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### **Second Scoping Period Comments on the Proposed Three Trails OHV Project**

This is the second set of scoping comments provided by our organizations. We have added significant additional information on legal prohibitions on segmentation, legal requirements on connected actions and cumulative impacts analysis process and disclosures, and on resource concerns to our previous comments. These additions are combined with our previous comments in this revised comment submission. We thank the agency for this additional opportunity for public comment and meaningful incorporation of the concerns and issues addressed herein into the NEPA analysis for the proposed Three Trails project and related concurrent Deschutes National Forest OHV system and Travel Management Planning NEPA processes.

The Oregon Chapter Sierra Club and the League Of Wilderness Defenders-Blue Mountains Biodiversity Project have reviewed the Crescent District's scoping notice and accompanying maps for the proposed Three Trails OHV project on the Crescent Ranger District Deschutes NF, and submit these joint comments on the Three Trails OHV Project as currently proposed.

The Sierra Club represents over 20,000 members throughout Oregon, including over 1,000 Juniper Group members throughout central and eastern Oregon. Sierra Club members feel strongly about nature, wilderness, wildlife and the environment. Our members regularly enjoy hiking, camping, birding, wildlife watching, recreation and ecological study within the public lands of central and eastern Oregon, including the project area and surrounding national forest and LSR lands.

LOWD-Blue Mountains Biodiversity Project has many members and volunteers throughout the Northwest. Members and volunteers of the LOWD-Blue Mountains Biodiversity Project regularly use the Crescent Ranger District Deschutes National Forest, including the proposed project area and surrounding forest watersheds and LSR areas, for hiking, ecological study, watching wildlife, viewing forest native botanical diversity, and avian species study.

#### ***Overview of Issues***

One of the overarching issues regarding ongoing OHVs and Travel Management Planning was addressed recently in our comments on the related proposed Lava Rock OHV trail system designation: While our organizations appreciate the Deschutes National Forest's stated intention to prohibit cross-country travel by OHVs, and limit OHVs to designated systems only, such a closure can be done by a legally and environmentally warranted necessary Emergency Closure Order for the entire Deschutes.

In the Crescent District however, it is understandable given there are no designated OHV systems at present, that such a complete closure may be politically untenable albeit desirable from a conservation-natural resources perspective. Given enforcement issues, and accustomed use concerns, it would be

difficult at best to close the entirety of the Crescent District to OHV use when some people have become accustomed to using OHVs in the area already. It may be that establishing emergency closure exemptions for limited interim trails in areas that clearly have little or no natural resource concerns could help offset overall OHV closure impacts, until a TMP EIS has been completed. Given the significance of resource concerns in the District, and the current levels of OHV use and resource damage, such exemptions should be stringently limited to ecologically acceptable areas only, which are far smaller in extent than the current proposed Three Trails systems. Additionally, exemptions should only be temporary, as full designation would require a completed TMP EIS process. Exemption areas could include trails in logging and management degraded heavily roaded areas, but must avoid all LSRs, RCHAs, old growth areas (the rock pit could be excluded from this area – as it clearly is not old growth), hiking and equestrian trail areas, and valued natural resource areas, including connective wildlife habitat, rare plant areas, popular hiking trails, and mushroom areas.

With the limited exemptions noted above, the agency should not delay such a closure order, as the forest's natural resources and recreational values are being irreparably degraded daily, with an urgent need for curtailment of rampant widespread OHV abuse throughout the forest. This is true for the entire Deschutes, Crescent District included, and is likely the case with the region's other public lands also.

Undertaking a lengthy EIS process for such a closure only circumvents the agency's legal responsibility to protect public lands under its management, allowing yet more damage to occur, and adding to the irresponsible illusion that the agency is obligated in any way to provide play areas for environmentally harmful, resource destroying, intrusive, noisy, disrupting machines and those who operate them. Forgoing such a closure, and undertaking segmented TMP and OHV trail NEPA processes; with the segmented Three Trails project proposing the designation of an extensive trail system with OHV incursions into ecologically important LSR, old growth, connective, and riparian habitat, is not a legally or ecologically acceptable option.

The Deschutes and BLM already have designated OHV trail systems and play areas that are far greater in acreage extent than the proportional small percentage of the public that uses OHVs, and far greater than the agency's ability to enforce regulations, prevent damaging OHV incursions into treasured natural areas including the designated LSR habitat and important salmonid waterways, or restore damaged areas. As such, instead of proposing additional trail systems beyond the capabilities of agency resources to effectively manage, we recommend an interagency public lands wide Programmatic EIS on Travel Management. The EIS objectives include:

- Codifying a forest-wide emergency closure to OHVs – limiting these to currently designated systems only (and in the Crescent District to limited interim areas as described above);
- Analysis focus on reducing resource damaging roads, removing excess roads to comply with Forest Plan road density standards and wildlife thresholds;
- Assessing the impacts of current OHV systems;
- Assessing federal agency resource needs, capabilities, and effectiveness in enforcing OHV regulations and preventing OHV harms to the environment;
- Assessing impacts from roads and OHVs to natural recreational qualities of serenity, solitude, intact natural conditions, and the ability to view and enjoy wildlife and nature;
- Assessing the impacts of road systems and OHVs on wildlife, and native species biodiversity and abundance;
- Assessing the impacts of road systems and OHVs on federal and state listed species and species of concern;
- Assessing the impacts of road systems and OHVs on waterways, aquatic systems and species, and forest hydrological patterns and functioning;

- Assessing the impacts of road systems and OHVs on native plants and the spread and introduction of invasive exotic plants;
- Assessing OHV impacts upon residential communities neighboring affected public lands.

These above emergency closure action and follow-up PEIS analysis needs represent just some of the resource issues that need to be implemented and addressed in an EIS well-before additional OHV systems such as Three Trails can be legally and ecologically considered.

### ***Travel Management Working Group General Recommendations, Natural Resource Issues, and NEPA***

As proposed, the Three Trails OHV project would directly and significantly adversely affect the interests of the members and volunteers of our organizations. The Three Trails project needs to be refined and better restricted to remain within the resource recommendations expressed by conservation representatives and others during the year-long collaborative working group consensus process.

Conservation recommendations include prohibitions on OHV use within or near designated LSR, old growth, connective wildlife habitat, riparian areas, natural recreational trails, and areas of ecological significance such as rare plants, springs, and natural geologic features.

Current plans call for OHV trails and road use within LSR on Royce Mountain, as part of the Junction trail system. Junction also includes shared hiking, equestrian, and OHV sections of trail. Natural recreation is incompatible and antithetical with OHV use and its corresponding noise, dusts, degradation, and fumes. There should be no OHV trails beyond or near LSR boundaries. There should be no shared use of natural recreational trails and campgrounds with OHVs. There should be no OHV trails within or near riparian areas. OHV trails should be additionally limited to already management impacted locations where OHV disturbance would not inflict adverse environmental harms upon wildlife, watersystems, and the natural resource quality of the area.

Finally, there is no requirement in the Travel Management Plan to actually create and develop new ORV trails. It is understandable given the lack of designated trails in the Crescent District, long term OHV closure plans, and current OHV use levels, there is a desire to locate ecologically acceptable trail systems. The Travel Management Plan offers such an opportunity, while overall it's main emphasis should remain proactively protecting irreplaceable natural resources by closing restoring existing ecologically damaging OHV routes, excessive roads, and user-created trails.

### ***The Proposed Purpose and Need Violates the NEPA, NFMA, and Agency Resource Protection Mandates***

#### ***Purpose and Need of the Project is Impermissibly Narrow***

NEPA requires federal agencies to base their project analysis and disclosures on accurate, expert, professional information. The agency is bound by legal mandates, directives, and responsibilities to protect public lands natural resources from undue degradation. The proposed segmented NEPA processes, and differing Purpose and Need project subsets, are largely inappropriate and unsubstantiable given NEPA legal analysis requirements, current resource and management issues, and the vast extent of existing interconnected OHV trail systems both on the Deschutes National Forest and on adjoining BLM lands. The purpose and need as proposed preclude a comprehensive analysis of responsible resource actions; including closing ecologically significant portions of the project area to OHVs, reducing road densities to Forest Plan standards, and curtailing motorized impacts as appropriate to better match designated management objectives in areas such as LSRs, old growth and connective habitat, natural recreational trails, and ecologically sensitive areas.

An agency must not define the purpose and need of a project so narrowly that the proposed action is the only possible course of action. EPIC v. USFS, D.C. No. CV-04-01705-GEB (9<sup>th</sup> Cir. 2006)(attached). In the recent EPIC case, the Ninth Circuit found that the purpose and need of a timber

sale project was so narrow that it was impermissible. The proposed action was the only possible course of action to fulfill the purpose and need, so there was no real analysis of alternatives.

The proposed purpose and need of the proposed Three Trails OHV Project is also far too narrow. The Forest Service has limited possible actions towards developing OHV trail systems, the extent of which are ecologically harmful and largely incongruous with the agency's legal responsibilities and ecological directives. Under the proposed narrow purpose and need, the Forest Service could only develop and analyze alternatives that increase OHV trail systems in the area, predisposing the decision-maker to either leave the current unacceptable cross-country OHV degradation as is (under a no action alternative) or choose an alternative that designates trails in areas where ecologically they should not be permitted at all.

The Forest Service must withdraw the proposed Three Trails OHV Project, and develop a comprehensive EIS addressing the direct and cumulative impacts of OHVs across the District and adjoining public lands systems, the scientific research recommendations related to OHVs and affected natural resources, impacts to forest integrity, ecological functioning, wildlife species and habitat, hydrology, and biodiversity.

### ***Natural Quiet as a Resource***

"Natural quiet" has become increasingly scarce on public lands throughout the Western U.S. Its scarcity is a result of many factors, including the increase in both commercial and military air traffic, and an increase in the use of all-terrain vehicles and other OHVs coupled with advances in engine technologies that have allowed OHV enthusiasts to penetrate deeper into the backcountry each year.<sup>1</sup> Given the growing scarcity of natural quiet coupled with the beneficial effects of natural quiet to most wildlife populations and the recreational experience of forest visitors, the Three Trails OHV NEPA documentation must identify natural quiet as a resource worth protecting. One or more alternatives, including the agency's proposed action, should incorporate an objective of retaining natural quiet (to the extent within the Forest Service's control) in important landscapes, watersheds, or "soundsheds."

### ***Motorized Mayhem or Wild Nature?***

National forests across Oregon's eastside are magnificent in natural wonders and beauty. From the tumbled geology of eastern Oregon's weathered Blue Mountains, to the volcanic wonderlands of the Cascade's rain-shadow, our forests are home to a wealth of biodiversity. Alive and vibrant with gorgeous wildflowers, birdsongs and canid howls, cascading streams and falls, deep incised canyons, towering weather carved rocks, and Cheshire wildlife, the region's complex ancient forest mosaics are sculpted by fire, climate, moisture, and time. Many people in the region, from transitory visitors to long-time residents, come to these forest wonderlands to enjoy and experience the serenity and inspiration of untrammelled nature.

In our increasingly mechanized society, public wildlands are among the only remaining places where people can get away from the incessant noise and intrusions of industrial machines. Yet a small percentage of the visitors to our wondrous forests cannot seem to leave their treasured machines behind. Called by a variety of names ranging from Off Highway Vehicles (OHVs), All Terrain Vehicles (ATVs), or "Terrain Annihilating Zehicles" (TAZ – for the mechanized version of the fabled TaZmanian Devil), the widespread intrusion of these machines into our last remaining natural lands destroys the serenity, and severely harms the wildlife, plants, soils, and waterways of our region.

For years public forests have been largely open to OHV travel, including random user-created cross-country routes. As a consequence widespread OHV damage and disturbance has significantly

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<sup>1</sup> See, for example, Off-Highway Vehicle Trail Impacts on Breeding Songbirds in Northeastern California, *The Journal of Wildlife Management*, 71(5): 1617–1620; 2007.

increased. While the Forest Service has basic regulations prohibiting OHV-caused natural resource degradation, and has varied requirements in OHV trail system areas, they lack the enforcement personnel to prevent OHV harms, and lack funding and resources to restore OHV damaged waterways and forests. Currently any adult with an OHV, and children with adult accompaniment, can drive OHVs willy-nilly across our national forests, to the detriment of wildlife, and the natural experience of us all.

In a beginning effort to rectify rampant OHV abuse of public lands, the Deschutes, Ochoco, and Umatilla National Forests are conducting varied environmental analysis, with plans to close the forest to cross country OHV travel by late 2009 or 2010, while unrealistically – given their inability to regulate systems - designating additional OHV trail systems throughout large areas of the region's forests.

In this Deschutes Three Trails OHV Project, the agency has proposed a mix of curtailing unregulated OHV use with a series of designated trail systems. Some of these trails are located in more environmentally acceptable areas, while significant portions are located in and nearby LSRs, natural recreational trails, designated old growth, riparian systems, and connective wildlife habitat. Given the incompatibility of OHV use and impacts with natural resources, ecological integrity, wildlife habitat, and natural recreational qualities on public lands, the choice presented to the agency and the public really comes down to that of either extending existent “motorized mayhem” even further beyond the agency's ability to regulate and control impacts, or taking effective management actions to proactively protect and restore “wild nature” qualities throughout the region's forests, including the greater Three Trails project area. The proposed Three Trails project must be significantly reduced in scope to prevent designating OHV use in areas where this would result in ongoing cumulative harms, in contravention to natural resource needs and the greater public's natural values and recreational needs and desires.

The EIS for this process must disclose the full extent of OHV depredations, and acknowledge agency resource limitations and enforcement capabilities. If trail systems are to exist at all on public lands forests, these must be reduced in size and extent so the agency can effectively ensure natural resources are protected, and capably enforce regulations. Trails must be kept far from ecologically valued areas including essential wildlife habitat, watersystems, old growth and roadless areas, and areas treasured by wildlife and recreationists alike for their natural serenity and beauty.

OHV systems are also incompatible with residential areas bordering public lands, whether these be populated communities or remote rural locations. Most people live near public lands forests for the natural qualities and peace inherent in nature. OHV impacts, from incessant loud noise, to airborne dusts, exhaust fumes, and severe environmental damage to soils, waterways and vegetation irrevocably destroy the natural qualities of our forests for all. As OHV abuse continues to grow across the region, we are hearing growing citizen calls for more responsible agency efforts to proactively protect our wildlands forests and WUI communities from OHV harms.

### ***Cumulative Impacts Issues from Interlocking OHV Trail Systems Across Oregon***

In addition to this proposed Three Trails OHV project, other agency OHV plans across the region's forests include Willamette National Forest OHV links to the Deschutes, which cross the Crest trail and use an historic wagon trail; the “Lava Rock” system in the Deschutes Bend-Fort Rock District; the East Ochoco OHV trail system around Big Summit Prairie in the Ochoco National Forest; and the Heppner District Umatilla Forest's West End OHV trail system which would link a county OHV park with forest lands.

OHV proponents are jockeying to create systems that link routes throughout the region's public National Forests and BLM lands, spanning from the Wallow-Whitman through the Umatilla, Malheur and Ochoco forests, across BLM lands into the Deschutes, and on to the Willamette National Forest in a huge, somewhat disjointed, interconnected system of unenforceable dimensions and unfathomable harms. By designating official trail systems, OHV proponents are attempting to establish their noisy damaging

impacts to public forests as both acceptable and somehow “compatible” with natural recreation and environmental values.

. It is imperative that instead of pandering piecemeal in illegal segmented EAs for otherwise interconnected OHV systems, that federal agency’s adhere to their resource protection responsibilities and directives and take effective actions to reign in rampant OHV abuse, protecting the natural serenity and beauty of our public wildlands for those of us here today and the generations yet to come.

### ***Natural, LSR/Old Growth, & Unroaded Areas***

We are concerned that the proposed designated OHV trail system will negatively impact non-motorized recreation and values associated with natural old forests/LSR and unroaded areas in the vicinity. Old growth and unroaded areas of 1,000+ acres in size provide valuable natural resource attributes that must be protected. These include: water quality; healthy soils; fish and wildlife refugia; centers for dispersal and restoration of adjacent disturbed sites; reference sites for research; non-motorized, low-impact recreation; carbon sequestration; refugia that are relatively less at-risk from noxious weeds and other invasive non-native species, and many other significant values. Designating open trails in or adjacent to old growth, LSR, and/or unroaded areas will have detrimental impacts on water quality, soil health, vegetation, non-motorized recreation, and wildlife habitat. We ask you to consider how the proposal will impact these areas and come up with a plan that will keep OHVs out of these areas. Trails should not be designated adjacent to these areas, as this would likely cause OHV abuse within them, harming the natural values of the area.

### ***Need for Travel Management***

We are supportive of Forest Service efforts to prevent off-highway vehicle (OHV) use in sensitive areas, effectively regulate where use may occur and prevent harmful impacts, conflicts associated with OHV use, and to close and rehabilitate unnecessary and redundant forest roads and user-created routes. Consistent with Executive Orders 11644 and 11989 and applicable Forest Service regulations, it is our belief that OHV use is appropriate only where it can be demonstrated that such use will be controlled and directed so that it does not adversely affect forest resources or the safety of users of the national forest, and where it can be demonstrated that OHV use will not pose significant conflicts with residences and or other uses on the forest or adjacent public lands.

It is our hope that the greater Three Trails area and Crescent Ranger District forestlands will be managed for the benefit of all visitors and can be shared by all people who respectfully value and appreciate our public lands and national forests.

National forests as a whole experienced a dramatic increase in OHV use during the period 1982 to 2000. While there is no question that OHV use on many Forests increased markedly throughout the 1990s, it is important to note that the rate of OHV growth nationwide peaked in 2003 and no longer is growing. The reasons for the recent reversal of the OHV use growth curve are not well understood but have nonetheless been documented by the Powersports Business/Motorcycle Industry Council, the Outdoor Industry Foundation<sup>2</sup>, and Forest Service personnel associated with the National Survey on Recreation and the Environment.<sup>3</sup>

In light of this documented pattern — a trend likely to be continued and reinforced both by the current economic recession and the fluctuating fuel costs that recently rose and fell from, and may return to, \$4/gallon - the agency’s underlying premise of a need to accommodate ever-increasing levels of OHV

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<sup>2</sup> Outdoor Industry Foundation. *Outdoor Recreation Participation Study. Eighth Edition, for Year 2005. Trend Analysis for the United States.* June 2006.

<sup>3</sup> Schuster, R.; Cordell K.; Mitchell, J.; Betz, C.; Zarnoch, S. OHV Recreational Use in the United States. Paper presented at the 60<sup>th</sup> annual meeting of the Society for Range Management, February 2007.

user demand on the Deschutes National Forest is seriously questionable and largely unsubstantiated. However, the absence of upward pressure for OHV use on the Forest does little, if anything, to mitigate the upward spiral of the power, traction and maneuverability — and associated potential for causing adverse environmental impacts — being built into modern off-road recreational vehicles.<sup>4</sup>

Unmanaged and improperly managed motorized recreation on our National Forests is a serious, intensifying threat to the health and integrity of our National Forests. Moreover, such use increasingly conflicts with our National Forest's quiet-use recreationists, whether hunters, anglers, hikers, kayakers, rafters, or backpackers — many of which are represented by the staff and members of the signatories to these comments. Former Forest Service Chief Dale Bosworth succinctly demonstrated that unmanaged OHVs are a “major threat” affecting our nation's forests and should be “one of the highest priorities for the agency” when he stated:

Each year, the national forests and grasslands get hundreds of miles of unauthorized roads and trails due to repeated cross-country use. We're seeing more erosion, water degradation, and habitat destruction. We're seeing more conflicts between users. We have got to improve our management so we get responsible recreational use based on sound outdoor ethics. How do these threats affect outdoor recreation? As I said, our focus in the Forest Service is on protecting air and water, habitat for wildlife, scenery, and naturalness. That's what people come to the national forests to find—but increasingly they're not finding it. They're not finding it if forests are out of whack and unhealthy. They're not finding it if invasives and loss of open space are driving out our native species. And they're not finding it if stream banks are collapsed, trails eroded, and sensitive meadows degraded because we're not properly managing recreational use.

Dale Bosworth, USFS Chief, “Ensuring the Future of Outdoor Recreation,” Partners Outdoors, Snowbird, UT (Jan. 11, 2004).

As then Chief Bosworth explained above, the rapid expansion of motorized vehicle use damages our National Forests. Motorized vehicle use carves unlawful, unauthorized routes and trails into our National Forests, triggers erosion and water quality degradation, fragments and degrades wildlife habitat, and creates serious conflicts amongst the hunters, anglers, hikers, kayakers, rafters, backpackers, and other users of our National Forests. It is against this background that the Deschutes NF Three Trails OHV Project must be viewed.

### ***NEPA Analysis & Segmentation***

The Three Trails project is being improperly segmented from the Forest's larger travel planning process, and this project needs to be considered as part of that larger travel planning process which the Forest Service has required through its travel management rules. The Forest is only proceeding with this project because it anticipates closing the Forest to cross-country travel as part of its later travel planning process.

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<sup>4</sup> In 2005 Congressional testimony, former USFS Chief Bosworth stated that “[t]oday's [OHV] vehicles are also more powerful and more capable of off-highway travel than those of a decade ago.” Statement of Dale Bosworth concerning motorized recreational use of federal lands before the Subcommittee on Forests and Forest Health and The Subcommittee On National Parks, Recreation, of the United States House of Representatives' Public Lands Committee on Resources, July 13, 2005 at 4. He continued by noting that this new capacity is related to “[d]amage to water quality, erosion, loss of wildlife habitat, and introduction of invasive species jeopardize the health of the land, the sustainability of the use, and the opportunities people come to the national forests to enjoy.” *Id.* at 5.

Conversations with agency travel management planning staff disclosed that the Three trails project is being done in a separate EIS on an faster decision timeline because the agency is concerned that the Crescent District currently does not have designated OHV systems, and the Deschutes – Ochoco Travel Management Plan EIS would close much of the District to OHV use. Consequently planning staff wanted to designate trail systems in the Crescent District prior to the TMP EIS decision, so OHV users would have areas to go.

However, this cart before the horse process is legally non-compliant, for a number of reasons. Among these are:

- The limited scope of the Three Trails EIS fails to comprehensively address significant resource damage, ineffective enforcement, cumulative impacts issues, increased OHV use and abuse in and surrounding designated trail areas, and connected trail systems adjoining Districts and public and private lands.
- The Three Trails project is clearly a connected action with the larger Deschutes-Ochoco TMP EIS. The overarching analysis that will be developed in the TMP EIS is critical to assessing the full ramifications and impacts of the proposed Three Trails systems.
- By segmenting these analysis processes, and by putting Three Trails on an earlier analysis and decisional timeline, the requisite foundational analysis information in the TMP EIS will not be available for adequate inclusion in assessing the resource, impacts, cumulative, and enforcement issues necessary to arrive at an environmentally and legally sound decision for the Three Trails project.

Quite clearly, the Three Trails and other similar proposed OHV trail system projects are connected actions, must all either be included as part of the overarching Deschutes-Ochoco TMP EIS, or as subsequent analysis projects tiered to that EIS after analysis has been completed and a decision has been reached for Travel Management on the Deschutes and Ochoco National Forests. It is clear Three Trails and other similar OHV trail system projects may not legally reasonably precede the Deschutes-Ochoco TMP EIS; among these are Lava Rock, Three Trails, Meadows Lakes, Wake Butte, and potentially others in the Deschutes, and Summit in the Ochoco (and potential others).

Connected actions, the impacts of which must be considered in the same EIS, fall within one of three categories: Actions that “(i) Automatically trigger other actions which may require environmental impact statements; (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; or (iii) Are interdependent parts of a larger action and depend on larger action for their justification.” 40 C.F.R. § 1508.25(a)(1). Plainly the Three Trails project is part of the whole of the Forest’s travel planning process, and so must await that process so it can be considered together in that EIS. As stated by one court: “Quite simply, ‘( s)egmentation of a large or cumulative project into smaller components in order to avoid designating the project a major federal action has been held to be unlawful.’ We assume this same proscription would apply if an agency sought to evade its NEPA responsibility to consider programmatic environmental impacts. The existence of a comprehensive program with cumulative environmental effects cannot be escaped by disingenuously describing it as only an amalgamation of unrelated smaller projects. *National Wildlife federation v. Appalachian Regional Commission*, 677 F.2d 883, 890 (D.C. Cir. 1981) (citation omitted).

Instead, at present the agency has planned for separate EIS processes addressing OHVs, including the greater TMP analysis closing the forest to cross-country OHV travel, and separate NEPA processes for designated OHV systems. It may be that nearly concurrent EIS projects are needed – though this is legally and ecologically questionable. However, if so, the overarching Deschutes-Ochoco TMP EIS, including needed OHV closures, should be completed first; as the environmental analysis issues addressed, including cumulative impacts issues and effectiveness of agency trail systems regulation,

enforcement capabilities, restoration accomplishments and needs, and overall resource requirements and impacts will help set the necessary foundation for evaluating proposed localized systems such as Three Trails.

Additionally, given the agency's legal mandates to prevent resource degradation, directives to protect natural qualities and resources of our public lands, and to provide quality recreational experiences for all that are compatible with natural qualities; it is clear that the agency legally may issue an emergency closure prohibiting all cross-country OHV travel and all OHV travel on non-designated OHV routes and trails. An EIS is not needed for this urgently necessary legally and environmentally responsible action.

Following such closure, an EIS on Travel Management Planning, addressing environmental impacts from roads, OHVs (including snowmobiles), existing trail systems, and enforcement, regulation, and restoration needs must be conducted well-before proposals as extensive as Three Trails may legally considered. The agency has no mandate or requirement to provide OHV systems. It does have the legal responsibility to protect natural resources. Road density levels and impacts are already in excess of Forest Plan standards and wildlife threshold levels. These need to be reduced, with excess and resource damaging roads closed, removed, and restored to natural topography and vegetation. It would be a violation of the Deschutes LRMP, NFMA, and likely the ESA to add the additional significant detrimental impacts that would result from creating a designated OHV trail system as proposed, given that the agency has failed to address and rectify current resource harms and standards violations. Again an EIS is necessary to adequately address these significant issues. Segmenting Three Trails, other trail systems, and the overarching Deschutes-Ochoco TMP into separate, nearly concurrent NEPA processes only serves to deprive the public and decision-makers of requisite foundational analysis, and obfuscates the environmental significance of the cumulative impacts of the proposed Three Trails OHV systems in combination with other trail systems and OHV use areas throughout the Deschutes National Forest and on adjoining lands with connected trail systems. "Segmentation of a large or cumulative project into smaller components in order to avoid designating the project a major federal action has been held to be unlawful." [\*Park County Resource Council, Inc. v. United States Dept of Agriculture\*, 817 F.2d 609, 622 \(10th Cir.1987\)](#). The rule against segmentation was developed to insure that interrelated projects, the overall effect of which may be environmentally significant, not be artificially divided into smaller, less significant actions. [\*Taxpayers Watchdog, Inc. v. Stanley\*, 819 F.2d 294, 298 \(D.C.Cir.1987\)](#).

### ***The Forest Service Must Study the Direct, Indirect, and Cumulative Effects of the Proposed Action Along with Other Connected Actions in One EIS***

In addition to the proposed Three Trails OHV systems, there are a number of other OHV use areas with significant resource degradation impacts in the Crescent District. Additionally, there are connected user-created trails with other public and private lands adjoining the District, and with other Ranger Districts in the Deschutes National Forest. The series of segmented NEPA processes, slated to be completed before the Final EIS and ROD are concluded for Deschutes Travel Management, are additional agency actions that will further accommodate and facilitate OHV use into the Three Trails project area, the Crescent District, and in both localized and connected use areas throughout the Deschutes forest and adjoining lands. Conducting the Three trails analysis absent the completion of the Deschutes-Ochoco TMP EIS, and without jointly assessing connected agency actions, violates federal policy laws and compromises the natural resource values described in the Deschutes Land Resource Management Plan as amended, and in subsequent agency directives and management mandates.

NEPA requires agencies to study not only the direct and indirect impacts of their proposed actions, but also cumulative impacts that may occur along with prior, currently, or reasonable foreseeable actions. 40 C.F.R. § 1508.7; *Lands Council v. Powell*, 395 F.3d 1019 (9th Cir. 2005); *Klamath Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 993 (9th Cir. 2004). Here, the cumulative impacts of the many prior and foreseeable Forest Service actions related to OHV use, system trails and staging areas, trail systems

construction and/or reconstruction, trail openings, or otherwise facilitating OHV motorized use in the Three Trails project area and adjoining lands must be addressed in one EIS assessing the greater connected actions and overarching cumulative Travel Management action issues. And because those direct, indirect, and cumulative impacts on the Crescent District and throughout the Deschutes National Forest are already significant – as acknowledged by the agency in the need for both the Three Trails and TMP NEPA EIS analyses – these connected actions and effects need to be addressed fully in one environmental impact statement (EIS). “In determining the significance of a proposed action, an agency must consider whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impacts on the environment.” *Kern*, 284 F.3d at 1067 (Citing *Edwardsen v. U.S. Dept. of Interior*, 268 F.3d 781, 186 (9th Cir. 2001) and 40 CFR § 1508.25(a)(2)).

Since the combination of multiple agency actions, including changes in road and trail designations and use, trail systems construction and maintenance related to motor vehicle use throughout the Deschutes National Forest have and will continue to facilitate increasing OHV motorized use and associated direct, indirect, and cumulative impacts effects to soil, water quality, fisheries, vegetation, and wildlife habitat, this project requires the preparation of one comprehensive forest-wide environmental impact statement documenting and analyzing such cumulative effects.

***The Forest Service May Not Assess or Approve the Project Until It Has Completed the Deschutes-Ochoco Travel Management Plan***

In 2005, the Nez Perce National Forest dropped a proposal to open the last non-motorized segment of Divide Trail 505, between Blackhawk Mountain and the junction with Trail 504. The reason for dropping this premature proposal, as presented in the agency’s documentation, was the on-going and upcoming planning-level projects such as (1) the Forest Plan Revision, (2) the changes to the Roadless Area Conservation Rule, and (3) implementation of the 2005 Travel Management Rule.

The Three Trails Project OHV trail systems proposal is similarly premature, given that the overarching prerequisite Deschutes TMP EIS is only in its initial phase of analysis, and that related OHV system NEPA proposals are undergoing simultaneous yet illegally segmented analysis development. Conducting OHV trail systems planning across the Deschutes prior to completion of the foundational TMP NEPA analysis, which will facilitate widespread increased OHV motorized use and impacts, strongly indicates that the agency has made an arbitrary and capricious pre-analysis decision to keep significant portions of the Deschutes National Forest open to OHVs well before the Travel Management Plan has been completed despite resource issues that would warrant closure and significant cumulative impacts assessment.

***The Draft EIS must specifically consider the cumulative impacts from interconnection between motorized routes designated via the proposed action and alternatives and other existing or proposed reasonably foreseeable future actions.***

Motorized routes on the Deschutes and Ochoco National Forests and CRNG connect to others on adjacent national forests, BLM lands, State, County, and private roadways. For example, the Willamette National Forest will soon issue a decision record on OHV trails as part of the Santiam Pass OHV EA. OHV routes that connected with routes on the Deschutes National Forest were included in the Draft EA’s proposed action. On a landscape scale, the agency must address and disclose cumulative impacts issues that are likely to result from, or contribute to, the impacts of the proposed action and alternatives.

***One comprehensive EIS must assess and disclose the impacts resulting from and/or additive to this proposal upon and from adjacent lands. It must also disclose whether regional connective OHV routes are planned or proposed by other federal and state agencies and/or OHV user groups.***

Federal courts have recognized the significance of increased motorized trail use as a necessary component for environmental analyses relating to trail designations. Specifically, “the environmental significance of [the trail project] cannot be accurately assessed unless the potential for increased use resulting from the cumulative impact of the projected network of ORV trails planned for the [Ranger District] is carefully considered.” *Wash. Trails Ass’n v. United States Forest Serv.*;<sup>91</sup> see also *North Cascade Conservation Council v. United States Forest Serv.*<sup>92</sup> (“Within the NEPA scheme, however, any proposal adding to this ORV system that may adversely affect the environment must be examined in light of the entire existing system”). In conducting a cumulative effects analysis for the Deschutes and Ochoco National Forests and CRNG EIS, the Forest Service must provide detailed information about the present effects of past actions—whether or not those actions were subject to NEPA review at the time of the action. As the regulations note, “[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. Thus even a “minor” past action (i.e. one not subject to NEPA review at the time) must be analyzed in the cumulative effects review of a new proposed action.

### ***Connectivity with Other Proposed or Foreseeable OHV Routes***

On a landscape scale, the agency must address and disclose cumulative impacts issues that are likely to result from, or contribute to, the impacts of the proposed Three Trails OHV proposed action. Thus, the District must also disclose whether regional connective OHV routes are planned or proposed by other federal and state agencies and/or OHV user groups. The baseline for “environmental analysis that is the heart” of the NEPA process must “be accurate and complete.” In summary, the EIS as currently planned would fall far short of NEPA’s “hard look” requirements by ignoring the existing and potential future use of routes that extend beyond the project boundary.

Federal courts have recognized the significance of increased motorized trail use as a necessary component for environmental analyses relating to trail designations. Specifically, “the environmental significance of [the trail project] cannot be accurately assessed unless the potential for increased use resulting from the cumulative impact of the projected network of [OHV] trails planned for the [Ranger District] is carefully considered.” *Wash. Trails Ass’n v. United States Forest Serv.*;<sup>5</sup> see also *North Cascade Conservation Council v. United States Forest Serv.*<sup>6</sup> (“Within the NEPA scheme, however, any proposal adding to this [OHV] system that may adversely affect the environment must be examined in light of the entire existing system”).

### ***Scope of Cumulative Impact Analysis***

In conducting a cumulative effects analysis for the Three Trails OHV Project, the Forest Service must provide detailed information about the present effects of past actions—*whether or not* those actions were subject to NEPA review at the time of the action. As the regulations note, “[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. Thus even a “minor” past action (i.e. one not subject to NEPA review at the time) must be analyzed in the cumulative effects review of a new proposed action.

It follows that the effects of the following past, present, and foreseeable future actions must be considered in the cumulative effects analysis for the Three Trails OHV Project:

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<sup>5</sup> 935 F. Supp. 1117, 1123 (W.D. Wash. 1996).

<sup>6</sup> 98 F. Supp. 2d 1193, 1198 (W.D. Wash 1999).

- Road building;
- Creation of unauthorized, user-created routes;
- Siviculture activities;
- Dispersed camping;
- Soil erosion;
- Impacts to LSRs and old growth;
- Impacts to connective forest habitat;
- Water quality impacts;
- Wilderness values and unroaded areas
- Effects on listed species; and
- Lack of enforcement of road/route/trail designations, system connections with other systems, and foreseeable creation of illegal, user-created routes.

### ***Minimum Systems Regulations***

**The proposed action must address the “minimum system” regulation found at 36 CFR § 212.5(b)(1).** Should the Three Trails OHV Project proceed and the Forest Service develop and select an alternative that does not address the “minimum system” regulation, the agency would risk appeal and litigation as the process moves forward. Under the circumstances, we believe that the most appropriate course of action would be for the District to postpone the project NEPA analysis until such time as the requisite travel analysis and the accompanying report is completed and shared with the public. At a minimum, this would include development of an alternative that complies with the “minimum system” regulation, is both ecologically and fiscally sustainable given current and anticipated funding levels, and includes a detailed plan for monitoring, mitigation, and enforcement—including “conditional decisions” which would grant the authority to take effective action to address violations of standards uncovered during subsequent monitoring and enforcement without having to complete additional analysis.

### ***Impacts to Wildlife***

The proposed OHV routes traverse throughout a significant extent of public lands that contain habitat for Endangered Species Act (ESA)-listed terrestrial and avian wildlife species, and federal and state regional wildlife and avian species of concern. The analysis must adequately disclose current status information on these and other affected species including other wildlife species that historically have existed, and may presently occur, in the planning area. The analysis must adequately address the likely direct and cumulative impacts from OHVs, related management actions, and other area management projects upon these and other wildlife and avian species.

### ***Conclusion***

Thank you for the opportunity to submit comments on the Three Trails OHV Project. Unfortunately, notwithstanding clear evidence of the Forest’s good-faith efforts to eventually implement the Travel Management Rule closing the forest to cross-country OHV travel, as we have outlined there are a number of areas where this proposal has fallen short of the substantive mandates imposed by the applicable Executive Orders as well as federal environmental policy laws and the Agency’s own regulations. We also understand the political realities the Crescent District is facing given the lack of designated systems in the area, current use levels and accustomed expectations, and the plan to soon close the forest to OHV use except in designated areas. We encourage the agency to incorporate our recommendations to better protect ecologically valued areas from OHV harms. Additionally, we welcome a meeting with Forest decision-makers and planning staff to

discuss specific points or provide clarification of our recommendations. As the comment period has been extended, we will be sending in additional comments by or before March 27, 2009.

Sincerely,



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*And on Behalf of:*

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