

February 2, 2009

Umatilla National Forest
Heppner Ranger District
P.O. Box 7
Heppner, OR 97836

SENT VIA EMAIL TO: comments-pacificnorthwest-umatilla-heppner@fs.fed.us

RE: West-End OHV Project Draft Environmental Analysis

To Whom It May Concern:

Thank you once again for the opportunity to participate in the West-End OHV Project. We ask that you please include this letter in the public record for the Project and that our organizations be kept apprised of all relevant actions. Throughout this letter, reference is made to our scoping comment letter sent to the Heppner Ranger District and dated March 14, 2008.

It is our understanding that the Travel Plan project area comprises about 91,000 acres of National Forest System lands located on the west side of the Heppner Ranger District (Heppner RD) west of Forest Road 22 (Morrow County Road 67/Grant County Road 3) and consists of portions of the Upper Rock Creek, Wall Creek, and Lower John Day River-Kahler Creek watersheds.

I. Introduction

With a strong membership base of individual hikers and hiking clubs, the **American Hiking Society** promotes and protects foot trails and the hiking experience. We represent more than half a million outdoors people and serve as the voice of the American hiker. As a long-time advocate and partner of the U.S. Forest Service, American Hiking has a strong interest in the outcome of the West-End OHV Project and its effect on the hiking experience throughout the planning area.

Founded in 1991, **Blue Mountains Biodiversity Project** monitors four national forests and one Bureau of Land Management district in eastern and central Oregon. We act to protect biodiversity and ecological integrity and address root causes of ecological and community instability.

Grant County Conservationists have been active in the Blue Mountains of Eastern Oregon for over thirty years, have a six-person board of directors and a net work of long-time community members – some are professionals with the Forest Service or state agencies, others are teachers, independent contractors, etc. Our Keystone Project is well

known for its advocacy on behalf of keystone species such as beaver, bull trout and salmon.

The **Oregon Chapter Sierra Club** has nearly 24,000 members statewide, including the Club's Juniper Group, which has over 1,000 members throughout eastern Oregon . We have a strong interest in public lands protection and restoration. We are a non-profit member-supported public interest organization that promotes the conservation of Oregon's natural environment. The Sierra Club has a long-standing and well-documented interest in the management of public lands forests in Oregon, including the Umatilla.

Founded in 1974, **Oregon Wild** works to protect and restore Oregon's wildlands, wildlife and waters as an enduring legacy for all Oregonians. Oregon Wild (formerly the Oregon Natural Resources Council or ONRC) has been instrumental in securing permanent legislative protection for some of Oregon's most precious landscapes. Our enjoy visiting national forests such as the Umatilla, to undertake a wide variety of quiet recreational activities. Oregon Wild has a long-standing interest in the management of the waters, wilderness, wild and scenic rivers, and national forests in Oregon, including the Umatilla.

II. Need for Travel Management

We are supportive of Forest Service efforts to better regulate off-highway vehicle (OHV) use in sensitive areas, minimize 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 West-End Heppner Ranger District—and the variety of recreational experiences it has to offer—will be managed for the benefit of all visitors and can be shared by all users who value and appreciate of 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 Foundation¹, and Forest Service personnel associated with the National Survey

¹ Outdoor Industry Foundation. *Outdoor Recreation Participation Study. Eighth Edition, for Year 2005. Trend Analysis for the United States.* June 2006.

on Recreation and the Environment.² In light of this documented pattern — a trend likely to be continued and reinforced both by the current economic recession and the return to \$4/gallon fuel costs upon the return of a better economy — the EA’s premise of a need to accommodate ever-increasing levels of OHV user demand on the Umatilla National Forest is called into serious question (*see, e.g.*, EA pp. 1-3, 1-13). 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.³

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 this letter. Former Forest Service Chief Dale Bosworth succinctly demonstrated that unmanaged OHV is 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 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,

² Schuster, R.; Cordell K.; Mitchell, J.; Betz, C.; Zarnoch, S. OHV Recreational Use in the United States. Paper presented at the 60th annual meeting of the Society for Range Management, February 2007.

³ 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.

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 Heppner RD West-End OHV Project must be viewed.

III. The Forest Service Failed to Prepare an Environmental Impact Statement

As a threshold matter, the Forest Service is violating the National Environmental Policy Act (NEPA), and NEPA's implementing regulations promulgated by the Council on Environmental Quality (CEQ), by relying on an EA rather than an Environmental Impact Statement (EIS). Given the complexity of the route designation process and the long-term consequences of designating a huge network of routes to other forest users and the environment, an EIS is required.

NEPA requires an EIS for all "major Federal actions significantly affecting the . . . human environment." 42 U.S.C. §4332(2)(C). Where an EIS is not categorically required, the agency may prepare an EA to determine whether the proposed action *may* have a significant environmental effect. *See Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001) (*citing* 40 C.F.R. § 1501.4). "If the EA establishes that the agency's action *may* have a significant effect upon the . . . environment, an EIS must be prepared." *Id.* Furthermore, an EIS must be prepared if "substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor." *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998) (quotation omitted). "To trigger this requirement a plaintiff need not show that significant effects will in fact occur, raising substantial questions whether a project may have a significant effect is sufficient." *Id.* at 1150. A decision not to prepare an EIS must be supported by a "convincing statement of reasons" demonstrating why the project's impacts are insignificant. *Blue Mtns Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

The term "significant" has two components: context and intensity. 40 C.F.R. § 1508.27. These components are considered by the Ninth Circuit in determining whether an EIS should have been prepared. *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004). Context refers to the setting in which the proposed action takes place, in this case a National Forest in Idaho and, in the case of user-created routes that the Forest Service wants to incorporate into the designated route system, the immediate environs, such as watershed, that the route is located within. *Id.* § 1508.27(a). Intensity means "the severity of the impact." *Id.* § 1508.27(b). The Ninth Circuit has held that if an agency's "action is environmentally 'significant' according to *any* of these criteria," then the agency violated NEPA if it failed to prepare an EIS. *Public Citizen v. Dept. of Transportation*, 316 F.3d 1002, 1023 (9th Cir. 2003) (emphasis original), *rev'd on other grounds*, 540 U.S. 1088, 124 S.Ct. 2204 (2004), *citing National Parks Conservation Assn. v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001).

The very fact that the EA is approximately 150 pages in length undermines any contention that the Forest Service's actions are not significant. *See, e.g., National Audubon Soc'y v. Hoffman, National Audubon Society v. Hoffman*, 917 F. Supp. 280, 287 (D. Vt. 1995). The CEQ has stated that “[w]hile the regulations do not contain page limits for EA’s [sic], the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages...In most cases...a lengthy EA indicates that an EIS is needed.” 46 Fed. Reg. 18,026, 18,037 (1981) (NEPA’s Forty Most Asked Questions: 36(a) and (b)). While the Forest Service may argue that the length of the EA should not be held against the agency, such an argument is contrary to CEQ’s guidance and should be rejected. Moreover, an agency may not avoid the environmental analysis and public participation requirements simply by preparing a lengthy EA; NEPA and CEQ regulations do not allow it. The federal Court of Appeals for the Ninth Circuit has held:

No matter how thorough, an EA can *never* substitute for preparation of an EIS, if the proposed action could significantly affect the environment. We stress in this regard that an EIS serves different purposes from an EA. An EA simply assesses whether there will be a significant impact on the environment. An EIS weighs any significant negative impacts of the proposed action against the positive objects of the proposal. Preparation of an EIS thus ensures that the decision-makers know there is a significant risk of environmental impact, and take that impact into consideration.

Anderson v. Evans, 371 F.3d 475, 494 (9th Cir. 2004) (emphasis added).

More fundamentally, beyond the length of the EA, it is difficult to understand how the designation of an extensive route network on the Umatilla National Forest will *not* cause significant impacts to the environment; the very nature of the decision cries out for an EIS. We provide additional site-specific examples at the end of this letter.

IV. Comments Regarding the Draft EA

While we understand and support the need to designate routes within the Forest to accommodate motorized uses, the **Draft EA fails to disclose the fact that the largest unmet demand in trail-based recreation throughout Oregon is for hiking, biking, backpacking, horseback riding and walking/running.**⁴ Given that the West-End Heppner Ranger District currently has *no* trails designated for non-motorized uses, we are disappointed that the Draft EA lacks current statistics for projected recreational demand and current recreation participation on the Forest for all relevant recreational activities. **The Draft EA does not define actions to be taken in response to these trends in recreational use and fails to disclose how the designation of motorized routes in the plan area would affect the current unmet demand for non-motorized forms of trail-based activities.**

⁴ Statewide Comprehensive Outdoor Recreation Plan: 2003-2007. Oregon State Parks and Recreation Department.

1. The Draft EA Fails to Eliminate Damaging Cross-Country Motorized Travel

The Forest's proposed action (Alternative 2) includes a number of positive OHV management reforms, most notably the elimination of cross-country motorized travel. Consistent with direction contained within the 2005 Travel Management Rule⁵, the Forest proposes to amend the Forest Plan to rescind the motorized use "Open" designation for large portions of the forest (about 61,000 acres in total) where motorized cross-country travel currently is allowed. This change would make it illegal for OHVs to travel anywhere on the Forest other than on routes designated for motorized use. **We enthusiastically support the proposed Forest Plan amendment to eliminate cross-country motorized travel and view this as a timely and much-needed management reform.** The proposed action, however, allows unnecessarily broad exceptions to the prohibition of off-road travel. These exceptions are described below.

Exceptions for Dispersed Camping and Wood Gathering

The proposed action and Alternative 3 would allow exceptions to the prohibition on cross-country motorized travel for the purpose of dispersed camping and firewood gathering. The Draft EA states:

OHV travel from an open road up to 300 feet laterally for camping or wood gathering is allowed, provided that travel over or around a physical road-closure device is not required (p. 2-5, Proposed Action; p. 2-7, Alternative 3)

The Draft EA does not indicate whether this exception would apply also to Alternatives 4 and 5. Moreover, the EA analysis contains only a single reference to this blanket exception (p. 3-52, Direct and Indirect Effects) and the reference does not represent analysis of the proposed policy but, instead, represents merely a listing of elements of the proposed action. The omission and the lack of disclosure in the EA regarding the potential environmental impact of the exception to the ban on motorized-cross country travel represents a serious deficiency in the EA analysis..

We believe that allowing exceptions for both dispersed camping and wood collecting would serve to undermine the intent of the Travel Management Rule's prohibition on cross-country motorized travel and, because of the largely open and readily-accessible nature of the terrain in the Heppner RD West-End, would result in potentially significant and adverse impacts to cultural and natural resources. That is why we were compelled to include the following request in our 3/14/08 scoping letter:

If cross-country exceptions are incorporated into the Proposed Action, then extensive environmental analysis under NEPA would need to be completed on all lands affected by the exception. This analysis would include a complete ecological,

⁵ 36 CFR § 212, *et seq.*

cultural, archaeological, and historical site survey of the cross-country exception zone surrounding each motorized route

Indeed, guidelines issued by the Pacific Northwest Regional Office⁶ state that the presence of sensitive biological and cultural resources may warrant less than a 300-foot exception for off-road travel. The West-End project area contains many such sensitive resources, including riparian areas and wetlands, old growth habitat, creeks containing sensitive fish populations, a Research Natural Area, and Big Game Winter Range. **But the Draft EA fails to disclose how such resources might be affected by a policy that would allow unrestricted off-road travel within what constitutes a 600-foot-wide corridor centered along each designated route.**

Were the Heppner RD to have applied the assumption stated on p. 3-13 of the Draft EA that current OHV management (Alternative 1) “does not provide *any* areas of non-motorized influence due to cross country travel occurring throughout the project area,” (emphasis added), it would have found that the allowance for wood gathering and camping-related cross-country motorized travel under the proposed action has the potential to adversely affect up to 21,000 acres of lands adjacent to designated roads and trails under the proposed action.⁷ **Such earth-disturbing activity could represent a potentially significant and adverse impact to forest resources over time (e.g., soils, vegetation, wildlife habitat, etc.) to a degree that we believe can only be addressed via an Environmental Impact Statement (EIS).**

Many roads within the Heppner RD are within 300 feet of fish-bearing streams and sensitive riparian and wetland habitat. In addition, drivers of four-wheel drive trucks could interpret the exceptions to off-road travel as allowing them to ford active rivers and creeks, if not travel within the creek bed itself (i.e., rockcrawling within the stream course). By granting a blanket exception to restrictions on off-road travel, the Forest Service may unwittingly condone otherwise illegal behavior. Consequently, **we recommend the Forest planning team reassess these potential impacts and grant dispersed camping and firewood gathering exceptions sparingly and only where warranted by site-specific conditions. We recommend that the exception not be allowed in areas adjacent to unroaded areas, riparian habitat or other sensitive locations such as old growth habitat, and the Research Natural Area. We also recommend that the project’s NEPA documentation contain a caveat (i.e., adaptive management) that would prohibit this type of off-road access in the absence of adequate monitoring and enforcement to ensure that resource damage is not occurring as a result of site-specific allowances for off-road travel related to dispersed camping and wood gathering.**

Exceptions for Game Retrieval

Although not mentioned in the project EA, conversations with Forest staff have revealed that exceptions to the prohibition on cross-country motorized travel would be allowed

⁶ R6 Guidelines, Implementation of the Travel Management Rule. September 6, 2006

⁷ Proposed action’s 290 miles road/trail x 5,280 ft./mile x 600 ft. corridor; divided by 43,560 sq. ft./acre

during the hunting season for retrieval of big game. **The EA fails to disclose the proposed policy for vehicle-assisted game retrieval and whether it would apply to a distance of 300 feet (as measured from either side of a designated motorized route) or greater. Further, the EA is absent any description of the potential environmental impact of the game retrieval policy.** There is growing consensus from land management agencies that a game retrieval policy for off-road travel is simply unworkable and unenforceable⁸ and **the Draft EA is deficient by not disclosing this fact and provide analysis of its proposed game retrieval policy.**

In summary, we believe that granting blanket exceptions for off-road travel—whether it would be for purposes of wood collection, dispersed camping, or game retrieval—would make analysis and disclosure of the cumulative impacts of the Proposed Action nearly impossible. Consequently, for this reason alone **we believe that the Heppner RD should seriously consider limiting the temporal and geographic scope of any blanket exceptions. If not, we do see how the West-End OHV Project can be approved via a Finding of No Significant Impact.**

Executive Orders 11644 and 11989 create an obligation for the agency to minimize the adverse effects of OHV use, including damage to soil, watershed, and vegetation, minimize harassment of wildlife or habitat, and minimize conflicts with existing uses, as well as closing routes if the authorized officer determines that OHV use has resulted, or may result, in “considerable adverse effects.” **Thus it is incumbent on the Forest Service—particularly given the lower threshold used in EA-level analysis—to demonstrate via the West-End OHV Project’s NEPA analysis that OHV use does not have the potential to result in considerable, or potentially significant, adverse effects.**

2. The Draft EA Fails to Disclose Cumulative Impacts

The Forest Service’s decision to limit the geographic scope of its cumulative impacts analysis to address only the private Morrow County OHV Park, and not to address the ramifications of designating OHV roads and trails that lead to adjacent Bureau of Land Management (BLM) lands and other routes on the Heppner RD that can be accessed via Forest Road 22 (Grant County Road 3/Grant County Road 3), violates NEPA’s “hard look” requirements. NEPA is our “basic national charter for protection of the environment.”⁹ The statute’s twin objectives are to ensure that federal agencies “consider every significant aspect of the environmental impact of a proposed action” and to “inform the public that it has indeed considered environmental concerns in its

⁸ See, for example, the October 2008 Draft Environmental Impact Statement (DEIS) by the Bureau of Land Management for neighboring lands in the John Day Basin that contains several admissions to the fact that users will continue to violate restrictions on OHV use (DEIS, pp. 312-314 and 466-467).

⁹ 40 C.F.R. § 1500.1(a).

decisionmaking process.”¹⁰ “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”¹¹

To satisfy NEPA, the Forest Service must demonstrate it has taken a “hard look” at the environmental consequences of the proposed action.¹² By focusing agency and public attention on the environmental effects of proposed agency action, “NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.”¹³

Linkages with Roads on Nearby Public Lands

The following statement on p. 3-7 of the Draft EA is misleading:

There are several locations along the project boundary that are administered by the Bureau of Land Management. None of these areas have roads or designated OHV trails that are connected into the proposed Forest Service designated trail system.

At least two Forest roads and one trail proposed for OHV use in the Draft EA link with existing roads on BLM lands located along the eastern boundary of the plan area. These routes, Forest Rd. 23 (Big Wall Creek), Forest Rd. 24 (Indian Creek), and Trail 225 link to Forest Rd. 22 which provides access to a number of existing roads located within a large block of contiguous BLM lands located immediately to the east. At present, many of these BLM-administered roads are closed. However, the outcome of a current BLM planning effort could change this, as described below. Moreover, Forest Rd. 22 provides linkages to other Forest roads located immediately east of the OHV plan area, including several roads providing access to neighboring BLM lands. For example, Forest roads administered by the Heppner RD and traversing Little Wall Creek and Lovlett Creek connect directly with existing roads on BLM land.

The BLM planning effort for neighboring public includes a proposal to open several currently closed roads that would link with roads proposed as open to OHV use in the proposed action for the Heppner RD West-End OHV Draft EA. A map of the BLM proposal is shown on pp. 170-171 of the BLM Prineville District Office *Draft John Day Basin Resource Management Plan and Environmental Impact Statement, Volume I, Chapters 1-5* (October 2008). The map, labeled as Map 14F: Alternative 3, Travel Management and Off-Highway Vehicle Designations – North Fork John Day, depicts several currently closed roads proposed as “open road seasonally” that would link with the aforementioned roads in the Heppner RD. **The BLM proposal represents a**

¹⁰ *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1153–54 (9th Cir. 2006) (citing *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir. 2002)); *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983). See also 40 C.F.R. § 1500.1(b), (c).

¹¹ *Id.* § 1500.1(b).

¹² *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 864 (9th Cir. 2005); *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002) (quoting *Marsh v. Ore. Natural Res. Council*, 490 U.S. 360, 374 (1989)); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989).

¹³ *Marsh*, 490 U.S. at 371 (quoting 42 U.S.C. § 4321 and 40 C.F.R. § 1502.9(c)).

reasonably foreseeable future action that should have be addressed in the Draft EA’s analysis of cumulative impacts.

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 West-End OHV proposed action. Thus, **the Heppner RD must also disclose whether regional connective OHV routes are planned or proposed by other federal and state agencies and/or OHV user groups.** By failing to include in the Draft EA maps showing existing roads and user-created OHV routes located on BLM lands surrounding the project area, a false impression is created that few, if any, potential motorized routes exist outside the project boundary. **As such, the Draft EA’s analysis appears to be based on flawed, inaccurate, or incomplete information.** Yet the baseline for “environmental analysis that is the heart” of the NEPA process must “be accurate and complete.”¹⁴ In summary, **the Draft EA violates NEPA’s “hard look” requirements by ignoring the existing and potential future use of routes that extend beyond the project boundary.**

As stated in our 3/14/08 scoping letter, 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.*;¹⁵ *see also North Cascade Conservation Council v. United States Forest Serv.*¹⁶ (“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 West-End 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 West-End OHV Project:

¹⁴ *Ctr. for Biol. Diversity*, 422 F.Supp.2d at 1163 (citing *Vermont Yankee Nuclear Pwr. Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 553 (1973)). *See also Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988) (“without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA”).

¹⁵ 935 F. Supp. 1117, 1123 (W.D. Wash. 1996).

¹⁶ 98 F. Supp. 2d 1193, 1198 (W.D. Wash 1999).

- Road building;
- Creation of unauthorized, user-created routes;
- Sviculture activities;
- Livestock grazing;
- Dispersed camping;
- Soil erosion;
- Water quality impacts;
- Wilderness values (including effects on the adjacent North Fork proposed Wilderness Study Area located on Bureau of Land Management lands),
- Effects on listed species (particularly steelhead and bull trout); and
- Lack of enforcement of road/route/trail designations and foreseeable creation of illegal, user-created routes.

3. The Draft EA Fails to Address “Minimum System” Regulations

The proposed action and other action alternatives analyzed in the Draft EA fail to address the “minimum system” regulation found at 36 CFR § 212.5(b)(1). As stated in our scoping letter, should the West-End OHV Project proceed and the Forest Service 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 Heppner RD 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.

4. Route Density Standards Used in the Draft EA are Inadequate

It is our understanding that road density figures presented in the Draft EA represent only those roads and trails proposed for OHV use, and that the EA does not include, analyze, or disclose the total densities of all currently existent open and closed routes not proposed for OHV use but nonetheless present on the landscape. If correct, **this approach would seem needlessly myopic and, in our view, further places the EA far outside NEPA’s threshold for the adequate analysis of cumulative impacts.** As it stands, the use of route density standards in the EA does not comport with full disclosure of environmental impacts associated with the project alternatives, including no action.

Our preliminary estimates of road density in the project area range from 1.5 miles per square mile (on the relatively unroaded east side of the planning area, east of Hwy 207) to greater than 5 miles per square mile in higher density road section locations across the

area, with an average of 3.5 to 4 miles of closed and open roads per square mile. These calculations do not take into account the effects of unauthorized, user-created OHV routes.

Applying route density standards is consistent with the Forest Service's duty to address impacts, in particular cumulative impacts, in the proper "context" to determine those impacts' significance.¹⁷ In so doing, the Forest Service would have an informed means of determining whether or not agency actions comport with other substantive legal obligations, e.g., to "provide for diversity of plant and animal communities...."¹⁸

Accordingly, **we believe that route density calculations in the project NEPA documentation should include *all motorized routes* – whether classified as closed, a "road" or "trail," and whether "authorized" or "unauthorized."**

5. The Draft EA is Deficient in its Analysis of Project-Related Impacts to Wildlife

The Draft EA proposes to designate OHV routes 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 Draft EA fails to adequately disclose current status information on the species noted below and other wildlife species that historically have existed, and may presently occur, in the planning area. The analysis fails to 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. The Draft EA also proposes to designate OHV trail systems without adequately assessing direct and cumulative impacts to listed and species of concern in the area. The EA fails to meaningfully address recovery objectives for federally listed species and regional species of concern, and incorporate effective management provisions to ensure OHV activity and use of the Forest travel system does not prevent or diminish recovery of affected wildlife and avian species in the greater West End planning area.**

Under the proposed action and Alternatives 3-5, there are many associated impacts and issues both incrementally and irretrievably affecting the habitat quality and connectivity, and the viability of ESA and state-listed species and regional species of concern that have not been sufficiently disclosed or addressed in the Draft EA. Among these are direct OHV intrusions into and near important hiding and rearing cover and refugia; as well as noise, exhaust, dust, and disturbance extending throughout much of the area's forest habitat. OHVs also irreparably impact soils, detrimentally affecting hydrology and soil subsurface communities - which play foundational roles in the forest food chain upon which many species depend. OHV use also harms native plant species abundance, distribution, and growth, and introduces and spreads invasive exotic plants, affecting

¹⁷ 40 C.F.R. § 1508.27

¹⁸ 16 U.S.C. § 1604(g)(3)(B)

available foraging and sustenance for numerous wildlife and avian species. OHV impacts over time are likely to result in diminished populations and altered distributions of native prey species, affecting many other larger wildlife and avian species throughout the forest ecosystem. Imperiled species such as wolverines, lynx, marten, eagles, goshawks, great gray owls, and others are known to potentially exist in the project area, with the potential for both territorial as well as transitory refugia and foraging habitat.

Wolves have been documented returning to the greater northeastern-central area of Oregon. **The Draft EA fails to adequately address the potential direct and cumulative impacts of the proposed OHV trail systems to these and other species of concern.** The OHV route system and associated management provisions may delay, hinder, or otherwise impede recovery of these ESA, state, and regional listed protected wildlife species and species of concern. These and other species of concern are also addressed in more detail in **Appendix A**. The project NEPA documentation needs to be revised, to disclose and address likely and potential direct and cumulative impacts to these and other species, with provisions incorporated within proposed alternatives for the recovery, protection, and sustainable viability of federal and state listed wildlife species and regional terrestrial and avian species of concern.

See **Appendix A** for a detailed summary of our concerns and issues related to species and species type in the Heppner RD West-End OHV Project area.

6. The Draft EA Fails to Disclose Current Forest Plan Designations for Semi-Primitive Non-Motorized Recreation Use in the Heppner Ranger District

The Draft EA does not include a map of current Recreational Opportunity Spectrum classifications for forest lands within the planning area, as found in the currently approved 1990 Land and Resource Management Plan (Forest Plan). As stated in our scoping letter, the project NEPA analysis should identify and summarize the extent of motorized routes, if any, that currently cross or are located within lands identified in the Forest Plan as Semi-Primitive Non-Motorized (SPNM) areas. Forest Plans and agency policy generally prohibit motorized use in these areas,¹⁹ but in situations where they do not expressly forbid it, we believe that these areas should not contain designated motorized routes. **Thus, project NEPA documentation must also identify routes proposed to be designated for motorized use that occur within the SPNM classification, if any, while providing a rationale for the need to designate each route. The justification should be accompanied by a description of the environmental consequences of the corresponding decrease in the Forest Service's ability to provide SPNM recreational settings where the public would otherwise have enjoyed relatively quiet and motor-free recreational experiences.** Motorized use conflicts with SPNM management objectives, which are to provide isolation from the

¹⁹ FSM 2311.11 – Exhibit 2

sights and sounds of humans while promoting tranquility, and self-reliance through the application of outdoor skills.

7. The Draft EA is Deficient in its Analysis of Project-Related Impacts to Unroaded Areas and Roadless Values

The Draft EA does not adequately analyze potential impacts resulting from the proposed action and alternatives as they effect the preservation of existing unroaded areas in the West-End Heppner RD. In its March 11, 2008, scoping letter, Oregon Wild stated concerns about the project's impacts to large unroaded areas within the West-End Heppner RD. The unroaded areas they identified included the Mahogany Butte (2,994 acres), Keith Canyon (2,226 acres), Wildhorse Spring (2,047 acres), Thorn Spring (3,032 acres), Tamarack Creek (2,245 acres), Bologna Basin (2,330 acres), Happy Jack (4,313 acres), Dry Creek (2,371 acres), Willow Springs (1,872 acres), Turner Mountain (5,120 acres), and Indian Creek/Hall Haven (1,190 acres) areas. (See map provided in 3/11/08 letter). Proposing open motorized routes within and adjacent to these unroaded areas would compromise unroaded values such as wildlife corridors and habitat, high water quality, refugia of native vegetation, and non-motorized recreation opportunities.

We have significant concerns related to several proposed OHV trail segments that would cut into these existing unroaded areas. Further, we remain opposed to the Forest Service designating as open to OHV use roads and trails that serve to fragment these landscapes. For example, several action alternatives and the proposed action include development of a substantial stretch of designated new year-round trail along the ridgetop of the Keith Canyon roadless unit. This proposed trail and the unacceptable impacts it would impose on area wildlife, habitat and non-motorized recreational opportunities would far exceed any anticipated benefits of providing OHV "loop" opportunities as a result of closure to Forest Rd. 24/022 to non-street legal OHVs. **Yet the Draft EA does not describe in sufficient detail the impacts of this and similar trails to the values of currently unroaded areas. Alone, this proposal represents a potentially significant adverse and unmitigable impact. Combined with other roads and trails designated for OHV use within or in close proximity, the potential impact to unroaded ecological values found in this area appear significant, and warrant further NEPA analysis and disclosure.**

8. The Draft EA Fails to Disclose a Proposed Route Closure and Restoration Schedule

The Draft EA lacks a description of Forest Service plans regarding the closure and obliteration of existing routes that are not included in the final road and OHV trail system. Presumably, there are many such routes given that Table 2-7 of the Draft EA (p. 2-19) identifies a total of 430 miles of currently closed roads, some of which would be designated for use by OHVs under the proposed action and alternatives 3-5. In addition, the plan area contains hundreds of miles of unauthorized user-created OHV routes. The

Draft EA states that “user-created trails would be eliminated” (p. 3-68) but gives no details regarding the timing and methods of the proposed route obliteration.

The agency’s ability to effectively monitor and enforce compliance with its designated route system is predicted upon its ability not to tempt riders from venturing off the system. Unfortunately, many of the agency’s decisions to close roads in the plan area to date have not been followed by actions to physically discourage use by OHVs (i.e., placement of physical road-closure devices to prevent OHV passage; or ripping, recontouring and revegetation of the road surface). **By not disclosing in the EA details of the closure, restoration and/or decommissioning of these surplus routes, the public has no information by which to gauge the likelihood of rider compliance with the designated route system. Conversely, the public has no information to gauge the likelihood of riders straying from the designated system to traverse otherwise closed routes or the magnitude of potential environmental impacts that could result from such ongoing transgressions.**

To put these numbers into context, under the proposed action *at least* 223 miles of existing roads and an unquantified but large amount (at least 78 miles) of non-system, user-created routes, while technically closed to motorized recreation use, would remain on the landscape as a result of the proposed action, and are thus vulnerable to unlawful motorized recreational use and would continue to impact the environment. These impacts could include such things as accelerated soil erosion or contributing to the spread of invasive weeds; increased opportunities for poaching and/or harassment of wildlife, including big-game habitat; creating conflicts with traditional (i.e., non-motorized) forms of recreation. The adverse impacts created by the continued presence of user-created routes are potentially significant because such routes were never properly authorized through a route designation process or via NEPA and were never designed in light of proper engineering or safety standards. Consequently, **the project NEPA documentation must include a plan for route closure that would include a timeline, budget commitment, and restoration strategy for all routes considered surplus and not necessary for administrative purposes. If the Heppner RD considers maintaining all non-designated routes as necessary for administrative purposes, the project NEPA documentation must include a statement to that effect and the potential environmental impacts of its decision must be analyzed and disclosed.**

9. The Draft EA Failed to Consider a Range of Reasonable Alternatives

The Draft EA failed to consider reasonable alternatives designed to meaningfully protect the Heppner RD’s natural resources, in particular clean water, wildlife, and wildlife habitat, and therefore violated NEPA and the CEQ regulations. Instead, the Forest Service considered four management alternatives that, collectively, failed 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.

This is because the route designation process employed by the Forest Service – as demonstrated by the inadequate range of alternative – omits consideration of key travel planning elements implicated by the 2005 Travel Management Rule, most notably the restoration of lands scarred by high motorized route densities and the proliferation of user-created routes. These high route densities, and the proliferation of user-created routes, have operated to degrade the environment, significantly reduce wildlife refugia, and preclude a quiet-use recreational experience. The Forest Service has, however, turned a blind eye to this record of harm and developed a proposal that heavily emphasizes motorized recreation in the West-End Heppner RD. To ensure compliance with NEPA and the CEQ regulations, the Forest Service must therefore:

1. Consider alternatives that would aggressively reduce overall route densities within acceptable science-based ecological limits across the entire plan area;
2. Consider alternatives that would determine how best to physically close, decommission, and obliterate unnecessary or unacceptable routes, in particular unauthorized, user-created routes;
3. Consider alternatives that would not only reduce route densities, but entirely eliminate routes within key areas to protect environmentally sensitive watersheds and wildlife habitats and minimize user conflicts by establishing quiet-use recreation areas; and
4. Consider alternatives that would not have provided exceptions from the prohibition of motorized cross-country travel for purposes of dispersed camping, firewood gathering and game retrieval.

These recommended elements of the range of alternatives provide the Forest Service with an opportunity to forthrightly confront otherwise “unresolved conflicts” concerning the management and use of the Heppner RD. 42 U.S.C. § 4332(E). Regardless, **because these elements are “reasonable” and “viable,” the Forest Service’s failure to consider them renders the EA unlawful.** *Muckleshoot Indian Tribe v. Forest Service*, 177 F.3d 800, 814 (9 Cir. 1999); *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1065 (9 Cir. 1998).

10. The Draft EA Fails to Evaluate Alternatives in Terms of the Agency’s Ability to Implement, Monitor and Enforce Compliance with the Designated Route System

As described above, in order to support a reasoned and informed decision regarding the West-End OHV Project, it is our belief that the Forest Service must provide documentation of its ability to effectively monitor and enforce compliance with a designated OHV route system. **Yet the Draft EA lacks any meaningful discussion of its ability to implement, monitor and enforce compliance with the proposed route system. Nor is mention made of current challenges associated with monitoring and enforcing rider compliance on the hundreds of miles of designated motorized routes located within other portions of the Heppner RD, within other ranger districts on the Umatilla National Forest or neighboring Wallowa-Whitman National Forest, or**

on lands located immediately east of the West-End OHV Plan area that are managed by the BLM.

The analysis in the Draft EA appears to be predicated on the assumption that OHV users will comply willingly with proposed restrictions on cross-country travel and use only routes designated as open for motorized use. If so, it is a stretch of the imagination to conclude that administrative decisions to prohibit cross-country motorized travel or restrict routes to particular uses will actually cause motorized recreation users to forgo cross-country travel or respect route-specific use limits. There is a fundamental difference between a paper decision and reality. And the reality is that motorized recreationists have learned that there are few restrictions on motorized travel in the Heppner RD West-End to date. Thus, the Forest Service can not assume to change human behavior over night given its ineffective management to date that cannot be remedied simply by publishing a new Motor Vehicle Use Map. The challenges are exacerbated given the Heppner RD also is proposing to allow blanket exceptions to the prohibition on cross-country travel for purposes of dispersed camping, firewood gathering and, presumably, retrieval of big game (*see* Section IV.1).

The only statement in the Draft EA that references the critical question of monitoring and enforcement is a *single* sentence that refers to agency regulation. It reads:

Monitoring would occur for the consistency of the effects of motor vehicle use on designated roads and trails and in designated areas with the forest plan when appropriate and feasible (36 CFR 212.57).

Accordingly, the Draft EA is wholly inadequate because of its failure to include analysis of the potential environmental consequences of designating an extensive motorized route system in the absence of a detailed plan for monitoring and enforcing user compliance. For example, the proposed action does not provide any consideration for the Forest Service’s current or expected future enforcement capabilities. Given that the plan area contains 61,000 acres of lands currently available for cross-country use, and given that there are hundreds of miles of closed roads and existing user-created routes, the NEPA documentation must, at some level, account for the agency’s ability to properly implement the proposed action and thereby assess the efficacy of implementation efforts to ensure that users comply with whatever ultimate decision is reached. This entails considering variables such as Forest Service budgets, staff levels, enforcement capabilities, and the track record of motorized Forest users.

The EA simply does not provide sufficient evidence to support the Forest Service’s determination that it can properly implement and enforce the route designation decisions in the Decision Notice/Finding of No Significant Impact such that impacts of the selected alternative are mitigated to insignificance. *See Natl. Parks and Conserv. Assn. v. Babbitt*, 241 F.3d 722, 734 (9th Cir. 2001) (“‘perfunctory description’” or “‘mere listing’ of mitigation measures, without supporting analytical data,’ is insufficient to support a finding of no significant impact”) (citations omitted). This undercuts the Forest Service’s ability to proceed with only an EA, raising substantial questions as to potentially significant impacts that must be addressed through an EIS.

The Draft EA also fails to disclose information about monitoring that would be implementing in the field to track compliance with the designated route system, including methods of monitoring to identify early warning signs of resource impacts and conflicts before irreversible damage occurs. Moreover, it lacks any analysis regarding the perceived enforceability of proposed OHV restrictions, including methods of public education and the use of signage and physical barriers for closed routes, and estimates on the relative success of rider compliance with the designated travel system. The EA is wholly insufficient in the absence of this critical analysis and disclosure and, as such, can not be used as a basis for issuing a Finding of No Significant Impact. Absent from the EA is adequate disclosure regarding the significant challenges, proposed solutions and potential environmental impact associated with users who are unwilling to comply with restrictions on motorized travel.

Yet the current Draft EIS addressing BLM lands in the John Day Basin,²⁰ including public lands located immediately to the east of the Heppner RD Wes-End OHV Project area, is surprisingly frank about challenges facing the agency with respect to enforcement of OHV restrictions. It contains numerous statements that demonstrate the utter lack of the public's compliance with OHV closures. For example, the Draft EIS states:

Off-road motorized use in the planning area is occurring...even where current restrictions prohibit such use (DEIS, p. 312).

However, even with a designated route system, users regularly drive past closed signs and off of designated routes (DEIS, p. 312).

Though much of the BLM land adjacent to the lower John Day River is closed to off-road motorized vehicle use...unauthorized use of (sic) continues to occur (DEIS, p. 313).

Each year BLM receives complaints associated with motorized use, specifically vehicles in closed areas, trespass on private lands, wildlife disturbance, and soil and vegetation damage due to cross-country use over muddy terrain (DEIS, p. 314).

Unauthorized use on existing routes...has continued to increase annually (DEIS, p. 318).

Lastly, the Draft EIS includes specific reference to BLM-administered located immediately east of the West-End OHV project area:

Since the BLM acquisition of additional lands in this area, and the subsequent interim closure of most roads, there have been repeated violations of road closures. Trespass on private land also continues. These violations primarily occur during deer and elk hunting seasons (DEIS, p. 313).

²⁰ *Id.*, footnote 7

In addition to these relevant findings by the BLM, there is ample evidence to demonstrate that mere signage, physical barriers and rider education are not effective for mitigating the adverse and often significant impacts of ongoing violation of OHV use restrictions. **Appendix B** of this letter includes a summary of several peer-reviewed studies demonstrating that a large percentage of OHV riders knowingly violate restrictions on OHV use. **Appendix C** provides recent Congressional testimony provided by a former U.S. Forest Service law enforcement officer on this topic. This information is critical in informing land managers about the adverse and significant environmental impact associated with widespread and willful noncompliance of a designated OHV route system and **we request that the Heppner RD consider such information prior to issuing a decision on the West-End OHV Project.**

Yet the Draft EA for the Heppner RD West-End OHV Project fails to recognize this significant challenge, fails to cite problems on neighboring public lands as reported by the BLM, nor does it provide documentation of the Forest Service's own challenges with respect to monitoring and enforcing OHV restrictions elsewhere on the Umatilla National Forest. Moreover, the Draft EA fails to disclose the degree to which current trends in budgeting could affect the Forest Service's ability to implement, monitor, and enforce user compliance its designated OHV route system. Proposed OHV use designations and restrictions are only as meaningful as the concurrent and ongoing ability of the agency to enforce them. The Draft EA does not disclose or assess past and current agency enforcement capabilities, track records, issues and concerns. It does not identify whether the agency currently employs sufficient staff to effectively ensure OHV-user compliance throughout the plan area. It fails to apply the premise that OHV trail designations should be limited to only those areas where enforcement capabilities can be routinely and effectively carried out, else ongoing use likely would result in significant and adverse environmental impact.

V. Conclusion

Thank you for the opportunity to submit comments on the West-End OHV Project. We applaud the Heppner RD for taking much-needed steps toward reforming management of OHV use in the West-End Project area but remain unconvinced that the effort will be successful under the framework of the current EA. Unfortunately, notwithstanding clear evidence of the Forest's good-faith efforts to implement the Travel Management Rule, as we have outlined in this letter there are a number of areas where it has fallen short of the substantive mandates imposed by the applicable Executive Orders as well as the Agency's own regulations. Also, for the reasons discussed above, the EA fails to satisfy the Forest's obligations under NEPA to take a "hard look" at the environmental impacts of the proposed action. Most glaringly, the fact that the Forest is seeking to implement the TMR using an EA instead of an EIS effectively renders this process inadequate under NEPA. These deficits would likely prove very vulnerable to reversal in the unfortunate event that judicial review is required in this matter.

It is evident that the magnitude and scale of the current and proposed route network, the serious management problems and controversies implicated by motorized recreation (e.g., camping corridors and motorized game retrieval) and the cause-and-effect relationship between motorized recreation, motorized routes, and potentially significant environmental harm warrants preparation of an EIS. The impacts of the OHV-related decisions on the Heppner RD are directly related to the impacts from similar decisions in the other ranger districts of the Blue Mountain forests, which will, together, have cumulatively significant impacts. Some of the reasonably foreseeable results of the proposed action include user conflicts, the creation of additional illegal user-created routes, possible intrusions into unroaded areas, and impacts to crucial habitat of sensitive species as described in Appendix A of this letter.

As the Ninth Circuit has held:

No matter how thorough, an EA can *never* substitute for preparation of an EIS, if the proposed action could significantly affect the environment. We stress in this regard that an EIS serves different purposes from an EA. An EA simply assesses whether there will be a significant impact on the environment. An EIS weighs any significant negative impacts of the proposed action against the positive objects of the proposal. Preparation of an EIS thus ensures that the decision-makers know there is a significant risk of environmental impact, and take that impact into consideration. *Anderson v. Evans*, 371 F.3d 475, 494 (9th Cir. 2004) (emphasis added).

As the Heppner RD reviews this EA for determination to develop an EIS, we suggest the Heppner RD consider that the cumulative impacts of the Forest Service's actions must be viewed as a product of: (1) the baseline impact caused by the pre-existing 430 miles of existing roads; (2) the added impact caused by the creation of unauthorized user-created routes over time; (3) the short and long-term impacts caused by the persistence of all of these routes on the landscape now; (4) the impacts caused by lawful use of the current route system coupled with the potential unlawful use of the undesignated route system; and (5) the impact caused by past, present, and reasonably foreseeable future actions. Simply because the Forest Service is moving to enact positive reforms of its management policies does not thereby erase the past history of motorized recreation use on the West-End Heppner RD. Nor does it enable the Forest Service to proceed on the basis of an EA. The "cumulative impact" of motorized recreation to the landscape must, here, be addressed through an EIS. 40 C.F.R. § 1508.27(b)(7).

We welcome a meeting with Forest staff to discuss specific planning points or provide clarification of our recommendations.

Sincerely,

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cc. David Bahr, Western Environmental Law Center

Appendices

Appendix A

Summary of concerns and issues related to species and species type
in the Heppner Ranger District West-End OHV Project Area

Appendix B

Unlawful OHV behavior and the impacts and effectiveness of signage and “education”

Appendix C (submitted as a separate .pdf attachment)

Statement of
JACK GREGORY
Special Agent in Charge, Retired,
Southern Region
U.S. Forest Service
On Behalf of Rangers for Responsible Recreation and
Public Employees for Environmental Responsibility
Before the
Subcommittee on National Parks, Forests, and Public Lands
Natural Resource Committee
United States House of Representatives
Hearing on
The Impacts of Unmanaged Off Road Vehicles on Federal Land
March 13, 2008

Appendix A – Summary of Concerns and Issues Related to Species and Species Type in the Heppner Ranger District West-End OHV Project Area

I. Terrestrial Wildlife Species

American (Pine) Marten

There is not sufficient analysis in the EA of the effects of the proposed OHV trail systems on American marten in the planning area. The forests of the Umatilla including the West End Project area, have historically provided marten habitat. It is likely that at least some of the project areas still provide marten habitat—both for denning and foraging, as well as dispersal and travel corridors. Research has documented that martens and other forest-dependent species are not adapted to OHVs and road disturbance however, and that these management actions can extirpate and harm marten populations and habitat. The EA fails to adequately and responsibly address this issue.

The agency has an obligation under NEPA to assess the direct, indirect, and cumulative impacts to all species that will be affected by the proposed action. 40 C.F.R. §§ 1502.16. The Forest Service also has an obligation to obtain missing information or state why it could not be obtained if that information is necessary to make an informed decision. Id. § 1502.22. Finally, the agency has a duty to prepare an EIS when there are unknown risks to the environment—and its current EA is deficient in addressing these issues. Id. § 1508.27.

In this case, the Forest Service failed to accurately and adequately assess how the proposed OHV trail systems and cumulative road and project disturbance impacts, including those near and/or into unroaded and old growth areas will impact marten. The Umatilla NF clearly is not meeting the requirements of NEPA and NFMA as they apply to pine marten, and is precluded from implementing the proposed OHV system project as a result.

Wolverine

It is suspected that wolverine may use the planning area as part of their seasonal and nocturnal foraging and territorial wandering patterns. Winter season surveys by our organization over the past decade have found likely wolverine snow tracks within the region's forests and wildlands, and have documented suspected wolverine sightings. Wolverine are known to have a 150 square mile or more winter range, and are also known to utilize roadless and unroaded/potential wilderness areas—including the areas surrounding these preferred places. It is also well known that human disturbance and management actions related to the proposed OHV trail systems may alter the movement patterns of wolverine and other wildlife species. Failing to adequately and accurately address the likely impacts to wolverine by the proposed OHV systems, given the large home ranges of these animals (approximately a 150 square mile winter range), and the likelihood of wolverines in the planning area, violates both NEPA and NFMA.

The EA fails to adequately analyze how wolverine may be affected by proposed OHV systems and management provisions. Because it is probable that the species utilizes the planning area for some life cycle needs, the USFS is required to accurately address how the OHV systems will affect those needs and the species itself. The EA's failure to assess the proposed OHV systems potential adverse impacts to wolverine, including the potential incremental role OHV impacts and intrusions may have cumulatively in ongoing trends pushing this species towards uplisting under the ESA, violates NEPA and NFMA. 40 C.F.R. § 1502.16 (environmental consequences).

Given the sensitive nature of this species, it is highly possible that the proposed OHV use may decrease Wolverine viability through the actual loss of connective travel, nocturnal, and seasonal foraging habitat, altered prey distribution, increased exposure to human visibility and disturbance, and possible loss of individuals. This is inconsistent with the federal and state recovery objectives and NFMA because such planning could contribute incrementally to Wolverine population trends towards federal ESA listing, and uplisting under Oregon state provisions as well.

Wolverine are already listed in Oregon by the Oregon Department of Fish and Wildlife, however the USFS fails to adequately address this within the EA or disclose any consultation with ODF&W regarding potential OHV impacts, agency concerns, and the long term recovery and protection of wolverine and their habitat. These failures are in violation of the requirements of the NEPA, and in contravention to the necessary cooperative interagency efforts needed to begin the recovery of this species and its required habitat.

Wolves

The EA fails to adequately address the proposed OHV trail systems and associated management actions potential detrimental impacts on wolves that may utilize the planning area, now or in the future as wolf recovery continues, whether for territorial or transitory habitat. Wolf populations are known to be returning to Oregon, and have been reported within the greater Umatilla National Forest, especially within the North Fork District to the east. Wolves prefer large roadless undeveloped forest areas and natural wildlands ecosystems such as some of those found in and adjacent to the eastern half of the West End OHV project planning area. Wolf presence in Northeastern-central Oregon has been recognizably increasing over the past few years, with reports of confirmed and possible wolf sightings growing exponentially. The EA's lack of comprehensive disclosures and adequate analysis on growing wolf use and potential adverse OHV impacts, and failure to protect wildlands areas from OHV harms and disturbance violates the NEPA, NFMA, and the ESA. Management provisions that may result in extending OHVs into largely untrammeled portions of the planning area could increase adverse impacts to returning wolves and other species of concern, as well as diminish the well-being and abundance of native ungulate prey species, resulting in actions and impacts that are in contravention to federal and state wolf recovery objectives, contrary to Oregon States wolf recovery plan. The EA fails to address whether its proposed OHV plans are compatible with wolf protection and recovery, and its

analysis assumptions regarding OHV impacts to wolf prey species and other wildlife are unsubstantiated by EA analysis addressing impacts and issues.

A few years ago two of three returning wolves were killed (and a third was captured and deported to Idaho). Since then additional wolf sightings have been reported, with a recent discovery of another returning wolf found shot in NE Oregon. It is well known that management actions that introduce disturbance such as OHV intrusions and noise alter native predator-prey relationships and can diminish the abundance of native prey species. Additionally, planning actions that may result in adverse impacts to vegetative and forest cover degrade natural ecosystems, and allow for more human visibility and movement. Such actions are likely to result in significantly decreasing returning wolves chances for survival. The lethal track record of human-caused killings of returning wolves testifies to this unfortunate reality. The proposed West End OHV systems are likely, whether now or in the future as wolf recovery continues, to subject any current or future wolves in the area to increased risk of death from illegal human shootings, or harm and disturbance from OHV intrusions into and near suitable unroaded area and wildlands habitat. The EA must be revised to correct these NEPA deficiencies. The EA for this area must include provisions for the protection and recovery of Oregon's returning wolves.

Lynx

Among our many concerns is this proposed OHV trail systems effects on lynx. Based on data from the U.S. Fish and Wildlife Service's (USFWS) Portland office, there have been past sightings of lynx in the Oregon Cascades region, including in and/or around the planning area. Historic evidence of lynx in these areas includes positive occurrence records, lynx bounty claims, and federal and state agency Wildlife Statistical Reports. Positive reports of lynx occur as far south as Modoc County, California. As this is the case, the planning area may be important to lynx recovery. It is plausible that lynx are rare in the greater analysis area (and in Oregon on the whole) due to bounties, aerial poisonings, and other efforts to eliminate them (and other predators) that were performed systematically for decades, and not due to a lack of habitat, as is the current situation with wolves as well.

The Forest Service should have adequately addressed how the implementation of its proposed OHV management provisions will affect lynx, including potential lynx travel and dispersal through the West End project area. It is clear that lynx habitat is very fragmented, and that large blocks of intact forest with adequate cover and prey species populations are required to maintain viable populations of the species. Without these large blocks, lynx may need larger ranges to survive. The EA OHV systems include potential lynx habitat and connective habitat to the area's higher elevation mountain forests, in and within range of mixed conifer forest habitat known to be preferred by lynx, and connective forest habitat with roadless and potential wilderness areas. The proposed OHV systems in the planning area may adversely affect whatever lynx recovery is occurring, as lynx may use portions of this area for both nocturnal foraging as well as migratory and dispersal routes and refuge. Continuing to squeeze lynx out of their habitat

range by intensively managing the land runs afoul of NFMA's requirement that the agency maintain viable populations of wildlife that are well distributed across the landscape. The USFS has an obligation to accurately assess the impacts of its planning on lynx.

Next, it is clear that data is lacking on the food habits of lynx in Oregon's forests, and during dispersal and migration through non-forest areas, which represents a critical research need. Ruggiero, 1999b; Aubry, 1999. It is well accepted that lynx are dependant on snowshoe hares as a prey base, but in the southern portions of lynx range, and during extended periods of dispersal or migration to new habitat, squirrels, other rabbits, small rodents, birds, bird eggs, and other wildlife may always be an important part of lynx diet. Some of these same prey species may also be important to raptors and other wildlife species of concern. It is critical to understanding how the proposed OHV trail systems may impact lynx to examine how these will impact lynx prey.

Snowshoe hares, squirrels, and other mammals have different habitat needs. However, these and other terrestrial wildlife species could be negatively affected by OHV intrusions and other management actions associated with this proposed OHV system. Most of these prey species require adequate cover and areas with little to no disturbance (USFWS, 1999), as well as conifer cover in winter (GTR-RM-254), and foliage that is accessible during winter snowpack conditions. Hares, squirrels, and forest-dependent species are typically associated with dense forest cover, including shrubs and "dog hair" thickets of small trees. McKelevey, 1999a. Many of these prey species also perform important roles in the recovery of fragmented forest and impaired rangeland habitat, helping to spread seeds of plants and trees, distributing nutrients throughout area soils, and loosening compacted soil areas—none of which was sufficiently disclosed or addressed in the EA. Edge areas within and adjacent to dense mixed conifer forests provide viable habitat for many species, including potential prey species for lynx. The area's unroaded, old growth, and connective habitat also provide potential habitat, and the project area likely serves at some time as dispersal and migration corridors, as well as supplemental habitat for lynx that may occur within, or traverse through, the project area. The proposed OHV systems directly and cumulatively could result in significantly further reducing needed disturbance-free refugia and cover for wildlife, jeopardizing both lynx and their prey species viability across the area—in violation of the NEPA, NFMA, and the ESA, and management recovery objectives for lynx and other species of concern.

Different management actions can have detrimental impacts on many of these species, including squirrels, rabbits, rodents, and birds, as well as snowshoe hares. For example, Koehler and Brittell (1988) predict that it may take up to seven years after logging an area for hares to recolonize the site and up to 25 years before they reach their highest densities. OHV impacts are known to have similar detrimental affects upon these species; diminishing populations, reducing necessary sources of sustenance and cover, causing reduced viability due to stress and energy lost from OHV disturbance, and overall degrading habitat quality and extent. As another example, Bull (1999) examined the results of a variety of harvest prescriptions on hares and found that in lodgepole

stands, the number of snowshoe hares decreased in all types of harvest. She reports that mixed conifer stands appear to be “no longer suitable for hares after harvesting.” Similar impacts degrading habitat for prey species also result from OHVs, directly and cumulatively adversely affecting many wildlife species that are likely to comprise some portion of lynx sustenance.

Squirrels have different habitat needs than snowshoe hares and are associated with mature, cone-producing forests. Ruggiero, 1999a; Buskirk, 1999b; McKelvey, 1999a. They tend to reach their highest densities in late-successional, closed-canopy forests with substantial quantities of coarse woody debris. Similarly, ground squirrels may during dispersal and seasonal nocturnal foraging comprise a portion of lynx diets. The EA fails to adequately address the potential impacts of OHV trail system disturbance on both forest and rangeland squirrels, ignoring these important components of lynx diet.

The EA failed to provide an adequate analysis of how the OHV system will impact hares, rabbits, squirrels, avian species, as well as other wildlife species that may at times be essential prey for lynx. Without sufficient assessment of how these prey species will be impacted, it is impossible to quantify and qualify the impacts to lynx from the implementation of this proposed OHV trail system(s). The EA must analyze the cumulative impacts of its proposed OHV systems on lynx prey in association with other regional impacts across the surrounding lands.

The EA makes little mention as to any site-specific to protocol recent surveys of the planning area regarding lynx, lynx dispersal routes and connective corridors to suitable habitat, or assessing the abundance, viability, and distribution of potential lynx prey. These planning analysis deficiencies must be corrected in a revised NEPA planning process.

Native ungulates

The decision to designate such a large area of the Heppner District for OHV use and disturbance is likely to adversely impact native ungulate species, including elk and deer in the affected lands. The EA fails to adequately address native ungulate populations, including historical variability and current population levels and trends. Current and future desired refugia, disturbance levels, habitat quality, fawn and calf survival, forage conditions and overall management objectives for native ungulate species are not adequately disclosed and addressed. Habitat needs, including cover, forage, fawning and/or calving areas, the ratios of bulls/bucks to cows/does, survival rates and fluctuations of young, and overall cumulative impacts to these species are not sufficiently assessed. Potential adverse changes and impacts to native ungulate populations, habitat, and forage conditions from OHV intrusions into preferred habitat areas are not assessed. Native ungulate populations are prey species for native predators within the planning area.

The viability and sustenance of predator species including cougars, Oregon state threatened listed wolverine, and federally-listed wolves will depend in part largely upon

viable populations of native ungulates and other prey species. The analysis fails to assess the cumulative impacts of OHV trail systems and use in combination with increasing presence of native predators in the greater region, particularly regarding returning wolves. How OHV systems may impact native ungulates in combination with increased displacement and predation as wolf and wolverine recovery objectives are met over time has not been sufficiently disclosed or assessed in the NEPA analysis. Without such assessments, the agency lacks sufficient direct and cumulative impacts understanding upon which to base their OHV system designations for these lands.

Eagles

Regarding eagles, absent credible planning area protocol survey information to substantiate eagle population status, trends, and foraging and nesting territories; the agency does not have the requisite information to adequately assess potential direct and cumulative OHV system impacts to eagles. Similar information needs to be assessed as regards eagle prey species in the planning area, assessing potential direct and cumulative impacts to prey species that are likely to result from OHV trail systems in the greater area. For example, authorizing widespread OHV systems will have adverse impacts upon numerous prey species for eagles, thus diminishing available sources of sustenance in both the short and long term. Small terrestrial mammals, ground nesting avian species, as well as salmonid populations and habitat quality and distribution, are all negatively impacted by OHVs. Such impacts in turn adversely impact eagles, limiting prey availability, requiring greater territorial areas for foraging, and as such greater expenditures of energy and longer forays from nesting young. OHV disturbance and intrusions into nesting and foraging territory, whether frequent and recurrent or transitory, can cause eagles to abandon nests and fledgling young, or abandon territorial areas entirely over time. This in turn may detrimentally impact the survival rate of eagle young, and the long term viability of this recovering species. Other raptor species; ranging from hawks, falcons, and owls; are similarly adversely affected by OHV impacts and disturbance. The EA fails to adequately address these significant issues. Yet, it is known that eagles utilize the greater area. For example, surveys by LOWD-BMBP of the Rimrock project area documented an eagle nest territory within forests that would be affected by the proposed trail systems. As these and other raptors rotate their nest locations over time, it is possible that significant portions of the planning area could be used by eagles and other raptors for roosting, nesting, and hunting territory over the course of time. Surveys throughout the region's public wildlands over the past 18 years by our volunteers have frequently found eagle nests within the greater planning area, including interior forest locations often several miles from their salmonid waterway hunting and roosting sites. The EA violates the NEPA by the lack of meaningful and accurate analysis and requisite meaningful scientific disclosures and conclusions assessing potential adverse impacts to eagles, their nesting territory and prey, from the proposed OHV trail systems.

Neotropical Migrant and Native Birds

Neo-tropical migrant and native rangeland, riparian, and forest-dependent birds (as well as numerous other wildlands species) are in serious decades-long population

declines due to the adverse cumulative impacts from over a century of public lands management, including growing adverse impacts from OHVs as well as impacts from livestock grazing, habitat disturbance and loss, and logging in Oregon (see “Avian Population Trends” by Brian Sharp). The EA fails to fully and adequately disclose the current population status and trends of native grassland and native forest dependent Neotropical migrant and native avian species within the planning area and adjacent lands. Compliance with both the NFMA and the Migratory Bird Treaty Act requires that all alternatives presented within the EA must be capable of protecting essential nesting and foraging habitat for these many avian species, and of reversing any current downward population trends. Such a course of proactive protective action is also required by the ESA and the NEPA, Presidential and federal agency directives, and the Migratory Bird Treaty Act, and recommended as well by credible conservation science. However, in violation of these legal requirements and scientific recommendations, the EA presents widespread OHV trail system plans that would likely result in the irreparable degradation and disturbance of available habitat and further imperil neotropical and native avian species populations, resulting in both individual mortality to these species as well as irreparable habitat and population level harms.

The West End EA’s proposed OHV trail systems and their management provisions could significantly impact migratory birds in violation of the Migratory Bird Treaty Act, 16 U.S.C. §§ 703—712 (1994). It is well known amongst the conservation-science community that many migratory birds which are currently experiencing severe population decline trends are “strongly associated” with native grasslands, intact riparian systems, and old and mature interior forest natural habitat. The proposed OHV trail systems could result in directly killing nesting and fledgling migratory birds, and disturb and impair otherwise viable habitat. Migratory and native bird species habitat has already been significantly diminished due to the cumulative impacts of past management throughout much of the planning area.

The proposed management provisions could irreparably fragment and degrade migratory bird habitat. Impacted areas could be negatively impacted by generalist bird species favored by the environmental conditions created in overly disturbed fragmented ecosystems. Other avian and predator species more adapted to management disturbance, including non-native invasive avian species, would likely move into the greater planning area, further displacing and adversely impacting imperiled neotropical and migrant avian species of concern. The impacts these abundant and highly competitive invasive bird species would have on sensitive migratory and native avian species dependent on less disturbed and fragmented natural ecosystems should have been adequately disclosed and assessed in this planning EA. The adverse impacts that the proposed OHV trail system could have on migratory birds are well-documented by multiple scientific studies.

The adverse cumulative impacts from management disturbance and ecological fragmentation, including loss of viable nesting habitat within central and eastern Oregon’s public lands ecosystems, is considered to be a primary cause behind declines observed in many songbird species. Further loss or fragmentation of habitat could lead to

a collapse of regional populations of some avian species birds (Robinson et al. 1995). As landscapes become increasingly fragmented, regional declines of migrant populations may result (Id). In the Pacific Northwest, researchers have found that native grasslands, intact riparian systems, and old growth forests and these systems natural ecological processes are integral to the survival of many habitat-specialized species of migratory birds. The past and continuing grazing and logging-oriented management of public lands in Oregon and Washington, which provide nesting and fledgling habitat for numerous migratory birds, has resulted in severe ongoing population declines in natural ecosystem-dependent migratory and native birds. Increasing OHV use on public forest lands further harms and exacerbates ongoing population declines and habitat loss of these imperiled avian species. Among the many avian species experiencing population declines due to the cumulative impact harms of OHVs, livestock grazing, management disturbance, and logging are: band-tailed pigeon, rufous hummingbird, olive-sided flycatcher, winter wren, song sparrow, golden-crowned kinglet, pine siskin, solitary vireo, willow flycatcher, tree swallow, red-eyed vireo, yellow warbler, yellow-breasted chat, and others as well. This information was not adequately addressed in the EA despite the obvious direct adverse impacts to many migratory and native bird species from the proposed OHV trail systems. Failure to sufficiently disclose and comprehensively analyze pertinent, essential, scientific information violates provisions of the NEPA. Implementation of this OHV trail system project would violate both NFMA and the Migratory Bird Treaty Act.

In August 1999, the FWS outlined what it perceived to be the agency's legal obligation in respect to migratory birds. FWS stated that agencies should take "an extremely cautious position with respect to the intentional take of migratory birds by federal agencies." Letter from Acting Director, United States Fish and Wildlife Service, to Regional Directors, Regions 1-7 and Assistant Director, Refuges and Wildlife (August 17, 1999), 3. FWS also cautioned that "the Service should not assert in any communication or correspondence that federal agencies are not covered by the prohibitions of the MBTA [Migratory Bird Treaty Act]." Id.

In July 2000, the Eighth Circuit Court of Appeals held that federal agencies are required to obtain a take permit from FWS prior to implementing any project that will result in take of migratory birds. *Humane Soc'y of the United States v. Glickman*, 217 F.3d 882 (8th Cir. 2000). Due to this litigation, the FWS is operating under the assumption that the Migratory Bird Treaty Act applies to federal land management agencies and their management planning activities. 16 U.S.C. § 703 et seq. The Act states that "it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill . . . any migratory bird." 16 U.S.C. § 703.

In January 2001, President Clinton signed Executive Order 13,186 that outlined the federal government's responsibility to comply with the Migratory Bird Treaty Act. Exec. Order No. 13,186, 66 Fed. Reg. 3,853 (2001). President Bush did not rescind this Order, and it is expected that President Obama will honor and may strengthen this

directive. Recent legal analysis confirms that federal agencies must actively prevent the take of migratory birds, or obtain a permit for incidental take of individual species. Helen M. Kim, *Chopping Down the Birds: Logging and the Migratory Bird Treaty Act*, 31 *Envtl. L.* 125 (2001).

The Heppner District has failed to comply with these legal and scientific obligations. Until the agency can demonstrate that it has complied with the requirements of the Migratory Bird Treaty Act, the current deficient EA analysis for this widespread OHV trail system must be revised and an EIS must be prepared. The lack of adequate scientific and cumulative impacts assessments pertaining to avian species fails to meet NEPA's requirement for high quality scientific analysis that would satisfy the "hard look" standard. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998) cert. denied, *Ochoco Lumber Co. v. Blue Mountains Biodiversity Project*, 119 S.Ct. 2337 (1999).

Appendix B - Unlawful OHV Behavior and the Impacts and Effectiveness of Signage and “Education”

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 OHV 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 Agency’s reliance on mitigation in the form of signage alone is unacceptable because it has been proven not to work. Approximately 75% of OHV 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 hereto as Appendix C. While assuredly many OHV riders have lawful intentions and “follow the rules,” a disturbingly high percentage show a pronounced preference and practice among off-road vehicle recreationists to travel cross-country and ride off of legal routes. This conclusion is derived from publically available data generated by the OHV community itself.

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. *For the report, see <http://www.wildlandscpr.org/status-and-summary-report-ohv-responsible-riding-campaign>*

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,²¹ 2001; Off Highway Vehicle Uses and Owner Preferences in Utah. Logan, Utah. Utah State University, at iv, see <http://extension.usu.edu/iort/files/uploads/pdfs/revisedOHVreport.pdf>

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. Exhibit E 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-OHV 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, see <http://fwp.mt.gov/content/getItem.aspx?id=19238>, at 1. 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 OHV behavior, this figure is notable to the extent that 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).

Finally, the U.S. Fish and Wildlife Service (“FWS”) found a near universal disregard for

²¹ No relation to counsel.

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, <http://www.wildlandscpr.org/denial-petition-list-sand-mountain-blue-butterfly-threatened-or-endangered> , 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, 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, at 8-9.

Accordingly, the record is clear that the problem of OHV-abuse is not located someplace else, it is a problem in the West-End Heppner RD. The Forest Service should address the effects, including the cumulative effects of continued off-route travel in this area, both lawful and unlawful. Furthermore, because the Forest is proposing exceptions to the prohibition on cross-country motorized travel for dispersed camping, wood collection, and game retrieval, and therefore did not limit cross-country travel, it is even more important that the continued environmental degradation from off-route travel be considered and included in project NEPA analysis.

NEPA’s regulations require that an EA discuss “[m]eans to mitigate adverse environmental impacts” of the proposed action (40 C.F.R. § 1502.16(h)). Remarkably, the Draft EA lists *no* mitigation measures and does it address the impacts, direct, indirect or cumulative, that will flow from this decision. This is not 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”). The project anticipates continuing and concentrating OHV use in the West-End area yet there is nothing to mitigate that use except the act of designating routes on a Motor Vehicle Use Map. Route designation may legally be ignored, as cross-country travel is still legal at least along a 600-foot corridor along each designated route according to this document. Even if cross-country travel were eliminated by this decision, which it is not, the data noted above concludes that route designation does not result in compliance or control of off route travel.

Regardless, the Agency apparently intends (although not stated in the Draft EA) to rely on the promise of “education” to avoid the inevitable adverse consequences of permitting widespread OHV travel. It is noteworthy that the Agency does not specify the nature or

scope of any increased law enforcement as an associated tool to control OHV-abuse. *See, e.g., Sand Mountain Blue Butterfly Butterfly 12-Month Finding at 24261, at 9* (“The Conservation Plan also provides for increased law enforcement, especially on heavy use weekends and randomly at other times;”).

Moreover, if the Heppner RD intends to issue a Decision Notice that includes provisions for additional law enforcement, history has established that it is not likely that funding will be available for the number of law enforcement officers necessary to effectively enforce the designated 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. 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, Appendix C at 8.

**Statement of
JACK GREGORY
Special Agent in Charge, Retired,
Southern Region
U.S. Forest Service**

**On Behalf of Rangers for Responsible Recreation and
Public Employees for Environmental Responsibility**

**Before the
Subcommittee on National Parks, Forests, and Public Lands
Natural Resource Committee
United States House of Representatives**

**Hearing on
The Impacts of Unmanaged Off Road Vehicles on Federal Land
March 13, 2008**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present our views on the impacts of Off-Road Vehicles (ORV's) on public lands. I am Jack Gregory, currently retired from the U.S. Forest Service (FS). In my last 10 years of over 36 years of service with the agency, I provided management and direction for the largest law enforcement (LE) program within the FS, serving as the Special Agent in Charge for the Southern Region, with approximately 200 LE employees and an \$18 million budget.

In the Southern Region, LE problems associated with ORV use are substantial. Today, I am speaking for myself, my former colleagues, and for Rangers for Responsible Recreation, a network of former federal, state and local rangers and land managers organized by Public Employees for Environmental Responsibility, otherwise known as PEER.

My message is simply this: Our public lands are in serious trouble. Irresponsible off-roading has become such a menace that it is now the single greatest threat to American landscapes.

Before recommending solutions, I would like to make three points: 1) the ORV problem is getting steadily worse, with no end in sight; 2) the ORV problem is not just "a few bad apples" -- we are suffering from a major breakdown in attitude from sadly, a high percentage of off-roaders; and 3) route designation without effective enforcement simply will not work and, when done poorly, significantly aggravates problems.

My first point is that we are not close to getting a handle on ORV problems and, if anything, we are headed in the wrong direction. Already, on many national forests, ORV's are the top LE problem. The story is the same on other federal lands. Figures from the U.S. Bureau of Land Management (BLM), for example, indicate that ORV incidents are not only the biggest drain on LE Rangers' resources but, nationally and in the Western U.S., generate more LE citations than all other criminal activity combined.

In preparation for my testimony, I recently contacted a number of my former colleagues currently working in FS LE, who deal with ORV users every day. Here is some of their perspective:

One National Forest Patrol Captain said:

"The damage to the forest floor here is huge. I would estimate that 75% of the Forest has some kind of ORV created trail. In recent years the Forest has been inundated with ORV's."

Another National Forest Law Enforcement Patrol Captain wrote:

"ORV problems are probably number 1 on this Forest in terms of volume of violations. Every corner of the Forest shows the impact of vehicles being operated off-road. With declining budgets our road conditions are deteriorating and the large-tire vehicles are tearing up what is left of many FS roads."

ORV-generated LE problems range from minor offenses to serious life threatening incidents. For example, last Easter weekend at Little Sahara Recreation Area in Utah, the situation spun out of control. A gathering of approximately 1,000 ORV enthusiasts

terrorized many of the 35,000 visitors to this popular BLM recreation spot. By the end of the weekend, there were:

- More than 37 injuries, including a state Highway Patrol officer;
- More than 300 arrests or citations were issued; and
- More than 50 officers had to be summoned to the scene from state, federal and local law LE agencies to assist.

Inebriated gangs of ORV riders surrounded family campsites. According to BLM's official incident report:

"Officers were faced with near riot conditions on two separate nights involving approximately 1,000 people which required all available officers and over 5 hours to mitigate the situation... Groups of partiers were blocking an area and forcing women to bare their breasts in order to leave, along with numerous incidents of unwanted fondling of women. When LE officers took action, the crowd became unruly, throwing objects at the officers."

Serious problems extend beyond assaults. In tinder-dry forests, the red hot mufflers of ORV's can set off deadly forest fires. A National Forest Patrol Captain wrote to me:

"Just this past week, we had a 2700 acre fire and used a road as a containment line. The road was so badly damaged from previous ORV activity that access was hampered. We had to post Law Enforcement Officers (LEO's) at either end to close the road because of the continuous traffic from jeeps and 4x4 trucks that came to play in the mud in spite of the fire. In a separate fire last week we had over 1,000 acres burn and it forced the evacuation of an entire neighborhood adjacent to NF land. The cause - illegal ORV operation on the NF; 2 juveniles on an ORV, riding on a FS horse trail when the ORV caught fire...Fact is Jack, we are down to 10 LEO's here covering 1.8 million acres, 3,000 miles of forest roads, and 17 Wilderness areas, all with ORV problems. And we are overwhelmed with it."

Significant LE problems occur when ORV use directly interferes with the enjoyment of other forest users. Visitation to National Parks, Forests and BLM lands includes a wide range of activities. Many visitors enjoy sight-seeing, bird watching, hiking, fishing, and hunting. The problem is when there is conflict of use. Here is what this National Forest Patrol Captain said about how ORV's can effect hunting:

"All winter we got complaints from hunters who had (to deal with) ORV's in areas where they were trying to hunt. Many had walked back into areas to get away from everyone and here comes 5 ATVs. It was almost weekly that someone was calling."

Here is what a National Forest LEO stated about conflicts between ORV's and Hunters:

"Many ORV riders are uninformed about the state and federal laws regarding ORV use and are mostly ignorant to the fact that other things happen in the forest, especially hunting and how they impact hunting. We have some weekends that are especially significant to our hunters; those being - a special youth hunt for deer (it is the weekend before the main season), a youth turkey hunt (the weekend before the main season), and of course opening weekend of each of the big game and turkey season. We receive multiple daily complaints from hunters and hunting camps about ORV's dusting them out, riding off-road, disturbing the hunting and reckless driving on forest roads. We have attempted to educate people about "sharing the land" and being respectful of other people by planning trips around these times but the response has been negative to say the least."

Compounding the problem, in most cases, ORV riders in the forests have firearms and many have alcohol. A Supervisory Special Agent spoke to me about how ORV's have become a driving force for a host of other problems:

"Imagine a wheel with legal ORV use as the small hub. The spokes that form the wheel and the wheel itself represent the illegal use and their negative effects proceeding outward from it. And once that wheel starts to spin...it becomes near impossible to stop it given our current number of officers to serve as a 'brake.'"

To put this problem in a national perspective, Rangers for Responsible Recreation surveyed FS and BLM LE Rangers in the five-state Southwest region about ORV issues last fall. The results were unambiguous:

- More than nine out of ten (91%) of respondent rangers agreed that "off-road vehicles present a significant LE problem in my jurisdiction";
- More than half (53%) felt "off-road vehicle problems in my jurisdiction are out of control"; and
- Nearly three out of four (74%) said that off-road abuses "are worse than they were five years ago."

In the essay portion of that survey, a FS LEO conveyed the scope of impacts by noting:

"The numbers of off road vehicles on public lands, especially national forests, are creating resource damage at an alarming rate."

The second and related point here is that the ORV problem is not as has been portrayed by some rider groups; where just "a few bad apples" are the ones causing these problems. I am certainly not trying to demonize ORV riders. In fact, many of the Rangers for Responsible Recreation are themselves ORV enthusiasts. Rather, there is unfortunately a "don't give a damn" attitude among a high percentage of off-roaders that result in resource damage, unnecessary accidents and other bad side effects. In the PEER Survey, one BLM LE Ranger wrote bluntly:

"User attitudes are atrocious. They (ORV's) are the single biggest destruction on public lands these days, far worse than grazing or energy development."

One of my former colleagues wrote me:

"Most of our (ORV) accidents can be attributed to speed, alcohol, or operator with little/no experience on the machine. We have multiple fatalities each year from riders striking a fixed object."

He also elaborated on how widespread user indifference is to the forest rules:

"Not all damage is by radical behavior, some is by repetition, as folks ride the same user created trails until it becomes an accepted 'trail'... If we could reach 70% compliance with ORV regulations, I would call it a success, as the situation we now have hampers enforcement efforts, I would say we have less than a 25% compliance rate with closure orders."

Another National Forest LEO stated:

"On my Forest we have had 7 airlifted in the last 10 months from ORV accidents. Two factors caused all of these accidents, too fast or too steep. The too steep occurs when they get off the legal riding areas and climb hills, powerlines, creek banks, etc. Too fast occurs whenever. We had one ORV accident where an ORV hit a deer crossing the road. How fast do you have to be going on an ORV to hit a moving deer, kill the deer instantly and eject the rider? The driver spent 3 months in the hospital. We had another get on a neighbor's ATV and rip down the

road, hit a bank, overturn and paralyze himself from the neck down. The list goes on and on."

A National Forest Law Enforcement Patrol Captain explained the enforcement challenge this way:

"I would dare say that ORV's are the number one complaint from the public and the number one resource damage problem we face. By their very nature, it is very hard to exclude them by physical barriers. One of the biggest problems is that they have such a network of illegal trails all over the NF, it is almost impossible to combat them.... With the proximity to metropolitan areas and the influx of people moving into these rural areas adjacent to NF lands, the problem is increasing. ORV's are driving directly out of their backyard onto NF land and are virtually undetectable until a complaint comes in."

Without the ability to enforce ORV rules and regulations, it is unlikely that off-roader behavior will change. As one of my former colleagues pointed out:

"The Forest may have as many as 1000 ORV's per weekend and they go wherever they want. With 8 Enforcement Officers we deal with what we can catch, but with 1.86 million acres, chances are slim that the riding public will even see an Officer, let alone be contacted in the back country."

Part of this irresponsible mindset is due to manufacturer advertising that promotes the thrill of speeding, ripping up and down hills, and tearing through streams. Mechanized thrill-seeking in national forests simply means more and more damage to the forests. One National Forest Patrol Captain said:

"The problem for the future includes, wildlife disturbance, bigger ORV's with tires that chew up the ground, people riding in water like they see in the ORV advertisements and the newer UTV (mules) that will need to be on the roads instead of the woods because of clearance and hauling 2-3 family members."

Another argues that agencies like the FS should do a better job of rider education:

"I think more than anything else, it has a lot to do with the culture that rides and to a large extent they are ignorant to the laws and the impacts they are having. I think the FS has done a poor job on education and outreach to spread the message about the use of ORV's on NF land."

But the FS has no budget for ORV rider education. In fact, it is arguable that the FS has a manageable budget for LE operations. Despite a rising tide of assaults, accidents, and LE incidents related to ORV usage, the FS LE budget is shrinking:

- The FS LE program has lost one-third of its total patrol force since 1993; Down from 984 uniformed LEO's and Criminal Investigators in FY 1993 to a total of 660 in FY 2006.
- The FS spends less than 2% of its total budget on law enforcement.
- This translates into one position for every 291,000 acres of forestland or one for every 733,000 visitors each year. ...the lowest LE presence of any of the agencies.

Incredibly, just last month, FS Chief Abigail Kimbell, in her House testimony on the agency's FY 2009 Budget, actually called for a \$17 million decrease in LE operations over what the agency had in FY 2008. Given these dynamics, it is unlikely that the FS can finance the sort of public education campaign needed to shape the attitudes of ORV riders, particularly younger riders, or provide for the number of on-the-ground LEO's to police this activity.

The third point I would like to make is that ORV route designation without effective enforcement simply will not work.

Thus far, FS and BLM travel planning efforts have been a mixed blessing. While the agencies are moving from millions of acres that have been open for off-roading toward designated route systems, they are still keeping open large, unmanageable, and damaging route systems available for ORV use. Route designation will not work without enforcement and there are not currently enough LE Rangers on the ground in any agency to police this activity. As two senior level LE Managers working the Southern Region stated:

"... each Forest is closed unless designated by map. . . . Our maps suck. Hard for the folks to understand."

"Many FS ORV areas were originally established without much thought or science as to effects on the land. Over the years, they have become de-facto official areas and the FS is now afraid to close them due to user backlash. And these same

areas will likely be permitted on the new Travel Maps because of 'past use.' In a typical area that this open to ORV's, we need 3 LEO's just to patrol it, let alone trying to deal with activity on areas that are closed. Some of these areas are impossible to monitor and patrol at all. With manpower and budgets the way they are, we can't even patrol regular roads...let alone open ORV areas. "

Another National Forest LEO wrote me:

"I worked in a region where, because of the population densities, ORV planning and proper LE has been underway on some of the units. Even on those units (where good planning, route designation, and effective field implementation has occurred), we still need help."

Even when agencies designate ORV trails to follow, riders often branch-off from the approved route or corridor. As that happens, an entire network of unauthorized trails and roads start to develop very quickly with devastating effects to the ecosystem.

Another drawback is that FS designated routes often do not address ORV issues on state and county roads running through the national forests. Compounding this is that in some areas, there is virtually no ORV enforcement by state and local police jurisdictions on these roads, which is a major problem. If the other agencies around NF's are not enforcing their own ORV laws on county roads and state highways, it makes our job in the forests that much tougher.

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 resources for dealing with serious problems.

Congress and Federal land management agencies must take the lead to get a better handle on the thousands of irresponsible users who are continuing to destroy important archaeological, riparian, botanical, and wildlife habitat resources, not to mention the large number of injuries and deaths attributed to ORV use. The following was copied this week from a popular ORV web-site under the "Directions" section for ORVers. It provides information about how to drive ORV's in an "approved" National Forest location known as the Tellico ORV Area. This area is within one of the best networks of wild trout waters for native trout species in the Southeast and, until the development of the ORV area, was known for its pristine qualities as a place to "get away" from other busy visitor use areas.

"Ultra low gears are not needed here and sometimes hurt more than they help, as wheel spin is required to clean the tires and heat up the rubber in hopes that they will stick to the wet rocks. You will see a lot of local rigs here with 300 horsepower and tires in the 40"+ range. These big rigs (locally called hybrids or cab trucks) are what keep our trails interesting. When they 'hammer down' they tend to move large quantities of rock and dirt, so the trails are in a constant state of change. Therefore, the 'line' that worked for you on your last trip, may not be the correct approach the next time out. That's what makes this place such a hoot to ride....it's always changing! . . . Known as 'Hard Rock' going up and 'Slick Rock' coming down, either way, this trail provides plenty of excitement. The approach to the rock runs right up a creek bed with lots of big, loose muddy boulders that get shifted around each time someone goes up. Steering linkage damage and tires coming off the rim happen quite frequently here. There is no getting around Hard Rock, so when you reach this point on Trail 9 you are committed. The rock has a very smooth surface, is about two stories tall, and has a natural spring at the base to ensure that it's always muddy and wet. . . .This is a favorite place for the locals to gather and watch the show and rollovers are quite common."

In other words, off-roaders are being advised to ride right in the middle of a hydrological sensitive area to increase the thrill value. It is not uncommon for FS LE personnel to write numerous ORV citations on the weekends in this area. Recently an LEO wrote over 125 violation notices and seized over 300 containers of alcohol during one shift. Also on the aforementioned website is the "Tread Lightly; Leaving a Good Impression" logo that the FS promotes to ORV manufacturers. The notion that the above driving directions

could somehow coexist with the "Tread Lightly" theme, particularly in this ecologically sensitive location, cuts against rationality.

Congress should evaluate both BLM and FS on-going travel planning by reviewing several of their current proposals involving ORV management scenarios. PEER and the Rangers for Responsible Recreation believe these efforts could clearly be improved if the agencies better complied with Executive Orders, regulations, and policies. Federal agencies are often willing to go the extra mile in placating and appeasing the ORV community, even in the face of logic and common sense. For example, illegal immigrants and drug smugglers are entering the United States through BLM's Imperial Sand Dunes Recreation Area, which shares a common international boarder with Mexico. To quote a recent Los Angeles Times article:

(http://www.latimes.com/news/local/la-me-dunes2mar02_0,4925540.story?page=1) these individuals:

"shoot across the border in souped-up vehicles loaded with illegal immigrants and drugs and elude U.S. Border Patrol agents by playing the part of dune enthusiasts: wearing helmets and decorating their bikes and all-terrain vehicles with decals and flags. The cat-and-mouse game turned deadly recently when a suspected smuggler driving a Hummer ran over an agent and fled back across the border over the dunes. The agent's death focused attention on the federal government's enforcement strategy in this remote corner of the border."

The obvious solution to the problem would be to close this portion of the area to all OHV's and then patrol it for incursions. That would affect approximately 7,842 acres, which is less than 10% of the 80,000 acres that would still be open to off-roaders. It appers that not even the death of a federal agent, simply trying to do his job, gets the attention of our public land ORV managers. PEER believes that Border security should certainly trump the off-road industry. But it's not clear that's the case with this administration.

For any chance of success, America needs a strategy to cope with the recent explosion of ORV use and its public safety, ecological, social, and financial consequences. We propose beginning with these three steps:

1. Establish Penalties that Deter

In most locations, today's fines for ORV abuse are inadequate. Some are so low that oftentimes the offender(s) will just view it as a necessary user fee. In many Federal Judicial Districts, agency collateral forfeiture schedules have not been updated for years. When fines for ORV violations are raised, rider compliance is easier to gain. Reckless or "Repeat Offender" off-roading can be deterred by on-site criminal seizure of the offending vehicle(s) in the field, coupled with a criminal asset forfeiture of that vehicle if the offender pays the fine or is adjudicated guilty. These provisions could be accomplished by Federal rulemaking changes to each agency's prohibitions contained in the Code of Federal Regulations. This effective strategy is currently used at the State level with firearms and hunting licenses when offenders are caught violating State game laws. Repeat offenders should face suspension of riding privileges (through time imposed Federal Court "banishments" from public lands), and, when appropriate, imprisonment.

2. Properly Fund ORV Enforcement

Necessary enforcement actions dealing with off-road abuse are taking an ever larger toll on already over-burdened LE Rangers. Congress and state legislatures need to immediately augment their public lands LE budgets. The FS is far less capable today in redeeming traditional land management LE responsibilities than they were 10 years ago. Many internal and external reports demonstrate that illegal and unchecked use continues to rise as the number of on-the-ground personnel to deal with these problems fall. With regard to ORV's, this is due to agencies failing to place a priority funding emphasis on an activity that is currently responsible for ruined landscapes, demolished wildlife habitats, and destroyed riparian areas. The region where I worked is currently under-funded by

approximately 20 LE Officer positions from when I retired in 2006. The proposed budget cuts for LE staffing in the Southern Region will exacerbate an already bad enforcement staffing situation.

3. End Hidden Costs to the Taxpayers

Taxpayers are footing the bill for the damage and havoc caused by reckless off-roaders. As yet, we do not know the full extent of these costs. Mr. Chairman, I am very pleased to hear that you have recently asked the Government Accountability Office to investigate the use and management of ORV's on Federal public lands. This is a critical first step that's needed for Congress to enact common sense solutions to the growing ORV problem. Over time, some areas have been so trashed by ORV's they are in need of significant restoration. Congress should move to ensure that adequate steps are taken to repair the decades of damage to our rivers, cultural sites, wildlife habitat and other ecologically and culturally valuable places. Greater oversight on the companies that manufacture this category of vehicle is needed. When one looks at today's literature or commercials being produced by the companies, it seems they emphasize the vehicles' durability as well as the perceived freedom that riders have to drive anywhere they wish with little thought given to their impacts or safety. It is time to place an added Federal tax on the sale of these vehicles which could be used by land management agencies to offset management and rehabilitation costs related to this type of use.

Congress should not allow more off-road usage than can be monitored and managed. Responsible use of public lands now is a necessity for future generations to enjoy.

I highly recommend that the Members endorse the report entitled "Six Strategies for Success, Effective Enforcement of Off-Road Vehicle Use on Public Lands.", which was published by Wildland CPR, and available for viewing at the following web link:

<http://www.wildlandcpr.org/news/new-report-reveals-solutions-road-vehicle-abuse->

[public-land](#) . I also brought several copies with me today if Members are interested. This report presents a comprehensive review of the current issues associated with ORV's on public lands and then makes a number of very effective recommendations. Its Executive Summary states, in part:

"Over the past two decades, advances in off-road vehicle technology have enabled riders to drive on nearly any type of terrain, up steep slopes, and onto lands that once were accessible only on foot. At the same time, the popularity of off-road vehicle recreation has soared. Together, these forces have overwhelmed the regulatory enforcement efforts of public lands agencies. The results: An extensive network of unauthorized, usercreated routes that criss-cross the landscape and a legacy of damage to environmental and cultural resources. Safety concerns for humans and wildlife and conflicts among motorized and non-motorized recreationists have escalated. Public land management agencies are facing these challenges with inadequate enforcement funding and staff. This leaves them unable to protect the lands under their stewardship, and at a loss to turn around the attitude of lawlessness that is alarmingly common among off-road riders. The common perception among off-road riders is that breaking the rules some of the time is all right, especially if someone else has ridden off-route before and cut a visible trail. This has become a significant public problem because of the destructive capabilities of off-road vehicles."

This is the best statement that I have seen encapsulating the problem. The report also contains a lot of very practical advice that federal land management agencies should be integrating into their approach to this growing problem.

This concludes my statement. I would be pleased to answer any questions that you may have.

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