorized use on them. Therefore, the wildlife analysis does not evaluate the effects of motorized or non-motorized use to wildlife habitat. Rather, the wildlife analysis will generally focus on effects to wildlife populations caused by human disturbance, which is often facilitated by motorized vehicles."

(p. 3.5-6).

We fail to understand the logic of this statement. We agree that motorized use has associated wildlife effects, negative according this analysis and several studies cited throughout these comments, but disagree that continued use on routes and in areas will not have additional affects. The Forest Service's decision to ignore the effects of continued use on these routes discounts increased levels of use from human population growth and associated increases in off-road vehicle activity. Even assuming no change in motorized use, we fail to understand how this justifies omitting wildlife habitat from the analysis. While a focus on populations is necessary, especially since high habitat quality does not always translate into viable wildlife populations, we do not think one precludes the other; the BNF is legally obligated to analyze both populations and habitat. This is especially true in order to determine if individual route designations in the alternatives meet Executive Order 11644 requirement: "Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats."[36]

Furthermore, we are concerned with the omission of several sensitive species from the analysis. The DEIS explains fishers and martens are excluded because, "none of the proposed activities would affect suitable habitat for the species, and thus there will not be any impacts to those species from the project" (DEIS, p. 3.5-3). How could nearly 2,500 miles of roads and trails, and 600,000 acres open to cross-country snowmobile use across the Bitterroot Forest have no effects on fishers, martens, or any of the other Sensitive wildlife species also excluded from further analysis? Where is the analysis that would support such a sweeping conclusion?

The apparent assumption is that if these or any other species are unharmed by the existing condition, any action that improves the current situation will only benefit wildlife.[37] However, the Forest Service has not explained how the action alternatives will allow the BNF to overcome its current inability to meet its Forest Plan standard for Elk Habitat Effectiveness in 78 of its Third Order drainages. Neither does the DEIS account for the decrease in mountain goat populations, or the impacts to wolverine habitat, or the barriers to wildlife linkage zones, and how individual routes and the system as a whole will affect these resources. The assumptions and decision not to include wildlife habitat in the analysis is arbitrary and capricious, and in violation of the NEPA.

Furthermore, we are concerned that these omissions in the analysis resulted in flawed conclusions. For example the DEIS states,

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[36] Executive Order 11644 (Sec. 3(a)(2)).

[37] Further, merely because the Forest Service proposes to designate routes and areas for ORV use does not mean that impacts of the designation can be swept aside and only compared with the no-action alternative. As one court put it in the context of modestly improved fuel economy standards where the plaintiffs had urged more stringent standards:

> The only reason NHTSA provided for why the environmental impact of the Final Rule would be insignificant is that it results in a decreased rate of growth of [greenhouse gas] emissions compared to the light truck CAFE standard for MY 2007. But simply because the Final Rule may be an improvement over the MY 2007 CAFE standard does not necessarily mean that it will not have a 'significant effect' on the environment.

Center for Biological Diversity v. HTSA, 538 F.3d 1172, 1224 (9th Cir. 2008); *see also* 40 C.F.R. § 1508.27(b)(1) ("A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.").

> Implementation of **Alternatives 1, 3 and 4** would have **a Beneficial Impact** on wolverine populations because they would reduce the potential for human disturbance to denning wolverines, and/or reduce the risk of trapping mortality….
>
> Implementation of **Alternative 2** would have **No Impact** to wolverine populations or habitat because it would not change the existing condition.

(DEIS, p. 3.5-25)

We question the assertion that Alternatives 1, 3 and 4 would really have beneficial impacts to wolverines since between 543,215 and 672,234 acres would be open to winter motorized use, which includes potential wolverine denning habitat; such action is not beneficial to wolverines. Similarly, the assertion that Alternative 2 would not impact wolverines because there is no change from the existing conditions is illogical and erroneous. If the existing conditions harm wolverines, and Alternative 2 would not change the existing conditions, then Alternative 2 would harm wolverines. By pursuing this line of logic, the Forest Service appears to confuse its obligation under the NEPA and NFMA into somehow applying only to those of actions that change existing conditions. The NEPA is clear that the Forest Service is obliged to consider the effects of its actions on the environment, including all its range of alternatives. The NFMA requires the Forest Service to maintain native species on its lands, and to follow its forest plan: previously authorized actions are not somehow exempted from these obligations, and in fact one could argue that whether or not the actions occurred in the past is irrelevant.

We urge the Forest Service to revise its analysis to ensure it aligns with its obligations under NEPA to take a hard look at impacts to wildlife, NFMA, and other applicable statutes and regulations, and to redo its species-specific analyses in the FEIS accordingly. We have the following comments to add regarding your road density analysis, and the potential impact of the travel plan on individual species.

Route Density Analysis

We urge the Forest Service to use roads and motorized trails in a combined route density calculation when analyzing the effects of its travel plan on wildlife habitat security. The analysis does this in the elk section, but it is unclear if this was applied to other species. Using motorized route densities is common practice for national forests that contain occupied grizzly bear recovery zone habitat.

The BNF notes the value of this approach, but does not commit to using it: “Analysis of open road or open motorized route (including trail) density ***could provide*** an additional tool to differentiate true potential impacts to wildlife of each alternative,” (DEIS, p. 3.5-7, emphasis added). Another statement suggests the BNF will indeed make use of this tool, “…this analysis assumes that motorized use on trails has effects to wildlife similar to those from motorized use on roads. This assumption will facilitate comparison of the relative potential of each alternative to impact wildlife, and will allow a relatively large-scale analysis of impacts appropriate to the scope of the decision being made,” (DEIS, p. 3.5-8).

Here we encourage the Forest Service to indeed analyze open motorized access route densities and total motorized access route densities when analyzing the effects of this travel plan on wildlife and other natural resources.

Wolverine

The DEIS does a decent job in summarizing past research and disclosing impacts to wolverine from off-road vehicles. In addition to the studies included in the analysis, we would like the BNF to consider the latest research from the Wolverine Foundation Inc. that maps natal, maternal denning, and primary

rendezvous site habitat.[38] In an effort to demonstrate site-specific impacts from snowmobile noise on Inman's wolverine habitat model, we hired a GIS specialist to apply the SPreAD model in a portion of the Moose Creek drainage from Kent Lake to Fish Lake along trails #39, #421, #420 and #313, as well as on the lakes themselves. We found that 1,432 total acres were above ambient noise levels with 747 acres in Tier 1 habitat and 1,257 in Tier 2. Appendix J explains methods and provides a table with maps.

This demonstrates that if the BNF chooses to allow snowmobile use within wolverine habitat, it should consider the latest research and use noise in conjunction with acres affected to adequately assess impacts. While the research is preliminary at this time, we expect it to be published soon, perhaps before the release of the BNF's final travel plan decision. We urge the BNF to use this new information in the Final EIS, and if the Forest Service decides not to, we ask the Forest Service to explain its rationale and alternative data on which it based its analysis.

As mentioned, the DEIS discussed motorized impacts to wolverine, but unfortunately fails to rigorously compare and contrast the effects of the proposed alternatives on wolverines or its habitat, and fails to ensure that the effects of the preferred alternative will sufficiently protect wolverine habitat such that a viable population will be maintained and that wolverines will not decline to the point that might lead to an ESA listing. Note our comments above that "no change" from existing conditions does not mean "no effect" from this decision on wolverines, and indeed the only way a travel plan would NOT affect wolverines is if there were either no wolverines on the forest, or no ORV was permitted in the travel plan, neither of which is the case here.

A good example of where the DEIS identifies the potential impacts to wolverines from the travel plan decision, yet dismisses those impacts rather than ensuring the decision effectively mitigates them, is found in this description of the "Direct and Indirect Effects, Winter" of the "Proposed Action" alternative on wolverines

> Since the wolverine population in the Sapphires and other areas on the east side of the valley is likely quite small and relatively isolated from other wolverine populations, loss of a litter ***due to disturbance or several individuals due to trapping could potentially result in extirpation of wolverines from this area***. Closing some high elevation areas to snowmobile use reduces the risk of impacts to wolverine populations.

(DEIS, p. 3.5-22, emphasis added).

This statement indicates that wolverines are at risk from extirpation from the Sapphire Range and snowmobile use could be a significant factor. The DEIS acknowledges this area to be a key linkage route for the regional wolverine population: "The Sapphires may function as a linkage routes for wolverine dispersal between southwest Montana and areas to the north and east of Missoula," (p. 3.5-21).[39] This section also reports that restricting snowmobile use would reduce this risk: "Closing some high elevation areas to snowmobile use reduces the risk of impacts to wolverine populations," (3.5-22). Failing to prevent extirpation of wolverines from the Sapphire Range is in violation of the NFMA and its implementing regulations, as well as E.O. 11644.

Mountain Goat

[38] We have provided a map in Appendix I illustrating these habitats on the BNF. Please note this is unpublished, preliminary data that may change slightly upon publication.

[39] See also Schwartz, Michael K., Jeffrey P. Copeland, Neil J. Anderson, John R. Squires, Robert M. Inman, Kevin S. McKelvey, Kristy L. Pilgrim, Lisette P. Waits, and Samuel A. Cushman. 2009. Wolverine gene flow across a narrow climatic niche. Ecology In Press.

Mountain goats are a rare and popular big game species for hunters, and the DEIS does a good job of describing their decline on the BNF. The Montana Dept. of Fish, Wildlife and Parks (MTFWP) identified two areas of occupied mountain goat habitat in the Stony Mt. IRA and the Sapphire mountains, stating that "Goat populations in both areas have declined dramatically, and we no longer issue any hunting licenses in either."[40] The letter explains that motorized recreation is the presumptive cause, and scientific research shows vehicle access is linked to population declines.[41] The MTFWP Region 2 supervisor recommends that snowmobiles not be allowed in the two areas with declining goat herds.[42] The BNF biologist says, "Goat winter range, and as a consequence goats that are disturbed on winter range may have few options for escape to other suitable habitat," (DEIS, p.3.5-52). "Mountain goats probably winter in the harshest environment of any big game animal on the forest, and therefore have the least margin for unnecessary energy cost without impacts on survival and reproduction," (DEIS, p. 3.5-9).

The DEIS describes the situation succinctly, "…the Stony Mountain IRA and the Sapphire WSA, two areas near the Sapphire Crest where human disturbance facilitated by motorized access is suspected of contributing to drastic reductions in goat populations," (p.3.5-51). On a regional level, the DEIS explains "Mountain goat populations appear to be declining in a number of smaller, isolated ranges where there are few options to relocate if habitat conditions worsen or if human disturbance causes displacement (Koeth, 2008)," (p.3.5-55).

It appears evident that snowmobiling impacts mountain goat habitat and populations, and the DEIS fails to demonstrate how the preferred alternative will ensure the species is not extirpated from its traditional range. We are particularly concerned about mountain goat populations in the Sapphire Range including those in the Stony Mt. IRA and the southern goat herd in the Sapphire WSA. These populations are seriously compromised, and we urge the BNF to close the area to winter motorized use. NFMA requires the Forest Service to protect wildlife diversity, 16 U.S.C. § 1604(g)(3)(B), and we fail to see how allowing snowmobile use in sensitive mountain goat habitat complies with that mandate.[43]

Canada Lynx

We appreciate that the DEIS analyzes the effects of the travel plan on lynx: "Compliance with the Objectives, Standards and Guidelines contained in the Northern Rockies Lynx Management Direction FEIS is evaluated for each of the alternatives," (DEIS, p. 3.5-10). We also appreciate the description of lynx habitat on the Bitterroot Forest to help understand potential impacts: "Lynx habitat is generally limited to the higher elevations in the Sapphire Mountains, and to forested areas along streams and in many of the higher basins and north aspects in the Bitterroot Mountains. The many steep, rocky areas in the Bitterroot Mountains are not considered lynx habitat. Consequently, lynx habitat in much of the Bitterroot Mountains is highly fragmented by these steep, rocky areas," (*Ibid*).

This is a great first step, and we ask the Forest Service to fulfill the rest of its obligations to take a hard look at effects on lynx and its duty to inform the public of those effects by including a map of lynx habitat on the Bitterroot Forest in its travel plan Final EIS and use this map to illustrate, quantify and analyze the effects of its travel plan alternatives on lynx. Also, we would like to see the Forest Service analyze the

[40] See Project File WILD-020.
[41] See Joslin 1985, Project File WILD-046.
[42] See Project File Agency-005.
[43] See also 36 C.F.R. 219.19 (1982): "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least a minimum number of reproductive individuals and that habitat must be well distributed so that those animals can interact with others in the planning area."

effects of its travel plan alternatives on the lynx "linkage areas" mapped on the Bitterroot Forest (USDA 2007), to ensure these areas are managed to promote lynx connectivity.

Similar to our concerns with the wolverine analysis described above, we are disappointed that the Forest Service analysis concludes with the simple determination that all of the action alternatives would be a "Beneficial Effect" to lynx compared to existing conditions, and thus the Forest Service's duty to maintain and restore lynx habitat is fulfilled. 40 C.F.R. § 1508.27(b)(1) ("A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial."). We acknowledge the Bitterroot Forest is not a core area for lynx, but given the reliable observations of lynx on the Bitterroot in the DEIS, and the Bitterroot Forest's importance for connecting occupied lynx habitat in Idaho and Montana, we urge the Forest Service to refine it analysis of the travel plan alternatives' impacts on lynx and ensure that its decision maintains and restores lynx habitat to the maximum extent feasible.

We disagree with the Forest Service's assertion in the DEIS that forest roads and trails do not harm lynx. Please see our Appendix K that details the effects of forest roads on lynx.

Fishers

As mentioned above, we object to the exclusion of fishers from the DEIS. The BNF provides the last remaining stronghold in Montana for the fisher population native to the U.S. Rocky Mountain region and in Appendix L we provide a map from a recent peer-reviewed scientific study to illustrate this point. Additionally, another study found, "Thus, fishers in north-central Idaho and west central Montana are the only confirmed native fishers in the Rocky Mountains, and 1 of a few populations in the West that have maintained native genes."[44]

Rather than highlight this unique ecological value of the Bitterroot Forest, the DEIS vastly understates the importance of the Bitterroot Forest to fishers by describing their presence as "Scattered occurrence records mostly in west side canyons," (DEIS, Table 3.5-1, p. 3.5-4). The DEIS then excludes the fisher from any analysis in the DEIS with the assertions that "[t]ravel planning will not affect fisher habitat, and access for trapping will be reduced in all alternatives," (*Ibid*).

We acknowledge that the direct effects of roads, trails, and snowmobiles on fishers is not well-studied, yet scientific literature describes various impacts of roads on fishers, including fragmentation of their habitat and populations, and increasing the risk to fishers posed by trappers. The DEIS itself acknowledges impacts to small mammal populations that are prey for forest carnivores, including fishers

> …studies indicate that in areas of concentrated snowmobile or other over-snow vehicle use, small mammal communities can be reduced or eliminated… which can in turn affect predators of small mammals such as weasels and marten.

(p. 3.5-8)

The DEIS also acknowledges the travel plan can facilitate the access of trappers into habitat for wolverines, fishers, martens and other furbearers

> Snowmobile access leads to increased trapping pressure for some furbearers that prefer more mesic habitat conditions generally found at higher elevations or in riparian habitats, such as marten, fisher, lynx, and wolverine. Trapping season for these species is limited to the winter months, and most trappers prefer the relatively easy access to suitable habitat provided by

[44] Schwartz, M.K. 2007. Ancient DNA Confirms Native Rocky Mountain Fisher (Martes Pennanti) Avoided early 20th Century Extinction. Journal of Mammalogy, 88(4):921–925.

> snowmobiles. Lack of snowmobile access dramatically reduces the amount of trapping pressure for these species, several of which are classified as Sensitive or are federally listed. (p. 3.5-9)

For the Forest Service to dismiss these effects of the travel plan on fishers because motorized access will be reduced from current conditions is inappropriate and illegal. Failure of the Forest Service to consider the effects of the travel plan alternatives on fishers violates NEPA, NFMA, the ORV Executive Orders, and 36 C.F.R. 212.55.

Martens

Similar to fishers, we also object to the exclusion of martens from analysis in the DEIS. Martens are more secure and abundant than fishers in the Northern Rockies, but as noted in the DEIS they are listed as a Sensitive species by the Forest Service, and also a Management Indicator Species for old growth forests. The Forest Service assertion that "travel planning will not affect marten habitat," (DEIS, Table 3.5-1, p. 3.5-5) is simply not true. We appreciate that access for trapping will be reduced in all alternatives, but this is not sufficient to fulfill the Forest Service's obligation to ensure its travel plan decision fulfills its NEPA obligations to analyze the effects of its actions, and its NFMA obligations to ensure its decision will maintain sufficient habitat for Sensitive and Management Indicator Species.

Grizzly Bears

We are also concerned that the DEIS excludes any analysis of the effects of the travel plan on grizzly bears, despite the fact that the project area includes the western portion of the Selway-Bitterroot grizzly bear recovery zone (USDI 1993). The many harmful effects of roads on bears are well documented, and managing travel planning may be the highest priority of a land manager seeking to maintain and restore habitat for grizzly bears.

Western Toad

The BNF lists the western toad as a sensitive species, and we are concerned that important riparian habitat could be negatively affected by dispersed camping exemptions to the ban on motorized cross-country travel; this is especially true in Riparian Habitat Conservation Areas (RHCAs). Unfortunately, the DEIS does not provide us with enough information to adequately comment on the threat to the western toad from the dispersed camping exemption. The DEIS states, "The entire Forest provides suitable habitat for western toads given their use of a variety of habitats, although use may be limited in many of the denser stands on north-facing slopes (Bull 2006)," (p. 3.5-26). The DEIS states the analysis focused on riparian habitat, so we expected to see some measures of how much riparian habitat is affected by each alternative. Especially so since the DEIS states, "Because of the importance of riparian areas to western toads, the effects analysis looks at potential impacts to riparian areas with each alternative," (p. 3.5-26). Yet the environmental consequences section of the DEIS only provides miles of roads and trails. It should have included the number of riparian acres affected by motorized route density and acres available due to the dispersed camping exemption.

The DEIS does explain, "All of the action alternatives would prohibit motorized use within 30 feet of streams, ponds, lakes, marshes, or wet areas. This would protect riparian habitat and water quality in potential toad breeding sites, as well as reduce the risk of direct mortality to breeding adults, eggs, or immature toads that could result from motorized vehicles crossing these wet areas," (p. 3.5-26). But we find no supporting information demonstrating that prohibiting motorized use within 30 ft of habitat is

sufficient to protect riparian areas.[45] Furthermore, it is unclear how such a provision will be enforced. The hope that people will follow directions is belied by the presence of so many user-created routes, especially those established to access or create dispersed campsites.

Finally, "…access to dispersed camping sites, and human presence in potential breeding sites for toads, may disturb or displace toad breeding behavior or success."[46] Unfortunately, the DEIS does not include a hard look at these impacts, rather the DEIS simply states, "This alternative [1,3,4] might reduce impacts to potential toad breeding sites comprised of seasonally or perennially wet areas on road or trail surfaces, but any such benefits would be minor and are not quantifiable," (p. 3.5-26). It appears there was little effort to quantify the acres affected by each alternative, so the conclusion that benefits would be minor seems unsupportable, and indeed with further analysis the BNF may find that some alternatives would have a harmful impact in specific riparian areas.

Elk

The BNF's analysis of elk populations is perhaps the most complete we have ever seen, and we commend the level of detail that illustrates viable populations. However, our concerns about habitat are best illustrated by the BNF's omission of habitat quality, especially since elk are susceptible to disturbance from off-road vehicles, which potentially affect their distribution. Elk disturbance and impacts on distribution should have been a focus of the analysis. Additionally, we would liked to have seen the number of routes proposed for designation in relation to elk calving areas by total route density as well as by individual route. This would help us identify those areas and routes that have the most impact to elk calving.

Regarding Elk Habitat Effectiveness EHE calculations, the DEIS states, "an open road is any road open to full-sized vehicles during all or part of a year. Roads that are closed to full-sized vehicle use all year are counted as closed roads," (p.3.5-32). Also, "Road prisms that are closed to full-sized vehicles but open seasonally or year-round to ATVs and/or motorcycles are considered closed for this EHE analysis because technically they are now operating as trails," (p.3.5-33). Until these closed roads are officially decommissioned and physically converted into trails, they should be included in any EHE calculations, regardless of whether or not they were included in the EHE Index. Additionally, these roads should be analyzed as if they were closed to all motorized use, as they should be, so that we may be able to actually see if there is an increase in the number of Third Order drainages that comply with EHE standards.

In regards to the EHE Index, we support the acknowledgement that, "…motorized traffic on trails affects elk similarly to motorized traffic on roads," (DEIS, p.3.5-29).[47] Given this, we expected that the analysis would inform us how many Third Order drainages comply with EHE standards based on this calculation. It is understandable that travel planners would not want to confuse the issue since the BNF cannot base EHE standards on motorized route densities without supporting scientific publications demonstrating the validity of such an approach. However, we feel such a comparison would be useful in comparing the difference between EHE and EHE Index calculations. Finally, while the BNF may feel it is inappropriate to use the EHE Index to determine compliance with Forest Plan standards, it can be used to help support a new standard that addresses elk disturbance and distribution; see our comments below on Forest Plan elk standards.

[45] We also fail to see how a 30-foot setback complies with the INFISH requirements.
[46] USFS. 2009. Motor Vehicle Use Map Project Environmental Assessment. Three Rivers District, Kootenai National Forest. p. 3-30.
[47] See also, Naylor, L.M., M. J. Wisdom, R.G. Anthony. 2009. Behavioral Responses of North American Elk to Recreational Activity The Journal of Wildlife Management 73(3):328–338

In discussing elk security, the DEIS explains the data shown in Table 3.5-8: "This security area analysis shows that none of the Hunting Districts used as surrogate elk herd units comes close to meeting the 30% minimum level recommended by Hillis," (DEIS, p. 3.5-35). Tables 3.5-15 & 16 illustrate that only Hunting District 208 meets the 30% threshold, and then only for archery season. Logging and fire account for loss of security cover in many areas. As a way to mitigate the loss of cover, we suggest the BNF close motorized routes to alleviate stress that have inadequate vegetative cover until canopy closure is restored.

A Travel Plan alternative that would not require a Forest Plan amendment for EHE should be developed in order to explore such possibilities in providing for improved EHE and disclose what would be necessary to meet the Forest Plan EHE standard.

In any event, we endorse the MTFWP recommendations in PF-WILD-20, especially the request to close Tr. #205 in Porcupine Creek and Tr. #103 in Warm Springs Creek to motorcycles year-round instead of seasonally to provide elk summer range security. Additionally we recommend the full closure of route TR-OHV-164 that follows a high ridge top connecting to Tr. #205 and the Porcupine Saddle elk summer range from road #5733 in Waugh Gulch.

Water Quality

Watershed integrity and stream quality are of particular interest to us, and we were glad to see the analysis use 6^{th} – level HUCs for the scale. In explaining what the analysis measures, the DEIS states, "this analysis focuses on ways to determine direct and indirect effects to water resources from the changes in motorized access," (p. 3.6-1). While this is a logical approach, we do have a concern that only focusing on changes misses existing and on-going impacts from the transportation system and its use.

We were heartened to see acknowledgement of impacts, particularly that, "Trails may also affect sediment when there is an inadequate vegetation buffer between the trail and stream and at crossing locations (Welsh 2008)," (DEIS, p.3.6-1). Off-road vehicle use on trails and roads converted to trails, have serious impacts to water quality. While driving on roads has long been identified as a major contributor to stream sedimentation (for review see Trombulak and Frissell 2000), recent studies have found ORV use to be a significant source of fine sediment in streams (Chin and others 2004, Ayala and others 2005, Welsh 2006). Stream sedimentation can greatly degrade aquatic habitat (Newcomb and MacDonald 1991). For example, Chin and others (2004) found that in watersheds with ORV use streams contained higher percentages of sands and fine sediment, lower depths, and lower volume – all characteristics of degraded stream quality.

While forest roads often have greater erosion potential, ORV trails often have no culverts or bridges across streams. The result is direct input of sediment into a waterbody. A modeling exercise found that the average annual sediment yield from one ORV stream crossing in Alabama could reach 126.8 tons/ha (Ayala and others 2005). Another study found that ORV trails produced six times more sediment than unpaved roads and delivered 0.8 mg/km^{-2} of sediment to the stream network each year (Welsh 2008). Coe and Hartzell (2009) recently reported that the well-traveled Rubicon jeep trail in California's Sierra Nevada mountains had rates of stream sedimentation 50 times higher than adjacent forest roads.

The DEIS explains that most impacts occur from stream crossings and within 300 ft of waterbodies, and that the analysis uses GIS to measure impacts by "miles/square mile motorized route density within 300 feet of streams and a number/square mile for motorized crossings," (p. 3.6-2). While this approach captures use on routes close to streams, it does not account for the dispersed camping exemption to the cross-country prohibition on motorized travel. Since each action alternative proposes such an exemption, the analysis should include affected acres and sediment-yield estimates from the cross-country use as well as those routes within 300 ft of streams. On this matter the DEIS states, "Compared to road systems, this

source creates only minor levels of sediment," (p. 3.6-8). Without a more specific measure that includes affected acres or non-system routes within the dispersed camping zone, we fail to understand how the analysis determined the exemption only produces minor sediment levels compared to roads. Furthermore, even if the sediment levels are minor when compared to roads, that does not mean those levels are benign. The determination could be due to the flaw in the methodology that only focuses on changes from the existing route network instead of taking into account current damage.

While the analysis did look at 6th-level HUCs, the environmental consequences did not show motorized route densities at this level, rather the BNF averaged the impacts across the planning area, thereby failing to account for impacts to specific areas with high densities. The DEIS explains, "the analysis suggests that all **Action Alternatives** would have similar sediment contribution from this primary source, and, therefore, produce overall water resource conditions similar to those that currently exist," and that "This situation also applies to the 303(d)-listed streams…" (p. 3.6-11). The latter statement is particularly troubling because sediment-caused, water quality limited streams are listed because of site-specific impacts, not from impacts across the entire planning area. Appendix B of these comments provides a list of all routes proposed for designation in the preferred alternative that fall within 300 ft. of 303(d) listed streams, and Table 3 below shows those along streams listed due to sedimentation and temperature. We have a concern that motorized cross-country travel for dispersed camping can lead to a loss of vegetative cover or prevent revegetation needed to lower stream temperature. This should be analyzed in the Final EIS.

Table 3. Routes in Alternative 1 Within 300 ft of 303(d) Streams Listed Due to Sedimentation & Temperature.

Route ID	Route Name	Cause
73069	MEADOW CREEK	Sedimentation/Siltation
725	(FDR) MEADOW CREEK	Sedimentation/Siltation
725	(FDR) MEADOW CREEK	Sedimentation/Siltation
(TR)606	COLTER CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)674	OVERWHICH CREEK	Sedimentation/Siltation
(TR)673	SHIELDS CREEK	Sedimentation/Siltation
(TR)673	SHIELDS CREEK	Sedimentation/Siltation
(TR)673	SHIELDS CREEK	Sedimentation/Siltation
(TR)673	SHIELDS CREEK	Sedimentation/Siltation
(TR)650	HUGHES POINT	Sedimentation/Siltation
1328	(FDR) MILL CREEK	Temperature, water
1328	(FDR) MILL CREEK	Temperature, water
1328	(FDR) MILL CREEK	Temperature, water
1328	(FDR) MILL CREEK	Temperature, water
438	(C) COW CREEK	Temperature, water
5759	(FDR) SAGEBRUSH	Sedimentation/Siltation
5759	(FDR) SAGEBRUSH	Sedimentation/Siltation
5703	(FDR) OVERWHICH	Sedimentation/Siltation
5703	(FDR) OVERWHICH	Sedimentation/Siltation
5703	(FDR) OVERWHICH	Sedimentation/Siltation
5703	(FDR) OVERWHICH	Sedimentation/Siltation
5699	(FDR) LOOKOUT MTN NORTH	Sedimentation/Siltation
5764	(FDR) SWIFT-ECHO	Sedimentation/Siltation
5762	(FDR) BUGLE CREEK	Sedimentation/Siltation
5761	BALSAM CREEK	Sedimentation/Siltation
5758	(FDR) DOWLING-KERLEE	Sedimentation/Siltation
364	(FDR) WILLOW-ST.CLAIR	Sedimentation/Siltation
364	(FDR) WILLOW-ST.CLAIR	Sedimentation/Siltation
66	(FH) WEST FORK BITTERROOT	Sedimentation/Siltation
66	(FH) WEST FORK BITTERROOT	Sedimentation/Siltation
364	(C) WILLOW-ST.CLAIR	Sedimentation/Siltation
364	(C) WILLOW-ST.CLAIR	Sedimentation/Siltation
1311	(FDR) MCCLAIN CREEK	Sedimentation/Siltation
969A	WILLOW CREEK TRAILHEAD	Sedimentation/Siltation
969A	WILLOW CREEK TRAILHEAD	Sedimentation/Siltation
364	(C) WILLOW-ST.CLAIR	Sedimentation/Siltation
1311	(C) MCCLAIN CREEK	Sedimentation/Siltation
969	(FDR) GOLD CREEK	Sedimentation/Siltation
364	(FDR) WILLOW-ST.CLAIR	Sedimentation/Siltation

Please note that in the above table routes highlighted yellow are ML 1 roads where #5759 and #5762 have Map Codes R-4, possibly due to soil erosion, and road #5699 has a Map Code R-7. We believe none of the routes in Table 3 should be designated in any final travel plan decision. In particular, we believe the Forest Service must provide a rationale explanation for its decision to open ML 1 roads and Trails #606, #650, #673, and #674, which the Forest Service previously determined should be closed to vehicular use. The BNF proposes these trails to be open for vehicles 50 inches or less to accommodate ATVs, which cause

significant sedimentation. Additionally, designating trails inside the Allan Mt. IRA negatively affects the area's natural integrity in relation to 303(d)listed streams and reduces its roadless character. Montana DEQ reports that Overwhich Creek has a water quality category 5, meaning that the agency still needs to develop a TMDL for sediment. Until that time, the BNF needs to ensure no further stream degradation. Hughes Creek does have a TMDL for sediment and the BNF needs to make sure motorized use does not produce sedimentation beyond set levels. The Final EIS should also report water quality categories for 303(d) listed waterbodies where the BNF proposes to designate motorized use, and, in general, the FEIS must contain a more detailed discussion of how the Forest Service's action alternatives would affect water quality and the Forest Service's ability to comply with its *specific* obligations under the Clean Water Act.

The above table demonstrates that the preferred alternative has the potential to impact specific stream segments and the analysis should have taken a more site-specific look rather than averaging impacts across the planning area or even in the total 303(d) listed watersheds shown in the DEIS's Table 3.6-5. The DEIS claims,

> With open road density (and road crossing density) remaining virtually constant (Tables 3.6-3 and 3.6-4), the difference between the effects of the different action alternatives lies with the differences in motorized trail crossings and the motorized trail mileage within 300 feet of streams. While these sediment contributing sites are considered to have effects on channel sites immediately adjacent to the crossing or streamside road segment, their effects are not likely to be detected downstream.

(p. 3.6-13).

The last statement is troubling because it suggests that there should only be a concern when effects are felt downstream. We know that this is not the case as impacts to specific stream segments directly affect water quality and fisheries habitat in that segment, which could be in violation of the Clean Water Act and nondegradation policies; especially since Best Management Practices can only be applied to maintenance as these routes are already on the ground. If the BNF chooses to designate motorized use within 300 ft of 303(d) listed streams, it should provide a description of specific activities that it will use to meet reasonable land, soil, and water conservation practices; simply relying on BMPs is not sufficient to comply with nondegradation requirements.

Fisheries

Because the Forest Service generalized water quality impacts across the planning area, it is difficult to comment on specific impacts to fisheries and aquatic habitat. We have concerns about those routes listed in Table 3 above, especially where they overlap with sensitive westslope cutthroat trout and threatened bull trout habitat.

Additionally, the DEIS explains, "A Biological Assessment (BA) for bull trout will be finalized before the Record of Decision for this project is signed," (p. 3.7-2). We would have liked to have the chance to comment on the BA and are confused as to why it was not part of the DEIS, especially since the analysis determined that preferred alternative would slightly improve conditions in Burnt Fork Creek, but forest wide it would not change the existing condition (DEIS, p. 3.7-7). We question how the BNF can make this determination without the BA, and how the public can provide meaningful input without the benefit of this document. Also, since the analysis averaged impacts across the planning area, site specific benefits or impacts may have been missed. Finally, the analysis separated motorized trails from roads, which is useful for comparing alternatives, but it should have also included a total motorized route density to better assess the cumulative impacts.

The DEIS explains that the Inland Native Fish Strategy (INFISH 1995), which amended the Forest Plan, "defined Riparian Habitat Conservation Areas (RHCAs), which are portions of watersheds where riparian dependent resources receive primary emphasis," (p. 3.7-2). "INFISH establishes riparian management objectives ["RMOs"], standards and guidelines, and monitoring requirements for all proposed and new projects within or affecting RHCAs in the planning area, as well as to certain ongoing projects in areas designated as priority watersheds."[48] RHCAs are buffer zones designed to facilitate attainment of RMOs, and they are designated to minimize the risk of activity-related sediment entering aquatic systems as well as to minimize impacts to habitat for aquatic- or riparian-dependent plant and animal species through the establishment of buffer zones.[49] RHCAs may not be modified unless a Watershed Analysis is first completed or site-specific data support the change.[50] The DEIS states that all action alternatives reduce open road densities (p. 3.7-12), suggesting that RHCAs will benefit from any alternative, but we do not see the particularized analysis that would lead to this conclusion.

The EIS contains no indication that a watershed analysis has been completed to support a decision allowing cross-country travel of any kind to reach dispersed camping sites in RHCAs. Neither does the EIS contain the requisite "hard look" at the effects of allowing such travel in satisfaction of NEPA. Although the EIS acknowledges the existence of RHCAs and suggests the plan will be a net benefit, regardless of which alternative is selected, it provides no substantive discussion of how each alternative will meet INFISH standards, guidelines, or RMOs. The DEIS lacks adequate information with which to assess whether cross-country travel for dispersed camping in RHCAs would, in fact, have an impact on the Forest Service's ability to achieve RMOs.[51] Moreover, it is unclear if the analysis included motorized trails, or if there are some RHCAs that would have more impacts than others; this is a major flaw with averaging impacts across the planning areas. The DEIS should have included a map and table illustrating where the RHCAs are, what portions would be affected by each alternative, and an analysis of how RMOs will be achieved under each alternative. While there may be an overall benefit in comparison to the existing condition, that does not mean each action alternative will not negatively impact riparian habitat, and the Forest Service has an obligation to take a hard look at this issue.

In relation to impacts from trails the DEIS states, "Trails can have the same kind of effects, but generally the system trails are much narrower, were built with much less cut and fill material, and are therefore less consequential than roads from a fisheries perspective," (p.3.7-3). While this may be true generally, the analysis provides no supporting information demonstrating this assertion, and there could be cases where such use does cause increased erosion. This is especially true for roads being converted to trails, since they need more maintenance to mitigate impacts, and the BNF does not have the capacity to service those trails twice a year.[52] The BNF did not explain if these roads were counted as trails or not, and the DEIS failed to show where these trails occur in relation to west slope cutthroat (WCT) and bull trout streams.

Lastly, we have a serious concern about the dispersed camping exemption and the assumption that people will not drive 30 ft from a stream. As stated above, we think this approach is unenforceable and violations will harm riparian habitats and increase stream sedimentation. The DEIS should have shown where the exemption overlaps with RCHAs and which streams could be affected that have bull trout and WCT. The DEIS does state, "Dispersed recreation sites are not routinely maintained, and they have steadily increased over the years, resulting in geographically-scattered areas of sediment delivery to streams and destabilized

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[48] See *See Friends of the Wild Swan v. U.S. Forest Serv*., 966 F.Supp. 1002, 1010 (D. Or. 1997).
[49] See Inland Native Fish Strategy Environmental Assessment Decision Notice and Finding of No Significant Impact, at A-7 to A-9 (1995).
[50] *Id*. at A-14; *Idaho Conservation League v. Bennett*, 2005 WL 1041396, No. CV 04-447-S-MHW, at *13 (Apr. 29, 2005 D. Idaho).
[51] See Idaho Conservation League, 2005 WL 1041396 at *13; League of Wilderness Defenders v. U.S. Forest Serv., 2005 WL 3307087, No. CV 03-1563-AS, at *7 (D. Or. June 6, 2005).
[52] See DEIS p. 3.2-15.

streambanks," (p.3.7-10). In addition to the DEIS's failure to examine the particular areas where the Forest Service has observed this phenomenon and use these observations to assess effects on specific stream segments, we are concerned not only with existing dispersed camping sites themselves, but with the motorized impacts from accessing or locating new sites. The DEIS does not adequately assess these impacts to fisheries or RCHAs.

Soils

The DEIS explains that the soil productivity standards do not apply to system roads and trails, and we understand they are a committed resource where applying such a standard would make little sense. Of course, productivity standards do apply to uncommitted resources and we were please to see the DEIS state, "Soil disturbances that result from non-system routes are subject to Region 1 Soil Quality Standards (R1 SQS) (PF-SOILS-001)," (p. 3.8-1). In addition to non-system routes, the potential for new or continued soil disturbance in areas resulting from the dispersed camping exemption is another place where productivity standards apply. Unfortunately, the DEIS does not provide information on the number of non-system routes as it relates to soil productivity or how many or which of these routes occur in sensitive soils. The analysis does state "…the exact amount of area affected by non-system routes has not been quantified for the Bitterroot National Forest," (p. 3.8-1). Given that the DEIS maps and associated project files list numerous non-system routes, it is reasonable to ask that the Final EIS include some measure of the area affected. Furthermore, the DEIS states, "The miles of motorized routes on sensitive soils was selected as the indicator for analyses because it represent landscapes most vulnerable to soil impacts from roads or trails," (3.8-1). We agree that this is an important measure for designated roads and trails, but a poor indicator for the area potentially harmed by the dispersed camping exemption; here the BNF should have used acres instead.

While dedicated resources do not have to meet soil standards, in order to understand cumulative effects it is important to know the total acreage of BNF land that is withdrawn from soil productivity standards due to the transportation system. This is also important to understand watershed resources as the DEIS recognizes: "analysis of soil resources provide background information for better understanding watershed impacts from roads and trails on the Bitterroot National Forest," (DEIS, p.3.8-1). Roads and trails add to Equivalent Clearcut Acres and the DEIS should have included a measure of this impact.

We find it particularly troubling that the DEIS claims, "There are no goals, objectives, or forest-wide standards in the Bitterroot National Forest Plan, laws, regulations, or Regional Policy pertaining to soils that specifically apply to Travel Planning," (p. 3.8-1). We disagree. The Forest Plan explains that "Soil & Water Conservation Practices will be part of project design and implementation to ensure soil and water resource protection;" and directs managers to "Plan and conduct land management activities so that soil loss, accelerated surface erosion and mass wasting, caused by these activities will not result in an unacceptable reduction in soil productivity and water quality."[53] These practices are still in use and apply to the project. Also, Forest Service Directives apply: "Designate, construct, and maintain recreational travelways for proper drainage and armor their stream crossings as needed to control sediment."[54] Moreover, the Travel Management Rule and Executive Orders themselves require the Forest Service to designate routes so as to "*minimize damage to soils*," and the Forest Service must demonstrate how it has done that with respect to each route in the FEIS.[55] The BNF should adjust its analysis in the FEIS and show how the preferred alternative complies with these requirements.

[53] BNF 1987 Forest Plan, p. II-25
[54] See 2509.25 ch10 p.19
[55] Exec. Order 11644 § 3(a)(1); *see also* 36 C.F.R. § 212.55(b) (critieria for designation).

In looking at the DEIS's potential environmental consequences, Table 3.8-3 lists the miles of motorized routes located on sensitive soils, and we were pleased to see roads and trails combined for this analysis. In order for better informed comments, it would be useful for the BNF to disclose how many of these routes occur within 300 ft of streams, especially those that are water quality limited due to sediment as well as those with bull trout and WCT. We ask that these routes not be designated for motorized use, or for the BNF to demonstrate how it will minimize impacts associated with such use in these highly sensitive areas.

In reading the section on motorized dispersed camping, it seems the analysis focuses more on impacts from the campsites than the damage from motorized use. For example, the DEIS states, "The 150 to 300 feet difference among alternatives will lead to minimal differences in impacts to soils across the Analysis Area since the majority of dispersed sites have already been developed and soils were disturbed during initial development of the sites," (p. 3.8-5). This assumes that no new ground would be disturbed accessing existing sites, and no new sites would be created. In fact the analysis claims, "topography, vegetation, rocks, and downed wood often limits dispersed camping farther than 150 feet from routes in many areas," (p.3.8-7). We are very interested in knowing specific qualities that actually limit motorized access to campsites or prevent the establishment of new ones. How steep, dense and rocky does an area have to be to actually limit use? In our monitoring efforts, we have seen machines drive over or move obstacles and climb steep terrain. Furthermore, the analysis repeats a consistent flaw of averaging impacts across the whole analysis area. This is especially problematic where the dispersed camping exemption overlaps with sensitive soils near streams. The Final EIS needs to include affected acres of sensitive soils for the entire motorized corridor that would result from each action alternative; 600 ft for Alternative 1 and 3, 300 ft for Alternative 4.

Finally, according to a BNF sensitive soils map, a significant portion of route TR-OHV-164 crosses highly erosive soil or high compaction potential ash cap soils. It is reasonable to expect this trail to need significant maintenance to prevent soil resource damage; given the acknowledged lack of adequate funding this could lead to future persistent impacts. This segment of user built ORV trail was apparently not included in the "Soils Review of User Built OHV Trails" (PF SOILS-003), so the DEIS fails to disclose existing conditions or necessary trail reconstruction or maintenance needs. We urge this route not be included in any final travel plan decision.

TES Plants and Noxious Weeds

Overall this analysis was extremely thorough in identifying affected species and assessing impacts from roads and trails. However, the dispersed camping analysis needs some improvement. The DEIS explains, "For dispersed camping, the indicator will be the acres of potentially-suitable habitat within dispersed camping areas that could be impacted," (p. 3.9-1). This suggests that the analysis focused only on areas with dispersed campsites, rather than the whole exemption area. The DEIS further states, "Due to the flat terrain where these dispersed campsites are located, a total of about 150 acres of suitable sensitive plant habitat could be impacted by dispersing camping (Table 3.10-4)," (p. 3.9-8). This confirms that the analysis did indeed only focus on known campsites. Instead it should have focused on the affected acres from the exemption to the ban on cross-country travel, which would include dispersed campsites, but also all the total area susceptible to disturbance from off-road vehicle use 300 ft from either side of the route; in Alternative 4 this would be 150 ft from either side of the route. We urge the BNF to correct this error in the Final EIS.

It is unclear whether or not the analysis for noxious weeds repeated this error, but since the DEIS references the TES Plants section, we believe it does. Additionally, the DEIS explains, "Tables 3.10-5 and 3.10-11, below, list some of the known dispersed campsites and the potential acres of weed spread within a 300 and 150 foot corridor based on terrain (using GIS)," (p. 3.10-7). In looking at these tables, they list

the dispersed campsite and then potentially impacts acres associated with each site. This suggests that campsites were the focus of the GIS based analysis instead of the area open to motorized cross-country travel. This approach misses significant acres of land that will be open to cross-country motorized travel under each action alternative. Following our recommendation above for TES plants would correct this error. Unfortunately, it appears that the BNF dismisses the potential for new impacts from the cross-country ban exemption by claiming topography will prevent access to new sites, (DEIS, p. 3.10-9). We question what topographic features limit motorized access, and ask the BNF to clarify what degree of slope, vegetative density or other factors actually prevent access. Furthermore, motorized access to establish new sites is just one concern, and the BNF needs to consider motorized travel across all acres open under the motorized exemption.

The Forest Plan Elk Standard and Elk Habitat Effectiveness

The DEIS explains, "The Forest Plan requires that habitat be provided to support viable populations of native and desirable nonnative wildlife, and to maintain habitat for the recovery of T&E species (USDA Forest Service 1987a, II-3)," (p. 3.5-3). Given this mandate it is understandable that elk management efforts to date focused solely on maintaining population levels. Towards this end, the BNF uses an Elk Habitat Effectiveness (EHE) model to ensure viability. However, this model does not address elk distribution, or ensure adequate hunting opportunity. Therefore we urge the BNF to use the travel planning process as an opportunity to establish an additional elk standard to address elk disturbance and distribution.

According to the DEIS "*The EHE model (Lyon 1983) did not account for motorized use on trails, so they are not included in these calculations to determine compliance with the EHE standard. Motorized trails are included in the EHE Index calculations in the next section.*" We agree with and support the use of motorized routes in the effect analysis methods as it relates to elk and other wildlife. Motorized use on trails have negative impacts on elk; a fact substantiated by recent studies cited in the above section on elk. Given this, it would be logical to incorporate motorized trails into any revised EHE standard. However, we recognize that as of yet there are no published studies that use motorized route densities to develop an EHE standard. However, such a study is not necessary to establish an elk standard that addresses disturbance and distribution.

Such a standard should use *Elk Herd Units* and motorized route densities. Herd units have a long history of use as evidenced by the 1986 Helena Forest Plan where it defines the term as, "the total area used by a herd of elk in the course of one years' movement from summer to winter range."[56] While we recognize, as explained in the DEIS, that there are problems with managing elk herd units outside of Bitterroot National Forest boundaries, they still provide a more specific measure for determining elk range than the surrogate hunting districts used in the analysis. Therefore the BNF should identify elk herd units and establish a standard to ensure these units have the lowest motorized route densities possible to help elk stay on public lands during hunting season. One possible approach may be to develop a standard that uses elk herd units in tandem with Recreation Opportunity Spectrum allocations. Such a new standard could read as follows:

> "The Forest Plan standard to address elk disturbance and distribution is to manage motorized routes through the Travel Management process where each elk herd unit will attain or maintain at most 2 mi/mi^2 of motorized routes in currently roaded drainages (those where the ROS does not include primitive or semi-primitive settings), and at most 1 mi/mi^2 of motorized routes in drainages where the ROS includes primitive and semi-primitive settings."

[56] 1986 Helena Forest Plan Glossary VI/5.

We believe such a standard is necessary to minimize motorized recreational impacts to elk and also ensure adequate hunting opportunity as required by E.O. 11644 and E.O. 13443 "Facilitation of Hunting Heritage and Wildlife Conservation."

In the event that the BNF chooses not to develop and implement a standard that addresses elk disturbance and distribution, we urge that it keeps the current standard unchanged.

Conclusion

We urge the BNF to address flaws in its analysis and choose an alternative that complies with the Travel Management Rule and Executive Orders. We believe a modified version of Alternative 4 will be necessary to achieve this. Such modifications include omitting the dispersed camping exemption to the ban on motorized cross-country travel; retaining the current Elk Habitat Effectiveness Standard or including an amendment that addresses elk disturbance and distribution; and bringing road and trail classifications in line with budgetary expectations. Unless the BNF has enough capacity to manage all the ML 1 roads proposed for conversion into trails, then these roads should be closed to all motorized use. If the BNF finds that some ML 1 roads would be appropriate for off-road vehicle use, but lacks trail maintenance capacity to prevent future resource damage, then the BNF should designate these roads and manage them as ML 2 roads only open to vehicles 50 inches or less. Finally, no routes should be designated within 300 ft of a 303(d) listed stream that is water quality limited due to sedimentation. We appreciate the opportunity to provide these comments and thank the Bitterroot National Forest and all its staff who worked on the analysis. We would be happy to meet with the travel planning staff to clarify any points in these comments, or answer any other questions.

Sincerely,

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Attachments

1. Appendix A – bitterroot_travel_routes_data_open (Excel spreadsheet)

2. Appendix B – Preferred Alt. with routes within 300 ft of 303(d) listed streams (Excel spreadsheet)

3. Appendix C - Bitterroot Quiet Use Coalition 2008 Monitoring Report

4. Appendix D - BQUC 2008 Monitoring Presentation

[57] See Appendix M for the full publications (not all are available).

5. Appendix E - BNF Travel Cost Estimator (Excel Spreadsheet)

6. Appendix F - BNF Travel Cost Estimator Methodology

7. Appendix G - SPreAD-GIS User's Guide v1.2

8. Appendix H - American Wildlands Linkage Report - West Fk Bitterroot

9. Appendix I - BNF Wolverine Habitat

10. Appendix J – Wolverine Sound Modeling

11. Appendix K – Fisher Distribution

12. Appendix L – Forest Roads and Lynx

13. Appendix M – Full Publications and Supporting Studies

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