



## **BARK**

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Jennie O'Connor Card  
Off-Highway Vehicle EIS  
Hood River Ranger District  
6780 Highway 35  
Mount Hood-Parkdale, OR 97041

October 28, 2009

RE: Comments on the Draft Environmental Impact Statement (DEIS) for Mt. Hood's Off-Highway (OHV) Vehicle Management Plan ("OHV Plan")

Dear Ms. O'Connor Card,

Bark submits the following comments regarding the DEIS for the Mt. Hood OHV Plan. Bark's mission is to transform Mt. Hood National Forest into a place where natural processes prevail, where wildlife thrives and where local communities have a social, cultural, and economic investment in its restoration and preservation. We work in collaboration with agencies such as the Forest Service and other groups with interests in quiet recreation and conservation. We scrutinize every proposal in Mt. Hood National Forest in order to minimize negative impacts of agency actions on our air, water, wildlife, and future generations.

Bark appreciates the opportunity to work with the Forest Service to create an OHV plan that protects natural resources, minimizes user conflicts, and establishes an affordable, safe, ecologically sustainable, and enforceable motorized route system. We submit these comments on behalf of our supporters, board of directors, staff, and all citizens who are interested in protecting our source of clean drinking water, wildlife, and opportunities to engage in quiet recreation in Mt. Hood National Forest.

Please give careful scrutiny and consideration to these comments in the preparation of your final EIS and Record of Decision. If the Forest Service does not have reports and studies cited in this document in its possession, please let us know and we will be happy to provide an electronic version of the document. We also incorporate by reference the both our scoping comments and all addenda submitted with those comments.

We would be happy to meet with you to assist you in understanding our concerns and fashioning an appropriate OHV Management Plan for the forest which we all love.

Sincerely

Lori Ann Burd

Restore Mt. Hood Campaign Manager, Bark

## I. **Introduction**

Mt. Hood National Forest is located just twenty miles away from Oregon's largest city, Portland. Encompassing over one million acres, Mt. Hood National Forest is unique in its proximity to a large urban area. Mt Hood National Forest provides a vast array of ecosystem services such as producing clean drinking water for millions of Oregonians. This forest also occupies a special place in the hearts of area residents, many of whom are proud to count their adventures among the four million recreational visits to Mt. Hood National Forest each year. As noted in the DEIS, the vast majority of people who visit Mt. Hood come to engage in traditional quiet recreation activities such as hiking, fishing, horseback riding, observing the ecosystem, and picnicking. While these activities impact the ecosystem by introducing humans to areas otherwise uninhabited by humans, their impacts are minimal when compared to the impacts caused by OHV users, which have caused significant damage to Mt. Hood's ecosystems. In addition to causing ecological harm, the noise and pollution caused by OHV use fundamentally harms the experience of the majority of people who visit Mt. Hood in search of serenity and communion with nature.

Bark believes that everyone has a right to use the forest, but no one has a right to abuse it. Unfortunately, Bark staff and volunteers have witnessed countless examples of OHV use rising to the level of abuse of the forest. The thoughtless

actions of some OHV users have left lasting scars on Mt. Hood. Bark staff or volunteers have groundtruthed every area included in Alternatives 2-4 and many other areas frequented by OHV users. We have seen once pristine alpine meadows crisscrossed with OHV tracks, OHV use in and around waterways making streams inhospitable to fish due to increases in stream temperature and turbidity, OHV use in Congressionally designated wilderness areas, and entire areas made inhospitable to wildlife and recreationists due to the proliferation of unauthorized user created trails.



Scarred land around Rock Creek

The Forest Service has stated that this OHV Plan presents an excellent opportunity to *reduce* future abuse of the forest by OHV use. Bark believes that *any* abuse is unacceptable, and that agency staff does not need to compromise ecological health to provide for a recreational activity that has eluded regulatory efforts for decades.

We appreciate your statement that the “Forest is not striving to be known as a major provider of OHV recreation, or major OHV destination...” DEIS at 1-7. We thank you in advance for creating an OHV Plan which balances the demands of motorized recreation groups with the many other interests that

exist in the forest, such as reducing impacts to wildlife, water, and quiet recreationists.

In general, we are pleased that the Forest Service developed Alternative 4 in response to the concerns raised by the majority of Forest users. That said, we still have significant concerns about the impacts implementation of Alternative 4 would have on several of our core areas of concern, especially water, wildlife, and quiet recreation. As you will see, these comments touch on many issues within the scope of this Plan which Bark is concerned about. However, there are several issues we would like to highlight as areas of particular concerns. All of these concerns are discussed in more detail later in these comments.

- 1) OHV use adjacent to wilderness areas: While the Forest Service has followed the letter of the law by not designating OHV routes in designated wilderness, the inclusion of 30.4 miles of OHV routes immediately adjacent to designated wilderness in Alternative 3 is inappropriate. Wilderness is much more than a legal designation. The designation of wilderness is a designation of values and the value of wilderness for people and the ecosystems whose health the Forest Service is charged with protecting is immeasurable. For many people, the simple knowledge that in this day and age of noise and overcrowding there are areas “where the earth and its community of life are untrammelled by man”<sup>1</sup> is a source of comfort and joy. Dozens of individuals and organizations have approached Bark to express their horror that the Forest Service has disregarded this deeply felt value by selecting Alternative 3 as a preferred alternative even though it features routes immediately adjacent to *six* designated wilderness areas. The inclusion of the 4610 road adjacent to what would otherwise be the largest contiguous wilderness area in the forest is particularly egregious. Surely

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<sup>1</sup> 16 U.S.C. §1131(c).

this is not what Congress intended when it designated these areas as wilderness, and the roar of OHV engines is surely not what a person who travels a long distance simply for the opportunity to experience designated wilderness would intend to experience. The Forest Service should eliminate all wilderness adjacent OHV routes from its OHV Plan.

- 2) Impacts to wildlife: This DEIS does not contain nearly enough analysis of the impacts OHV use will have on wildlife. The one sentence per preferred alternative analysis of impacts this Plan will have on migratory birds is just one example of this woefully inadequate analysis. In addition, the Forest Service has not met its affirmative obligation under §7(a)(1) of the Endangered Species Act to utilize its authority to carry out programs for the conservation of listed species by failing to designate a preferred alternative that does not include a likely to adversely affect finding for Northern Spotted Owl. The inclusion of Graham Pass, which is in an area of particular importance to the survival of anadromous and other fish, in Alternative 3, is another example of the Forest Service ignoring this obligation. In addition, the Forest Service's inclusion of Peavine, Mt. Defiance, and Gibson's Prairie in Alternative 3 against the expressed recommendations of wildlife specialists including those at Oregon Department of Fish and Wildlife indicates that Alternative 3 caters to the wishes of OHV enthusiasts instead of managing the precious resources of the Forest for the protection of wildlife and another, much larger recreation group, hunters.
  
- 3) Water: The inclusion of 161 stream crossings in a preferred alternative, Alternative 3, is inappropriate. The inclusion of 10 streams in or adjacent to proposed OHV routes which are listed as temperature impaired under §303(d) of the Clean Water Act with no real analysis of the impacts OHV use has on stream temperature indicates that further analysis is necessary. The Forest Service should continue its efforts to

protect waterways by doing everything it can to create OHV routes which avoid stream crossings.

- 4) Compliance and Enforcement: This DEIS summarily dismisses the concerns raised by hundreds of commentators without any real analysis. Because OHV users have a demonstrated history of illegal activity including the creation of unlawful user created trails, it is reasonably foreseeable that this activity will not cease immediately upon the creation of a Motor Vehicle Use Map (MVUM.) The Forest Service must plan for and analyze the reasonably foreseeable impacts of unlawful OHV use both in designated and undesignated OHV areas. In addition, the DEIS and conversations with law enforcement indicate that the Forest Service is not prepared to adequately enforce rules pertaining to OHV use in the forest due to a shortage of law enforcement officers. In order to curtail unlawful activity, the Forest Service should designate OHV routes in as few areas as possible, and only in front country, so that law enforcement can focus its efforts on those areas rather than being stretched thin by the impossible task of monitoring hundreds of miles of routes throughout the interior of the forest.

## II. **The Forest Service Should Provide a Formal Comment Period Between the Publication of the Final EIS and the Record of Decision**

The Forest Service has discretion to provide for another formal comment period and there are many reasons why another comment period is needed in this situation. First, fundamental fairness dictates that the public should have the opportunity to comment on a final EIS. The Forest Service may find public input on any number of issues to be very helpful, and, as this is a plan that will affect all forest users, it seems appropriate for the opportunity to be provided. Secondly, the provision of inaccurate maps in the DEIS was misleading and the public should have an opportunity to comment with accurate maps in hand. Finally, the Forest Service's failure to comply with the

strict timeline established in FOIA deprived Bark of the opportunity to submit comments based on information requested in a timely manner, but not received in a timely manner.

a. The Public was Misled by the Incorrect Maps Provided in the DEIS and Needs More Time to Study the Maps

In March of 2009, President Obama signed into law a bill which designated 125,000 acres of new wilderness in Mt. Hood National Forest. When this DEIS was released in August of 2009, all of the maps associated with the Plan (including on the Mt. Hood National Forest website, in the hard copy DEIS mailed to the public, and the large maps provided at the two open houses) omitted these new wilderness areas, showing only the wilderness areas that had existed prior to this major change in the landscape of Mt. Hood National Forest. Bark and members of the public pointed out this serious error to Forest Service staff during the two open houses held on September 15<sup>th</sup> and 16<sup>th</sup>, 2009. Several Forest Service employees were dismissive of the concerns raised by citizens who felt that this omission would deceive people who would rely on the maps to make their comments, stating that because none of the routes were in wilderness areas, there was no problem. However, other staff members acknowledged this was a serious problem and promised to promptly release accurate maps. The revised maps were not posted to the Forest Service's website until September 29<sup>th</sup>, and by then, more than half the comment period had passed. No effort was made to notify the public or those whom the Forest Service had initially contacted about the publication of this DEIS that the original maps were incorrect and that correct maps were now available. It is unreasonable to expect potential commentators to regularly check the Forest Service website and compare versions of maps prior to making comments, especially those who were not aware of this problem in the first place.



It is clear that the Forest Service knew exactly where the new wilderness area were when it created this plan, as none of the routes actually violate the letter of the law by entering these areas. The same maps the Forest Service used to determine where it could legally site OHV routes should have been made available to the public originally. While the release of new maps did not result in the change of any routes, members of the public who relied on maps, rather than turning to chapter 3, page 248 of the DEIS, to comment, were misinformed. The vast majority of members of the public who have turned to Bark for information and resources during this public comment period have indicated that their primary concern is about particular routes immediately adjacent to wilderness. Wilderness is not just a legal designation, it is a value that people hold dear. In addition, it is a place where people go to escape the noise and pollution of urban life.

The deceptive maps included in the DEIS undoubtedly have prevented many commentators from grasping the impacts this plan would have on wilderness. This information has serious impacts on the ability of the public to make informed comments about this plan and its environmental impacts. Bark recognizes that the Forest Service is trying to expedite this OHV Plan and appreciates this effort, thus we are not petitioning for the release of a Supplemental EIS with proper maps. However, because members of the public should not be expected to compare Forest Service maps with other maps to ensure that the Forest Service has indicated correct boundaries for Congressionally designated lands, the Forest Service should open a comment period and solicit comments from the public after the release of the final EIS ("FEIS"), and use these comments to inform the final decision it will publish in its Record of Decision. CEQ regulations require at least a 30 day period after the publication of an FEIS, during which the public and other agencies may comment prior to the agency taking final action. 40 C.F.R. 1506.10(b). The Forest Service should extend this period by at least 30 days to ensure that members of the public and other agencies who were initially misled have a fair

opportunity to comment on what many have identified as their issue of primary concern.

In addition to providing maps which show the proper wilderness boundaries during this second comment period, the Forest Service should also include in its maps the types of information that will help recreationists identify the areas at issue. Many members of the public have pointed out to Bark staff that the OHV route maps are unclear because they omit key landscape features such as hiking, biking, and equestrian trails and trailheads and campgrounds. This has made it challenging for people, particularly elderly individuals who have a hard time looking at multiple small maps concurrently, to identify their site specific concerns. The Forest Service should make a habit of including such features in the maps its releases for all actions as the recreation community is often eager to provide educated comments on agency actions.

#### LaDee Flats

The maps provided with the DEIS failed to label the new Roaring River Wilderness Area. Wilderness users and advocates would agree that the Roaring River/Salmon-Huckleberry Wilderness complex would be the largest, if not most significant, contiguous Wilderness in Mt. Hood National Forest. However, the failure to show the Roaring River Wilderness in the DEIS maps made it difficult for viewers to understand that the proposed OHV route on the 4610 road in Alternative 3 would bisect those two Wilderness areas.

The maps provided in the DEIS failed to label the following trails, at least two of which have experienced illegal OHV use recently:

- #517 to Serene Lake, in the Roaring River Wilderness with a trailhead beginning at the end of an unidentifiable spur road connecting to Rd 4611.

- #521 to Huxley Lake in the Roaring River Wilderness with a trailhead beginning at Rd4612-120 and the junction with trail #507 just after departing the trailhead for trail #507.
- #507 to Roaring River proper in the Roaring River Wilderness with a trailhead beginning at the end of the former Lookout Springs Campground on Rd 4610.
- #506 to Roaring River proper in the Roaring River Wilderness with a trailhead beginning at the former Twin Springs Campground on Rd 4610.
- #502 to Squaw Mountain with a trailhead beginning at Rd 4610.
- #783 to Sheepshead Rock connecting
- #788 to Plaza Lake in the Salmon Huckleberry Wilderness with a trailhead beginning at Rd4610.
- #791 to Salmon Butte in the Salmon-Huckleberry Wilderness with a trailhead beginning at Rd 4610.

The maps provided in the DEIS failed to label the following former campgrounds, at least one of which has been officially closed due to soil and other resource damage:

- Twin Springs Campground
- Lookout Springs Campground

The exclusion of designated Wilderness, trails, and former campgrounds on the LaDee Flats map made it difficult for the average person to realize that there is more to this proposed OHV area than OHVs.

#### **b. FOIA Issues**

Bark has made every effort to be patient with the Forest Service regarding our FOIA request for this project file. We are disappointed that this process has been so challenging, as we have tried to be very accommodating. Bark made

significant changes to our original October 17, 2008 request in response to Forest Service concerns regarding the time it would take to process the information. Our feeling was that this would help meet your need to keep the OHV Plan DEIS on schedule, and would result in a smoother process for Bark to receive the second-half of the documents we requested.

Instead, when Bark submitted our August 20, 2009 FOIA request for the second-half of the documents as we had agreed, the result has felt like intentional foot-dragging. Amy Harwood responded promptly to another request to make the processing easier for you on August 25<sup>th</sup>. Then Bark received a letter, dated September 9, almost two weeks later, asking for clarification on our fee waiver. We responded to this request on September 24<sup>th</sup>. Throughout this process, we have made it clear to the Forest Service that our reason for requesting this information was so we could include our comments on this information in our DEIS comments. FOIA officer Michelle Lombardo assured Bark staffer Lori Ann Burd that the request would be processed within 20 business days the postmark day of this letter, again, with the full understanding of our goal of including information derived from the FOIA'ed materials in our comments. This would have allowed Bark to receive the request on October 22, certainly close to the end of the comment period, but with at least some time to review the documents for information pertinent to our comments. Lori Ann Burd received notice via email from Michelle Lombardo on October 26 stating that the request was mailed that very day, three days after the agreed upon date.

While usually Bark would not make an issue of a three day delay, even though it is unlawful, this delay comes in the context of a long process which we feel the Forest Service has intentionally dragged out and a comment deadline. This entire process has been a serious disappointment to us. We had thought our efforts to make it easier for the Forest Service to respond to this request, despite our legal right to demand these documents, would result in goodwill

and a smoother process. Instead, our goodwill has been manipulated and our willingness to negotiate has resulted in the Forest Service failing to provide us with information that would have helped inform our comments in a timely manner, in addition to a drawn out and frustrating process. It is now impossible for us to include comments on the contents of these documents in our DEIS comments.

In addition to the concerns about fundamental fairness and the need for the public to have accurate maps in order to provide substantive comments, the Forest Service should provide for a formal comment period between the release of the final EIS and ROD in order to allow Bark to comment on this long awaited FOIA request.

### III. **Purpose and Need**

The stated purpose and need for this project is to strike an appropriate balance between all types of recreational pursuits, in accordance with the Travel Management Rule. While more discussion of this rule and an appropriate balance will follow, Bark would like to note that we appreciate the Forest Service's acknowledgment that the area of the Forest currently available for OHV recreation is disproportionate to the current and anticipated demand and the fundamental incompatibility of OHV use and quiet recreation. DEIS at 7 The three goals identified in this section; providing adequate access to OHV users, not exceeding the challenge provided in other areas, and dedicating the majority of the Forest to quiet recreation, are not problematic to us, and in particular we commend you for establishing the third goal. *Id.* However, we are concerned that the Forest Service may fail to achieve goal two, "not to exceed the challenge offered by better-known OHV destinations available to the Portland/Vancouver community." *Id.* Both preferred alternatives meet the projected demand for OHV based recreation for the next *twenty* years. Creating the vast network of OHV routes proposed in Alternative 3 would certainly make the Forest a prime OHV destination. The Tillamook State Forest, which is

widely known as an OHV destination, provides approximately 100 miles of OHV routes. Thus, even Alternative 4 provides for too many miles for OHV travel for the Forest Service to ensure that the goal of not creating an OHV destination would be met. Thus, the Forest Service should designate significantly fewer than 100 miles in order to ensure that its goal is met. The purpose and need of this project, balancing OHV use with other uses, would be best met by starting small and maintaining a manageable system.

#### **IV. Public Involvement**

The Forest Service states that 375 comments were received during the scoping process. This figure is simply incorrect. Bark alone generated at least hundreds of comments. While many of these comments may have been form letters, they still should be counted as comments. Many concerned citizens simply do not have the time or expertise to provide the Forest Service with personalized and detailed comments expressing their concerns about agency actions such as this one. However, these people are concerned enough to take a moment of their day to state that they support Bark's position on these issues. The agency must count these comments and consider their content as valid comments within the administrative record.

In addition, the DEIS indicates that the Forest Service met with numerous OHV user groups. While the DEIS notes that these meetings and presentations of the OHV Plan were conducted upon the request of these user groups, Bark is deeply concerned that the face to face meetings between the Forest Service and OHV users may have improperly tilted the "balance" discussed in the purpose and need section. These meetings caused Forest Service staff to spend a disproportionate amount of time with this small user group, and thus become excessively responsive to the demands of this group. It also became clear at the open houses that numerous Forest Service staff members had close relationships with OHV users, and they spent a disproportionate time at the open houses talking to this minority user group, rather than making efforts to

hear the concerns of the other interested person. Indeed, on one OHV user website contains the comment, “Bill [Westbrook] is a quad rider and avid snowmobiler...he would be riding this weekend with our club, if it wasn't for another planned rafting trip he has for his family. We have a OHV friend in Bill.” <http://www.oregonrecreationcoalition.com/forum/viewtopic.php?t=96> (last visited Oct. 27, 2009). Throughout the DEIS, the “balance” appears to tip in favor of OHV users and their opportunities in the forest. This tone is particularly prevalent in the discussions of recreational opportunities, where the perceived needs of OHV users are discussed as though they are of tantamount importance, without nearly as much consideration given to other interests in the forest. Indeed, the addition of two OHV areas to this Plan after the scoping process indicates that the comments of thousands of users were disregarded in favor of the suggestions made by OHV users. This does not strike us as a balancing of interests. We are confident that had the Forest Service performed similar outreach with other recreation groups these groups would have had more opportunity to influence this process and have their voices heard. When engaging with the public, the Forest Service should not favor the input of one user group above all other interests.

## V. **“Resolved” Issues**

The DEIS claims that issues are resolved when they have been mitigated through the development of project design criteria (PDC), and that as such, they do not have significant impacts. Bark respectfully disagrees with this contention and submits that the mere development of PDC does not resolve any of these issues.

### **a. Safety**

The DEIS describes safety as a resolved issue. Even if the PDC are properly implemented, user compliance with PDC cannot be assumed in every instance. The DEIS also notes that implementation of PDC would only reduce, but not eliminate risk of accidents. While every activity may result in accidents, OHV

use is widely known to be a dangerous activity. The high risk of bodily harm associated with OHV use was even the topic of a series of articles in the Oregonian titled “ATVs: Deceptively Dangerous.” *see e.g.* [http://blog.oregonlive.com/oregonianatv/2007/05/deaths\\_waiting\\_to\\_happen\\_why\\_a.html](http://blog.oregonlive.com/oregonianatv/2007/05/deaths_waiting_to_happen_why_a.html) (last visited Oct. 27, 2009). Most recently, on October 21<sup>st</sup>, 2009, the Consumer Products Safety Commission voted to write rules regulating OHVs, in response to more than 1000 deaths since 2003. The development of PDC may be an effort at mitigation, but by no means is the issue of safety resolved. To say safety issues are resolved is simply untrue. Because of the unusual danger associated with OHVs, an OHV Plan for the Forest must do more than implement danger mitigation measures; it must provide a Plan detailing what should happen when someone is hurt.

Alternative 3 proposes OHV areas in remote parts of the Forest where cell phone coverage may be non-existent. Even the areas proposed in Alternative 4, which are mostly in the front country of the Forest, are remote enough that cell phone coverage may not be reliable. The Forest Service should develop a plan, in consultation with the three affected counties and their emergency service providers, to ensure that those injured by OHVs can be promptly and effectively treated. The Forest Service should recognize that emergency vehicles such as ambulances will probably not be able to access certain routes, and should consider the cost of helicopter evacuations. To simply claim that an issue as serious as the bodily integrity of forest visitors is “resolved” because mitigating PDCs have been designed constitutes a failure to take a hard look at the impacts of this Plan.

#### LaDee Flats

The LaDee Flats area has been a notorious safety concern in the Forest for over a decade. In response to a FOIA request submitted by Bark, we received a copy of an email from Officer Laurence Olson to multiple agency staff. In the email Mr. Olson described the consequences of the extensive road system, “The



condition that adds a much greater risk, however, is the proliferation of unmarked roads throughout the District. Even if I can figure out where I am, there is very little chance that a Deputy or an EMT will be able to discern how to get to a location without lengthy, complex, and confusing directions that I would probably not have the luxury of dividing my attention long enough to provide on a radio that may or may not work well enough to do so in outlying areas.” He continues, “As a new employee working alone, I have had a very difficult time trying to figure out what is an official road and what is not, and what the number designation for that road is...*The 45 and 4610 road systems are good examples of this problem.*” CITE? Emphasis added

The link between the road system and OHV use cannot be underestimated. In the same email referenced above Mr. Olson describes the link, “I have discussed this problem with new Zig Zag LEO Frank Aguilar and he told me that long ago he informed the District staff that he *would not patrol* on any unmarked road where he could not be sure of his location and be able to easily communicate that location to our County Dispatcher.” *Id.* Emphasis added

“Chief [Dombeck] states he doesn’t believe off-road use and accompanying damage make it reasonable for us to provide an off-road use experience here.” Email from Officer Christine Lynch to Officer Laurence Olson, September 11, 2003. For over 15 years the Forest Service has been struggling to manage illegal OHV use and associated activities (shooting, dumping, etc.). In 1992 the Forest Service takes its first official action and closes the area to shooting that is not a part of a “legal hunt.” CITE? As described by former LEO in the Clackamas Ranger District, “USDA Forest Service and USDI BLM jointly agree that resource damage from garbage dumping and shooting MUST be stopped before some gets badly injured or killed.”<sup>2</sup>

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<sup>2</sup> Email from Christine Lynch to Laurence Olson, September 11, 2003. Obtained by Bark through FOIA request.

There is no evidence in the project record that the LaDee Flats area has undergone any substantial change that would lead to a safer environment, except the hope that changing to a closed unless posted system will result in compliance with the law. Bark expects that in order for safety to be considered a “resolved issue” there must be some substantiation of the claim.

**b. Compliance/Continued OHV Use in Specific Areas**

Law enforcement for the proposed areas will be discussed in greater detail below. For now it suffices to state that the lack of adequate law enforcement in existing OHV use areas has been a severe problem in the Forest, and Bark is disappointed that the Forest Service is not using this opportunity to coordinate a more effective law enforcement strategy. Law enforcement is inadequate. But this is not because law enforcement officers are not dedicated public servants, but because the Forest is vast and there are not enough officers to respond to all the problems forest wide. More importantly, there are not enough officers to routinely patrol areas that OHV users frequent. In addition, it is unclear what types of problems will arise as a result of OHV use being consolidated as a result of the shift from “open unless posted closed” to “closed unless posted open.” This is nowhere near a resolved issue, and the Forest Service should take a cautious approach to the designation of OHV areas to ensure that law enforcement can adequately respond to whatever issues may arise, especially in a Forest so close to an urban area where there are numerous law enforcement problems. For information and ideas about improving enforcement, see Wildland’s CPR, 6 Strategies for Effective Enforcement, attached.

In addition to our concern about the ability of law enforcement to adequately enforce the law in areas with designated OHV routes, we are also deeply concerned about the ability of law enforcement to enforce route closures in existing OHV areas not included in any action alternative. As the Forest Service has moved forward with the Draft EIS of the OHV Plan only analyzing

the areas proposed for OHV designation and not the areas with known and current use, we have become more resolved in the absolute necessity of including effective enforcement and monitoring systems in these other areas. Examples are discussed below.

We do not believe that the Forest Service has taken the time in this planning process to adequately design an enforcement protocol or monitoring plan that will analyze how effectively the selected areas have kept OHV users from trying to use other parts of the national forest that have been open to them until this point. Although, we respect that the resources put into this Draft EIS were an enormous expense for the Forest Service and adding other areas at this level of analysis was not realistic, we believe that it has left the agency unable to effectively react to the continuation of rogue users.

As stated in the purpose and need of the OHV Plan, the hope is that this plan will provide guidance for how to balance the many recreational needs of people on Mt. Hood National Forest. OHV use is incompatible with so many of the other uses in the Forest that it has become clear that a sanctioned approach will allow for conflicts to be avoided, rather than compromised. Therefore, the need is not only about these selected areas being optimal for OHV use, but also the need to keep OHVs from other areas that are optimal for other services of the forest, including other recreation users, clean water sources and wildlife habitat. Bark understands that under the Travel Management Rule, the Forest Service will be expected to regularly revisit this plan. We believe that the Forest Service will not be able to properly analyze the effectiveness of this plan without clearer measures of success with regards to keeping OHVs out of other areas, as well as in designated areas.

One of the places that Bark sees an opportunity for the Forest Service to include stronger framework for effective enforcement and monitoring is within the Project Design Criteria (PDC). There is almost no guidance for PDC outside

of the project area, which will have a known impact based on the PDC within the project area, due to potential for displacement. **PDC should include a plan for law enforcement patrols in the known areas of OHV use that will no longer be designated open, at least for the first couple of years after the decision is in place.**

**Additionally, we would like to see specific language about the protocol for ticketing users who may be operating an OHV in an undesignated area. We would also like information about the types of penalties an OHV user would face for behaving unlawfully.** In conversations with law enforcement officers, we have come to understand that a challenge presented to enforcement is actually catching them “in the act.” The reality of OHV use is that although it is a conspicuous use of the forest, vehicles that have brought the rider to the forest are not always easily corralled into a trailhead parking area such as a hiker might be. The PDC and DEIS provides no general guidance for law enforcement. The public has not been informed, through this document, of the range of penalties illegal OHV users should expect with any specificity. Forest Supervisors are charged with establishing monitoring intervals and criteria for their forests. FSM 2353.04(h)(8). Mt. Hood National Forest should develop an annual monitoring plan, and the results of that monitoring should be made available to the public annually. The directives should include a list of minimum and suggested data sets to acquire for resource analysis. Criteria and monitoring intervals should be tied into identified goals or PDCs. At a minimum, the Forest Service should identify a suggested procedure to follow if illegal use or environmental damage is witnessed by field personnel or forest users. In addition, based on the monitoring data, the Forest Service should annually review the effectiveness of existing levels of law enforcement and existing closure mechanisms in order to assess whether enforcement measures need to be adjusted in order to ensure OHV enthusiasts’ compliance with the motorized trail designations on the MVUM.

New PDC should be created to spell out standard protocol for ticketing and data gathering when an officer comes upon a truck with a trailer in an undesignated area that is obviously made to haul ATVs, but is not carrying them in the moment. Additionally, descriptions of types of trailers and ramp devices will allow officers to properly identify a truck that is likely bringing ATVs and motorcycles into the forest. This information (counting number of warning tickets served and license plate data) gathered from outside the OHV areas should be used to create new, more effective mechanisms, for enforcement and monitoring.

Bark also believes that there should be a moratorium on logging operations in any area known to have concentrated OHV use (such as the other areas that were not part of the OHV Plan analysis) that will be outside of the proposed designated areas, with particular emphasis on forests surrounding the designated areas. During the Wildcat CE process, Bark was told by acting Zigzag District Ranger Daina Bambi that logging operations create a presence in the forest and reduce illegal activity. However, the logging activity may only last a month or at most a summer season. Through our extensive groundtruthing efforts, Bark has found a correlation between timber sales and OHV use after logging has occurred. Spur roads and log haul routes provide enticing opportunities for loop systems to connect with user-created connector routes. Because many of these projects are deep in the Forest, away from easily accessed areas, such as campgrounds and trailheads, they are not often on patrol routes making it more difficult for law enforcement. Our site specific examples listed below highlight this issue.

As the Forest Service moves into implementation of the OHV Plan we intend to continue to monitor all known areas of current OHV use. We will be putting special emphasis on the following areas and expect the Forest Service to have

site-specific recommendations created in coordination with law enforcement officers for appropriate techniques based on the range of use.

### **Site Specific Examples**

1. Hillock Burn: Bark does not believe that the Forest Service, nor the adjacent Bureau of Land Management (BLM) can properly prevent illegal activity along Road 45. Although there has been funds allocated to picking up trash in the shooting galleries, these efforts have only been effective in the short term and have not mitigated the ongoing problems. This past summer, we witnessed motorcycles and ATVs in an established dispersed camping site that is inside of the new Memaloose Wilderness area.

Other than access to the popular Memaloose Lake Trail, Road 45 offers limited recreation value to most users of the forest. The road itself is sagging and cracking. With its steep slopes, the road will continue to be expensive to maintain and keep accessible for safe travel. Bark supports a temporary closure the first season of the OHV Plan implementation. A sign stating that the illegal creation and use of shooting galleries has forced the Forest Service to close the road for the season could send a strong message to OHV riders who refuse to follow the new regulations that they risk losing access to parts of the forest for everyone by not following the law.

There is a consistent message from OHV clubs and organizations that the user-community is a responsible and self-regulating group. We believe that a couple of strong examples such as a Road 45 closure could ripple throughout the OHV riding community and have long-lasting impacts. The DEIS notes that this area may be reconsidered in future years when the BLM makes its plans for OHV use in this area. We sincerely hope that in future years this Forest Service will refrain from considering reopening this area to OHV use, as the users of this area have consistently engaged in unlawful behavior, creating major problems for law enforcement officers and serious damage to the resources and ecology of this area.

2. Fish Creek: OHV access on the obliterated Road 54, Fish Creek Road, is not being taken seriously enough by the agency. Bark has been involved in the recovery and restoration of this Wild and Scenic River Corridor since over a hundred miles of crumbling road were removed from the watershed in the late 1990's. This triumphant example of restoration and return of native fish runs is threatened by continual disturbance of closure devices and illegal user-created trails that connect the old spur roads. In addition the Forest Service recently opened up an eliminated spur road for access in to a unit of the 2007 Thin logging project. This allowed OHVs to not only breach a naturally blocked route, but also led to one of the worst examples of creek crossings we have come across on the forest across Rimrock Creek, a tributary to Fish Creek.

After last year's storms, Rimrock Creek washed out the roadbed left behind from the Road 54 decommissioning project along Fish Creek. This prevented ATVs from crossing onto the rest of Road 54 and the broken closure on Road 54 was once again minded. At the beginning of the season, the Forest Service opened up a successful closure on Road 5420 just uphill from Road 54 to log a unit of the 2007 Thin. ATVs started to use this spur road and eventually filled in a pitrock, dammed bridge across Rimrock about 75 yards up from the Road 54 blowout. They then built a road using more pitrock and metal stays to keep the makeshift road from going into the creek. This met up with a short spur left over from past logging that allows for ATVS to once again get back into Fish Creek up the rest of Road 54. Recently, when we were out there, Bark groundtruthers smelled gas and noticed that there was a stream of gasoline coming down the makeshift road and going off the side towards the creek.

Although Bark sees potential opportunity for a new hiking trail along the road bed of Road 54, we appreciate that the Forest Service has had a camping ban, angling restriction and generally approached the Fish Creek watershed as a

forest on the mend. People have been maintaining a double-track trail along the creek for several years now, cutting back brush and filling in slumps as the road bed begins to naturally break down. We see the access that OHVs are afforded on this road as compromising the outstanding restoration effort that has been achieved and expect to see the Forest Service take an aggressive approach to stopping continued use by OHV riders.

3. Black Wolf: In conversation with regular OHV riders and advocates, we understand that the Black Wolf area will be a focus for addition to the OHV system. Riders have said that the inclusion of Road 4610 enables a connector route between La Dee and the future Black Wolf area. By selecting the OHV routes in La Dee which are described in Alternative 3 or including Road 4610 in the OHV system, the Forest Service will have communicated a predetermined decision for the OHV community with regards to the Black Wolf area. Without that route, there is little incentive to continue pressuring for the area to be included. Should the Forest Service choose to include 4610, the OHV community will be determined to show a presence and thus an extended need for additional trail miles into the Black Wolf area and enforcement will need to be increased. Additional OHV use in this area will harm wildlife, quiet recreationists, and increase the existing problems with turbidity in streams.

The Black Wolf area contains "special habitat" including meadows, hardwood patches, wetlands, aquatic patches and rock patches. Habitat in the LSR is very fragmented and large open patches are growing. OHV trails in these areas would exacerbate this problem. In addition to these areas, it "contains some of the best coho salmon habitat in the Clackamas River." Oak Grove Watershed Assessment at 5 These areas are rare and contribute largely to species and habitat diversity. *Id.* at 45 Habitat values have already declined due to recreation in the Timothy Lake Area so care should be taken when implementing further recreation activities. *id.* at 34 Recreation should be



avoided in the River corridor Area where dense vegetation is necessary to stabilize the steep slopes. *Id.* at 28

4. Last Creek: Bark's groundtruthers have documented numerous user-created trails in the Last Creek watershed area. Using spur roads opened up for the Cloak Timber Sale as well as past clearcuts, OHVs have successfully penetrated the Forest in numerous places and created a series of connector routes that allow for loops between smaller, dispersed campsites. Although, we understand that the Forest Service successfully shut down a hunter poaching camp in the late summer of 2008, there has not been an attempt to take down markers or cover paint that indicates direction for people to go on the user-created trails. The first increment of the Aquatic Restoration and Road Decommissioning work that the Forest Service is undertaking will include the Last Creek watershed and a reduction of roads may help the problem. However, we have encouraged the Forest Service at numerous points to avoid closure prescriptions in areas with known illegal OHV use and follow through with full obliteration of all unneeded roads.

There are, unfortunately, numerous other areas that Bark has documented early OHV presence. In our 2007 survey of approximately 10% of the roads in Mt. Hood National Forest, we found signs of OHV use (witnessed riders, documented tracks, roads with encampments at the end that had tow rigs parked, user-created trails leading from the main road) on the following designated roads.

Bark is committed to continuing to monitor the effectiveness of the OHV Plan and we expect the Forest Service to continue to be as receptive to our data and feedback as they have proven to be throughout this process. However, we have concerns that the questions that have been created for monitoring will miss the true potential for impact by isolating analysis to the project area, or rather designated OHV areas. We recommend that the Forest Service include a

monitoring question that is specific to this issue. Has enforcement of known undesignated OHV areas significantly reduced the presence of OHVs in these areas? Likely, some of the largest impacts to the ecosystems, to aquatic resources and to other recreation opportunity will be found in the areas that are no longer designated as open to OHVs or that currently show consistent, returning use.

In the absence of a plan for monitoring and enforcement of the closure of known OHV user destinations not included in the Plan record of decision, it is not possible to claim that the purpose and need will be met.

### LaDee Flats

The LaDee Flats area is currently a spider web of system roads, user-created OHV routes, and other ghost roads. Many of these create loops, which next to the mud is the most appealing part of LaDee as an OHV area. However, while the extensive network is easy to navigate on a quad or motorcycle, it is not as easy for a full-size law enforcement rig. Assuming that there will be illegal activity occurring, what is the plan for dealing with the ability for suspects to flee easily from officers? Will enforcement be based on the staging areas, with tickets given to any vehicle with a trailer parked elsewhere? What about those individuals who have driven their OHV from the Fall Creek Road and used Rd4613 to connect to the OHV area? With Rd4610 remaining open as a connector to the High Rocks area this leads to a third route for users to flee an officer. Despite the improvement of the shift to a closed unless posted open strategy, without a strong law enforcement plan for the LaDee Flats area, there is no evidence that continued resource damage and illegal activity will not continue to flourish in this area.

## VI. **Assumptions and Analysis Framework**

The Forest Service's decision to refrain from including analysis of illegal OHV use in the Forest constitutes a serious failure to comply with NEPA. A report by Utah State University found that of the ATV riders surveyed, 49.4% prefer to ride off established trails, while 39% did so on their most recent excursion. Mt. Hood National Forest only has four law enforcement officers for the 1.1 million acres of forest (including the designated OHV areas) and 4,000+ miles of roads and routes. While Bark sincerely hopes that OHV users will decide to comply with the law, this study and the facts on the ground indicate that illegal OHV use will be an ongoing problem. Some OHV users will ride off-trail despite signage, trail design, and the attempts at enforcement by law enforcement officers. OHV riders who chose to break the law are reasonably foreseeable, and the types of impacts they are known to cause; stream turbidity, harm to wildlife habitat, erosion, user conflicts, and incursions into designated Wilderness should be analyzed in this DEIS. In particular, where designated routes are in the same area as established user created routes or hotspots of unlawful activity, the NEPA requires the Forest Service to provide some analysis of the reasonably foreseeable impacts on the environment. While the extent of noncompliance with the MVUM cannot be determined at this time, some unlawful use, particularly in the initial years that this plan is implemented, is foreseeable enough that it should have been analyzed.

### LaDee Flats

Anecdotes from the LaDee Flats area would lead the average person to question any assertion that continued OHV use in the area could be made lawful

- Riding off of system roads has been illegal in the LaDee Flats area since 1992, yet has continued every year since.
- Multiple cleanup efforts by SOLV and Dumpstoppers, including posting of Dumpstoppers report line along Rd 4610 has not stopped dumping from occurring in the area.
- Bark staff have been told by both Clackamas District Ranger Andrei Rykoff and Timber Planner Jim Rice the story of a man caught dumping

garbage in the LaDee Flats area. When asked why he would drive from his house in Vancouver, WA to this site to dump garbage, he explained that his father used to dump his garbage in the same spot in LaDee Flats area when they lived in Estacada. This indicates that unlawful use of this area is deeply entrenched.

- In ~2006 the Forest Service finally replaced the sign announcing the area closure, which was shot down annually, with a welded steel sign to prevent it from being shot down.
- Attempts to close illegal user-created OHV routes for the past nearly 20 years have included placing timber slash in front of the entrance to routes, placing the root wads of unearthed trees to block routes, piling earthen berms to block routes, digging “tank traps” to block routes, placing boulders approximately 3’ diameter or more to block routes, placing metal road barriers to block routes, and filling “mudding” sites with pit run rock. To date, every one of these attempts has been circumvented by OHV users including the use of heavy equipment to move the boulders and chainsaws to cut the root wads. The only mitigation attempt that appears successful is the pit run rock that was placed in 2009 (this year).



Taken summer 2009, dozens of yards of pit run rock and an earthen berm blockade is the latest attempt to stop illegal OHV use.



Taken summer 2009, this new “tank trap” style blockade is the latest attempt to stop illegal OHV use.

Years of unsuccessful efforts to stop OHVs from doing resource damage in the LaDee Flats area has wasted tax payer money, frustrated agency staff, and had impacts on the environment with unknown consequences because NEPA was not completed for the actions. All of this leads Bark to wonder why La Dee is in the proposed action.

The answer to this question seems (at least on record) arbitrary and disturbing. In response to a FOIA request for OHV information in the North Fork Clackamas River, Bark received a copy of an email dated August 16, 2005, from Malcolm Hamilton, Mt. Hood Recreation Program Manager, to Johanna

with the Raven Off-Road Club, in which Mr. Hamilton stated, “I want to let you know about how we incorporated the information that you provided to us when we met last January 26<sup>th</sup> at the Sandy office. Actually we did two things. First, we added a new planning area which we are calling La Dee. Secondly, we included the entire 4610 road as a connector between the La Dee planning area and the Black Wolf planning area (to the east).” In the fact of this area’s history, this seems plainly ridiculous.

Assuming compliance is simply unreasonable. Any final OHV Plan should feature routes carefully designed to prevent unlawful and essentially unenforceable user created trails.

## VII. **Range of Alternatives**

The Forest Service has violated NEPA by failing to consider a reasonable range of alternatives in this DEIS. Federal agencies must consider “alternatives to the proposed action” and “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. §§ 4332(2)(C)(iii), 4332(2)(E). As explained by NEPA’s implementing regulations, federal agencies must “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. §§ 1502.14(a), (d).

Alternatives constitute NEPA’s “heart.” 40 C.F.R. § 1502.14(a). Analyzing a full range of reasonable alternatives allows an agency to fully evaluate the potential environmental impacts of an action, allowing it to “sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decision maker and the public.” 40 C.F.R. § 1502.14. The Forest Service is required to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E); 40 C.F.R. §

1508.9(b). Solid analysis of alternatives effectuates NEPA's purpose by facilitating the creation of well considered actions.

Ultimately, of course, it is not better documents but better decisions that count. *NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action.* The NEPA process is intended to help public officials make decisions that are based on [an] understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

40 C.F.R. § 1500.1(c) (emphasis added); *see also* 40 C.F.R. § 1500.2(e). Unfortunately, the range of alternatives analyzed in this DEIS lacks the reasonable range of alternatives that would allow it to foster excellent action.

An agency must look at all reasonable alternatives, with the range dictated by the nature and scope of the proposed action. *Nw. Envtl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002). NEPA requires that an actual range of alternatives is considered in order to “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative...” *Col. Envtl. Coal. v. Dombek*, 185 F.3d 1162, 1174 (10th Cir. 1999) (citing *Simmons v. U.S. Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997)). This requirement prevents the EIS from becoming “a foreordained formality.” *City of New York v. Dep't of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983). *See also Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002).

Here, the Forest Service considered only an overly narrow range of alternatives; the mandated no action alternative, the alternative created during the scoping process, an alternative that caters to the whims of OHV users over all other interests, and only one somewhat reasonable alternative. This does not constitute the full range of alternatives required for a proper analysis under NEPA. The Forest Service should have considered at least one other alternative and made Alternative 4 more responsive to two known controversies by avoiding OHV routes adjacent to designated Wilderness Areas and impacting Northern spotted owls to the point which where they are “likely to be adversely affected.”

**a. The Forest Service Should Have Considered an Alternative to Eliminate All OHV Use from Mt. Hood National Forest**

The Forest Service should have created and considered at least one alternative that would completely preclude OHV use in the Forest. In explaining why such an alternative was not considered, the DEIS explains that the Forest Service cannot consider this because it fails to meet the purpose and need for the project. However, CEQ Regulations provide that an EIS

“shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would *avoid* or *minimize adverse impacts* or enhance the quality of the human environment.”

40 CFR § 1502.1 (emphasis added). Typically, the alternative described above would be addressed by the no action alternative. However, here the no action alternative clearly would cause the most significant adverse impacts to the human environment. Thus, in order to comply with NEPA’s mandate, the Forest Service should have considered the alternative that would do the most to avoid adverse impacts to the environment, the complete banning of OHV use in the Forest.



The mandate of the Travel Management Rule does not state that OHV use may not be banned, it simply calls for a balanced approach to managing motorized use. By excluding an OHV ban from its alternatives analysis, the Forest Service has violated NEPA by unreasonably narrowing the possibilities for this Plan, determining without sufficient analysis that a ban on OHV use is not an appropriate balance. However, the DEIS also notes that only .16% of people who visit Mt. Hood come for the primary purpose of using OHVs, with less than .6% including OHVs as some part of their reason for visiting the Forest. In addition, there are numerous other opportunities for OHV use on other public and private lands where this use has been deemed appropriate. It is eminently reasonable for the Forest Service to conclude that an appropriate balance may be reached by simply recognizing that this use is minor yet it has disproportionately significant impacts on the environment and other Forest users, thus it is worth considering an alternative that would ban it altogether. For example, a simple cost-analysis of the mitigation efforts and past illegal activity of the LaDee Flats area may lead the decision-maker to realize that the ongoing budgetary burden and safety concerns at LaDee are far too significant to warrant further OHV use. Yet no alternative allows for consideration of this reasonable course of action. Even if this alternative is not the action the Forest Service will ultimately decide upon, for political reasons, in the end, it would serve as an excellent baseline against which to compare other alternatives, allowing for more complete analysis.

The prohibition of OHV use is permitted under the National Forest Management Act (NFMA) and Multiple-Use Sustained-Yield Act (MUSYA). Neither of these statutes requires each national forest to provide every kind of recreation opportunity imaginable, especially those activities, such as OHV use, which increase burdens on the agency, cause significant environmental damage, and ruin the experiences of other forest users. Instead, MUSYA requires “harmonious and coordinated management of the various resources...” 16 U.S.C. §531(a). The Forest Service should comply with MUSYA and NEPA by

including in its analysis an alternative banning all OHV use in Mt. Hood National Forest, the alternative which would do the most to eliminate the harmful impacts of OHV use in Mt. Hood.

Lastly, by not including an alternative that proposes a forest-wide prohibition on OHV use, the Forest Service effectively shuts down debate on any suggestions for more aggressive restrictions on OHV use than is provided in Alternative 4. Similar to the language used throughout the DEIS, the argument that Alternative 4 is the least impactful alternative will continue to be used in response to all concerns raised, and furthermore that commentators should be satisfied with Alternative 4 because it is so much better than the No Action alternative. To which commentators have no reasonable response except to reply that the Forest Service's failure to analyze if an OHV ban would be more cost-effective, better protect natural resources, and better provide services to the American public, makes it impossible to know if in fact an OHV ban would be a better decision. The result is that the Forest Service moves the NEPA responsibility to the commentators, whereas the responsibility lies within the agency.

**b. The Forest Service Should Have Modified Alternative 4 so that it Would Not Include any Routes Adjacent to Designated Wilderness**

The Forest Service's decision to offer no alternatives that avoid OHV routes adjacent to designated Wilderness is patently unreasonable. Wilderness areas were designated because of their outstanding features and opportunities, and a reasonable range of alternatives would include at least one alternative that protects Wilderness values from the noise and pollution that would result in OHV use immediately adjacent to its boundaries. In addition, OHV incursions into designated Wilderness have been repeatedly documented by both Bark and the Forest Service. Alternative 4 comes close to protecting the value of wilderness, but ultimately fails because it includes .5 miles of OHV routes

immediately adjacent to the newly designated Lower White River Wilderness. While this Wilderness does not feature any formal trails, it is a destination for those who are truly seeking a rugged Wilderness experience. Congress obviously felt this area was special enough to warrant Wilderness designation, and the Forest Service should have recognized the value of this, and all other Wilderness areas, by creating including an alternative that precludes OHV use alongside wilderness boundaries. The Forest Service could have easily removed the .5 miles of Wilderness adjacent routes in Alternative 4 to create an Alternative that protects Wilderness values.

**c. The Forest Service Should Have Modified Alternative 4 so that it Would Not Result in a Likely to Adversely Affect Finding for Northern Spotted Owls**

The two preferred alternatives identified by the Forest Service both result in a “Likely to Adversely Affect” finding to Northern Spotted Owls. The Forest Service’s failure to identify at least one alternative that avoids harm to this listed species constitutes a failure to identify the full range of reasonable alternatives and indicates a lack of commitment to the conservation and recovery of this iconic bird. Spotted owls continue to face significant threats, both from human activity and from other species, and management decisions over the next several years may determine their fate. The Forest Service should have shown its commitment to achieving the recovery of spotted owls under the Endangered Species Act (“ESA”) and to utilizing NEPA to create an “excellent action” by offering at least one alternative with routes that avoid all known spotted owl nesting sites.

**VIII. Project Design Criteria and Monitoring Framework**

In general, Bark appreciates the inclusion of Project Design Criteria (PDC) and a Monitoring Framework that thoughtfully attempt to minimize the harm that inevitably results from OHV use. However, too often the Design Criteria are discretionary rather than mandatory. The Forest Service should replace

“would” and “should” with “must” and “shall” in most, if not all instances. Nearly all, if not all, fully-implemented attempts to regulate illegal OHV use or otherwise manage OHV user behavior in Mt. Hood National Forest has failed in the past two decades. Evidence of this is throughout these comments and in the record. Given this, how does the Forest Service expect aspirational or discretionary efforts to be taken seriously by the public, or the deciding officer? We respectfully request that all PDCs are included in the Record of Decision are that specific mechanisms to ensure the enforcement of these measures are included in the decision document.

In addition, we strongly recommend that the Forest Service employ at least some of the Best Management Practices (BMPs) outlined in *Best Management Practices for Off-Road Vehicle Use on Forestlands - A Guide for Designating and Managing Off-Road Vehicle Routes*, which was created through a scientifically, peer reviewed process. This guide and its suggested BMPs can be found at [http://www.wildlandscpr.org/files/ORV\\_BMP\\_2008.pdf](http://www.wildlandscpr.org/files/ORV_BMP_2008.pdf), or attached. These science-based BMPs represent a comprehensive approach to travel planning and have been endorsed by Jim Furnish, former Deputy Chief in the Clinton administration. In particular, these BMPs should be considered and applied to the particular areas identified in these comments as containing inadequate consideration and enforcement mechanisms.

**IX. General Comments Regarding the Affected Environment and Environmental Consequences**

**a. This DEIS Exhibits a Trend of Failure to Adequately Consider the Cumulative Impacts of OHV Use Throughout its Analysis**

While the DEIS notes that an effects analysis includes analysis of cumulative effects, in reality, as a general rule in this DEIS, there is almost no real analysis of cumulative impacts and their effects on the environment.

Attached for the Forest's use is "Best Management Practices for Off-Road Vehicle Use on Forestlands- A Guide for Designating and Managing Off-Road Vehicle Routes," January 2008, developed by Wild Utah Project and Wildlands CPR (note the endorsing introduction by Jim Furnish, former Deputy Chief in the Clinton administration). We would like you to adopt these BMPs in your travel planning, as we believe they provide the most comprehensive approach to travel planning that exist and provide a rational approach to minimizing impacts, as required by Executive Order 11644 (as amended by Executive Order 11989). If you choose to not utilize any of the recommendations, please provide an explanation for why you are choosing not to.

**b. The DEIS Frequently does not Analyze the Differences Between Alternatives 3 and 4**

Throughout much of its analysis of the effected environment and environmental consequences, this DEIS does not actually analyze the significant differences between the alternatives, and in particular Alternatives 3 and 4. The typical section does not engage in actual environmental analysis but instead relies on conclusory statements essentially stating that Alternative 3 is better than the no action alternative, has more impacts than Alternative 2, and that Alternative 4 has the fewest impacts on the environment of all the alternatives. Any person who has noted the proposed mileage in each alternative could come to a similar conclusion. The purpose of the DEIS is to take a hard look at the proposed action and actually engage in a detailed analysis of the issues, and the analysis described above fails to achieve this purpose. Bark requests that the Forest Service include more detailed analysis of the differences between the alternatives in its final EIS.

**c. This DEIS does not Clearly Establish an Accurate Baseline**

An accurate accounting of the true extent of the existing travel system is a critical step in setting the appropriate baseline for analysis. “The environmental baseline is an integral part of an EIS, because it is against this information that environmental impacts are measured and evaluated; therefore, it is critical that the baseline be accurate and complete.” *Or. Natural Desert Ass’n v. Shuford*, No. 06-242-AA, 2007 WL 1695162, at \*4 (D. Or. 2007) (citing *American Rivers v. Fed. Energy Regulatory Comm’n*, 201 F.3d 1186, 1195 & n. 15 (9th Cir. 2000)). In this action, it appears that the existing system, as described in Alternative 1 is the baseline. Bark has several concerns regarding the accuracy of the Forest Service’s baseline, particularly in relation to the Forest Service’s reliance on the INFRA database. First, we are concerned about discrepancies between INFRA and the baseline identified in the DEIS. Second, we are concerned that inaccuracies within INFRA itself undermine the validity of the DEIS baseline. Third, we believe all routes incorporated into the baseline must be supported by prior NEPA documentation. Finally, we are concerned that unlawful user created routes may have been included in the baseline.

INFRA, the database used by the Forest Service (FS) to document and track its transportation system, is one of the few places where detailed information regarding the FS road and trail system can be found. It is logical that this database be used as a starting point for travel planning. However, there are certain roads that should not be listed as part of the baseline travel system. Any road that is listed as temporary, closed (ML1), open for administrative use only, decommissioned, converted to another use, user-created routes (or other non-Forest Service routes such as tribal roads, private ways, and any other routes of unknown origin that may be listed in INFRA), intermittent storage, or short-term service should not be included as part of the baseline system. These routes have, at some point in the past, been determined not to be necessary or appropriate for motorized travel open for public use. Therefore, these routes should not be treated as system routes merely because they exist on the ground or have been entered into INFRA.

We are aware that several Forests have found significant inconsistencies between the roads included in their DEIS baselines and the status of the roads in INFRA, which led to inflated starting points in the NEPA process. Public comments on the DEIS of one California Forest's travel plan alerted agency staff to such discrepancies, and when staff members attempted to confirm the accuracy of the baseline, they found several hundred miles of roads that should not have been included according to their INFRA status. We urge the Mt. Hood National Forest to engage in similar quality control efforts so as to ensure the accuracy of its baseline. Please provide the results of your comparison and a description of actions taken to remedy flawed analyses flowing from the inaccurate baseline in the FEIS, completing a supplemental DEIS and providing additional opportunity for public comment, if the baseline is found to be inaccurate enough to warrant such action.

Furthermore, though INFRA is the most comprehensive representation of the Forest Service road system, it is far from perfect. INFRA came into being as a compilation of multiple databases, in an effort to standardize Forest Service road tracking over regions, forests, and even among districts in the same forest. Although INFRA is now one database, the data fields and data field completeness vary wildly from forest to forest. Moreover, many different Forest Service employees have had access to make changes in INFRA over the years. This essentially unrestricted access has led to the addition of many roads to INFRA without the necessary public and environmental analysis process (NEPA), simply because the routes existed on the ground.

The Forest Service has recognized the pitfalls of relying on the INFRA database for a particular Forest without first analyzing it for these problems:

Roads that meet any of the following criteria should not be included in the existing direction. Please exclude roads where any of the following can be credibly documented:

- Technical Corrections –Incorrect coding in INFRA such as:
  1. Road record in INFRA but no corresponding road exists on the ground.
  2. Jurisdiction incorrectly coded as Forest Service.
  3. Unauthorized roads incorrectly coded as system roads (i.e., System = NFSR) instead of UNDETERMINED during any inventory or data editing process after the Road Policy came into effect on January 12, 2001 (See FSM 7703.2).
- Changes on the Ground - The road is in INFRA but no longer exists on the ground or the road has been converted to another use.
- Decision Not Recorded in INFRA – A NEPA decision to close a road exists but has not been recorded in INFRA.

Region 3 Travel Management Rule Implementation Guidelines, Revision 4 June 30, 2008, at 4, *available at* <http://www.fs.fed.us/r3/projects/travel-mgt/index.shtml>. The Guidelines provide the same guidance for trails. *Id.* at 5.

To complicate the matter further, it is our understanding that there is no “history,” so to speak, of changes made to INFRA. For instance, changes made to a road’s mileage or maintenance status, once changed in INFRA, appear as if they have been part of the system forever. It is unclear whether there is an “audit” field for agency staff to record who made changes, what the changes were, when the changes were made, or whether it is mandatory to populate the field if it exists. If such an “audit” field does exist, we question whether this field could adequately capture the history of a route and how it came to exist. In order to promote more informed public participation and agency decision making, Bark asks that the Forest Service include information in its INFRA database that tracks and records changes made to the system over time in an enduring manner. For instance, if a route was upgraded from non-motorized to motorized, it is important to know, at a minimum, what decision document enabled this conversion, when the decision was made, when the conversion was made in INFRA, and who made the conversion.



We are particularly concerned that data entry technicians may be “cleaning up” data errors in INFRA in order to identify a forest’s baseline system. When a decision document and NEPA documentation supporting the changed status do not exist, such changes to INFRA are inappropriate. For example, where a route is entered in INFRA as both short-term service and ML2 open for public use (contradictory entries), a data technician should not be permitted to change the short-term service field to something that fits the ML2 designation without supporting NEPA documentation and a decision document designating the route as a ML 2 road. Of course, it is proper to make that data entry change where such documentation exists, but INFRA should reflect who changed the data cell and when, the reasons for the change, and the decision document supporting the change. In short, when in doubt as to a route’s status, the agency should not make de facto travel management decisions via mere data entry changes.

Bark is not asking the Forest Service throw out the entire INFRA system and start from scratch, which we realize would be unrealistic and counterproductive. However, given the significant unknowns associated with INFRA, the database should be used only as a starting point, and routes unsupported by NEPA documentation should not define the baseline system to which all other proposed alternatives are compared. The threshold for determining whether a route is currently in the transportation system should be consistent and rigorous. Therefore, the Forest Service should limit the baseline transportation system to those current motorized system routes supported by prior NEPA analyses or decision documents that justify their inclusion on maps and in spatial databases. Any routes lacking documentation should be analyzed as new unauthorized routes, in recognition of the fact that there is no record of administrative decision or analysis addressing the environmental impacts of motor vehicle use on these routes. Only in this way can a clear and complete effects analysis be completed during travel planning.

As part of its description of the legal baseline, we recommend that the Forest prepare and publish a table identifying the specific documentation or evidence which supports the inclusion of all existing routes in the transportation system. Such documentation would include NEPA analysis and decision documents, approval of Road Management Objectives (RMOs) or Trail Management Objectives (TMOs), or records establishing the expenditure of normally-appropriated maintenance funds on a specific route. Routes lacking such documentation should be marked accordingly.

Finally, there are several places throughout the DEIS, such as in the analysis of cumulative effects for the general forest in the soils section, where the Forest Service includes in its baseline the current unlawful use, in order to reach its conclusion that there are no significant impacts. The DEIS explicitly states that the analysis does not include illegal use. DEIS at 2-4. At no point in the DEIS does the analysis include consideration of illegal use under any of the alternatives, thus it is patently unreasonable to include this type of use in its analysis of the no action alternative as a baseline.

## **X. Recreation**

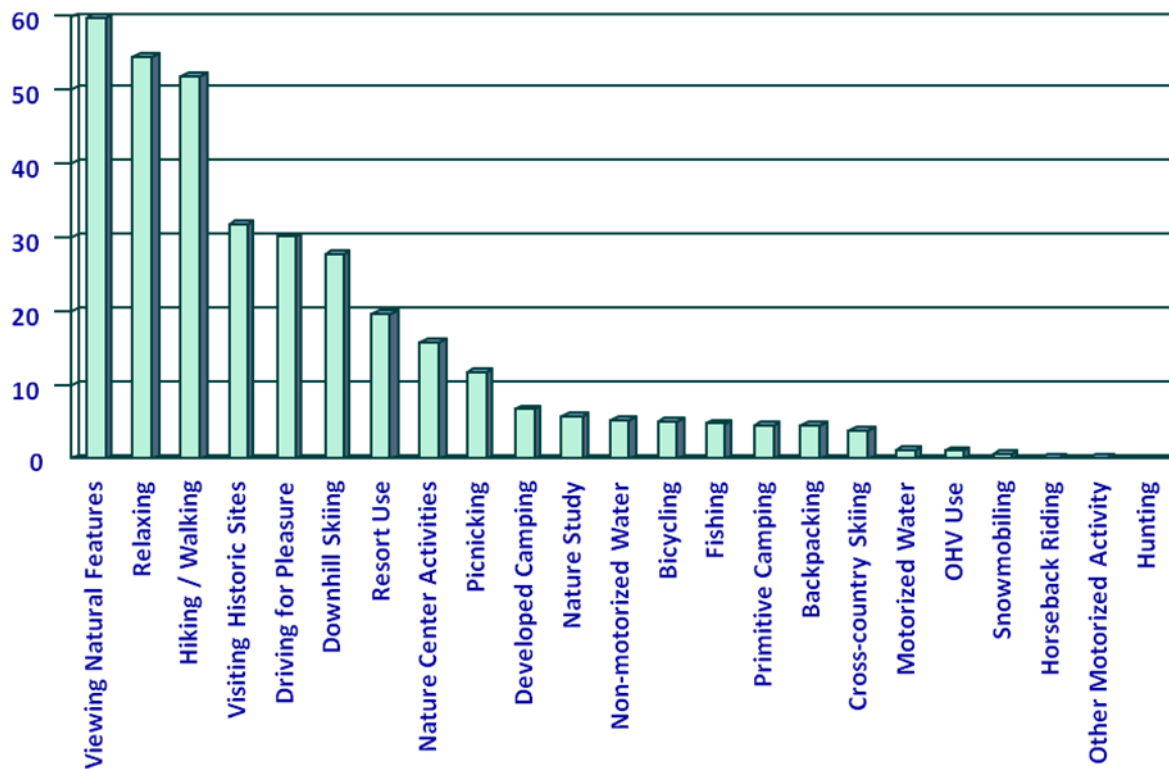
### **a. General Comments**

Bark appreciates the efforts of the Forest Service's explicit recognition that OHV users constitutes a very minor percentage of Mt. Hood's four million visits, and also the Forest Service's careful classification of the primary recreational activities enjoyed in the Mt. Hood National Forest. In particular, Bark appreciates that the Forest Service has adopted the term quiet recreation to describe the majority of recreational pursuits Forest visitors engage in. Bark also appreciates that recognition that Mt. Hood is not a major OHV destination, and that numerous opportunities to engage in OHV based recreation outside of the Forest exist nearby.

The Forest Service regularly defines a class of recreationists by what they are not — *non-motorized* — rather than what they are — specific user groups that seek different experiences of natural sounds, natural smells, and natural settings. We urge the Forest Service to refrain from lumping all the diverse interests of these user groups together under the banner of non-motorized recreation, and instead carefully consider both the shared and activity-specific interests of these user groups. Bark uses the term quiet recreation to refer to recreationists who partake primarily in summer activities such as hiking, road bicycling, mountain biking, fishing, hunting, horseback riding, bird watching and other wildlife observing activities, as well as winter activities such as cross-country skiing, backcountry skiing/snowboarding, and snowshoeing. However, the full scope of these activities would also include camping, picnicking, naturalist and spiritualist endeavors, hang gliding, photography, climbing, historical sightseeing, canoeing/kayaking, rafting, trail running, or any other activity that relies on human power and for which motorized vehicles are not central to the recreational experience sought.

While we realize that the purpose of this DEIS is to prepare for the action of designating OHV routes, the Forest Service has severely neglected consideration of quiet recreation in its analysis. The DEIS heavily favors the interests of OHV users over all OHV groups. The headings in this section betray this unbalanced approach to recreation in the Forest: the Forest Service analyzes quality of OHV experience, OHV system layout, loop opportunities, diversity in trail difficulty, supply and demand, access to Rock Creek routes, and noise from OHVs. Of these six areas of analysis, only the noise analysis even touches upon the interests of the majority of users. Many quiet recreationists would appreciate more attention paid to the quality of their experiences, more loop opportunities, etc. The DEIS does not analyze impacts to the other 99.4% of activities which forest visitors engage in, except to note the fundamental incompatibility between quiet recreation and OHV use. When the Forest Service does consider impacts to other user groups, it generally only

considers impacts to trail users. Many of the quiet recreationists described in our definition above visit the Forest not to use the trail system, but to boat or swim in rivers and lakes or find a quiet rock to sit on. The Forest Service needs to take a harder look at impacts to all recreation in this DEIS.



From Gary Larsen presentation to Mazamas, 2008.

It is obvious that if the Forest Service implements a Plan such as the one described in Alternative 3, and attempts to provide a large amount of motorized access and recreation opportunities, it will do so at the expense of traditional modes of travel and quiet recreation activities, and at the expense of natural resources. The planning process has consistently downplayed and ignored the impacts of ORV use on traditional recreational users. Motorized vehicle use has significant impacts to people and animals. It is not simply “unexpected and uncontrolled” ORV use that adversely affects the experience of these traditional recreational users, it is instead the long recognized fact that “noisier, more

consumptive and less contemplative recreationists such as ORV users tend to drive out quieter, less consumptive, and more contemplative users.” Conflicts between off-road vehicle enthusiasts and other outdoor recreationists —the ISD syndrome, *in* K. H. Berry, editor. *The Physical, Biological, and Social Impacts of Off-Road Vehicles on the California Desert*. Southern California Academy of Sciences, Special Publication, Badaracco, R. J. (1978). The BLM has documented the fact that even managed and controlled motorized use will result in the displacement of traditional recreationists from historically-used foot trails. “Even though...trails are designated as multiple use, heavy motorized use tends to cause other trail users to pursue opportunities at other locations in order to realize desired experiences and benefits.” Bureau of Land Management Proposed Colorado Canyons National Conservation Area Resource Management Plan/EIS (July 2004), page 4-38, Environmental Consequences. To underscore the inherent problem of expecting quiet recreationists to use mixed use trails on which ORV use is allowed, the American Hiking Society adopted in 2007 a policy on ORV use of public lands that states in part:

“Hikers visit our nation’s parks, forests and deserts to escape the fast pace of modern society, connect with nature, observe flora and fauna, and experience solitude, fresh air, and natural sounds while exploring and enjoying the outdoors on foot...The sight and sounds of ORVs alter the remote, wild character of parks and forests and deny other visitors the quiet, pristine, natural experiences they seek...American Hiking Society views ORVs as incompatible with...trails on which travel by foot is a primary pursuit.”

American Hiking Society, Policy: Off-Road Vehicle Use on Public Lands (2007).

The DEIS notes that even the alternative that most constrains OHV users, Alternative 4, would provide excess capacity for OHV use in the short term when compared to the current demand. It seems absurd that the Forest Service is providing for such excellent OHV opportunities in light of the impacts this use has on quiet recreationists.

The DEIS notes that the Forest does not receive many complaints about OHV use. . In order to complain a forest user must first believe that their complain will result in some action. We would submit that most forest users know that without identification of the OHV (since they lack readable license plates) there is little the Forest Service can do. Even frequent Forest users do not carry law enforcement phone numbers, and if they did, they could safely assume that by the time they complain, the OHV user is long gone, and there is little the Forest Service can do. But for the average user the biggest hurdle is finding the appropriate District office or phone number, and reaching someone to complain. Most district offices are closed during peak recreation days such as weekends. We would submit that this is because forest users know that by the time they complain, the OHV user is long gone, and there is little the Forest Service can do. In reaching out to the quiet recreation community during this open comment period, dozens of area residents have come to Bark with anecdotes about OHV use driving them out of their favorite areas to recreate. For the most part, these forest users reported that they will not revisit the areas where they were subjected to noise and pollution from OHVs because they visit the Forest in search of peace and quiet and do not want to take the risk of driving several hours and then hiking for several hours just to see OHVs destroying their destination. People also reported unsettling experiences with OHV users on roads. One person even reported an incident where, driving to a hiking destination, an ATV crashed into her car, causing hundreds of dollars in damage. Fortunately no one was injured, that time, but this type of incident does not encourage continued use of an area. In summarizing the take away messages of all these anecdotes, one thing is clear, the notion of multiple uses in areas where the Forest Service designates OHV routes will exist only on paper. Quiet recreationists will avoid these areas completely: the noise, pollution, and behavior of some OHV users will serve as a strong deterrent to the majority of forest users. It is important that the Forest Service understand this in designating routes, because it is not just designating routes, it is essentially designating where quiet recreation will cease. This shift in user

demographics is reasonably foreseeable and should be studied. The final EIS should not only consider the impacts of OHV use on designated routes, but it should consider the full range of impacts that will result from quiet recreationists abandoning entire areas of the Forest.

### **b. Specific Areas**

According to the DEIS, under Alternative 3, a full 3% of all trails would be impacted by OHV noise. It is patently unfair for such a minor use of the Forest to have such a significant impact on trail users, especially those unlucky trail users on trails which intersect with OHV trails. DEIS at 3-38.

#### Bear Creek

The Bear Creek area impacts a variety of popular hiker trails. Directly impacted is trail 632, the Laurence Lake Trail. Construction of a loop off of FR 1612 that extends out to the ridge above Laurence Lake incorporates a portion of this trail. This would make the trail much less attractive to hikers who would have to share this trail with OHV users. Furthermore, the noise pollution from construction of this loop as well as the loop from spur 660 of FR 1630 to spur 660 of FR 1640 would echo throughout the Laurence Lake region. This would make impact fishermen, hikers, and campers at the lake or in the Mt Hood Wilderness right next to the trail. The trail from FR 1630 to FR 1640 (spur 660 in both cases) is very close to the Vista Ridge Trail which is a very popular trail that would be very adversely affected by an OHV trail.

#### Gibson Prairie:

The conflicts with Gibson Prairie with regards to recreation are diverse. Many people have stated their concerns with this proposed area over the course of the planning period and we trust that changes made to this area from the Proposed Action are intended to reflect the concerns from the equestrian, mountain biking, hiking and birding community about illegal trail building and the “spidering” effect of the OHV systems.

Our understanding from conversations with Forest Service staff and OHV riders is that the Gibson Prairie area went from serving the need for a “family” area that would offer easier terrain to now serving the existing trail system off-forest. From conversation with Forest Service staff, we understand that one reason for the original Gibson Prairie proposal being dropped was that it did not receive enough interest and support from the OHV rider community in the scoping period. As with Mt. Defiance, we question the analysis that has been completed to justify this new area, considering the changes that were made. Bark also has concerns that the Forest Service is not in compliance with the NEPA process, considering the significant shift and addition of trails to this area. It does not seem as though this area was given adequate public input prior to the release of the DEIS.

The Gibson Prairie Horse Camp is an established area for the equestrian community. The presence of horseback riders in the area has been persistent. Additionally, the area has become popular for mountain bikers, particularly the Surveyors Ridge Trail. While there is a known user-conflict between mountain bikers and horseback riders, both have been significantly impacted by the recent presence of OHVs in the area. This is an example of where other recreation interests and their need for planned management and allocated areas are currently being underserved in this process that gives OHV riders “first dibs” over the areas they are most interested in claiming.

There is no analysis in the DEIS about the area that the Gibson Prairie trails in Alternative 3 are meeting up with. We understand that the trails will be connected to areas currently providing access, owned by a private, industrial logging company. Additionally, we have seen user-created trails along the powerline corridors that cross Road 17 and connect to the Toll Bridge Park, a state park facility off of Road 35. Does the county have a plan for these areas connecting? Has this been considered in the analysis?



On a recent trip to the Gibson Prairie area, Bark groundtruthers witnessed ATVs coming onto the Forest from Road 1711-650 and 1711 and dispersing onto the 1711 road system. How does the Forest Service intend to stop this use?

The Forest Service claims that there is no staging area for Gibson Prairie on page 2-26 and yet there is a staging area marked on the map. Please reconcile this discrepancy.

Road 1710, from Forest Boundary to Junction with Road 1711 is designated for closure in the North Fork logging project currently underway ([http://bark-out.org/tsdb/millcrk/Proposed\\_Action\\_Map\\_10March08.pdf](http://bark-out.org/tsdb/millcrk/Proposed_Action_Map_10March08.pdf).)

At the west end of this section, mapping indicates a short section of trail conversion tying the existing road to a spur 012 on county land. This is new trail construction, not conversion, and the flagged route is not mapped accurately: actual flagged route is somewhat longer and runs at a different angle. Flagging is also present on the other side of Road 1710, just across/adjacent to the forest boundary. This is not indicated on the map.

The existing road surface starts out fine, but degrades after about ¼ mile. Shortly after, there's an unmapped spur on the north side of the road, with a No OHV sign which has been flattened to the ground and surrounded by tire tracks (see photo). A few hundred feet further, an old skid trail with beer cans on south side of road is blocked with a log. About ¼ mile farther, on the north side, another blocked side trail is



bermed, and has likely been used as a jump in the past (see photo). Soon, the road runs by Neal Creek, probably about 200 feet away and down a steep slope. Then the road runs to with about 100 feet of a broken grazing allotment fence, behind which is easy access to Long Prairie. Just past the prairie is the junction with Road 1711.

From 1710 to the proposed staging area, the road is flat and runs adjacent to several meadow areas, which are easily accessed by driving off the road (see photo). There is at least one side trail with past illegal trail use, currently protected by a No OHV sign.



Just past the intersection with Slobber Drive, the proposed route turns north up what is mapped as existing road 1710640. This is not an existing road. It shows access to this old spur/skid trail from 1711; approximately 200 feet from road is a No OHV sign, and behind this, the typical condition of route, which approximates a hiking trail. The North Fork logging project designates all of 1710640 for closure, and all of 1710644 (the mapped continuation of the “conversion” in Alternative 3) for full decommissioning.

### Graham Pass

Creation of the Graham Pass area could adversely affect hikers and backpackers in the nearby Bull of the Woods Wilderness through noise pollution, as this valley is excellent for carrying noise. Also, it would impact hikers and mountain bikers within the Graham’s Pass area itself.

Rhododendron Ridge is a popular trail for hikers and mountain bikers. Converting it into an OHV trail would heavily impact this trail for these users, creating ruts in the trail, causing noise pollution, and disturbing or even posing a safety threat to slower and quieter recreationalists.

### LaDee Flats

Based on historic maps, the LaDee Flats area used to be covered in hiking trails. We also know that the area was logged extensively and burned in a forest fire set by logging equipment. With respect to the historic quiet recreation that has occurred in the area, the DEIS says nothing. In addition to excluding the eight trails referenced above from the DEIS maps, there is no analysis of how the alternatives will impact the trails. The assumption in the DEIS is that once a decision is rendered, there will be no impact to hiking trails because OHVs will remain on designated routes. Based on Bark's experience this is a false assumption.

In 2007 Bark's Executive Director, Alex P. Brown, documented ATV tracks in the Salmon-Huckleberry Wilderness on trail #791 to Salmon Butte.

Recommendation for 4610 Road Closure... at 2. As recently as October, 2009, OHVs have been documented using this trail, which is actually a former road to the former Salmon-Butte fire lookout, to drive all the way to Salmon Butte, over a mile into the Salmon-Huckleberry Wilderness.



ATVs on Salmon Butte October 2009

This trail was removed from the most recent (2003) recreation map, yet Bark is not aware of any decision-making process or NEPA process that accompanied the decision. Bark would argue that whether or not the trail has been excluded from the map it is still being used by hikers and the impact of OHV use should be analyzed.

In 2009 Mr. Brown also found ATV tracks at Huxley Lake, illegally using trail #521 from road 4612-120. The general perception among those brave enough to hike in the LaDee Flats area is that OHV users will ride on all trails accessed by the area's road system and user-created trail system. *Id.* at 8

The Twin Springs campground was recently closed due to the inability of agency staff to mitigate the soil and other damage being done to the camp. While there is no evidence that it was OHV users who were responsible for the ongoing damage, it remains a fact that all recreationists have lost the only two

developed campgrounds in the greater LaDee Flats area since OHV use became established.

The LaDee Flats area is approximately a one hour drive from Portland. It is one of the closest destinations for quiet recreation activities. It provides access to two congressionally designated Wilderness areas via seven hiking trails, which also provide stunning views of Mt. Hood and the Wildernesses. The DEIS should have addressed the impact that OHVs will have on other recreationists.

### McCubbins Gulch

Noise from OHVs would, according to the Forest Service's analysis of Alternatives 3 and 4, impact three trails in this area, two campgrounds, and one Wilderness area. A groundtruthers report indicates that the Forest Service forgot to include the 240 trail in this analysis, a lovely nonmotorized trail close to what would be designated OHV routes.



This area is easily accessible access for Metro area residents to the dry, Ponderosa pine dominated landscape of this area. In addition, the Lower White River is a beautiful stretch of river which may be important to kayakers and anglers. McCubbins Gulch is adjacent to a Wilderness area that is unique in that it does not have any formal hiking trails. This provides special opportunities for true solitude and a very rustic outdoor experience that may not be found in other parts of the forest. It is also extremely close to the Warm Springs reservation, an area where non-tribal member are not allowed to explore. In addition, there are many campsites, both dispersed and in the campgrounds, which feature old growth Ponderosa pine trees and excellent opportunities for east side camping. This area's large Ponderosa pines could provide a significant draw for quiet recreationists. McCubbins Gulch provides a special opportunity for those interested in this section of the forest and its ecosystem. It is also an area with a very diverse bird population, making it an area of interest to bird watchers. All of these potential uses could be ruined by heavy OHV use in this area. This area is also very close to the Rock Creek OHV area, creating a cluster of OHV opportunities in one part of the Forest. If the Forest Service must include any of these areas in its final plan, it should consider selecting just one of these areas, as there is no evidence that both areas are needed to fulfill user demands. If the Forest Service includes this area in its final Plan, it should select the smaller route system described in Alternative 4 for this area in order to preserve the special opportunities for quiet recreationists McCubbins Gulch provides.

Mount Defiance: Bark has concerns about the impacts to trails in the Mount Defiance area if an OHV area is designated in this area. Besides the sound intrusion on Trail 413 (the popular Warren Lake Trail), there is also known, illegal OHV use on Trail 417, an



alternate access to the trail leading to Warren Lake. See photo.

A consistent argument made for the Mt. Defiance proposed area is that it will afford additional trail mileage for the adjacent Hood River County OHV trail system. A map of this trail system or an analysis of whether this trail system is currently having an increased demand that would warrant additional trail miles is missing from the DEIS. We have included the Hood River County OHV trail system map as an Addendum and as a reference for the extensive trail system that already exists. The addition of the National Forest trails extension will not serve to connect any areas that are currently not connected (a common feature requested by OHV riders), but would just serve as an additional loop, independent of the rest of the trail system. The DEIS has not made an adequate argument for the addition this loop.

Peavine:

Peavine should not be included in the OHV Plan. It is located in a beautiful remote area favored by those seeking truly quiet recreational experiences, dispersed camping in particular, and is not an area of significant interest to OHV users. This area currently experiences some, but not much, OHV use. This area's popularity with wildlife has also made it popular with hunters. Hunters, such as those affiliated with the Backcountry Hunters and Anglers, come to this area precisely because there is no noise to scare away wildlife. Many of the roads in this area have either begun the slow process of revegetation or have been obliterated.



Bark appreciates that the proposed routes have been moved away from the PCTA and Warm Springs border, but we still do not believe that this area should be included. It is too far from any population center that have significant demand, and it is unique in offering significant solitude and quiet.

### Rock Creek

The residents and users of who enjoy the peaceful trails have consistently reported that they are being pushed out of this area by OHV users, whose use has come to dominate this landscape. Many Sportsman's Park residents moved to this area in order to enjoy peace and quiet. They have reported that their ability to engage in activities such as nature walks has been significantly impacted by dangerous OHV use of their hiking trails. In addition, once pristine areas have been completely trashed by prolific littering and unsanitary conditions around filthy campsites created by OHV users, even in areas where signage clearly indicates that OHV use is not permitted or facilities have been provided.





If OHV routes are

designated in this area, the Forest Service should follow through on its commitment to non-OHV users by creating day use areas in order to limit the disturbance. There is also an urgent need for more sanitation facilities here. The proposed route into the Badger Creek Wilderness is completely unacceptable, as it will harm the experience of those who travel all the way to Badger Lake. The DEIS notes that OHV users have entered the Badger Creek Wilderness from this route, and the only way to stop these incursions is to keep OHV users far from the Wilderness. The Forest Service should protect the non-OHV user interests in this area by limiting OHV use to a minimal system.

### **c. Noise from OHVs**

NEPA requires agencies to prepare NEPA documents that addresses a project's direct impacts, indirect impacts, and cumulative effects. *Kleppe v. Sierra Club*, 427 U.S. 390 (1976); *Thomas v. Peterson*, 753 F.2d 754, 758–59 (9th Cir. 1985); *Save the Yaak v. Block*, 840 F.2d 714, 720 (9th Cir. 1988); *Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1378–79 (9th Cir. 1998). This analysis needs to include: (1) the effects of past connected and cumulative actions; (2) the effects of present connected and cumulative actions; and (3) the effects of reasonably foreseeable future connected and cumulative

actions. 40 C.F.R. § 1508.7. Cumulative analysis of sound impacts on an area should include noise from all motorized traffic, and not just the projected increase in noise from any additional or new use. See, e.g. Grand Canyon Trust v. FAA, 290 F.3d 339 (D.C. Ct. App. 2002).

The Travel Management Rule states that in designating OHV trails and areas, “the responsible official shall consider . . . compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors” (36 C.F.R. § 212.55(b)(5)). The Wilderness Act provides that if a motorized route or area is adjacent to or near a proposed or designated wilderness, then sound effects on the natural solitude of the area should be taken into consideration and depending upon the level of the effect, reduced or eliminated.

Need to add challenge to basis for 30dB “very quiet” determination and use of this to determine reach of noise into wilderness. ANY perceptible human-made noise in Wilderness ruins the experience.

Off- highway vehicle (“OHV”) noise contributes greatly to the disturbance of natural places. Not only does the noise produced by OHVs ruin the peaceful experience of a hiker or camper, but it also has negative impacts on wildlife. While the DEIS notes that Oregon regulations require OHV sound to be muffled to produce no more than 99 decibels, OHVs produce noise as high as 110 decibels. United States Geological Survey. OHV Disturbance and Noise. Environmental Effects of Off-Highway Vehicles on Bureau of Land Management Lands. p 19-20. Reston, VA: USGS (2007) (“USGS Report”). This is to say nothing of the noise produced by numerous OHVs consolidated in one area. Noise generated by the average ATV engines can reach sound levels of 81 - 111db.<sup>32</sup> Bluewater Network. Off the Track: America’s National Parks under Siege. Available at: [http://www.bluewaternetnetwork.org/reports/rep\\_pl\\_offroad\\_offtrack.pdf](http://www.bluewaternetnetwork.org/reports/rep_pl_offroad_offtrack.pdf). This noise level is equivalent to a rock concert or a busy street. Because of the way

they are driven, with frequent engine revving, the sound level is not constant. Noise from an ATV can be loud enough to interfere with a conversation 800 feet away depending on vegetation and landscape. All-Terrain Vehicles in the Adirondacks, Issues and Options. Wildlife Conservation Society Working Paper No.21, Karasin, L.N. (2003). When this level of noise is generated by more than one vehicle, the resulting noise can be audible more than two miles away. Id. Those seeking quiet and solitude will have a difficult time escaping the sounds of ORVs, which reduces the ability of these users to access the forest in a manner which they enjoy.

Noise levels above 90 decibels have been shown to cause behavioral alterations and stress responses in animals. The Impacts of Off-Road Vehicle Noise on Wildlife. Road- RIPorter. Wildlands CPR. Schubert, D.J., and Smith, J. (2000) ("Impacts of Noise on Wildlife"). In addition, OHV noise is emitted more frequently than other man-made high intensity sounds. USGS Report. Because wildlife species in the forest are adapted to a relatively quiet environment, sound cues are vital for their survival. Animals rely on sound cues to gather information on predators and prey as well as natural occurrences such as storms. The noise produced by OHVs can disrupt these natural queues. OHV noise has been shown to lead to hearing loss in some ground-dwelling species. Environmental Impacts. The Encyclopedia of Ecotourism. p 379-393. Cambridge, Mass: CABI Publishing, Buckley, R. (2001) ("Environmental Impacts"). Hearing loss due to OHVs was later found to lead to disorientation and inability to respond to predation noises. Impacts of Noise on Wildlife. OHV noise can also simulate natural sounds, such as thunder, that animals then mistakenly respond to. For example, studies have shown that at least one frog species that relies on thunderstorms as an indication of temperature and moisture conditions, emerged during the incorrect season because of misinterpreted noise from OHVs. USGS Report. In addition, many species disturbed by the noise created by OHVs are driven away from areas with OHV use. This forces wildlife to move from their preferred

habitat to less favorable habitat. OHV noise also triggers other stress responses in wildlife such as alteration of behavior and disruption of courtship and breeding. One study showed diminished reproductive output of deer in an area of OHV use. USGS Study.

In humans, noise exposure has been linked to stress, ulcers, tension, and coronary disease. Schubert 2000. Detrimental effects of OHV noise exposure to wildlife, while still relatively unstudied, should be expected to be equally or even more severe. National Park Service's Natural Sounds Program Center has developed two annotated bibliographies regarding the impact that sound has on wildlife and another on the impact sound has on other park visitors.

Impacts of Noise and Overflights on Wildlife Annotated Bibliography.

National Park Service Natural Sounds Program Center. Available at <http://www.nature.nps.gov/naturalsounds/publications/wildlifebiblio.pdf>.

And Visitor Experience and Soundscapes: Annotated Bibliography. National Park Service Natural Sounds Program Center and Colorado State University. Available at:

[http://www.nature.nps.gov/naturalsounds/publications/Biblio\\_visitor\\_experience\\_soundscapes\\_2006.pdf](http://www.nature.nps.gov/naturalsounds/publications/Biblio_visitor_experience_soundscapes_2006.pdf)

We recognize and appreciate that the Forest Service has made significant advances in its efforts to comprehensively measure noise impacts, and particularly noise impacts on trails, in the Forest. Clearly Alternative 4 would be the least impactful choice to minimize the harm caused by OHV noise.

While the Forest Service's noise analysis is a significant improvement over the analysis provided during scoping, more detailed analysis of noise impacts are available and should be utilized in order to fulfill NEPA's mandate of taking a "hard look" at the environmental impacts of this agency action. 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.” 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. We have included the user’s guide for the SPreAD-GIS model as an appendix to this document, 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 Forest Service employ TWS’ SPreAD Model to evaluate the potential acoustic impacts on the planning area from engine noise in this process, and take appropriate action to reduce route density and ensure quiet landscapes based on the findings from your noise propagation analysis.

For the foregoing reasons, OHV noise should be limited on Mt. Hood. The wildlife that thrives on a serene forest environment and the humans that enjoy it are adversely impacted by the noise caused by OHV use. A smaller area designated for OHV use will reduce effects on wildlife by limiting noise pollution to a small confined area.

### Bear Creek

The Bear Creek area includes new trail construction that follows the ridge above Laurence Lake. This trail then follows the ridge all the way to the Vista Ridge trailhead. This would adversely impact hikers on Trail 632, the Laurence Lake Trail, as well as hikers on Trail 626, the Vista Ridge Trail. These are deeply cherished historic trails where OHV use is completely inappropriate. Some of the new trail construction in this area even replaces portions of Trail 632, which ends in a great viewpoint and ascends from Laurence Lake offering

a series of close in views of Mount Hood. Though trail 632 is officially closed and not listed on Forest Service Maps, it is still quite popular with hikers and Groundtruthers found that there has been little re-vegetation along this trail. Additionally, as a ridge trail, sound carries very well down through Laurence Lake. This area is well known for noise traveling, and hikers have reported hearing other users at significant distances. Groundtruthers have reported that engine noises have been heard up at Inspiration Point on the Elk Cove Trail (631). Also anecdotally, a group of hikers howling and shouting from this ridge were audible enough down by Laurence Lake to receive a reply from a group of geese. This indicates that OHV traffic along this ridge would be audible to fishermen, hikers, swimmers, campers, and backpackers around Laurence Lake, up on the Elk Cove Trail, and on the Vista Ridge trail, despite claims in the DEIS that noise does not travel in this area. This would damage the experience of the vast majority of National Forest stakeholders for the benefit of a less than one percent minority.

This same ridge trail continues between a spur from 1612 to the trailhead for the Vista Ridge trail bordering Wilderness to the south. Evidence has shown that the corridor for roads is significantly wider than the road itself, affecting wildlife up to 100 meters from the edge of the road), which would extend the effects of this OHV trail into the Mt Hood wilderness. Effects of Forest Roads on Macroinvertebrate Soil Fauna of the Appalachian Mountains. Conservation Biology Vol.14 No.1 pg 57-63, Haskel, David G.

This could impact animal foraging, predation, and reproduction. This area should, under no circumstances, be included in the OHV Plan.

### Graham Pass

Trail 564, the Rhododendron Ridge Trail, follows a high ridge along the entire length of this area. If this trail were opened up to OHV use, it would have noise pollution impacts that would carry throughout the remote region. OHV use and noise in this area would cause most quiet recreationists to abandon use of

this area, as its main attraction is quiet and views. This trail would not be suitable for both OHV use and quiet recreation not just because of the noise, but also because the trail is too narrow to safely allow both types of uses simultaneously. The DEIS does not include analysis of whether or not decibel levels equivalent to OHV use (up to 111db) would be audible within the nearby Bull of the Woods Wilderness. Considering how well sound will carry from the ridge, this should be done before Graham Pass is considered for an OHV area.

## **XI. Soils**

Soil is the foundation upon which all life in the forest grows. While all soils are vulnerable in some degree to compaction and erosion from ORV use, certain soils are particularly erodible. Effect of recreational use on soil and moisture conditions in Rocky Mountain National Park, Journal of Soil and Water Conservation 22:196-7, Dotzenko, A.D., N.T. Papamichos, and D.S. Romine (1967). OHV routes should not be designated in areas where the soil is classified as highly erodible (“severe” or “very severe”) by the Soil Conservation Service or the Forest Service Manual on soil classification.

The DEIS fails to produce any analysis of how the alternatives will meet the Standard and Guideline for soil productivity , or FW-022,

The combined cumulated detrimental impacts, occurring from both past and planned activities, of detrimental soil compaction, puddling, displacement, erosion or severely burned soil should not exceed 15 percent of the activity area. See Forestwide Riparian Area and Geology Standards and Guidelines and B8 Earthflow Management Area Standards and Guidelines. Landings, non-transportation system roads, and dispersed recreation sites should be included within the 15 percent.

.Mt. Hood LRMP at Four-49 In the LaDee Flats project area the agency has the benefit of a recent analysis for the No Whisky Plantation Thinning EA, however for the remaining seven proposed areas Bark expects some quantifiable

analysis of the current level of soil conditions which would allow the decision maker to determine whether or not the action will meet the Forest Plan or not.



Sediment from an illegal OHV “mudding” spot on 4610 is dumping into a tributary of the North Fork Clackamas River.

This DEIS notes that, looking at OHV impacts on a fine scale, would no doubt, show “highly detrimental impacts and nearly total productivity loss. DEIS at 3-42. The DEIS notes Alternative 4 is the least impacting alternative, however, all three areas in this alternative are lumped in the “higher concern” group for soils amongst the proposed systems because the soils in this area are known to be prone to erosion. Id. at 3-48.



### Bear Creek

Bear Creek area would be heavily impacted by the OHV proposal. The recent thinning action (Yaka 22/23) has opened up much of the ridge above Laurence Lake. OHV users traveling off trail in this area would heavily impact the soils, damaging the chances of a natural regenerative process. As OHV users are highly likely to take advantage of this thinned area, creating the Bear Creek OHV area would expose this disturbed habitat to soil compaction and erosion. The Bear Creek itself is crossed by the proposed trails and there is a steep grade from 1610 down to the creek itself. An OHV trail along here, with the inevitable off trail activity, would erode the soils and increase siltation in the Bear Creek. Furthermore, Bark Groundtruthers observed soil erosion and channelization of water along the surface of spur 660 off of FR 1630. Also spur 660 off of FR 1640 has moderate erosion and deep ruts along it.

### Gibson Prairie

In the soils section, the DEIS states, again, that there is no designated staging area for the Gibson Prairie area. However, it also states that this analysis area is one of the most sensitive areas because of its potential for soil impacts in meadows and wet areas. Staging areas help to concentrate the high impact of large tow rigs hauling OHVs to the areas. The Forest Service has not address the impacts of this presence being dispersed and potentially going into sensitive meadows.

### Graham Pass

Erosion poses a significant risk to the Graham Pass area. One Bark groundtruther observed trail #564 on September 8<sup>th</sup>, 2009. He found evidence of trail erosion including ruts from water erosion along the trail as well as evidence of surface flow over the trail. Another observed FR 4672 on September 30<sup>th</sup> 2009. There were areas where significant amounts of water had washed out sections of the road and been repaired with fill rock. This is of

concern because one of the eroded areas was uphill from Berry Creek, a tributary of Cub Creek and therefore of the Clackamas River. It also demonstrates that, even though many of these roads are well improved, a serious risk of erosion remains. Erosion in this area could have serious impacts on area streams, which support significant fish populations, including several listed anadromous fish. In addition, erosion in this area could harm the opportunities for bull trout, which are scheduled to soon be reintroduced to this area in an important cooperative effort. The DEIS notes that there are several small, wet meadows visible from the north end of the trail that would be an attraction to riders. DEIS at 3-46. The existence of this temptation, in a remote area where enforcement would be extremely challenging, is an excellent reason why Graham Pass should not be included in the OHV Plan.

#### LaDee Flats

None of the proposed OHV areas have experienced greater soil degradation than LaDee Flats. Bark incorporates by reference the 2006 No Whisky Plantation Thinning Environmental Assessment. Much of the LaDee Flats area is of a current soil disturbance of over 15% and some even over 20%. Exacerbating this problem is “mudding,” in which ATVs and full-sized pickup

trucks gun the accelerator and dig massive pits in the top soil.



Photo taken March, 2004, of mudding adjacent to Rd 4610.



Photo taken January, 2006, of mudding adjacent to Rd 4610.

In 2009 the Forest Service implemented a restoration program to fill historic mudding sites with pit run rock. Bark is thrilled at what appears to have been

an effective mitigation strategy, at least in the short term. However, beneath the pit run rock the subsoil is still exposed to surface runoff and topsoil and vegetation will not successfully reestablish in the areas now filled with rock.

It is conceivable that the establishment of existing routes in the action alternatives will lead to the same, or less, soil impact as the existing condition. However, if the baseline is considered the existing legal routes and not all of the mudding spots and user-created routes, then every action alternative includes the construction of new routes as documented below in the Transportation and Safety section of Bark's comments. The construction of a new route(s) in the LaDee Flats planning area requires an analysis on its contribution to the soil condition of the project area.

The DEIS does not disclose any new construction of routes in the LaDee Flats OHV area other than the staging area, which is described as "The staging area parking proposed in this alternative would occur on an already disturbed timber sale landing. Therefore, no additional impacts are expected." However, there is 5.1 miles of new construction proposed in the preferred alternatives. There is 1.6 in the proposed action. In a site visit by Bark staff to the LaDee Flat area in August, 2009, we documented flagging for the route identified in the Alternative 4 (for some reason the roads are not marked in Alt. 3 map) as connecting Rd 4610-016 and the main Rd 4610. See photo below for example of what current conditions are for this proposed route:



While there is recognition of new trail building in the other proposed routes in the Soil section of the DEIS, there is none in the LaDee Flats area. This is a particularly significant analysis gap, given that the LaDee Flats area has portions of greater than 20% soil disturbance, and any new disturbance would put it clearly over the threshold envisioned in the Mt. Hood LRMP.

#### McCubbins Gulch

As noted in the DEIS, the soils of this area is sensitive to disturbance, and in parts has been nearly denuded. DEIS at 3-43. The irrigation ditches in this area are completed filled with mud. In many areas, all that remains is bare dirt. The DEIS also notes that this area has been the most damaged of all OHV areas, and that restoration of this area would be extremely challenging.



This is an excellent reason to limit use of this area by closing the most damaged areas in order to begin the slow process of restoration. McCubbins Gulch should not be used as a sacrifice zone. Damage to the soil here will impact the nearby pristine waters. The DEIS notes, with some wonderment, that trees in this area are surviving, but if use continues at a heavy rate, these large Ponderosa pines could be imperiled. If this area is adopted as part of the OHV plan, a smaller version of the system proposed in Alternative 4 should be adopted in order to allow for restoration in some of the area.

### Mt. Defiance

Although the DEIS states that the Mt. Defiance OHV area is predominantly graveled, the Forest Service is not exempt from including cumulative impact information about the soils in this area. The DEIS states that past actions by the Forest Service has allowed for monitoring reports with regards to soil, but then does not link these findings to OHV use. The DEIS also talks about the current use of OHVs in the area. Have there been similar monitoring or surveying efforts done for this area to look at the impacts to soil?

### Peavine

This area has seen only minimal OHV use, and thus its soils have not yet been significantly impacted. This area is listed in the DEIS as part of the high concern group. DEIS at 3-48. New construction in this area is inappropriate, as there is a large network of roads that are slowly revegetating; this progress should not be undone through new road construction. To protect the soils of this area, Peavine should not be included in the OHV Plan.

### Rock Creek

Rock Creek is also included in the group of areas of high concern. DEIS at 3-48. OHV use has caused extensive damages to soils here, and subsequently significant erosion.



In addition to OHV use, which has had very significant impacts on this area; grazing, timber sales, and underburning have all had significant and cumulative impacts on these soils. The 4860 road into the heart of the Badger Creek Wilderness should be eliminated from consideration, as the it will cause harm to the soils in and around the Badger Lake campground and lake. If

routes within this area are included in the OHV Plan, they should be limited in order to limit the ongoing damage to soils here.

## **XII. Water Quality**

### **a. The DEIS Fails to Take a Hard Look at Water Quality Impacts (“WQI”) and the Ability of the Forest Service to Comply with § 313**

It is the responsibility of the Forest Service as a federal land management agency, through the implementation of the Clean Water Act (CWA), to protect and restore the quality of public waters under their jurisdiction. When OHVs cross streams and disturb sediment, streamside trails function as conduits for erosion and sediment run-off. Gasoline and motor oil enter the soils and waters of our public lands as a result of inefficient combustion and emissions. Unfortunately this ESI fails to adequately assess the potential impacts to water quality, effects on 303(d)-listed streams, the Forest Service’s ability to truly comply with § 313 of the Clean Water Act, or the Travel Management Rule’s minimization of environmental harm requirement. We remain concerned that both non-impaired and impaired waters in the Forest may be unacceptably degraded by the routes designated in any of the alternatives.

This DEIS does not adequately consider the serious risks of bacteriological water contamination from extensive recreation use in OHV areas.

Groundtruthers have had the unfortunately experience of coming face to face with evidence of unsanitary activity which could lead to contamination from fecal coli form in the Rock Creek system.





This DEIS notes that efforts to protect riparian areas from OHV damage have failed, and sedimentation and erosion have resulted. Mt. Hood provides clean drinking water for approximately one million people each year, and demand is only expected to increase. The Forest Service should make every effort to protect our water supply by designing OHV routes which avoid streams and riparian areas entirely, especially since efforts to protect these areas from nearby OHV routes have historically failed. It is particularly egregious that preferred Alternative 3 includes a staging area in a Riparian Reserve.

§ 313 of the Clean Water Act obligates the Forest Service to comply with state water quality standards. 33 U.S.C. § 1323. There is almost no analysis of how this compliance will be achieved, with no specific mention of the BMPs being followed. The final EIS must include this vital analysis. Furthermore, the Forest Service's own mandates, in particular NFMA, MUSYA, and the Travel Management Rule provide for water quality protection as well. The development and implementation of a Water Quality Restoration Plan (WQRP) is the primary mechanism to address and restore impaired waters on Forest. WQRPs provide

the necessary context for making land management decisions that lead to restoration of impaired waters. Development and implementation of WQRPs provide a means to meet Forest Service responsibilities for listed waters, allow management activities that complement a WQRP to proceed, and ensure that management activities lead to attainment of water quality standards and beneficial uses.

The Forest Service should take more substantial steps to ensure the protection of water quality. This would include dramatically reducing the miles of OHV routes within 100 miles of streams, the total number of stream crossings, the number of routes in drinking water source areas, and miles of OHV routes within riparian reserves. All of the above described water quality measures must be reduced, even from the levels described in Alternative 4. While a very small population relies on Mt. Hood for OHV recreation opportunities, over one million Oregonians rely on Mt. Hood for clean and safe drinking water. It is unacceptable to take unnecessary risks to the very source of life. We appreciate the Forest Service's thoughtfulness in attempting to avoid impacts to water quality in Alternative 4. When OHVs cross streams and disturb sediment, streamside trails function as conduits for erosion and sediment runoff. Gasoline and motor oil enter the soils and waters of our public lands as a result of inefficient combustion and emissions (Havlick D. 2002). The Clean Water Act obligates the Forest Service to protect water quality. 33 U.S.C. § 1313. The Forest Service's own mandates, in particular the National Forest Management Act and the Multiple Use and Sustained Yield Act, provide for water quality protection. The Forest Service should account for the impacts of all motorized routes that intersect or cause degradation of impaired waters – or waters that, if impacted by designated routes or motorized use, are threatened with impairment or water quality degradation. 40 C.F.R. § 131.12 (antidegradation provisions).

Bear Creek

Bear Creek shows evidence of erosion along a number of the trails. Also, many of the proposed trails are along ridges. This has serious consequences for water quality. The 660 loop off of FR 1640 has eroded areas and crosses Marco Creek. Added sediment from erosion will damage water quality in Marco Creek, which is a tributary of the West Fork Hood River. The Trails also cross Bear Creek. The area around Bear Creek has been disturbed by a thinning process (Yaka 22/23). OHV users traveling off trail through this area would create runoff into the Bear Creek which would have detrimental effects on Bear Creek's water quality. Furthermore, the converted portion of 632, the Laurence Lake Trail, is along a ridge above Laurence Lake. Erosion from illegal off trail through this disturbed area (also Yaka 22/23) would send runoff into Laurence Lake and potentially impact fish populations in this popular fishing destination.

#### Gibson's Prairie:

The Hood River Watershed Action Plan states that it is working on eliminating dispersed camping due to its impacts on the watershed: "Dispersed camping and OHV use on public and private forest lands can result in loss of streamside vegetation, decreased shade, damage to soils, proliferation of solid waste and introduction of fine sediment and bacteria to waterways. While water quality impacts are usually not as severe as those resulting from forest roads, dispersed recreation activities are still an important water quality, habitat and wildlife issue in the Hood River watershed." Hood River Watershed Action Plan, updated April 22, 2008, Hood River Watershed Group, pg 46.

#### Graham Pass

34 stream crossings are unacceptable. All these stream crossings could have significant impacts on both steelhead and the bull trout reintroduction efforts. Significant likelihood of increased pollution, temperature, sedimentation, and turbidity. Streams proposed for crossing in Alternative 3 include Berry Creek, Hunter Creek, Fawn Creek, Rhododendron Creek, Lowe Creek, Jazz Creek,

Ogre Creek, and Round Creek. Berry, Hunter, Fawn, Rhododendron, and Lowe Creeks drain into the Clackamas River (Berry via Cub Creek). Jazz, Ogre, and Round Creeks drain into the East Fork Collawash River, which leads to the Clackamas River as well. Erosion concerns have been noted along FR 4672, decision rd off of 6355, and along the Rhododendron Ridge Trail. This erosion would adversely impact all the streams in the area by adding to siltation, reducing the ability of these streams to support fish populations. Furthermore, these tributaries of the Clackamas River would carry various vehicle pollutants into the Clackamas including oil, fuel, and coolant to name a few. While this area may presently be open to use, the DEIS has not considered the increase in use this area will receive and the consequent increase in these pollutant inputs and the rate of erosion in this area.

#### LaDee Flats

The LaDee Flats OHV area falls in two distinct watersheds. North Fork Clackamas River watershed is approximately 30,000 acres in size and is unique due to the presence of three endangered or threatened fish species that occur in the North Fork Clackamas River drainage: Lower Columbia River steelhead, Upper Willamette River Chinook salmon, and Lower Columbia River coho salmon. The Roaring River watershed is 27,250 acres in size and notable for its status as a Tier 1 key watershed and Wild and Scenic designation and providing habitat for a little-known sub species of redband trout. Both watersheds drain into the Clackamas River, which provides drinking water to hundreds of thousands of Oregonians. Alt 3 features 46.9 miles of OHV route miles in drinking water source areas and 4.24 miles within riparian reserves. The impacts to water quality are far to significant to include all the proposed routes.

#### McCubbins Gulch

The inclusion of the McCubbins Gulch Campground, a riparian area, as a staging area is misguided. The Forest Service has an important obligation to

take special measures to conserve riparian areas, and the heavy use that will result from this being a designated staging area is inconsistent with management directives. Even under Alternative 4, the inclusion of 4.27 OHV routes within Riparian Reserves and 28 stream crossings indicates a failure to protect water quality. The waterways in this area have already been severely impacted.



Water quality in this area has been substantially impaired by OHV use. More efforts should be taken to avoid harm to water quality in McCubbins Gulch by reducing the total mileage of OHV routes here.

#### Mt. Defiance

The DEIS states that almost two and a half miles of road are within the Oak Grove Water Company's drinking water source area. Who does the Oak Grove Water Company supply water to? Allowing OHVs into a municipal drinking water source is unacceptable. OHVs are not permitted in the Bull Run or The Dalles drinking watershed. This should be standard for all municipal drinking areas in the Mt. Hood National Forest.

### Peavine

Protection of water quality is an important reason why Peavine should not be included in final OHV Plan. With 3 miles of OHV routes within 100 feet of streams, 35 stream crossings, **65.5** miles of routes in drinking water source areas, and 6.59 proposed miles within Riparian Reserves, the inclusion of routes within this area present serious threats to water quality.

### Rock Creek

We appreciate the Forest Service's obvious efforts to protect water quality in Alternative 4, as opposed to Alternative 3, for Rock Creek. We do note that the DEIS does not separately consider the impacts of allowing OHVs to travel to Badger Lake. Additional consideration should be given to the harm which may result from OHV use in the Badger Lake area.

In the main Rock Creek area, in addition to the above mentioned problems with the introduction of dangerous bacteria resulting from improper disposal of human waste in this area, there are numerous streams that have already suffered significant impacts from OHV use. Alternative 3's proposal to include 1.8 miles of OHV routes within 100 feet of streams, 29 stream crossings, and 3,96 miles of OHV routes within riparian areas is simply too much for this area to handle. Efforts should be made to mitigate the existing harm in this area by introducing closing the most significantly impacted areas in Rock Creek.

### **XIII. Fisheries**

Bark appreciates that the Forest Service obviously invested significant time into analyzing the impacts of this project on fisheries and sincerely hopes that the agency utilizes this information to select an OHV Plan that features the fewest possible stream crossings and not Alternative 3, which would include a

whopping 161 potentially harmful stream crossings. Protecting fisheries has been a priority for the Forest Service for some time, and fishing is a popular activity in the Forest.

**a. Endangered Species Act**

In addition to protecting the general aquatic environment and fish species, the Forest Service has a special obligation under §7(a)(1) of the Endangered Species Act to use its authority for the conservation of listed species. §7(a)(1) of the ESA requires agencies managing listed species to develop meaningful species- and location-specific conservation programs. *Florida Key Deer v. Paulison*, 522 F.3d 1133 (11th Cir. 2008). The DEIS notes that there will be a may affect, not likely to adversely affect finding for Lower Columbia River coho, Middle Columbia River Steelhead, and critical habitat due to sedimentation and OHV route stream crossings if Alternative 3 is selected. Such a finding, and the need for a biological opinion, can be easily avoided by not selecting Alternative 3 and excluding the most harmful routes from any decision. This would be consistent with the agency's obligations under the ESA.

In addition, more information is needed to help the public understand why this project has not been deemed to affect bull trout, a notoriously sensitive species. Specifically, did the analysis consider areas where bull trout currently do not exist but will soon be reintroduced to included? It seems likely that efforts to reintroduce this delicate species would be thwarted by OHV use close to their soon to be new habitat. Because of the considerable planning and research going into this cooperative effort, the Forest Service should err on the side of safety and not include Graham Pass and Peavine in its final decision.

**b. The Forest Service Should Consider a Broader Range of Impacts on Aquatic Species**

The draft Environmental Impact Statement does not consider habitat elements that it ascertains would not be affected by OHV use. For example, the DEIS

does not consider OHV impacts on water temperature, and thus impacts on listed and special status species and their habitat. Water temperature is an important water quality indicator impacting the distribution of stream salmonids and other aquatic biota. Trout biomass and habitat relationships in southern Ontario streams. *Transactions of the American Fisheries Society* 115: 503-514, Bowlby, J.N., and Roff, J.C. (1986), Predicting the effects of time-varying temperatures on stream invertebrate's mortality. *New Zealand Journal of Marine and Freshwater Research* 34:209-215, Cox, T.J. and J.C. Rutherford (2000). Critical thermal maximum of five trout species in the southwestern United States. *Transactions of the American Fisheries Society* 109: 632-635, Lee, R.M. and J.N. Rinne (1980).

#### Stream Temperature Issues

Alternative 3 would result in significant removal of riparian vegetation with 16 new trails near perennial and intermittent streams DEIS Table 3-76. Any increase in the amount of heat entering a stream from solar radiation will have a proportional increase in stream temperature. Riparian shade and stream temperature: An alternative perspective, *Rangelands* 19: 25-28.25-28, Beschta, R.L. (1997). Any decrease in riparian vegetation will result in increased solar loading to the stream surface and will warm stream temperature. This may have particularly important impacts in headwater streams, where due to a lower volume of stream flow, the stream may be more susceptible to stream warming (lower volume of water will warm more readily). Further, stream temperature may approach critical temperature thresholds for fish mortality. Although, for example, specific thermal tolerance thresholds for steelhead are not well known, any increase in combination with potential climate change may pose a risk to important species populations. Steelhead Rainbow Trout, *California's Living Marine Resources – a Status Report*. California Department of Fish and Game, McEwan, D.R. (2001). Water temperature has a significant impact on all life history stages of steelhead. *Summary of temperature*



*preference ranges and effects for life states of seven species of salmon and trout. trout, United States EPA Region 10, Berman, C. (1998).*

#### OHV Pollution Harms Water Quality

Emissions from OHVs impact water quality and fisheries. For example, increased hydrocarbon pollution from snowmobiles decreased the stamina of brook trout in Maine. Effects of lead and hydrocarbons from snowmobile exhaust on brook trout (*Salvelinus fontinalis*). *Transactions of the American Fisheries Society* 104: 363-373, Adams, E.S. 1975. Bull trout are particularly sensitive to pollution, requiring waterways with low level of contaminants in order to survive. DEIS at 3-103. Addition analysis on the impacts of OHV emissions on all aquatic species, especially bull trout, is necessary.

#### The Forest Service does not Adequately Substantiate its Claim that the Action Area ends at half a mile Downstream of the Source

No studies are offered to bolster this proposition, and the only thing supporting it is that FWS has agreed. The public needs to know how and why this conclusion was reached.

#### **c. Species of Special Concern and Other Important Aquatic Species**

The impacts of this plan on species of special concern and other important aquatic species are unacceptable. Specifically, coastal cutthroat trout and Columbia dusysnail are disproportionately impacted. Because not enough is known about several other species such as Pacific lamprey and Purple-lipped juga, the Forest Service should err on the side of caution and reduce OHV locations which may impact these species.

#### **d. Area Specific Concerns**

##### Bear Creek

The increase of erosion along the Laurence Lake Trail, which Alternative 3 proposes to convert into an OHV trail, could negatively impact the fish populations in Laurence Lake. Furthermore, runoff and the risk of devegetation by OHV off trail use nearby Bear Creek could impact the quality of water Bear Creek introduces to the Middle Fork Hood River. riders will compact soil, decrease pore space and infiltration and ultimately cause more surface runoff. *Applied Hydrogeology*. Prentice Hall: Upper Saddle River, New Jersey at 598, Fetter, C.W. (2004). As a result, stream flow will be more erratic and increased surface runoff will impact water quality (turbidity, stream temperature, etc.). Additionally, riders may seek alternative, off-road routes within the park. This may result in streambed erosion and compaction in ecologically sensitive, off-trail regions.

#### Gibson Prairie

The Forest Service needs to engage in more intensive efforts to protect the West Fork of Neal Creek and the critical habitat it provides for aquatic species especially steelhead.

#### Graham Pass

Graham Pass includes headwater streams and may be at a heightened risk for vegetation removal-induced warming. Graham Pass is already classified as steelhead protected habitat. DEIS Table 3-72. Potential threats to stream temperature caused by the construction of new roads for off-highway vehicles may pose a threat to important aquatic species. Specifically, the inclusion of routes within half a mile of both the proposed bull trout reintroduction sites and current steelhead habitat is unacceptable

OHV use so close to this important habitat is simply unacceptable, as it may pose a threat to the livelihood of those populations. In addition, OHV routes should not be permitted this close to any critical habitat, and here the route is

within a half mile of steelhead critical habitat. Until this species recovers, all efforts must be made to protect this habitat from further degradation.

Soil compaction issues may also pose a threat to the hydrology of streams in Graham Pass, ultimately impacting the fishery. Table 3-76 indicates that 16 new trails would be built nearby perennial and intermittent streams under Alternative 3. New trails and riders will compact soil, decrease pore space and infiltration and ultimately cause more surface runoff. *Applied Hydrogeology*.

Prentice Hall: Upper Saddle River, New Jersey at 598, Fetter, C.W. (2004).

As a result, stream flow will be more erratic and increased surface runoff will impact water quality (turbidity, stream temperature, etc.). Additionally, riders may seek alternative, off-road routes within the park. This may result in streambed erosion and compaction in ecologically sensitive, off-trail regions. The DEIS notes that fine sediment is not an issue in this area, due to the quality of the roads. While this may be true in some areas, it is simply not true in others, such as the road within Graham Pass pictured below.



The DEIS notes that U.S. FWS has expressed significant concern about the impacts this plan could have on the bull trout reintroduction efforts. The Forest Service should take these concerns very seriously. Because of the controversy surrounding impacts including this area would have on aquatic species is significant, it should be eliminated from the final Plan.

#### La Dee Flats

### McCubbins Gulch

Far too many stream crossings, especially intermittent stream crossings, are included in Alternative 3. Alternative 4 is significantly more protective of this areas aquatic resources, and proposes the most reasonable alternative in terms of protecting aquatic resources here. Immediate efforts must be made to ensure that spawning habitat fine sediment levels, which are out of compliance with the Forest Plan in every stream in this area, are met expeditiously.

### Mt. Defiance

The erosional risk for two of the roads in the Mt. Defiance OHV area is listed as “moderate.” Considering the proximity to Tier 1 watershed, we do not see this as an acceptable risk for possible downflow sediment load.

### Peavine

Because this area is also part of the bull trout reintroduction efforts, all routes here should be eliminated from a final OHV Plan. In addition, this area should not be considered for inclusion because it fails to meet Forest Plan Standards for spawning habitat fine sediment levels throughout the area.

### Rock Creek

Additional efforts to remove OHV routes from the vicinity of fish bearing streams in this area should be considered

## **XIV. Wildlife**

For wildlife, it is unquestionable that “harassment from OHV use is substantial. DEIS at 3-193. Perhaps some of the most serious impacts OHVs have on the Forest are on the wildlife whose habitat is severely impacted by this use. Impacts on wildlife should be taken very seriously, especially in light of the challenges faced by wildlife in this era of climate change and loss of habitat. The National Forest is vital habitat for the survival of numerous

species, and if for no other reason, the Forest Service should limit OHV routes to the minimum number of miles possible in as few areas as possible in order to fulfill its obligations to wildlife species.

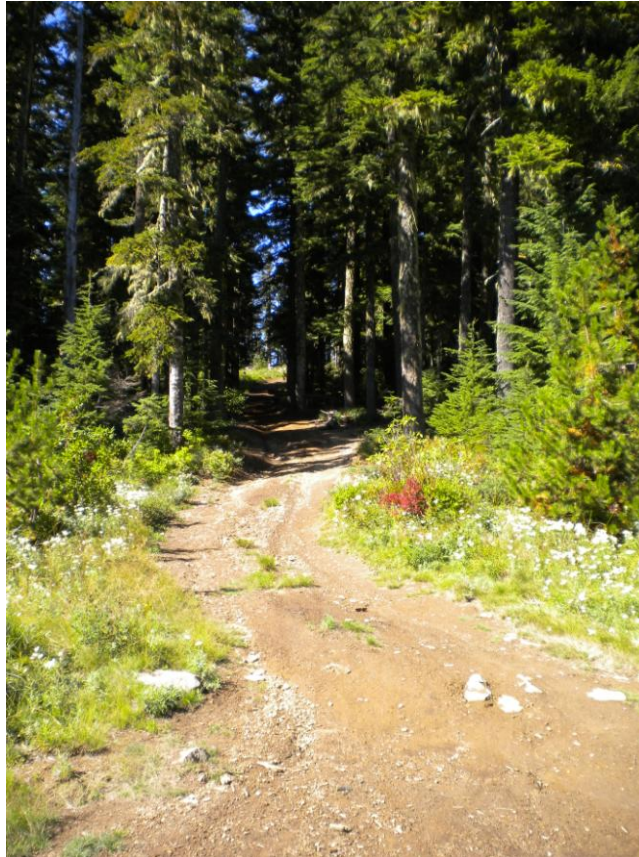
**a. Northern Spotted Owl (“NSO”)**

Bark is extremely concerned about the impacts this plan may have on NSO. §7(a)(1) of the Endangered Species Act imposes an affirmative duty on the agency to utilize its programs to promote the conservation of listed species. The Forest Service is not only ignoring this obligation to conserve NSO, it is actually taking affirmative action to harm this species by designing a plan that presents no Alternatives that avoid adversely impacting NSO.

There is absolutely no reason why OHV routes need to go through LSR or any other important spotted owl habitat, yet the Forest Service has chosen to place routes in these areas which are so critical for the recovery of this species. The placement of OHV routes in and adjacent to LSR in Peavine, LaDee, McCubbins Gulch, Rock Creek and on Mt. Defiance is simply unacceptable. While these may all be existing routes, designating them as OHV routes in this plan will make these areas an attraction to OHV users and will cause significant disturbance to the wildlife in general, and NSO in particular.

In addition, Bark is very concerned about the placement of an OHV route, the 4610 extension found in Alternative 3, in designated Critical Habitat. The Forest Service claims that because this is an existing road no change in status is expected here. However, this is not the full picture here. This section of the 4610 road is impassable for passenger vehicles, thus it is not really a mixed use system, it is a system only accessible for OHVs. And furthermore, if this portion of the 4610 were excluded from the system, the area of undisturbed habitat available for NSO would dramatically expand with the creation of the largest contiguous Wilderness opportunity in the Forest. Bark is concerned that OHV use in this designated Critical Habitat may actually adversely affect NSO because opening this area to OHVs will draw more people into a relatively

untrammelled area. OHVs have a history of traveling off the 4610 road and into the Salmon Huckleberry Wilderness potentially disturbing even more Critical Habitat. The spur road off 4610 photographed here connects to user created trails in the Salmon Huckleberry Wilderness.



In addition, there are already numerous user created trails in this area, and thus Forest Service should not even consider building new roads in this already severely impacted area. A “May Affect, not Likely to Adversely Affect” finding may not be predicated on accurate, on the ground information about the actual impacts of OHVs in La Dee Flats.

The Forest Service recognizes that substantial noise, smoke, and human presence can cause NSOs to experience disruptions in all behaviors essential to their survival. DEIS at 3-143. All these impacts are likely to result from the inclusion of important spotted owl habitat in this Plan. The Forest Service

could easily avoid causing these impacts by simply not placing OHV routes in NSO habitat. The fact that the threshold for incidental take is 92, well below the noise threshold of 99 decibels, indicates that the Forest Service must take immediate and affirmative steps to ensure that OHV routes stay clear of any known or potential spotted owl nests. No new roads should be built in any spotted owl habitat.

It is disappointing that instead of taking this reasonable measure to protect this struggling listed species, the Forest Service has made the decision to ignore its own information about OHV impacts to NSO and site OPV routes all around known NSO sites. While Alternative 4 has fewer impacts on NSO than Alternative 3, it will still cause disturbance to 5 known sites, and disruption that could rise to the level of take at 2 sites. The figures for Alternative 3 are simply astounding. It defies logic that the Forest Service, an agency charged with the recovery of NSO, would even consider an alternative that would feature disturbance at 20 sites. These numbers do not factor in the probability that numerous unknown sites exist which could also be disturbed or disrupted.

It is challenging for Bark, or any concerned citizen, to comment on this Plan's impacts to spotted owls, and the surprising inclusion of a "May Affect, Likely to Adversely Affect" finding in all action alternatives, without being able to view a Biological Opinion or even a Biological Assessment. We cannot understand why the Forest Service feels these impacts cannot be avoided without this information. We would contend that additional efforts should be made to protect NSO and prevent a small group of forest users from harming their potential for recovery.

#### **b. Management Indicator Species**

The DEIS notes that Alternative 4 has the fewest impacts to all these species, and Bark hopes that the Forest Service takes its responsibilities to these

species seriously enough to select an OHV plan that will have the fewest possible impacts to these species. The DEIS does not provide substantial analysis of how OHVs actually impact species, instead relying on assumptions. The Forest Service should conduct monitoring in order to develop a better understanding of how various species are actually impacted. Noise should not just be considered in the context of causing aversion, but also a risk to the ability of the species to engage in essential functions.

ODF&W has raised serious concerns about the impacts of OHV use on deer and elk in the Peavine, Gibson Prairie, and Mt. Defiance areas because these areas are well known hotspots for deer and elk. OHV use in these areas will cause stress to the species as a result of increased noise and could result in the aversion to otherwise excellent habitat. At the very least, the area closures described in Alternative 4 should be adopted in order to protect species.

#### **c. Land Birds**

Overall, analysis of this projects impacts to land birds is inadequate. Further studies to impacts of OHV use on land birds is necessary.

#### **d. Climate Change**

This issue is addressed more thoroughly below, but for now it should be noted that climate change is already impacting ranges of species that occur in the Mt Hood National Forest. On October 24, 2009 Bark Groundtruthers observed Varied Thrushes on trail 632, the top of which is proposed as an OHV route in Alternative 3. The range of the Varied Thrush normally does not include the Mt Hood National Forest at this time of the year. As Climate Change influences our national forests, consideration needs to be given to how OHV use will affect birds or other animals that were seasonal in the past, but are now spending significantly longer seasons on Mt Hood.

#### **d. Area Specific Concerns**



### Bear Creek

This area provides excellent habitat. In addition, the DEIS notes that management indicator species would experience harassment and lower production, and that an increased risk of vehicular collisions is “likely.” DEIS at 157. This area should not be included in the OHV plan for many reasons, but one of the most significant is the protection of species which rely on it for survival.

The proposed Bear Creek OHV area contains valuable habitat for a wide variety of animals. Bark Groundtruthers found evidence of bears on multiple occasions, groups of deer including fawns, a wide variety of bird species, and evidence of coyotes. This habitat would suffer greatly if the area were to become an OHV area. Illegal and highly likely off-road use would destroy potential forage as well as compacting soil, preventing new native food plants from growing. Also, the noise pollution from these trails would reduce the ability of many animals to avoid predators, scare them away from forage, and potentially disrupt their ability to reproduce. Considering the large number of deer and bear sightings in this area, Alternative 4 is the only alternative that takes these habitat considerations into account.

### Gibson Prairie

There is virtually no analysis of the difference between Alternative 2 and Alternative 3 of Gibson Prairie. Although this provides some stark discrepancies of analysis when the DEIS appears to refer to Gibson Prairie in reference to Alternative 3, as though it was the same proposal in Alternative 2, the discrepancy with regards to deer and elk range may be most significant. While the proposed Alternative 2 mostly lies in deer and elk summer range, while Alternative 3 reaches into winter range. Yet, there is virtually no analysis of this impact.

### Graham Pass

Graham Pass is an area used by both deer and bear, which have been sighted by groundtruthers on numerous occasions. OHV use of this area would make it far less usable for both of these species. Trampling of forage by illegal off road activities and noise pollution would make this area a much less attractive area for these species and many others as well.

### McCubbins Gulch

This area presents unique and excellent wildlife habitat featuring large, old ponderosa pines and adjacent Wilderness. One Bark groundtruther reported that she heard more diversity in bird sounds there than any other place in the forest. This same person also came across at least four blue grouse.



The DEIS recognizes that grouse are disturbed and can even be killed by passing vehicles if they are nesting near a road or OHV trail, and that indeed, they are often hit by passing OHVs. DEIS at 3-191. Despite this impact, the DEIS does not provide any real analysis of whether OHV use will impact this, or really any other, avian species in terms of long-term survival.

If this area is included in the final plan, the routes should be modified in order to avoid disruption to known NSO sites. OHV routes should be sited as far away from LSR as possible. Also, additional efforts should be made to protect Crater Lake tightcoil by limiting any new construction.

### Mt. Defiance

For such a small addition to the current OHV system, how can the Forest Service justify putting even 2 miles of designated routes in suitable spotted owl habitat? This area is also too important to deer and elk to sacrifice.

### Peavine

Too much of this area is suitable NSO habitat. In addition, the DEIS fails to adequately consider the impacts to deer and elk calving areas. While seasonal closures may prevent the worst of the harm, there is a risk that deer and elk will develop an aversion to this area after experiencing the noise and pollution of OHVs here, and that they will abandon this excellent calving site.

### Rock Creek

DEIS claims that there are no bald eagles near the proposed OHV systems. This is patently untrue. The Forest Service has been informed multiple times by at least one Sportsman's Park resident of the existence of at least one Bald Eagle nest site in the Rock Creek area. The pictures below were taken in or around Rock Creek in the spring of 2009.





The photographer, a Sportsman’s Park resident, has had many bald eagle sightings this year. Bald eagles, our nation’s emblem, are protected by the Golden and Bald Eagle Act. The Eagle Act provides civil *and* criminal penalties for anyone who “takes” a bald eagle. 16 U.S.C. 668-668d. Take is defined to include disturbance, which means to

to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

50 C.F.R. 22.3. The Forest Service must recognize that the placement of OHV routes in and around bald eagle nesting sites is likely to cause disturbance. This means that both the Forest Service and OHV users in the area could be subject to civil and criminal penalties if their actions are found to disturb this species.

If this area is included in the final plan, routes should be changed to avoid disruption to known NSO sites. This recommendation applies to both preferred alternatives.

## **XV. Botany**

### **a. Invasives**

Alternative 4 has advantages for invasive weeds management for a number of reasons. Firstly, it decommissions more roads and trails than it would build. This would not only reduce the potential for invasive species dispersal, but it would also create opportunities for natives to replace invasive species. Closed roads that are allowed to re-vegetate exhibit lower instances of invasive plants due to less favorable environmental conditions and lower introduction rates (Parendes and Jones, 2000). This suggests that road closers, such as those proposed in Alternative 4, could be an economical and effective method of reducing invasive species occurrences in the Mt Hood National Forest.

OHVs are directly linked to the introduction of invasive species. Section 2.a.3 of the Executive Order on Invasive Species (Feb 3, 1999) holds the Forest Service responsible to "...not authorize, fund, or carry out actions that it believes likely to cause or promote the introduction or spread of invasive species...." Section 2.a.2.iii of the Executive Order on Invasive Species (Feb 3, 1999) holds the Forest Service responsible for monitoring the populations of invasive species when their actions will impact the status of invasive species. The EIS erroneously assumes that there will be no change in the usage rates of the designated OHV areas. The Forest Service should establish a protocol for managing the spread of invasives species, and then ensure that it has an excellent monitoring protocol for all designated areas. It is not enough to note that invasives are not a problem in some of the areas, as increased OHV use will soon create a problem. OHV users who visit the invasive species infested

McCubbins Gulch area, which is currently undergoing extensive management for this problem, may go straight to another OHV area later in the day, spreading invasive species throughout the Forest. Appropriate protocol to avoid the spread of invasives should be established.

The Forest service is responsible for monitoring invasive species. A monitoring strategy should be included in the final EIS. The analysis of impacts to sensitive species and invasive species should factor in the possibility of walking around routes and increased use to areas generally in the final EIS.

#### **b. Sensitive Species**

OHVs have obvious impacts on the botanical potential of an area, oftentimes causing routes to become completely denuded. While this is an obvious impact on OHV routes, there are other, less obvious impacts which the Forest Service failed to consider. The Forest Service cannot limit its analysis to designated routes, given the known propensity of OHV users to abandon their designated trails and create their own motorized trails. Because this action is reasonably foreseeable, its impacts must be analyzed. In addition, this analysis completely ignores the fact that OHV users will disembark from their machines from time to time, and the impacts of people walking around and picnicking in the areas adjacent to OHV routes must be considered, especially for sensitive plant species.

Several parts of the DEIS, and in particular the section on Graham Pass, make a major logical fallacy. The Forest Service assumes that, because the area is already open to OHV use, there will be no change in the usage when OHV users are restricted from the entire national forest to smaller set of areas. The possibility that concentrating users into smaller areas will cause the usage in

those areas to increase is very real. Concurrent with usage increases will be increases in the impacts in those areas.

**a. Area Specific Concerns**

Bear Creek

In Bear Creek there would be a wide variety of opportunities for OHV users to illegally go off trail through the recent thinning that have occurred in the area. This could have a drastic affect on local flora. Along Bear Creek, Bark Groundtruthers observed that forest density is thin enough along FR 1631 and FR 1612. These areas are in the process of regenerating and even occasional OHV users going off trail in these areas would damage this regenerative process, compact soils, and create a situation where other OHV users could follow, causing new user created trails.

The ability of road closers to reduce invasive plants, and the corresponding significant increase of invasive plants on both low and high use roads ( has major implications in Bear Creek.. Parendes, L.A. and J.A. Jones. 2000. Role of light availability and dispersal in exotic plant invasion along roads and streams in the H.J. Andrews Experimental Forest, Oregon. Conservation Biology 11:64-75, Parendes and Jones (2000). In Bear Creek, Alternative 3 proposes the building of 28.8 new miles of trail where there are already invasive treatments in place. The staging area in Bear Creek overlaps with an invasives treatment site listed as 66-028. United States Department of Agriculture, Forest Service, 2008 “FEIS Site-Specific Invasive Plant Treatments for Mt. Hood National Forest and Columbia River Gorge National Scenic Area in Oregon Including Forest Plan Amendment #16”

.Other overlaps include FR 1640, which overlaps 66-048 and runs into where many of the proposed trails are located. *Id.*. A similar situation exists for FR 1631 and site 66-047 which ends amongst many of the new trails. *Id.* Also, FR 2840 is in 66-062 and FRs 1610 and 1612 are in 66-063. *Id.* The DEIS

stipulates that invasive sites in Bear Creek would be treated before any new trails were built, but that the forest service could not guarantee that new invasion would not occur. Considering the concern for treatment of invasive plants in this area and the extensive volume of new trails that would need to be cut, Alternative 4 is the only alternative that prioritizes forest health.

### Gibson Prairie

The Gibson Prairie has no treatment locations on it but, according to the DEIS, has invasive issues with diffuse and meadow Knapweed. Trail construction under Alternatives 2 and 3 would almost certainly spread invasive species further through this area. The East and Middle Fork Hood River Watershed Analysis recommends the use of boulders to block off-road use for the restoration of threatened and endangered plant species along the powerline corridor accessing Road 17. How will the Forest Service continue to analyze this impact and attempts to block OHVs from using the corridor?

### Graham Pass

The EIS states that the Graham Pass area has no invasive populations. Opening up the Graham Pass area would expose these trails to a much higher risk of invasive species introduction. Including Graham Pass will cause a change in the usage rates, and thereby a change in the status of invasive species in Graham Pass. The risk of invasive species in the Graham Pass area is very real. The Record of Decision for Site Specific Invasive Treatments identifies much of FR 46 and two proximal locations as treatment sites. The Record of Decision did not identify the two proximal locations by road name, but they appear to be FR 330 off of FR 46 and the intersection of FR 63 with FR 6380 (USDA, 2008). Treatment area 65-023 is FR 46 (USDA, 2008). Treatment area 65-033 is the intersection of NFR 63 and FR 6380 (USDA, 2008). Treatment area 65-042 is FR 4651. Treatment area 65-043 and 65044



are FR 330 off of FR 46 (USDA, 2008). Their presence indicates that invasive species are already a threat in the region. Stating in the DEIS that there will be no change in invasive status under either Alternative 2 or 3 does not account for the possibility of OHV use or transport producing more frequent introduction through increased use of the area. Furthermore, the DEIS does not consider the improvements in the status of invasive plants that would occur under Alternative 4 in which OHV use would be prohibited in Grahams Pass and trail 564 (the Rhododendron Ridge Trail) would not be created.

In addition, the DEIS notes that *Eucephalous gormannii* grows in the north end of Graham pass, but states that because the plants are in an open area they are not at risk. DEIS 3-205. This is not true. The DEIS notes that the northern area has several tempting meadows that could draw in unlawful OHV use. In addition, the Forest Service should consider the potential impacts that would be created increased use of this area and OHV riders walking around this area in order to take in views or eat meals.

#### McCubbins Gulch

As noted in the DEIS, invasive species are prevalent here, and treatment has been ongoing. DEIS 3-202. The Forest Service should create a protocol to help prevent OHV assisted spread of invasives both within this area, and to prevent OHV assisted spread of invasives found in this area to other areas where OHVs may travel. The Forest Service should consult with the Confederated Tribes of Warm Springs co-manage the invasive species problems here.

#### Mount Defiance

Trails within the Mount Defiance area are currently undergoing invasive plant treatment. The proposed trails 2821620, 2821630, and 2821621 are all within the treatment area 66-067 (USDA, 2008). The DEIS mentions that Knapweeds, Scotch Broom, and Tansy Ragwort are all found in the proposed area. Usage would increase in this area under Alternative 3, and the effects of increased traffic have not been considered. Likewise, Alternative 4 would reduce the amount of traffic in this area and the benefits to the status of invasive species in the area have not been considered. Peavine

FR 4210 in the Peavine proposed OHV area, which is treatment site 66-016 and a proposed OHV class I, III trail (USDA, 2008). The DEIS lists the Peavine area as having no invasive plant issues. The treatment area was listed as of 2008, and so the Peavine area is at the very least at risk for the spread of invasive plants. The increase in users under Alternative 3 would likely serve as a vector for invasive introductions.

Rock Creek

Similar concerns exist in this area as in McCubbins Gulch, and the Forest Service should establish a protocol not only to protect this area and other areas where OHV riders may visit after this area, but also the Sportsman's Park community from the spread of invasives.

#### **XVI. Aquatic Conservation Strategy ("ACS")**

Bark is disappointed with the Forest Service's analysis of this plan under the ACS, as true environmental analysis is lacking in this section. The DEIS does not provide a "hard look" at the impacts of the various Alternatives under the ACS. The ACS factors should have been applied to an analysis of each area under each action alternative. Instead, the Forest Service lumped all the action alternatives together, providing no true way to distinguish between the impacts of the alternatives. The ACS's purpose of maintaining and restoring ecosystem health at watershed and landscape scales "does not prevent project site degradation and does nothing to restore habitat over broad landscapes if it

ignores the cumulative effect of individual projects on small tributaries within watersheds." *Pac. Coast Fed. of Fishermen's Assoc. v. Nat'l Marine Fisheries Serv.*, 265 F. 3d 1028 (9th Cir. 2001).

The standard for compliance with the Aquatic Conservation Strategy (ACS) of the Northwest Forest Plan has been litigated and determined within the Ninth Circuit. "[N]ot only must the ACS objectives be met at the watershed scale . . . each project must also be consistent with ACS objectives, i.e. it must maintain the existing condition or move it within the range of natural variability." *Pac. Coast Fed. of Fishermen's Assoc. v. Nat'l Marine Fisheries Serv.*, 71 F.Supp. 2d 1063, 1069 (W.D. Wash 1999), *aff'd* 265 F. 3d 1028 (9th Cir. 2001).

Attempts by the Forest Service to modify this standard such that the project need only contribute to maintaining or restoring the fifth-field watershed were held illegal. *Pac. Coast Fed. of Fishermen's Assoc. v. Nat'l Marine Fisheries Serv.*, 482 F.Supp.2d 1248 (W.D. Wash. 2007). Despite this clear directive, the DEIS provides a summary of how the action alternatives (all lumped together) would influence the ACS objectives only at the 5<sup>th</sup> field watershed scale.

The DEIS, by ignoring away site-level degradation and failing to document the cumulative effects of the action, violates not only the ACS (and thus NFMA), but also NEPA and the ESA, which require the documentation and evaluation of the cumulative and aggregate impacts of site-level degradation.

All the OHV play areas include riparian reserves that will be degraded by OHV riding. There is an inherent conflict between OHVs and conservation of natural resources, because the very challenges that OHV participants seek (steep slopes, mud, water, etc), tend to degrade soil, water, and habitat. Proposed OHV activities near streams and multiple road-stream crossings, will likely retard attainment of ACS objectives in violation of the Aquatic Conservation Strategy (RM-1, and RM-2, NWFP ROD p C-34. and RF-5.) The DEIS acknowledges that pool quality and sediment will be adversely affected at local scales (p 3-206). How can this be reconciled with the "do not retard" standard?

The EIS says (p 3-206) that riparian reserves might experience a "slight improvement" (likely in places where OHVs are excluded), but the DEIS needs to more better disclose that riparian reserves will be degraded in places where OHVs are allowed and in watersheds where new OHV trails are constructed.

The DEIS analysis of ACS objective #5 related to sediment and ACS objective #8 related to riparian vegetation (at p 3-208) is incomplete. It only talks about the benefits in places that OHVs will be excluded, but fails to disclose the impacts in places where OHVs will be allowed and OHV use will be concentrated. The Analyses of ACS Objectives related to water quality and protecting stream banks are similarly flawed. Adversely affecting the attainment of ACS objectives cannot be avoided in places where OHV use is rampant. Please don't pretend otherwise.

Page 3-269 acknowledges that sedimentation "would continue to occur with OHV use on native surface roads and trails," and "OHVs may impact plants by crushing, trampling, or breaking vegetation. ... Any species along trails and roads would be threatened by not only the direct impacts of OHVs, but also by any invasive plants that are transported to the designated route systems." However, these significant fact are not accounted for in the ACS consistency analysis.

## **XVII. Heritage Resources**

The Forest Service should have considered potential impacts to these resources that will result from riders disembarking from their machines to take in views or picnic. This analysis is shortsighted in concluding that these resources will be protected because they are not directly on routes, as illustrated by the destruction of heritage resources in the La Dee area already.

In addition, we have learned that as of the week before the comment deadline, the State Historic Preservation Officer had not yet received a paper copy of the DEIS, and that his consultation is required. We hope that the Forest Service will carefully consider any input provided by this office in its final decision.

### Graham Pass

The existence of 6 pre-contact archeological sites in this area is yet another excellent reason why this area is inappropriate for OHV use. These sites are extremely fragile, and even one contact with a thoughtless individual could cause irreparable harm to one of these precious sites. The risk is simply too significant to ignore.

### **XVIII. Law Enforcement**

Law enforcement efforts around OHV routes has been extremely challenging for decades. Some OHV users have consistently shown a disregard for the law. Throughout the DEIS, the agency assumes that ORVs will stay on the proposed trails and roads. This assumption is baseless. And this baseless assumption significantly downplays the foreseeable impacts of OHV use throughout the Forest. The Forest Service consider law enforcement challenges as a very significant factor in deciding an OHV Plan, as a Plan that features fewer miles of routes in areas which are easier to access may prevent future law enforcement problems.

There is ample evidence that mere signage and barriers are not effective to protect the forest land and water resources from the adverse effects of off-highway vehicle (OHV) trespass. All too often, rock barriers have been winched aside, gates circumvented, and resources damaged. This point is most clearly illustrated at La Dee, where Forest Service personnel have invested countless hours attempting to prevent unlawful OHV use only to discover their efforts thwarted by OHV users. Without a constant law enforcement presence, resource damage in and around OHV routes will occur, regardless of the

variety and challenges available to the public through designation of an OHV route system.

Monaghan and Associates, a marketing research firm, conducted a 2001 study at the behest of the Colorado Coalition for Responsible OHV Riding, a coalition of off-road vehicle representatives, environmentalists and public officials. See Status and Summary Report; OHV Responsible Riding Campaign, attached. Researchers surveyed Colorado off-road vehicle riders through a series of three focus groups.

Monaghan and Associates found that the majority of off-roaders understand that staying on designated routes is “fundamental trail etiquette” and that going off trail is not “correct” off-road vehicle behavior. *Id.* at 11. The survey revealed, however, that regardless of this knowledge “as many as two-thirds of adult users go off the trail occasionally.” *Id.* A significant percentage of riders, 15-20%, admitted to frequently breaking the rules and riding off of legal routes often. *Id.* Survey participants also stated that “others” ride off-route and cause most of the damage. *Id.* at 7. “Many reluctantly admit to having gone off trail ‘a couple times’ but felt that it is permissible if rarely done .... ‘just this one time.’” *Id.* (emphasis in original). Tellingly, the report concluded: “In a ‘nutshell,’ it is our premise that further **information** and **education** per se - will not result in substantial behavioral change.” *Id.* at 1 (emphasis in original).

Similar results were found in Utah. In 2002, the Utah Division of Parks & Recreation commissioned Utah State University to survey riders to determine their “OHV uses and owner preferences.” The university conducted a telephone survey of 335 riders from a random sample of the 50,676 people who registered off-road vehicles with the state in 2000. See Fisher, Andrea L., Dale J. Blahna, and Rosalind Bahr, 2001; Off Highway Vehicle Uses and Owner Preferences in Utah. Logan, Utah. Utah State University, at iv, attached.

The Utah report reveals that an inordinate number of riders prefer to ride “off established trails.” Of the ATV riders surveyed, 49.4% prefer to ride off established trails, while 39% did so on their most recent excursion. Fisher and *Id.* at 26-27. Of the dirt bike riders surveyed, 38.1% prefer to ride off established trails, while 50% rode off established trails on their most recent excursion. *Id.*

It should be noted that pro-ORV groups commissioned both of the studies cited above. Additionally, these data are ratified by two other recent reviews. In 2006, the Montana Fish, Wildlife and Parks received survey responses from 446 owners of registered off-road vehicles. See Lewis, M.S., and R. Paige. 2006: Selected Results From a 2006 Survey of Registered Off-Highway Vehicle (OHV) Owners in Montana. Responsive Management Unit Research Summary No. 21. Prepared for Montana Fish, Wildlife and Parks, attached. Among the full sample of respondents, almost a quarter, 23%, “never” or “sometimes” comply with Montana’s law against cross-country driving even though off-route riding has been illegal there since 2001. *Id.* at 2. Over 28% “never” or “sometimes” avoid riparian areas and wetlands, in violation of rules for federal and state public lands in Montana. Sixty-four percent of those surveyed have used an off-road vehicle while hunting. *Id.* at 2. The majority of this hunting subset admits to illegally riding cross-country — over 58% have traveled off of legal routes to retrieve downed game. *Id.*

In the context of the assumption that “education” will cure unlawful ORV behavior, this 58% figure is particularly notable because the survey found that “[t]wo-thirds of the respondents who have used an OHV when hunting reported they have seen written materials (e.g., brochures, posters, articles, etc.) that address the topic of hunting and responsible OHV use.” *Id.* The survey concluded, therefore, that “most OHV owners in Montana have been exposed to a variety of safety and responsible use information.” *Id.* at 4. Regardless of this “education,” the survey noted:

OHV owners do not always follow important guidelines for responsible use when operating OHVs. For instance, about a third of the respondents who have used an OHV when hunting disagree or strongly disagree that “OHV users should NOT travel off legal routes to retrieve harvested game.” Only 42 percent of the respondents who have used an OHV when hunting reported they always follow this guideline. Nearly 7 percent reported they never follow this guideline. And, 52 percent reported they follow this guideline sometimes.

*Id.* (emphasis in original). Echoing these findings are the results of a 2003 survey of Wisconsin ATV users. A study of “motivations and attitudes” by graduate student Robert A. Smail at the University of Wisconsin - Stevens Point included a survey of user preferences for riding and found nearly two-thirds of respondents prefer to ride off maintained trails. Robert A. Smail, July 2007, WISCONSIN ALL TERRAIN VEHICLE OWNERS: RECREATIONAL MOTIVATIONS AND ATTITUDES TOWARD REGULATION, A Thesis Submitted in partial fulfillment of the requirements of the degree Master Of Science In Natural Resources Resource Policy And Planning College Of Natural Resources University Of Wisconsin, Stevens Point, Wisconsin, copy obtained from author attached at 62-63. “[S]urvey respondents were asked to indicate where they prefer to ride their ATV. Of the five possible choices, ‘On maintained trails’ (28.5%) ranked third. The top choice was ‘On user created trails’ (33.3%) followed closely by ‘Cross country, off trails and roads’ (32.0%). In other words, 65.3% of all users prefer to ride off of maintained trails.” *Id.* Dr. Smail concluded that the survey results demonstrated that past orthodoxies premised on education and the assumed “positive peer-pressure” flowing from membership in established “rider clubs” are not adequate to generate trail-riding compliance, they had “no influence.” *Id.* at 69. Rather, “[t]hese results indicate that messages promoting responsible ATV riding or use will need to be



reformulated *and law enforcement will need to be increased in order to prevent resource damage and user conflict.*” *Id.* (emphasis added).

Finally, the U.S. Fish and Wildlife Service (“FWS”) found a near universal disregard for motorized guidelines when the BLM experimented with a “voluntary off-road vehicle route system” in Nevada. The area in question serves as a refuge for the disappearing Sand Mountain Blue butterfly, a species proposed for listing under the Endangered Species Act. A 2006 monitoring report compiled over a three-year period found that “98 percent of all existing routes continued to be used and new routes were created, indicating an ongoing expansion of habitat degradation.” Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service. 2007. 12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens ssp. arenamontana*) as Threatened or Endangered with Critical Habitat. Federal Register, Vol. 72, No. 84. See pages 24260-61, attached, at 8-9. Incredibly, the study also found that “about 50 percent of all noncompliance points occurred *at or near red carsonite posts installed to alert riders that travel was discouraged in areas behind the posts*” to protect sensitive butterfly habitat. *Id.* at 24261, Attachment G at 9 (emphasis added). The cumulative impacts of such “noncompliance points” were four-fold as each discouraged route experienced multiple incursions. *Id.* The FWS noted that “[h]igh levels of noncompliance occurred *from the onset of implementation* of the voluntary system, and the number of incursions into habitat outside of the encouraged routes *increased* in 2006. *Id.* at 24260-61, Attachment G at 8-9.

Providing a broader overview, in September 2007, the Izaak Walton League, one of the country’s oldest conservation groups, released a study of state game and fish managers revealing that 83% of wildlife managers have seen “resource damage to wildlife habitat” caused by ORVs and 72% cited “disruption of hunters during hunting season” as another impact from ORVs. “Off-Road Vehicle Impacts on Hunting and Fishing, The Izaak Walton League of America,

2007, attached as Attachment H, at 15 (available from: <http://www.iwla.org/publications/wilderness/OHVreport.pdf> (last visited July 13, 2009)). Similarly, fully 60% of fisheries managers deemed ORV use to generate adverse impacts on riparian resources. *Id.* at 16. Notably, 41% of wildlife and 50% of fisheries managers do not believe that current standards and protections adequately protect the resources they are responsible for with the perceived attitude of lawlessness playing a central role: “We have numerous rules and regulations, but many ORV riders have an attitude that they should not apply to them and many just ignore some rules because they want to ride someplace. It increases law enforcement effort and takes time from other areas.” *Id.* at 15. “There seems to be a misconception that just because you own a piece of equipment that can go almost anywhere, that you are entitled to go almost anywhere including public land dedicated to wildlife management. This needs to change.” *Id.* at 16. Further, ““They go where they please, when they please, if they please. Not all do this, but many do. They cause significant upland erosion as well as stream side and in-stream damage.” *Id.* “Many ORV riders seemingly have no conservation ethic or appreciation for habitat management or understanding of the damage they cause.” *Id.* Another said: “While there is regulatory ability, there is insufficient enforcement response capability to adequately respond to illicit ORV use.” *Id.* at 15.

In a closely tracking review on federal land managers, in December 2007, the Public Employees for Environmental Responsibility (“PEER”) released the first-ever survey of federal rangers’ views on off-road vehicle issues. “Rangers for Responsible Recreation: Off-Road Vehicle Issues Survey of SW Law Enforcement Professionals - Bureau of Land Management (BLM) & Forest Service (FS), 2007, attached (available from: [http://www.peer.org/docs/az/07\\_11\\_12\\_sw\\_le\\_orv\\_survey\\_results.pdf](http://www.peer.org/docs/az/07_11_12_sw_le_orv_survey_results.pdf) (last visited July 13, 2009)). Strikingly:

- 91% of respondent rangers agree that “off-road vehicles present a significant law enforcement problem in my jurisdiction”;
- More than half (53%) feel “off-road vehicle problems in my jurisdiction are out of control”; and
- 74% say that off-road abuses “are worse than they were five years ago” while fewer than one in six (15.2%) believe the situation is improving.

*Id.* at 1. Moreover, the survey found that rangers believe their agencies are unequal to the task of controlling ORV abuse:

- 62% believe their agency is not “prepared to deal with the ORV problems we are experiencing”; and
- 78% do not think their department “devotes adequate resources to cope with ORV problems.”

*Id.* at 3.

Also attached is copy of an article published in the Washington Post. The report, entitled “‘Off-Road Rage’ Climbs as Trails Get More Crowded,” was published on August 12, 2008 and appeared in section A at page 2. The report provides additional documentation of many ORV riders’ unlawful — even violent — disregard of the rules and regulations applicable to ORV use on public lands.

This and other similar studies (see Appendix <http://www.wildlandscpr.org/biblio-notes/just-few-bad-apples-research>) should be consulted as a basis for a more realistic assessment of the impacts of creating ORV routes in remote and sensitive areas. There is ample evidence

that mere signage and barriers are not effective to protect the forest land and water resources from the adverse effects of ORV trespass. All too often, rock barriers have been winched aside, gates circumvented, and resources damaged. Without a constant law enforcement presence, resource damage will occur, regardless of the variety and challenges available to the public through designation of an OHV route system.

The Forest Service's reliance on mitigation in the form of signage alone would be unacceptable because it has been proven not to work. Approximately 75% of ORV riders regularly ignore regulations such as speed limits and closures. See, *e.g.*, Testimony of Jack Gregory, Special Agent in Charge (Ret.) USFS Southern Region, Before Subcommittee on National Parks, Forests, and Public Lands, U.S. House of Representatives, March 13, 2008, (hereafter "Gregory Testimony") attached.

Even if agency ORV route planning makes sense in downtown offices and public meeting rooms, there must also be a well funded on-the-ground monitoring and enforcement component. This is where the FS has failed time after time. Once plans are drawn up and implemented, there is not adequate funding for field resources to police this activity where it's actually occurring. Throughout my years of working for the FS, I witnessed the development of many good plans, but a failure to provide the field resources to properly execute them. It is unfortunate that the FS is long on "plans" and seemingly good intentions, but very short on effective field implementation, particularly with providing necessary LE [law enforcement] resources for dealing with serious problems.

Gregory Testimony, at 8. Similarly, another well known, law enforcement officer has publicly testified "about the growing burden on local law enforcement caused by a growing minority of reckless OHV riders and the need for effective management." Statement of Frank Adams, Executive Director of the Nevada Sheriffs' and Chiefs' Association, at the Senate Energy and Natural Resources Off-Highway Vehicle Management on Public Lands, Jun 2008.

[http://energy.senate.gov/public/\\_files/FrankAdamsSenateTestimony.pdf](http://energy.senate.gov/public/_files/FrankAdamsSenateTestimony.pdf) (last visited July 13, 2009) attached at 2. Sheriff Anderson noted that “any kind of public lands law enforcement [is] challenging, but particularly with OHVs given the technology that allows users to cover vast distances in remote areas over a short period of time.” *Id.* The Sheriff observed:

With such great land masses and so few enforcement officers, it does not take a large group of individuals disobeying federal and local laws to cause a problem. We have determined that a small number of individuals riding OHVs that use our outdoors for recreation are causing the problems. They are reckless in the operation of their vehicles; they disregard instructions to stay off of sensitive lands and are destructive to the facilities that are provided for their use. This is evident by the increase in the number of injuries that are being reported and the increase in the number of search and rescue mission that occur. We see blatant disregard for areas that are posted as “do not travel” as they have been designated sensitive areas. Part of the problem that encourages this reckless behavior stems from the feeling of anonymity that many of the OHV riders have because there is no way of identifying them or their vehicles. Most States do not require a license plate for such vehicles. Those States that do require tagging, the tags are not large enough to be seen without being in almost on top of the vehicle. If you are able to determine that there is a tag on the OHV, determining the tag number is almost impossible.

*Id.* at 3. While Bark understands that many ORV riders have lawful intentions and “follow the rules,” a disturbingly high percentage show a pronounced preference and practice among ORV recreationists to travel cross-country and ride off of legal routes. This conclusion is derived from publically available data

generated by the ORV community itself. A summary of several recent studies undertaken by state agencies and academic researchers in four western states can be found at:

<http://www.wildlandscpr.org/biblio-notes/just-few-bad-apples-research>

The analysis in the DEIS is inadequate as it does not describe the implications of these relevant studies as it relates to the ability of the Forest Service to manage and enforce rider compliance with a designated ORV route system. The Forest Service must address the effects in its travel management plan, including the cumulative effects of continued off-route travel on the Forest. To counter the anticipated lack of compliance with a designated motorized route system, the Forest's Service NEPA analysis should also address the impacts, direct, indirect or cumulative, that will flow from the EIS decision. Doing so would be consistent with the "Hard Look" required by NEPA. *See, e.g., Native Ecosystems Council v. United States Forest Serv.*, 428 F.3d 1233, 1240 ("NEPA requires us to determine whether the USFS took a 'hard look' at the environmental consequences of a proposed action"). Even if cross-country travel were eliminated by the EIS decision, the data noted above concludes that route designation does not result in compliance or control of off route travel. The Forest Service must not rely on the promise of "education" to avoid the inevitable adverse consequences of widespread non-compliance with ORV travel restrictions.

The Agency should also specify the nature or scope of any increased law enforcement as an associated tool to control ORV-misuse. *See, for example, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service. 2007. 12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens ssp.arenamontana*) as Threatened or Endangered with Critical Habitat. Federal Register, Vol. 72, No. 84. See pages 24260-61, <http://www.wildlandscpr.org/denial-petition-list-sandmountain-blue-butterfly-threatened-or-endangered>.*

Moreover, if the Forest Service intends to issue a ROD that includes provisions for additional law enforcement, the Agency's history has established that it is unlikely that funding will be available for the number of law enforcement officers necessary to effectively enforce the designated ORV route system: Even if agency ORV route planning makes sense in downtown offices and public meeting rooms, there must also be a well funded on-the-ground monitoring and enforcement component. Once plans are drawn up and implemented, there is not adequate funding for field resources to police this activity where it's actually occurring.

Even with the current availability of law enforcement funding via the Oregon All-Terrain Vehicle (ATV) Grant Program is not assured. State Parks and Recreation Department staff who administer the program recognize the likelihood that grants likely will become more competitive and resources spread more thinly as each National Forest in Oregon completes its Travel Planning process and looks toward State funding to augment declining Federal law enforcement budgets. These facts and the anticipated availability of State ATV Grants for plan implementation, monitoring and law enforcement must be disclosed in the final EIS/ROD.

#### Gibson Prairie

The Gibson Prairie area is highly inaccessible areas for law enforcement to regularly patrol. Access to Gibson Prairie would be best for vehicles using Road 17. However, this road is poorly maintained outside of the national forest boundary and often has obstructions. With additional entry points, OHV riders could be getting access to the area, while full-sized vehicles would not. This becomes not only a law enforcement issue, but a safety one, as well where emergency vehicles would not have access.

#### Mt. Defiance

The Mt. Defiance area is highly inaccessible areas for law enforcement to regularly patrol. Mt. Defiance is best accessed by Road 2820. This road also has significant maintenance issues where private logging is occurring along the road. The slope stability of these roads is questionable. Because this road does not connect to other National Forest features that would warrant regular law enforcement patrol, how is the Forest Service intending to enforce user-compliance in the area. Considering the proximity to the Mark O. Hatfield Wilderness, this is a legitimate concern.

### **XIX. Fire Suppression**

The Forest Service must not only consider the risk of OHV's starting fires, but also the risk of OHV users accidentally starting fires in parts of the Forest that would otherwise be relatively unvisited. This is another excellent reason to avoid siting OHV routes in the interior of the Forest, as these areas are challenging for fire crews to access. In addition to considering these impacts, the Forest Service should also include consideration of funding for fighting fires in its final EIS.

This past summer, an overturned OHV started a fire in the McCubbins OHV area. The fire did not spread and there were no reported fatalities. How has this occurrence on the Forest changed, influenced or re-enforced protocol? How was the rider responsibility handled? At the recent OHV Plan open house, Bark staff had conversations with two self-described well-informed riders who frequent other areas of the Forest. They were not aware of this incident. How was this information shared with other rider communities on the Forest?

### **XX. Transportation and Safety**



**a. The Forest Service should commit to complying with subpart A of the Travel Management Rule, including identification of the minimum road system, in the ROD.**

We believe that if Mt. Hood National Forest chooses Alternative 4, it will have made great strides toward getting OHV use under control in accordance with Subpart B of the Travel Management Rule (TMR). 36 C.F.R. § 215.55. That being said, 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 of this rule. *Id.* § 212.5(b). We believe completion of travel analysis and identification of the minimum road system logically should have preceded completion of the OHV Management Plan because this process will result in publication of the Motor Vehicle Use Map (MVUM). DEIS at 1-4. Although Mt. Hood National Forest focused narrowly on OHV management, the truth of the matter is that the MVUM will reflect the entire open motorized road and trail system, not just the OHV play areas. The Forest Service should have taken this opportunity to identify and implement a minimum road system, and reflected that smaller road system on the MVUM.

It was in June, 2007, that Bark first met with Mt. Hood National Forest Supervisor, Gary Larsen, and offered time and resources to help Mt. Hood meet the goals of Subparts A and B during this planning process. Representatives of the Mazamas and Bark presented Mr. Larsen with a document (see attached “for Gary Larsen mtg 7.23.07.doc”) outlining the political and economic opportunities that would make such an accomplishment possible. At the meeting Mr. Larsen reiterated the Forest Service’s documented position that Mt. Hood has too many roads and needs to do something about it, but expressed an unwillingness to expand the scope of travel planning due to resource, political, policy, and timing constraints.

Constraints as identified by Mr. Larsen:

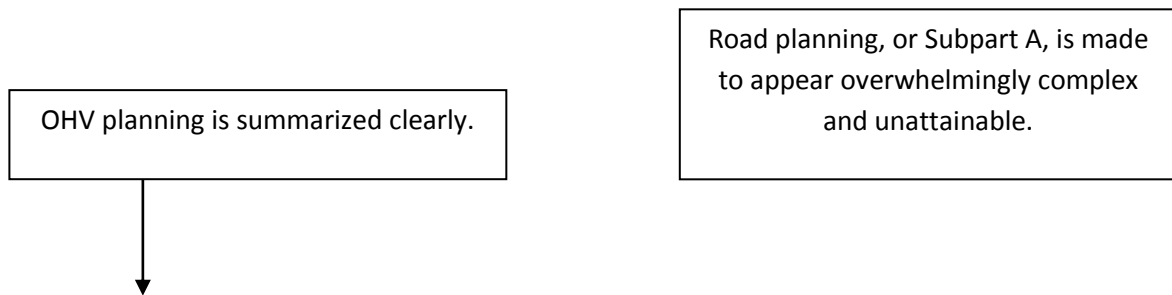
- **Staff resources:** The Forest Service does not have the resources to do the NEPA analysis (i.e. write an environmental impact statement on removing, maintaining, or upgrading roads).
- **Politics:** The Forest Service feels that the OHV proposal is already contentious enough and is concerned about the added controversy of road removal.
- **Timing:** The Travel Plan must be completed by November 2009.
- **Regional agency direction:** Internal direction is to focus on OHV planning and not open up travel planning to non-OHV needs.

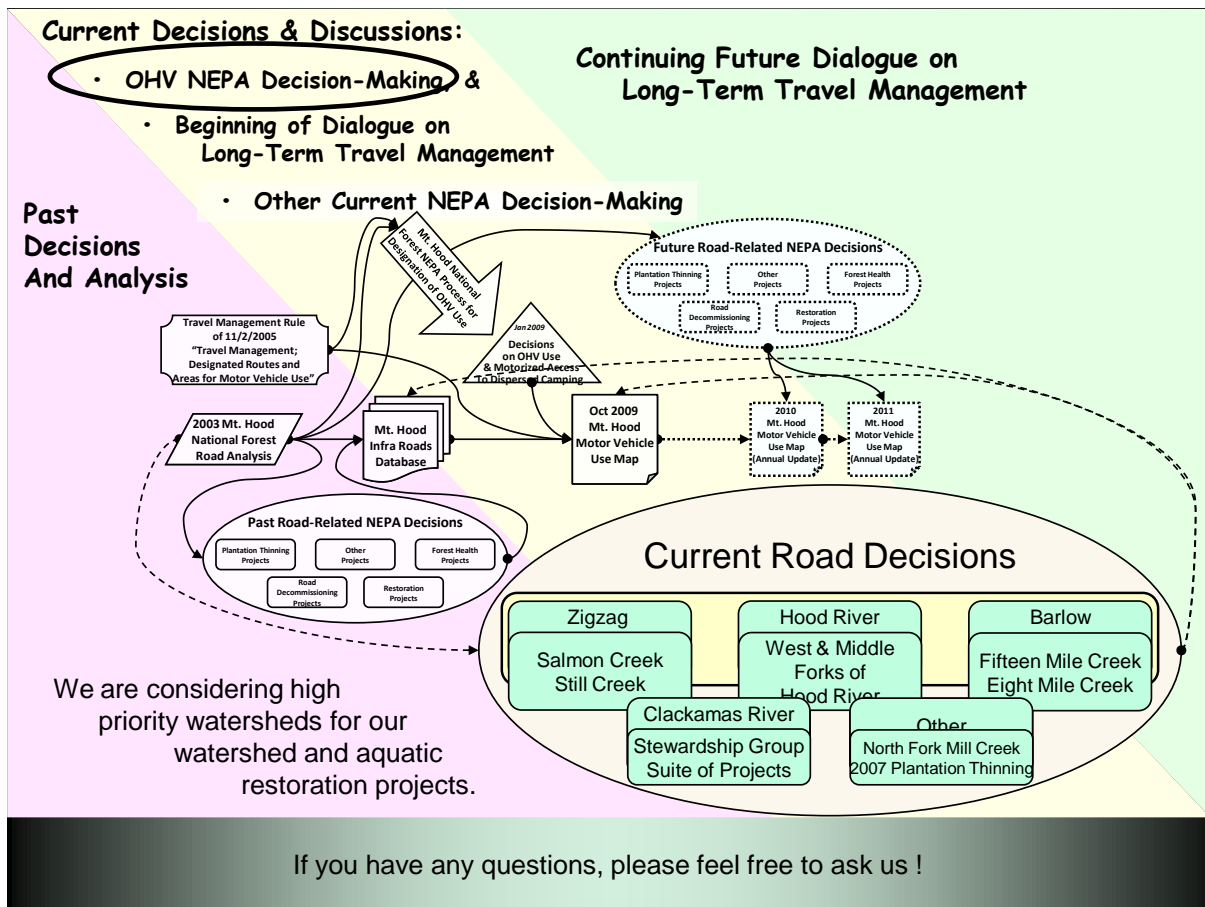
Since the meeting in 2007, Bark has continued to make a good faith effort to break down the barriers perceived by Mr. Larsen. During the two years that have passed since Bark first met with Mr. Larsen, Congress passed the Legacy Roads and Trails Remediation Act. This act has provided Mt. Hood National Forest with funding specifically for road work, including NEPA and decommissioning, and resulted in the hiring of an untold (Bark does not believe such an accounting exists) number of dedicated personnel including a road engineer, and seasonal survey staff. The increased staff has successfully completed three road-related environmental assessments during the two year span, none of which have identified the minimum road system, and could have just as easily contributed to a forest-wide environmental impacts statement to comply with Subpart A of the Travel Management Rule.

Mt. Hood National Forest also received a nearly one-year extension from the Regional Office for completing its OHV Plan. During this same time, Bark has worked with local and statewide political leaders who have increasingly supported road removal as a legitimate form of watershed restoration. And

finally, the 2009 directive released for completion of a Travel Analysis Process does nothing to hinder compliance with Subpart A simultaneously with Subpart B.

The visual provided in Gary Larsen's presentation on the OHV plan and the Travel Analysis Process given to the Mazamas in 2008 (date uncertain) seems to reiterate what Bark believes is a false perception among Forest Service staff that it cannot satisfy the requirements of Subpart A. Or at least that it will provide information to the public that makes it appear nearly impossible:





From Gary Larsen presentation to Mazamas, 2008.

At this late date, we do not think it would be wise to undo the considerable work that has gone into the OHV Management Plan by going back to complete Subpart A in this process. **However, we believe the ROD should contain an unequivocal statement that the Forest Service will identify a minimum road system and unneeded roads for decommissioning in a single comprehensive, science-based process within one year of publication of the MVUM.** In the first annual revision of the MVUM, the Forest Service should amend the map to reflect road closures that will achieve the minimum road system. Decommissioning of unneeded roads should then proceed in the phased fashion envisioned by the aquatic restoration planning process, using, in part, funds from the Legacy Roads Program.

Bark appreciates the efforts of the Forest Service to identify and decommission unneeded roads in the aquatic restoration planning process. However, from the very beginning of the travel management planning process (and in the first two phases of the aquatic restoration planning process), we have urged Mt. Hood 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. 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. We have attached the Mountainair Ranger District's TAP from the Cibola National Forest, which we believe provides a reasonable example of how to complete a TAP and minimum road system identification.<sup>3</sup>

We do not believe that the five-phase aquatic restoration planning process, looking at only 20% of the road network in each phase, can achieve the requirements of the Travel Management Rule, nor do we think the cumulative

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<sup>3</sup> Although this TAP is for a single ranger district, we would note that the ranger districts on the Cibola National Forest are spread out across central New Mexico and northern Texas. Unlike the Cibola National Forest, the ranger districts on the Mt. Hood National Forest are contiguous, and we believe that the Mt. Hood National Forest should complete a single TAP, reflecting the reality that the transportation network is interconnected on the Forest.

effects of the Mt. Hood National Forest's transportation network can be accurately analyzed through such a process. Further, we believe only a comprehensive analysis 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.<sup>4</sup> 36 C.F.R. § 212.5(b). In our October 12, 2009 comments on the Zigzag Ranger District Road Decommissioning plan, we noted:

Mt. Hood National Forest has opted to instead focus on decommissioning roads in five increments. While the result of this process will be a significant improvement over the status quo, the Travel Management Rule's mandate to identify a minimum road system will still require fulfillment. . . . The current process prioritizes road decommissioning based on risk to aquatic resources, with the exception of the "decommission with delay" categorization. However this is all that it accomplishes. After the 5 increments are complete, will the resulting system be a conglomeration of roads that are not immediately threatening aquatic ecosystems? Or will it be a system that meets the needs outlined in the Travel Management Rule?

We believe a comprehensive TAP and minimum system identification will address these concerns. We also believe that use of the 1999 Access and Travel Management Plan (ATM) will make the process more efficient and provide appropriate sideboards. Please see our October 12th comments (p. 3-6) for additional recommendations. Attached.

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<sup>4</sup> 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.

In addition to our practical concerns that the phased process will not allow the Forest to identify or achieve the minimum road system, the United States Congress requires the Forest Service to take a comprehensive approach that will allow the Forest to identify a minimum system commensurate with fiscal expectations and environmental needs. In report language accompanying the FY 2009 Omnibus Appropriations Act, Congress provided:

The Committees on Appropriations expect that each individual National Forest or Grassland will comply fully with all travel management regulatory requirements, particularly the *science-based analysis* in 36 CFR 212.5 (b)(1), *the identification of unneeded roads* in 36 CFR 212.5(b)(2), and *the criteria for designation* in 36 CFR 212.55 (a) and (b). The Committees expect the Forest Service to identify priorities, and associated resource requirements, to fully comply with the regulatory requirements of 36 CFR 212.5 (b) (1) and (2).

155 Cong. Rec. H2089-01 at H2110 (Feb. 23, 2009) (emphasis added).

Through this language, Congress emphasized that it expects the Forest Service to complete a 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 Program. 155 Cong. Rec. H2089-01 at H2110 (Feb. 23, 2009) (providing \$50,000,000 in 2009 for a “strategic effort to decommission and fix roads and trails in environmentally sensitive areas”). Just yesterday, on October 27, 2009, the Conference Committee reconciled the House and Senate budgets, committing \$90 million to the Legacy Roads Program for FY 2010. Thus, Congress has demonstrated its serious 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:

*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.

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 (emphasis added). Secretary Tom Vilsack recently stressed the importance of rightsizing the transportation system in order to restore the National Forests, as well. 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> (“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.”).

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.

Western Governors’ Association Policy Resolution 08-3, “Restoring and Maintaining a Sustainable Road System on National Forest Lands.”

Accordingly, within the past two years, every relevant authority has clarified that the Forest Service should proceed immediately to conduct a Travel Analysis on each Forest, making sure not to designate routes beyond this system and decommissioning existing routes that are no longer needed or sustainable.

Given this direction and the renewed Congressional funding commitment for FY 2010, we strongly recommend the Forest Service develop a timeline and

priorities for the physical closure, stabilization, decommissioning, and obliteration of environmentally destructive, user-created, fiscally questionable, or otherwise unneeded routes. Although Mt. Hood National Forest chose not to complete a comprehensive Travel Analysis, minimum road system identification, and plan for decommissioning of unneeded roads in this process, we believe that the Forest should commence this work in the very near future, making Legacy Roads funds available to the Forest in the process. Given the very small law enforcement capacity of Mt. Hood National Forest and the immense negative impacts that an outsized travel system cause, we believe decommissioning of routes is the most prudent plan to ensure effective closures and a right-sizing of the Forest's travel network. 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.

**b. The Forest Service's decision to carry forward the LRMP's dispersed camping rule is illegal.**

Just as the Forest Service chose to ignore the roads aspect of the Travel Management Rule, we believe the Forest Service improperly failed to meet its obligations to get a handle on dispersed camping on the Forest. This is a problem because the MVUM will display the motorized access to dispersed campsites along designated roads and trails. The DEIS's treatment of motorized dispersed camping is improper for several reasons. As an initial matter, Bark believes that the Forest Service violated NEPA by failing to explain the existing management directive and environmental condition as it relates to

dispersed camping. NEPA's purpose is to provide transparency to the public and to allow the Forest Service to make informed environmental decisions, based, in part, on public input. We fail to see how the ambiguous and conclusory discussion of dispersed camping in the DEIS (p. 1-5) advances these goals.

We believe the Forest Service is incorrect to rely on a nearly 20-year-old LRMP decision, which itself is overdue for revision, in order to comply with its obligation to limit motorized access to dispersed camping in compliance with the TMR. With regard to the dispersed camping exception to the general prohibition on cross-country travel, 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." 70 Fed. Reg. 68,264, 68,285 (Nov. 9, 2005) (emphasis added); *see also* FSM 7703.11(4). The rule itself provides that the dispersed camping exception be invoked only for the "*limited use* of motor vehicles within a specified distance of *certain designated routes*." 36 C.F.R. § 212.51(b) (emphasis added). The Forest may not simply, for example, designate a blanket motor vehicle dispersed camping exception for all routes. Since the Forest Service did not indicate what its current policy is with regard to motorized access to dispersed camping is, we find it difficult to provide substantive input. Suffice it to say that we believe the Forest Service must disclose its current policy, analyze the effects of that policy on the Forest, and provide the public an opportunity to comment on the Forest's intention with regard to this policy before the FEIS comes out.

**c. Specific Concerns about Particular Parts of this Transportation System**

In general, Bark is disappointed to see that both action alternatives include new road construction, although Alternative 3, with its proposal for 69 miles of new routes is particularly egregious considering that Mt. Hood National Forest has previously stated that it could decommission 49% of 3500 miles of roads. Mt. Hood National Forest 1999 Access and Travel Management Plan.

### Peavine

At least a dozen of the “roads” which the Alternative 3 map shows would be “converted” to OHV trails are, in fact, physically closed by trenches, rocks and berms, and are currently inaccessible by motorized means. Not a single one of these physically closed “roads” exhibited any evidence of motorized trespass—suggesting that the demand for motorized use in the Peavine area is non-existent. In several of the “roads” there were evergreen saplings growing as high as one groundtruther’s head in the centerline—indicating that it had been many years since they had experienced motorized access. These revegetating areas, and the quiet and solitude available to non-motorized recreationists (or people seeking solitude in dispersed campsites accessible by ordinary vehicles) would be forever lost if Peavine is sacrificed to the pollution and noise of OHV use.

The map for Alternative 3 inaccurately presents the “baseline” conditions on the Forest by showing that physically closed roads are actually “open,” and failing to correctly represent that creation of the OHV loops in the Peavine area would actually be “reopening” closed roads and destroying areas that are being slowly reclaimed by natural forces. The misrepresentation on the Alternative 3 map of the area that includes routes 4661011, 4661019, 4660130, and 4660180. While the map shows that these would be “converted” (along with other routes) into a complicated OHV loop system within the U-shaped loop formed by Forest Roads 4660 and 4661, the truth on the ground is that *not a single one of the access points from Roads 4660 and 4661 into this proposed loop is currently passable to motorized use.* Each one of the routes has been

closed at the junctions with the 4660 and 4661 Roads by trenching, berms, and/or rock barriers. So the Forest Service's illustration on the Peavine map that a few short "proposed" trails would be added to connect "existing" routes is fundamentally a lie: rather, the Forest would be reopening routes that have for many years (judging from the vegetation growth in the tire tracks) been physically closed, and are converting an area which currently has no motorized access and affords opportunities for solitude and quiet recreation into an OHV sacrifice zone. Rather than opening such an area to OHV use, the Forest should update its route system map to show that entire area as "closed" to all types of motorized use, so as to make the route system map match the physical reality on the ground. Failure to do so will constitute a significant NEPA violation.



### **XXI. Air Quality and Climate Change**

In 2007, the United States Supreme Court stated, "The harms associated with climate change are serious and well recognized." *Massachusetts v. EPA*, 549 U.S. 497, 499 (2007). Encouraging the usage of OHVs in Mt. Hood National

Forest would increase the emission of harmful greenhouse gases and defy the purpose of having national forests.

A recent study by the Center for Biological Diversity noted the injurious nature of off highway vehicle emissions,

Off road vehicles are typically powered by two-stroke engines that are highly inefficient and produce relatively high emissions of gases that harm the environment and adversely affect human health. The pollutants released in off-road vehicle exhaust include carbon monoxide, ozone, hydrocarbons, oxides of nitrogen and sulfur, and particulate matter ... One two-stroke off-road motorcycle or all-terrain vehicle emits as much hydrocarbon pollution per mile as 118 passenger cars, while relatively cleaner four-stroke engines still emit more than seven times the level of carbon monoxide as new cars.

Citation available upon request. This is an alarming amount of harmful gases being emitted into our national forest's air. According to the EPA these vehicles already account for "nearly 10 percent of national mobile-source hydrocarbon emissions and about 3 percent of national mobile-source carbon monoxide emissions." *Id.*

The Mt. Hood OHV EIS states, "the action alternatives do not authorize the emission of GHG; the alternatives do not limit the emissions of GHG; and the action alternatives are unlikely to change the emission of GHG as compared to the no action alternatives." By allowing OHVs in the national forest, one is allowing the emissions of greenhouse gases. In addition, by giving them roads, and the possibility of an extensive road system, one is not only allowing but also encouraging the use of OHVs in the forest. This attempt to hide behind uncertainty is arbitrary and capricious. Impacts of global warming have been predicted with a high degree of both certainty and precision, providing the Forest more than adequate information to analyze and disclose the carbon footprint of the proposed action and its contribution to global warming and the

likely impacts on resources including air quality, water availability, and to imperiled plants and animals.

In a Ninth Circuit case, *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 555 (9th Cir. 2007), involving an NHTSA rule for corporate average fuel economy standards for light trucks, the court found that climate change satisfied several of the “intensity” factors in 40 C.F.R. § 5108.27(b). First, the court found that although the NHTSA rule at issue may have an “individually insignificant” effect on climate change, it may nonetheless have a “cumulatively significant” impact, thereby satisfying 40 C.F.R. § 1508.27(b)(7). In addition, the court found that climate change will affect public health and safety, satisfying 40 C.F.R. § 1508.27(b)(2).

The Forest Service’s failure to address known and critically important environmental consequences violates NEPA. Federal agencies have a mandatory duty to take a hard look at the ongoing impacts of global warming in NEPA documents which has been affirmed by the courts. As the Ninth Circuit has recognized:

Global warming has already affected plants, animals, and ecosystems around the world. Some scientists predict that ‘on the basis of mid-range climate-warming scenarios for 2050, that 15-37% of species in our sample of regions and taxa will be ‘committed to extinction.’ In addition, there will be serious consequences for human health, including the spread of infectious and respiratory diseases, if worldwide emissions continue on current trajectories. Sea level rise and increased ocean temperatures are also associated with increasing weather variability and heightened intensity of storms such as hurricanes. Past projections have under-estimated sea level rise. Several studies also show that climate change may be non-linear, meaning that there are positive feedback mechanisms that may push global

warming past a dangerous threshold (the ‘tipping point’).

See *CBD v. NHTSA*, 538 F.3d at 1190-91 (citations omitted). Global warming’s well-established impacts on resources including air quality, water quality, and imperiled plants and animals will combine with and exacerbate the direct, indirect, and cumulative impacts of motorized recreation, but the DEIS never addresses this critically important aspect of the problem.

The DEIS makes no attempt to portray a reasonable, science-based assessment of the impacts of climate change on the forest. At a minimum, a description of the effects of climate change on existing conditions such as the prevalence of exotic plant species, important habitat for wildlife and habitat connectivity, the availability of water and the health of riparian areas, zones of soil erosion or vulnerability to erosion, all provide critical baseline information necessary to the Forest Service’s ability to determine whether public land resources can withstand any of the proposed management alternatives, including many miles of OHV routes and roads. Without this basic foundational information about the existing impacts of climate change on the land, and future expected impacts, it is impossible to make informed decisions about the level, location, and kind of activities the land and its ecosystems can support in the future.

## **XXII. Congressionally Designated Areas**

### **a. The Forest Service should not designate any OHV routes adjacent to designated Wilderness because use of these routes will impair Wilderness characteristics**

Congress passed the Wilderness Act of 1964, in part, in recognition of the fact that “an increasing population, accompanied by expanding settlement and *growing mechanization*” jeopardized the country’s last remaining natural landscapes. 16 U.S.C. § 1131(a) (emphasis added). The Act provides that federal agencies must manage designated Wilderness areas to protect the



“wilderness character” of those lands, so that they will be preserved “unimpaired for future use and enjoyment as wilderness.” *Id.* §§ 1131(c), 1133(b). Defining features of Wilderness areas include that man’s impact is substantially unnoticeable, primeval character is retained, and “outstanding opportunities for solitude or a primitive and unconfined type of recreation” abound. *Id.* § 1131(c). Mt. Hood National Forest’s LRMP indicates its wilderness management goal is to: “Promote, perpetuate and preserve the wilderness character of the land; protect watersheds and wildlife; preserve scenic and historic resources; and promote scientific research, primitive recreation, solitude, physical and mental challenge, and inspiration.” LRMP at 4-136. Under the desired future condition, one of the major characteristics of wilderness is that it “has outstanding opportunities for solitude or a primitive and unconfined type of recreational experience.” *Id.* at 4-137.

OHV use adjacent to Wilderness areas is incompatible with the wilderness characteristics outlined above and the Forest Service’s duty to protect and manage these areas so as to preserve their natural conditions. This DEIS notes that OHV routes should “[a]void routes that would conflict with adjacent land management objectives.” DEIS at 54. Although motorized use is prohibited in designated Wilderness, OHV routes adjacent to Wilderness can still have indirect or cumulative impacts on Wilderness resources, like wildlife habitat and the quiet recreationist’s experience within Wilderness. Most notably, motorized use is very noisy, and can preclude a true solitude experience if occurring adjacent to Wilderness. As the DEIS notes, sound from OHVs can travel 0.89 miles, and many studies and models, including those discussed above, indicate this noise can travel much further depending on vegetation, topography, and engine type.

In addition, OHV routes adjacent to Wilderness can facilitate illegal motorized intrusions, impair water quality, and spread noxious weeds into the areas. Even if law enforcement witnesses an OHV user illegally enter wilderness, that

officer likely cannot pursue the criminal because he or she is not permitted to enter the wilderness on a motorized vehicle, and given emergency authority it is likely the officer is in a full-size vehicle and not an ATV or motorcycle. An officer on foot would have no chance of catching up with an OHV. Given documented OHV trespass on Mt. Hood, the lack of law enforcement, the impossibility of law enforcement efforts to apprehend OHV users in wilderness, and the fundamental incompatibility of OHV engine noise and the wilderness experience, ***we recommend that all FS routes terminate at least ¼ mile from Wilderness boundaries.***

The DEIS makes much of the idea that Wilderness designation does not result in buffers, but fails to note that, at the same time, the Forest Service has more than enough discretion to opt not to designate motorized trails adjacent to Wilderness in order to avoid user conflicts and impacts on wilderness character. DEIS at 1-9, 3-248. The discretion to protect Wilderness extends even to private lands: courts have allowed agencies to regulate motorized use on private land adjacent to Wilderness where that use was found to conflict with the fundamental purpose of the Wilderness. *see Minnesota v. Block*, 660 F.2d 1240 (8<sup>th</sup> Cir. 1980). With respect to effects of motorized use on the quiet recreationist's experience in Wilderness, we would assert that the ability to attain a solitude experience in these Congressionally designated areas far outweighs any desire for motorized access in areas immediately adjacent to them. The Wilderness Act does not consider balancing motorized and non-motorized values; it comes down squarely on the side of quiet recreation values in what little wilderness we have left. As a forest adjacent to a major metropolitan area, Mt. Hood National Forest should be particularly cognizant of the fact that the Forest's wilderness areas provide urban dwellers a unique opportunity to get away from the sights and sounds of modern life. Natural quiet is fundamental to their wilderness experience, and the Forest Service should insure that its projects do not jeopardize the solitude people seek. OHV incursions into Wilderness have been documented both from the La Dee area

and the Badger Lake area, and keeping OHVs far away from these areas is the only way to ensure that this does not continue. We have also noticed that many OHV areas, such as McCubbins Gulch, do not feature signage indicating that adjacent lands are Wilderness, this signage should be provided for in an expeditious fashion. Because of the precious value Wilderness has to our society, we ask that the Forest Service refrain from designating any OHV routes adjacent to Wilderness in the ROD, and terminate all OHV routes ¼ mile from Wilderness boundaries in order to protect Wilderness values.

**b. The Forest Service Did Not Minimize Conflicts Between Users and Impacts to the Environment as Required by Executive Orders.**

Executive Order 11644 requires that designation of OHV trails “be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands.” Executive Order 11644, as amended by Executive Order 11989. This applies to all OHV routes in the Forest, not just Wilderness. This mandate should be applied with particular zeal to Congressionally designated areas. The Executive Order requires:

(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.

*Id.* As required by the executive order, the Travel Management Rule carries forward these requirements at 36 C.F.R. § 215.55(b), which reflects the same minimization criteria. When designating OHV routes, the Forest Service must clearly document that it adhered to these minimization criteria with respect to each route. *See Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, No. C 06-4884 SI, at \* 26 ( N.D. Cal. Sept. 28, 2009) (“[S]imply citing stated goals is not tantamount to showing that the BLM actually applied the minimization criteria in the OHV route designation process”). In other words, the administrative record must reflect that each OHV route designated is located in a manner that minimizes damage to soil, watershed, vegetation, and other natural resources on the Forest; minimizes harassment of wildlife or significant disruption of wildlife habitats; and minimizes conflicts between OHV use and other recreational use of the same *or neighboring public lands* (such as Wilderness areas). *Id.* at \*27, 29-30.

Several OHV routes do not meet the minimization criteria in the EO and TMR, nor does the DEIS reflect adherence to the minimization criteria with respect to these routes. The following anecdote illustrates the significance of implementing this criteria. On the September 13<sup>th</sup> Bark-led hike to the proposed LaDee Flats area, participants were driving east on Rd 4610 near the junction with Rd 4611 when three OHV users approached their vehicles in the opposing direction. When the OHV users came within approximately 50 yards the lead motorcyclist gunned his motorcycle and flew past the cars, appearing to barely keep control of the bike while maneuvering the ditch that enabled him to pass. The other two OHVs followed his lead. Multiple participants of the Bark hike including the hike leader, Bark’s Program Director Amy Harwood, described it as an involuntary game of “chicken.” This event occurred on a system road that is currently legal and will continue to be so under all alternatives. However the result is that Americans who have the right to use the forest are deterred from doing so because of one small user group. No other user group has the impact of deterring other uses as does OHV users.

In addition to the criteria above, the Travel Management Rule requires the Forest Service to consider “the availability of resources for [the] maintenance and administration” of the designated travel system in its NEPA analysis. 36 C.F.R. § 212.55(a). We are concerned that the Forest Service did not reflect the true cost of the alternatives because it seems to have examined the maintenance costs of only ML 1 and ML 2 roads for each alternative, as opposed to the cost of the *entire* travel system, which includes costs of motorized trails, LEOs, signage, etc.. DEIS at 3-242. To this end, we want to share a model that Dr. Michael Wing, Professor of Engineering in the Forest Engineering Department at Oregon State University, recently completed. Dr. Wing developed an easily reproducible model for estimating the costs of a travel management alternative. We have **attached** the model, an explanation of the model, and an example application from the Nez Perce National Forest. 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.

In addition, the Forest Service has an ongoing obligation to assess whether designated routes meet the minimization criteria of the Executive Orders and the TMR over time. Executive Order 11644, as amended by Executive Order 11989, requires:

8(a): The respective agency head *shall* monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the

basis of the information gathered, they shall from time to time amend *or rescind* designations of areas or other actions taken pursuant to this order as necessary to further the [minimization of environmental harm] policy of this order...

9(a): Notwithstanding [route designations made], the respective agency head *shall*, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrences.

E.O. 11644, 11989, sec. 8(a), 9(a); *see also* 36 C.F.R. § 212.57. Given these requirements, we ask that the Forest Service provide an adaptive management plan in the FEIS and ROD, which provides triggers for closures associated with monitoring results demonstrating that OHV use on designated routes has caused natural resource damage. In particular, we ask that the Forest Service provide a plan to:

- effectively monitor ORV use;
- practice adaptive management by periodically reviewing the monitoring results and altering the management of OHVs to ensure that serious user conflicts and natural resource impacts are not occurring;
- ensure that OHV use does not result in significant adverse impacts to natural resources or loss of viability to native and desired non-native species;
- close a trail or area if OHV use “is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area”(36 C.F.R. § 212.52(b)(2); and,

- practice adaptive management by periodically reviewing the monitoring results and altering the management of OHVs to ensure that user conflicts and natural resource impacts are not occurring.

If the Forest Service chooses not to include a such a monitoring and enforcement plan, we believe it will fail to meet the direction of the EOs, TMR, and NEPA, which requires the Forest Service to “[s]tate whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.” 40 C.F.R. § 1505.2(c).

**c. The Forest Service Did Not Take a Hard Look at the Effects of OHV Use on Lands Designated Under the Recreation Opportunity Spectrum (ROS) as Primitive and Semi-Primitive Non-Motorized in the LRMP**

The DEIS notes that “changing the existing mix of ROS areas in the Forest is not an objective of this project.” DEIS at 3-3. However, by designating motorized trails that are adjacent to wilderness, and a motorized trail that even bisects two wilderness areas, a de facto change in recreational experience, if not ROS classification, is exactly what results. . Moreover, the Travel Management Rule and Executive Order 11644, as amended by Executive Order 11989, prohibit the Forest Service from designating OHV routes in Primitive areas. E.O. 11644 sec. 3(a)(4); 36 C.F.R. § 212.55(e). The Forest Service must assess whether any proposed route designations lie within the Primitive Areas on the Forest, and the Selected Alternative in the ROD may not include designation of any routes within Primitive areas.

The DEIS indicates: “ROS provides a framework for describing the types of outdoor recreation and experiences that the public can expect at any given location in the Forest. The ROS also provides a context and criteria for describing and measuring the recreation effects from projects and activities.” *Id.* at 3-3. We believe the Forest Service’s analysis of ROS is one-sided, failing to take a hard look at the effects of motorized use on tracts of land designated as primitive or semi-primitive non-motorized (and the resulting recreational experience people can expect in these areas). At the same time, the Forest Service did use the ROS to examine effects of the project on the motorized experience by examining the number of miles available for these recreationists in roaded natural and roaded modified zones. *Id.* at 3-11–3-12. We believe the effects of the OHV route designations on primitive and semi-primitive non-motorized areas of the Forest should have been examined, as well.

### **XXIII. Forest Plan Amendment**

It was not until shortly before the end of the DEIS comment period that Bark realized that the Forest Plan amendments suggested, particularly those listed at page 2-22, are not in fact a strengthening of the existing standards and guidelines. This was due in part to the fact that the amendments are described in multiple locations as necessary for the Forest to meet the 2005 Final Travel Management Rule. DEIS at 3-273 In fact, the amendments are proposed in order to avoid non-compliance with the LRMP in order to allow existing OHV use to continue in land allocations where it is currently illegal. The justification of the amendments at 3.16 continues to mislead the reader by suggesting that 1) “Analysis of these proposed changes is included in this EIS” and 2) “None of these changes would alter any of the multiple use goals or objectives and current management activities outlined in the Forest Plan for Research Natural Areas (A3), Special Interest Areas (A4), Special Old Growth (A7), Key Site Riparian (A9), Wild Scenic and Recreational Rivers (B1), Roaded Recreation (B3), Pileated Woodpecker/Pine Martin Habitat Area (B5), Special Emphasis Watershed (B6), Deer and Elk Summer Range (B11), and Timber



Emphasis (C1).” Bark was not able to find references to most of the proposed amendments in the effects analysis. And since current OHV activity clearly violates many of these standards and guidelines, Bark does not understand the basis for the statement that “none of these changes would alter any of the multiple use goals or objectives in the current management activities...”

## **CONCLUSION**

Bark applauds the Forest Service’s efforts to end cross country OHV travel in Mt. Hood National Forest through the creation of routes that minimize harm to the environment and other Forest users. We urge the Forest Service to carefully consider these comments, as well as comments submitted by other groups and individuals including the Northwest Environmental Defense Center; Lower Columbia Canoe Club; Audubon Society; Mazamas; The Columbia Gorge Chapter of Back Country Horsemen; ANPO Dan van Vector at the Wasco County Court; Dave Becker, staff attorney for the Oregon Natural Desert Association; Tom Kloster; Zachary Mallon; Chris New; and others who remain concerned about the impacts an excessively large OHV system will have on a broad spectrum of other forest users and our environment. We look forward to the release of a final EIS that thoroughly discusses the issues we have raised, and the opportunity to comment on the final EIS in a formal comment period prior to the release of the ROD. Ultimately, we anticipate the release of a OHV Plan that is fair and protective of the environment. Please do not hesitate to contact us if you have any questions.

## **APPENDIX LIST**

- A: Oregon Recreation Coalition Message Board, *Thoughts on Proposed Mt. Hood OHV Areas*
- B: Roads with evidence of OHV use from Bark's 2007 Road Survey Project
- C: Best Management Practices for Off-Road Vehicle Use on Forestlands, Wildlands CPR report
- D: American Hiking Society's Off-Road Vehicle Use on Public Lands Policy
- E: Map of the North Fork Mill Creek Restoration Project
- F: Off-the-Track: America's National Parks under Siege, Bluewater Network
- G: Annotated Bibliography of Impacts of Noise and Overflights on Wildlife
- H: The Impacts of Off-Road Vehicle Noise on Wildlife, Wildlands CPR
- I: SPreAD GIS Model User Guide
- J: OHV Responsible Riding Campaign, Monaghan & Associates, at the direction of Colorado Coalition for Responsible OHV Riding
- K: Off Highway Vehicle Uses and Owner Preferences in Utah
- L: Collision Course?: Off-Road Vehicle Impacts on Hunting and Fishing, Izaak Walton League of America
- M: Off-Road Vehicle Issues Survey of SW Law Enforcement Professionals, Public Employees for Environmental Responsibility (PEER)
- N: Statement of Jack Gregory before the Subcommittee on National Parks, Forests and Public Lands, March 13, 2008
- O: Testimony of Frank Adams Regarding Off-Highway Vehicle Regulation Management on Public Lands, June 5, 2008
- P: Email exchange between Chris Lynch and Laurence Olson regarding La Dee chronology
- Q: Flickr comments string about OHVs in Salmon-Huckleberry Wilderness at the summit of Salmon Butte
- R: Opportunities for Mt. Hood Travel Management, document presented to Gary Larsen, Mt. Hood Forest Supervisor, at a meeting on July 23, 2007
- S: Deceptively Dangerous: Why ATVs Keep killing, Oregonian article, May 11, 2007

T: Six Strategies for Success: Effective Enforcement of Off-Road Vehicle Use on Public Lands, Wildlands CPR

U: Maps of New Wilderness with proposed OHV Areas adjacent to boundary; Bull of the Woods Additions, Sisi Butte, Roaring River, Lower White River, Elk Cove/Mazama, Gorge Face

V: Transportation Management Plan Cost Estimator

W: Groundtruthing Forms filled out by Bark volunteers who have visited the proposed OHV areas

X: Hood River County Off-Highway Vehicle Map

**CITATION ARTICLES:**

Effects of Forest Roads on Macroinvertebrate Soil Fauna of the Appalachian Mountains. Conservation Biology Vol.14 No.1 pg 57-63, Haskel, David G. Prendes, Laurie A. and Julia A. Jones, *Role of Light Availability and Dispersal in Exotic Plant Invasion along Roads and Streams in the HJ Andrews Experimental Forest, Oregon*, Conservation Biology, Vol. 14, No. 1, February 2000