

7 September 2016

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Objection Reviewing Officer

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Re: Objection to Upper North Fork Nooksack River Access Travel Management(ATM) Project*.*

Pursuant to 36 C.F.R Part 218.5 (a), Citizens for Forest Roads (CFFR) files this objection to the draft decision for the Upper North Fork Nooksack Access and Travel Management Project (herein referred to as “Nooksack ATM”). The Nooksack ATM project occurs on the Mt. Baker Ranger District of the Mt. Baker – Snoqualmie National Forest.

Responsible Official, Erin Uloth

Mt. Baker District Ranger

Mt. Baker –Snoqualmie National Forest

810 State Route 20

Sedro Woolley, WA 98284.

About us: Citizens For Forest Roads has worked with the staff of the Mount Baker Ranger District, U.S. Forest Service for the last seven years to provide motor vehicle access on the Mount Baker-Snoqualmie National Forest. Maintaining road access provides an infrastructure to manage for a healthier, more resilient forest that can be enjoyed and utilized for a wide variety of activities both recreation and commercial thereby contributing to local economies.

Our objection is based on the Draft Decision Notice: Nooksack ATM’s failure to meet its goal of “*reducing resource impacts, bringing the road system into better alignment with the budget and retaining a level of access for the Tribes and recreation public.”*

We maintain that the rationales for scheduled closures such as the justification that the ATM will “*incur overall savings in agency budget*” are flawed arguments. If there is no money currently being spent on many roads including those selected for proposed closure in this ATM, how can there be any savings?

We question the justification that closing certain roads to the general public is necessary to ensure treaty tribal rights (during certain times of the year) in light of language in the Point Elliott Treaty (Article 5) which, while firmly assuring treaty member access to open and unclaimed lands, stipulates that such access will be ‘in common with all citizens of the Territory.”

We further assert that in the scoping of ATM process and the announcement at the outset of this process there was no mention that the granting of exclusive access even on a limited basis was in play as a potential element of the ATM. Without upfront knowledge that this major paradigm shift in forest access was being considered, we had no chance to make initial comment that confers legal standing to object to this element. We believe this is a fundamental violation of NEPA due process regulation.

Objections 1 and 2 are based on CFFR’s input to Environmental Assessment of March 6, 2016. Objections 3, 4 and 5 are based on the Draft Decision.

Maintenance of forest roads has been the focus of our NEPA input.

1. Closing roads (moving them to maintenance level 1) does not resolve the fundamental problem of maintenance deferral on recreational roads (CFFR response to EA March 6, 2016). The last three years have clearly shown that it is internal Forest Service decisions that are responsible for the fact that effective road maintenance has not been performed in the ATM area during 2014 and 2015. That has extended to the current 2016 fiscal year when no maintenance other than opening one culvert had been performed at time of this writing.
2. The draft decision does not deal with impact to local communities by proposed reduction of recreational opportunity (CFFR response to EA March 6, 2016). The effect on the rural community economy of losing major snowmobiling areas due to a bar on the ability to groom routes and hunting access has not been effectively evaluated and dealt with in this process.
3. The draft decision’s interpretation violates treaty language and creates a discriminating situation which violates several agency (USDA) programs such as FONSI Intensity No. 10 rule. We believe the draft decision disregards the intent of the Wells Creek Road 33 Seasonal Wildlife (mountain goat) Closure by imposing an unacceptably adverse impact on the Barometer Mountain wintering mountain goat population by increasing disturbance from potentially unmodulated tribal access during the closure period. This clearly contradicts said wildlife closure as specified in the 1990 Mt Baker Snoqualmie Forest Plan, FONSI Intensity No. 9.

We are mindful that the TREATY WITH THE DWAMISH, SUQUAMISH, ETC., 1855. Jan. 22, 1855. | 12 Stat. 927. Ratified Mar. 8, 1859. | Proclaimed Apr. 11, 1859 assures and reserves that “*The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands.* We contend the prior and historic Forest Service actions, as mandated by FS Manual 2235, have not prevented tribal members from accessing such locations. We do not see in treaty representations compelling factual information in the form of incident history to demonstrate that there has been a denial of the enjoyment of rights. And as we have mentioned, language of this article does not mandate granting exclusive right of access to tribal members over citizens of the state as a specific remedy. Should such a condition exist we believe that the appropriate process would be to amend the treaty and have Congress change the status of such federal lands.

1. Failure to acknowledge and utilize existing Forest Service management documents including the Whistler Creek Environmental Assessment as well as formal agreements with partners specifically the Whatcom Snowmobile Association in proposing to close FSR 3160 and 3170 is dismaying. To make a change without consulting a long-time formal partner demonstrates a lack of consideration and respect. Failure to refer to and at least consider existing Forest Service documents demonstrates the lack of due diligence. It’s also dismaying that Forest Service does not recognize the contributions to effective road upkeep that the Club has played in obtaining past road maintenance grants for brushing, ditch work on FSRs 31, 3140, and 3160 for culvert replacement on Road 31 at MP 8.50 and 8.735. The closure of Road 3170 does in fact remove access to Bear Paw Lake Trail No. 4430 which is in conflict with the statement in draft decision that asserts there will be no loss of access to official trails.
2. Failure for public disclosure during the NEPA process until draft decision is out for review. The proposed closure to public motor vehicle of FSRs 3071, 33 and 36 that are maintained by Nordic Ski Club (Road 3071) and by CFFR (Roads 33 and 36) again demonstrates a lack of partnership consideration and just poor public disclosure practice. We further object to closing the last mile of Road 36. The rationale of deterring snowmobile access, will, in fact, also inhibit the driving public including treaty members from harvesting huckleberries from a long-term gathering area in the Grouse Butt/Grouse Ridge area.

We believe that where localized or limited scope management documents such as wildlife road closure orders or memoranda of agreements exemplified by the one made with Whatcom Snowmobile Association were recognized in environment assessment documents that were in turn subsumed in or incorporated into the Forest Plan, to fail to review them, consult with partners to such as the state fish and wildlife department or the snowmobile club or unilaterally abrogate them constitutes an impermissible disregard or violation of the forest plan. This we think is a bar to implementation of this ROD concerning the North Fork Nooksack ATM.

Insofar, as we are aware no officer of the Whatcom Snowmobile Association was informed that the Forest Service intended to change the terms of their written agreement.

It is our understanding from conversations with the Region Four Director of the Washington Department of Fish and Wildlife and the agency’s district/regional wildlife program representatives that they had no knowledge prior to the release of the ROD in late July that the proposal contained elements affecting the terms of the wildlife road closure agreements negotiated in good faith decades ago that have remained valid up to the present. Those changes most certainly materially alter the management prerogatives of the state agency and the Forest Service had and has a professional duty to consult upfront with their governmental partners. Relying on just one e-mailed inquiry and failing to follow up to establish affirmative contacts for discussion demonstrates a disregard for courteous, cooperative governance.

SOLUTIONS:

We believe the Forest Service, instead of relying the paradigm of road infrastructure reduction to meet budgetary challenges, should shift its institutional focus to increasing volunteer participation in road maintenance. The repeated concern given by Forest Service since 1993 has been the lack of engineering personnel to oversee limited maintenance operations such as brushing, ditch cleanout, and clean culvert inlets and outlets. It is our view that these activities do not in fact require such technical supervision. Recently, the Mount Baker District ranger gave permission on four different occasions to CFFR to clean out limited lengths of ditchline together with culvert inlets with small excavators. The justification for this was the critical nature of plugged culverts or drainage crossings and the risk of environmental damage if these sites were left unremediated. In each case, the work was documented and photographed and both the ranger and engineering were informed of start and finish of each task. This type of response requires trust on the part of the Forest Service in those who are overseeing such jobs and knowing something about the operator. CFFR hopes the Forest Service will allow more of this type of activity as trust is gained with those volunteering to perform these small maintenance operations. We further hope this leads to a more proactive approach instead of emergency reactive type mode.

CFFR also is proposing as part of this new paradigm the Road Reserve System. Though this endeavor requires Congressional action as well as agency initiative, establishment of Road Reserve Corridors and dedicated Forest Road Reserve Accounts would to enable the generation funding from careful and judicious timber harvest along forest roads on an annual basis dedicated to pay for road maintenance and emergency repairs. This would ensure the viability of all current elements of the Forest’s motorized transportation system keeping them open for use by a broad spectrum of public interests and abilities.

A third initiative that CFFR believes should be undertaken is the changing of the legal designation of national forest motorized vehicle routes. They are currently classed and recognized in statute as forest development roads. All ‘public’ roads in the country are eligible for funding from the Federal Highway Trust Fund (Final Rule, 26). Converting high use Forest Development Roads to Public Roads makes them become eligible for this funding, too. In 1999, with the passage of TEA 21, the Forest Service became a public road authority. As such, the Forest Service is now able to convert their main access roads (arterial and collector forest development roads) to public road classification. In doing this, they would be eligible for Federal Highways Administration funds to maintain and improve such rights of way. With outdoors recreation being a multi-billion dollar industry upon which many rural communities depend, such a change would be a critical investment for them, but equally as important this infusion of monies also would safeguard our public watersheds and fisheries.

Citizens For Forest Roads hereby requests the opportunity to participate in the objection resolution process for the North Fork Nooksack Access Travel Management Plan.

We also look forward with great anticipation to assisting you and the Forest Service going forward in keeping national forest roads open for public use.

Sincerely,

Roger Nichols

Roger Nichols, lead objector Doug Huddle, member

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