Comment Regarding the GMUG National Forest Draft Forest Plan and DEIS

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I. Introduction

I am a Jeeper and off-road vehicle enthusiast from Highlands Ranch, Colorado, and a non-practicing Colorado licensed attorney currently working as a software developer. I serve as the Vice President of Colorado Offroad Trail Defenders (COTD), a non-profit organization dedicated to keeping offroad trails open to full-size four wheel drive vehicles and maximizing opportunities for offroad motorized recreation.

I am also an Advisory Board member of Colorado Offroad Enterprise, a related organization based in Buena Vista, CO which focuses on trail adoptions and community outreach to preserve high quality opportunities for motorized recreation in the central Colorado mountains. CORE has adopted numerous trails in the Buena Vista and Leadville areas and has done multiple trail work projects in the Gunnison National Forest, including clearing a rock slide from the Alpine Tunnel road this summer.

These comments are submitted on behalf of both myself and Colorado Offroad Trail Defenders as an organization. We submit these comments to request that the new GMUG Forest Plan preserve the maximum number of opportunities for motorized recreation, particularly for full-size four-wheel-drive vehicles. We also support and endorse comments by the Trails Preservation Alliance (TPA), Colorado Off-highway Vehicle Coalition (COHVCO), the Blue Ribbon Coalition, the Colorado Snowmobile Association, and other motorized advocacy groups.

II. Comment Summary

The GMUG National Forest includes many of the most popular destinations for motorized recreation in Colorado. It includes four Jeep Badge of Honor trails in the San Juan Mountains (Black Bear Pass, Imogene Pass, Ophir Pass, and Poughkeepsie Gulch), as well as numerous iconic trails in the Taylor Park and Crested Butte areas such as Pearl Pass, Taylor Pass, Schofield Pass, Hancock Pass, Napoleon Pass, Tincup Pass, Williams Pass, Tomichi Pass, Italian Creek/Reno Divide, and many others. Grand Mesa is home to numerous popular Jeep and ATV trails and is a popular destination for snowmobiling in the winter. It is imperative that the new GMUG Forest Plan recognize the importance of, and continue to provide for, high quality motorized recreation opportunities throughout the Forest.

While we will discuss each of the alternatives in more detail below, **we generally support Alternative B**, which we understand from the webinars is currently the Forest's unofficial

preferred alternative. At least regarding summer motorized use, alternative B appears to best preserve existing opportunities and would allow all current designated routes to remain open. While the management areas and ROS zones in this alternative include a few important errors that we wish to see corrected in the next draft, we believe the summer motorized community would overall find this alternative acceptable. It is more likely to face opposition from winter motorized users, as it includes significantly fewer winter motorized ROS zones than the present. While we will defer to snowmobile groups to best describe their needs, what we would like to see eventually adopted as the final plan would look more like a combination of the summer ROS zones from Alternative B and the winter ROS zones from Alternative C.

While **Alternative C** is described in the DEIS as providing more motorized recreations settings and the Forest might therefore assume motorized groups would be inclined to support this alternative, we have major concerns with that alternative. As currently drafted, Alternative C would enlarge summer motorized ROS zones in areas where there are no existing motorized routes, while placing multiple high-value motorized (e.g. Black Bear Pass, Imogene Pass, Poughkeepsie Gulch) in semi-primitive non-motorized zones. In so doing, Alternative C might expand the number of areas theoretically zoned for motorized recreation, while in practice forcing the closure of numerous high-value motorized routes by placing them in an incompatible ROS zone.

Though I am by no means an expert on snowmobiling, it appears that the winter ROS zones in Alternative C are more favorable to motorized users than Alternative B, so as mentioned above we would support a final plan that adopts the summer ROS zones from Alternative B and the winter ROS zones from Alternative C.

The motorized community stands united in unequivocally opposing **Alternative D**, which is largely based on the proposed designations in the Gunnison Public Lands Initiative (GPLI). Motorized advocacy groups have been fighting against the GPLI for years, as we believe it to have involved a sham public process used to manufacture the appearance of a consensus which confers false legitimacy on the radical agenda of anti-recreation (specifically anti-motorized recreation) special interest groups. The GPLI remains highly controversial and is subject to significant public opposition, with many of the surrounding counties and numerous recreational groups opposing it.

Though the GPLI claims their proposal would not close any existing summer motorized routes, the proposed actions in Alternative D prove this to be an abject lie. Alternative D includes multiple proposed Special Management Areas (SMAs) which are listed as unsuitable for *any* (not just new) summer motorized use, yet include multiple existing designated motorized routes.

We see nothing in the draft plan language that would allow existing designated routes to stay open in SMAs deemed unsuitable for motorized use. Indeed, **MA-SMA-OBJ-01** states: "*Within 3 years, initiate travel management to implement special management area suitability designations.*" This implies that existing motorized routes incompatible with SMA designations must be closed. Therefore we must assume that if Alternative D were adopted, it would require numerous popular motorized routes to be closed in a future travel management

process, including multiple side trails off Kebler Pass, Schofield Pass Road and other roads in the Gothic area, Poverty Gulch Road, Red Mountain Road, and others.

Moreover, the summer ROS zones proposed in Alternative D would be a disaster for motorized recreation, placing nearly all of the most popular motorized routes in the GMUG NF in semi-primitive non-motorized zones. These include Black Bear Pass, Imogene Pass, Poughkeepsie Gulch, Lower Engineer Pass, Hancock Pass, Tomichi Pass, and many others.

Forest Service officials claimed during the webinars that placing existing motorized routes in non-motorized ROS zones was likely a mistake. Given that Alternative D describes decreased motorized ROS zones as a feature of that alternative, and that **FW-GDL-REC-16** requires future travel management plans to be consistent with the desired ROS zones, we can only conclude that the inevitable effect of these designations would be (to the extent the Forest Service even has jurisdiction over these roads) to force all of these routes to be closed in the next travel management process.

While we understand that the Forest Plan is not a travel management plan and will not directly close routes, it would be disingenuous for the Forest not to acknowledge that the Forest Plan will inevitably control future travel management decisions. Accordingly, the EIS must analyze the impact such incompatible designations would have on motorized recreation. We have recently seen in the Pike San Isabel National Forest that when motorized routes are placed inside non-motorized management zones, even accidentally, it can and will result in the forced closure of popular motorized trails.

In the Pike San Isabel National Forest, mapping errors erroneously placed several popular motorized routes including the Halfmoon Creek, Iron Mike Mine, Twin Cone, and Lost Canyon roads in non-motorized management areas. Those errors in part gave rise to litigation from anti-motorized environmental groups, which caused several of those routes to be temporarily closed by the resulting settlement for over five years pending the outcome of a new travel management process. As of the draft decision notice published last year, that new travel plan will result in the permanent closure of the upper portion of Twin Cone Road and numerous other high value motorized routes, and is likely to be challenged in court this time by motorized groups.

The GMUG NF would do well to recognize that placing existing designated motorized routes inside non-motorized management or ROS zones in the new Forest Plan will only invite litigation and controversy where none exists now. We urge the adoption of an alternative that will keep all existing motorized routes in motorized ROS zones and will not designate any form of management areas -- whether Recommended Wilderness, Special Management Areas, Wildlife Management Areas, etc. -- that would mandate the eventual closure of high-value motorized routes. The GMUG NF has already undergone travel management planning under the 2005 Travel Management Rule, and the decision in that travel plan should not be upended by incompatible management designations in the Forest Plan.

For these reasons, the only alternative we can support in its current form is Alternative B. Alternative C could be acceptable to motorized users as well, *if* the summer ROS maps were corrected so as not to place any current MVUM routes inside non-motorized ROS zones.

Regarding specific issues in the Draft Forest Plan, we oppose any new recommended wilderness areas beyond the small additions to existing designated Wilderness Areas in Alternative B. Managing large areas of "recommended wilderness" as basically identical to designated Wilderness violates both the letter and the spirit of the Wilderness Act, which places Wilderness designation under the sole purview of Congress. We oppose additional restrictions on dispersed camping, and urge the Forest not to adopt standards which will inevitably result in the widespread adoption of restrictive regulations on dispersed camping like those recently imposed around Crested Butte.

Finally, we strongly oppose the proposed restrictions on drone flying in **FW-STND-REC-09**, which are vastly overbroad and unnecessary to achieve their stated goal, and will ultimately be impossible to enforce. Drone flying has become a popular activity for motorized users traveling on Forest roads, and we strongly oppose mandating significant restrictions on this activity in the Forest Plan. Such restrictions, where necessary, should be established in Forest Orders or project level management plans specific to particular areas, not imposed broadly across the Forest. The Forest Service also should defer to the Federal Aviation Administration (FAA) in regulating this new and rapidly evolving activity.

III. Alternatives Discussion

As noted above we find Alternative B to be generally acceptable from a motorized perspective, and therefore urge the final adoption of that alternative. Nevertheless, we will discuss key points (and point out critical errors and problems) in each of the four alternatives under consideration.

A. Alternative A

Because Alternative A is the designated no-action alternative, we realize it has zero chance of ultimately being adopted, as the nature of any NEPA proceeding means the no-action alternative is included as a mere legal formality with no serious consideration actually given to adopting it. We will therefore focus most of our comments on the action alternatives. Nevertheless, we believe that the GMUG National Forest has been effectively managed under the existing Forest Plan.

We agree there is a need to simplify the Forest Plan, and we commend the Forest for reducing the number of different kinds of management areas in all the action alternatives. However, we believe that the new Forest Plan should not make any radical changes to the existing Forest Plan, and should especially keep the summer and winter ROS zones largely the same as they are today. We also note that several errors in management area and ROS zone boundaries, particularly those near the summits of Pearl and Taylor Passes which will be discussed in detail under Alternative B, exist in Alternative A as well and should be corrected in the FEIS.

We also note that it has recently come to light that many of the motorized and non-motorized ROS zones in Alternative A do not accurately reflect current conditions, as changes were made to the zones from the prior Forest Plan outside of any NEPA process and with no documentation. We endorse and fully agree with the comments of the Trails Preservation Alliance on this issue, as stated here.

As TPA describes, there is potentially a discrepancy amounting to 24% of the GMUG National Forest between the motorized ROS zones in the previous Forest Plan and the supposed no-action baseline as presented in Alternative A. TPA believes this discrepancy stems from a combination of mapping errors, a misrepresentation of the effect of the 1991 RMP Supplement, a blatantly illegal interpretation of the Travel Management Rule claiming that travel management designations automatically changed ROS designations in the Forest Plan, and a misapplication of the Colorado Roadless Rule.

We emphasize with TPA that route specific designations in a travel management plan adopted under the 2005 Travel Management rule do not in any way alter the ROS zones in the Forest Plan. Even when specific routes inside a motorized ROS zone or motorized recreation emphasis management area are closed in a travel management decision, the surrounding ROS and management zones remain the same unless amended by a separate process, which the GMUG NF elected not to undertake.

If the no-action alternative baseline is indeed misrepresenting large areas that should have a motorized ROS designation as non-motorized, that level of inaccuracy is fatal to this process and would invalidate all analysis made in comparison to that baseline. We urge the GMUG NF to resolve this discrepancy by either providing a sufficient explanation for it or correcting the baseline ROS maps and statistics in the final EIS.

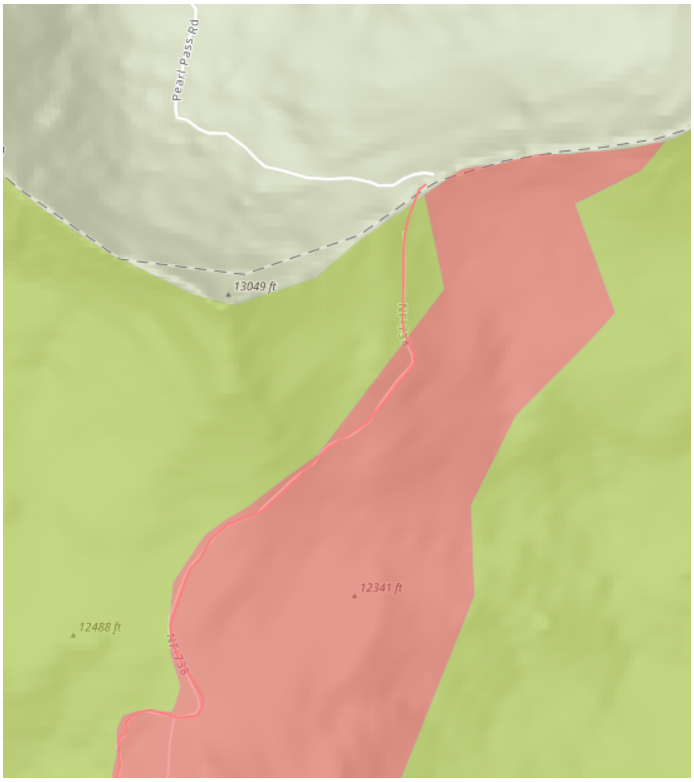
B. Alternative B

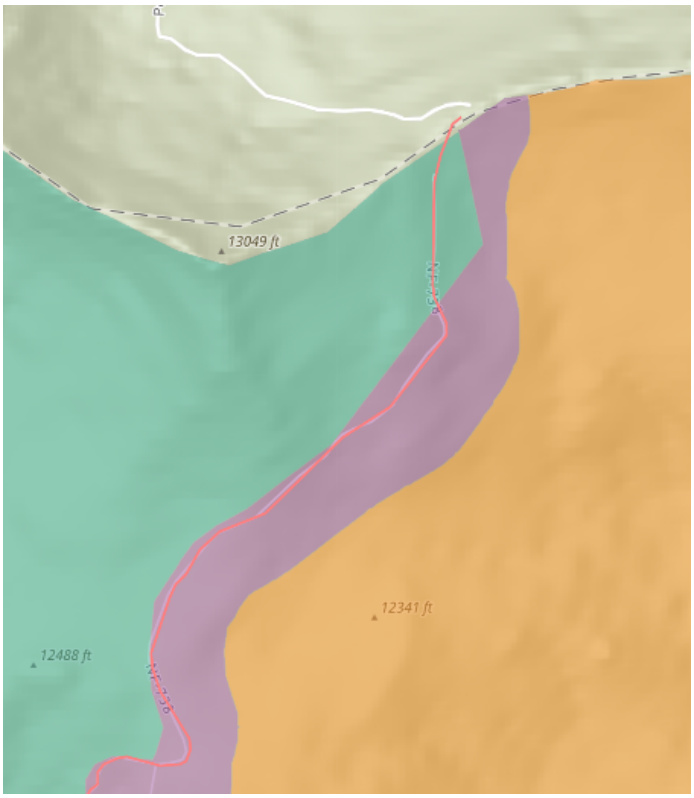
Of action alternatives under consideration, Alternative B (described as the “blended” alternative) does the best job of largely preserving the status quo regarding summer motorized recreation while simplifying the overall management area structure and updating specific management standards. Accordingly, as it stands today, we support the adoption of Alternative B in the eventual Record of Decision, at least for the overall plan and summer ROS zones. We also understand that this alternative is considered the Forest’s unofficial preferred alternative, and we will treat it as such in our comments.

While we are largely happy with the summer motorized ROS zones in Alternative B, the winter ROS zones leave much to be desired. While Alternative B keeps the summer ROS zones largely unchanged from Alternative A (see comments above about potential inaccuracies there), there is a substantial decrease in winter motorized zones relative to the status quo. The winter ROS zones from Alternative C are far superior and provide a much greater area available for snowmobiling than Alternative B, closer to current conditions. While we do not have sufficient expertise in snowmobiling to address specific areas, we would ultimately like to see a combination of the summer ROS zones from Alternative B and the winter ROS zones from alternative C.

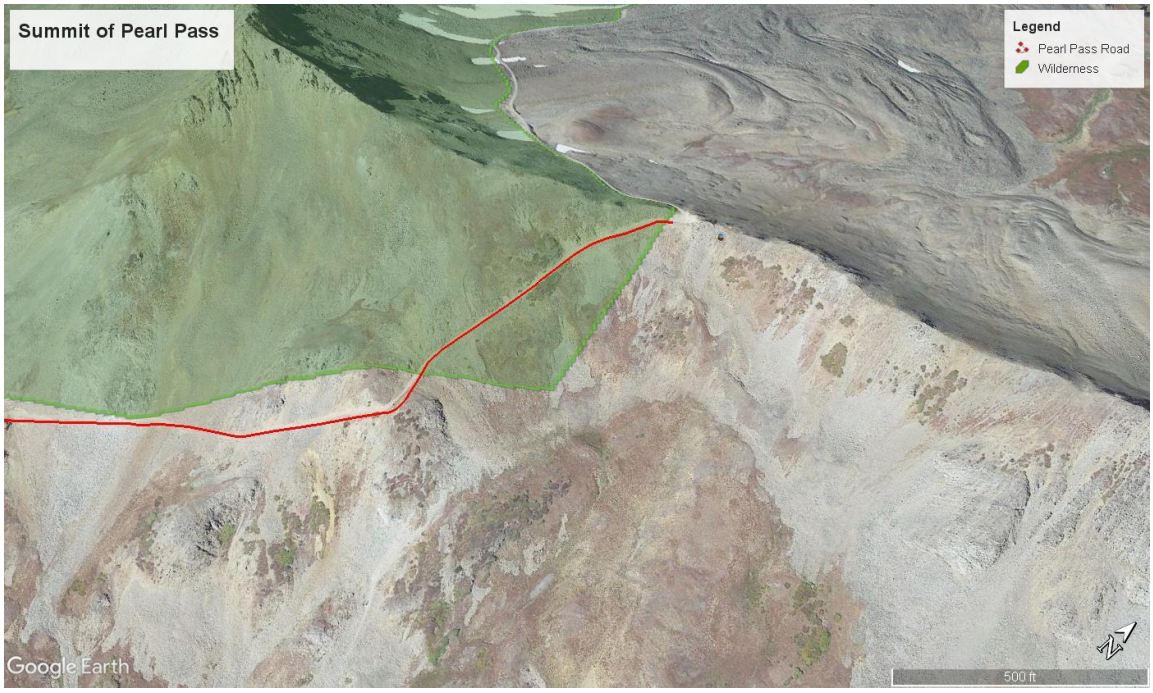
While the summer ROS zones are mostly the same as under Alternative A, we wish to point out several critical errors in ROS boundaries that carry over from Alternative A.

The first error (shown upper right) is at the **summit of Pearl Pass Road** (designated on the MVUM as a trail open to all vehicles), where the semi-primitive motorized zone (red area) that is supposed to follow Pearl Pass Road (NSFT 9738) is shown in the wrong place. As a result, the road (pink line) at the summit of Pearl Pass is shown as being inside a semi-primitive non-motorized zone (green area) instead. The same error occurs in the management area map for Alternative B (below right), where the summit of Pearl Pass Road is shown inside a Designated Wilderness management area (green), and the high use recreation area corridor (purple) that is supposed to follow the road is shown in the wrong place.

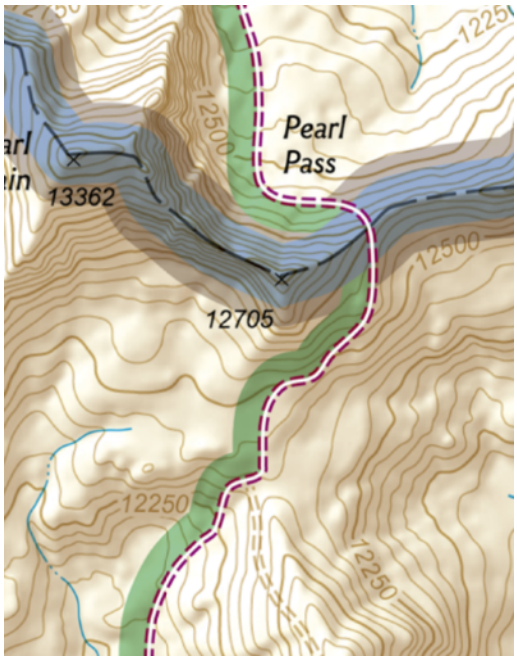




This error appears to have resulted from an error in the Forest Service's GIS data for the Maroon Bells-Snowmass Wilderness, as both the semi-primitive non-motorized zone and the designated wilderness management area follows its boundaries. This error can be clearly seen when the Forest Service's publicly available Wilderness GIS layer is plotted on Google Earth against the MVUM trails GIS layer showing Pearl Pass Road, as seen on the following page.



This is a critical error that must be corrected. Based on the fact that on both the north and south side of Pearl Pass, the Wilderness boundary follows the road, the road was clearly supposed to be outside of the Wilderness area. It would make no sense to have drawn the Wilderness boundary to exclude the road for its entire length, but then have the summit of the pass inside the Wilderness. This of course would force this segment of the road to be closed, making it impossible to drive Pearl Pass as a through route.

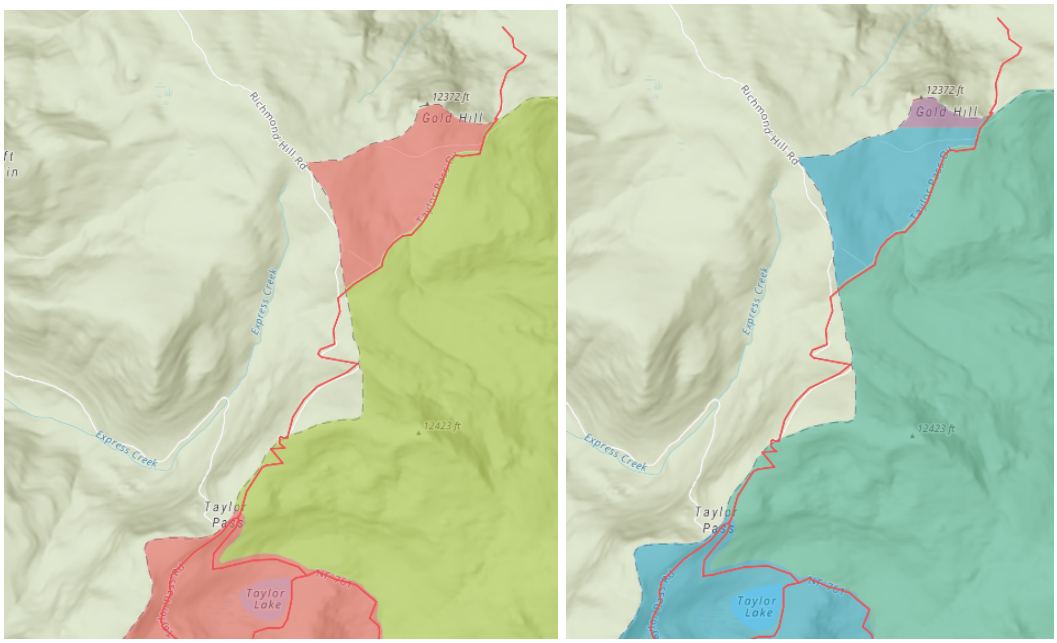


Other map sources correctly draw the Wilderness boundaries to exclude the entirety of Pearl Pass Road, including the summit. To the right is how the National Geographic Trails Illustrated map depicts the summit of Pearl Pass, with the Wilderness boundary (green) following and excluding the road.

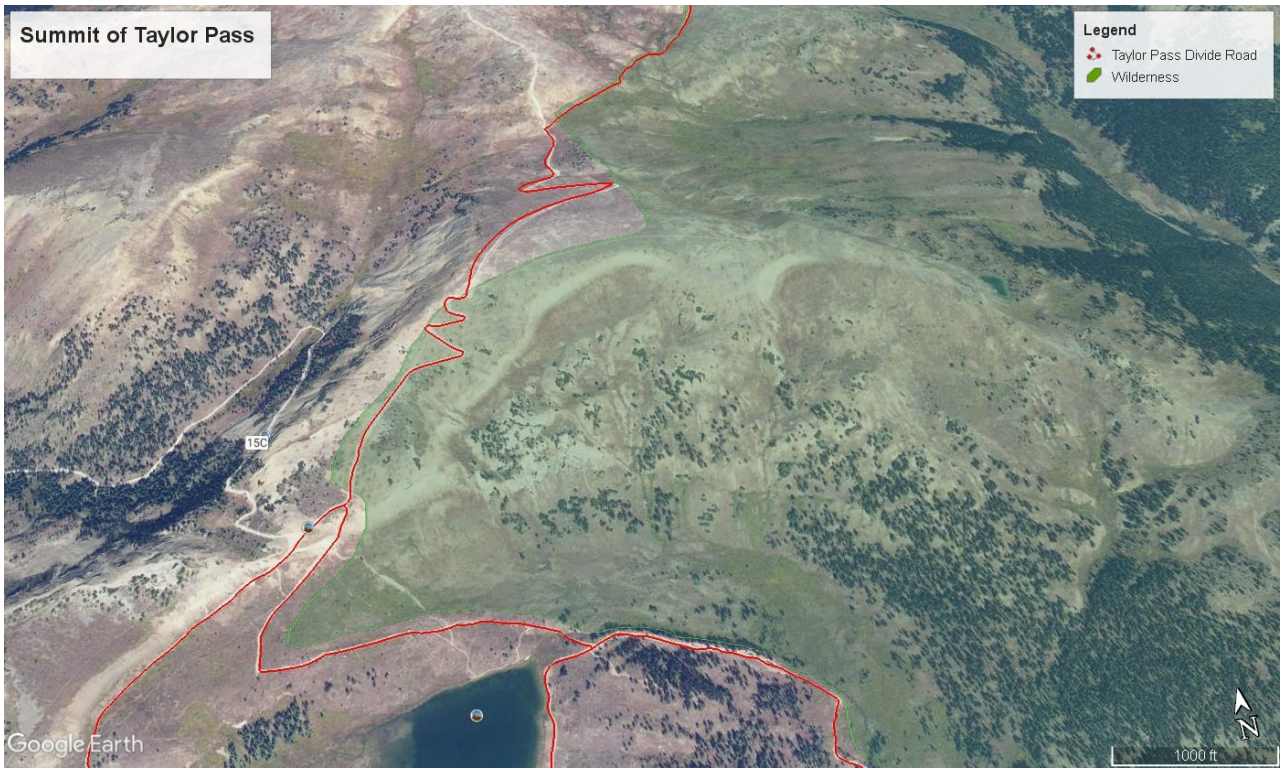
It is critical that this error be corrected not only in the GIS data and maps for the Forest Plan revision, but the Forest Service's national Wilderness GIS layers as well. If this clear error in the Wilderness boundary, ROS zones, and management areas goes uncorrected, it could force the unintentional closure of one of the most popular motorized routes in the GMUG National Forest.

A similar error occur occurs at the summit of Taylor Pass, where NFSR 7761.1A: TAYLOR PASS DIVIDE is shown inside the Collegiate Peaks Wilderness Area and therefore inside a

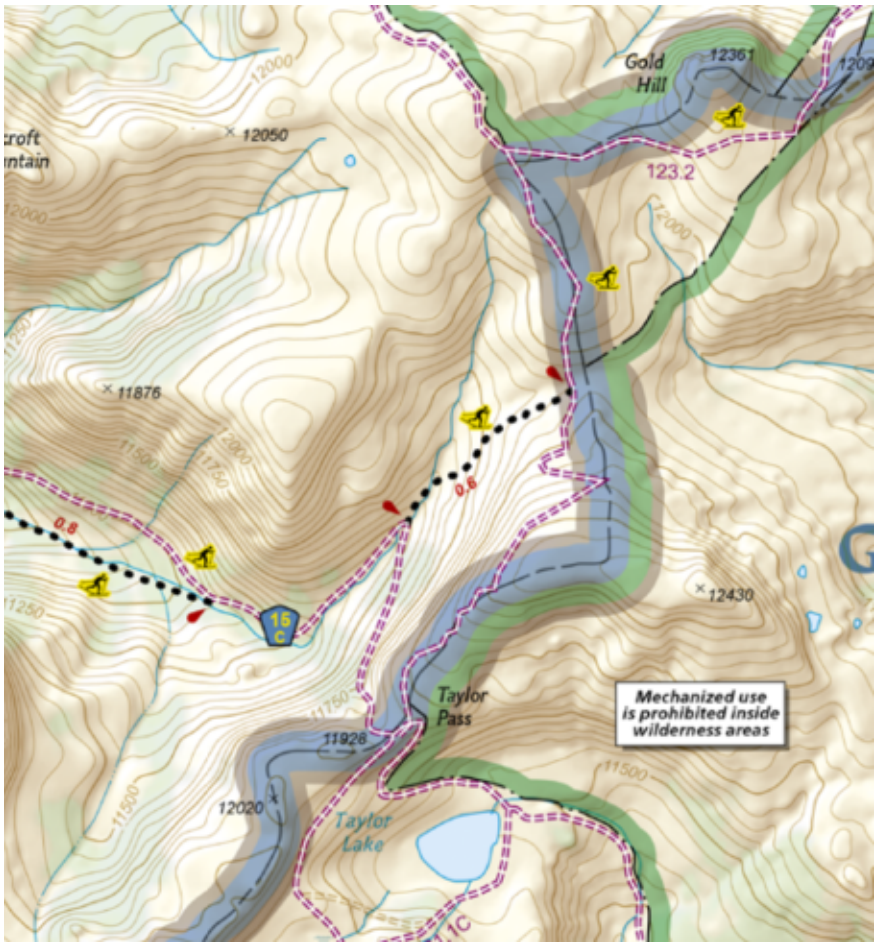
semi-primitive non-motorized ROS zone (below left) and a Designated Wilderness management area (below right). The motorized ROS zone and general forest management area are both shown in the wrong location and do not actually include the road.



This issue can once again be seen in Google Earth imagery to be a clear error in the Wilderness Boundary, which should have been drawn to exclude the road.



This Wilderness boundary also is shown correctly in the National Geographic Trails Illustrated map.



This also is a clear error with the Forest Service's GIS data and must be correct in the Wilderness GIS layer as well as the management area and ROS zone maps and GIS data for the new Forest Plan. Otherwise another important road could be forced to be closed without any deliberate decision to close it.

Another significant error in Alternative B concerns NFSR 895: SPIRIT GULCH/GREYHOUND MINE off of US 550 near Red Mountain Pass. As seen in the map to the right, this road is shown as being mostly inside a semi-primitive non-motorized zone in Alternative B. It is in a General Forest management area so that is not an issue, but the ROS zone needs to be corrected to semi-primitive motorized if it is to remain open.

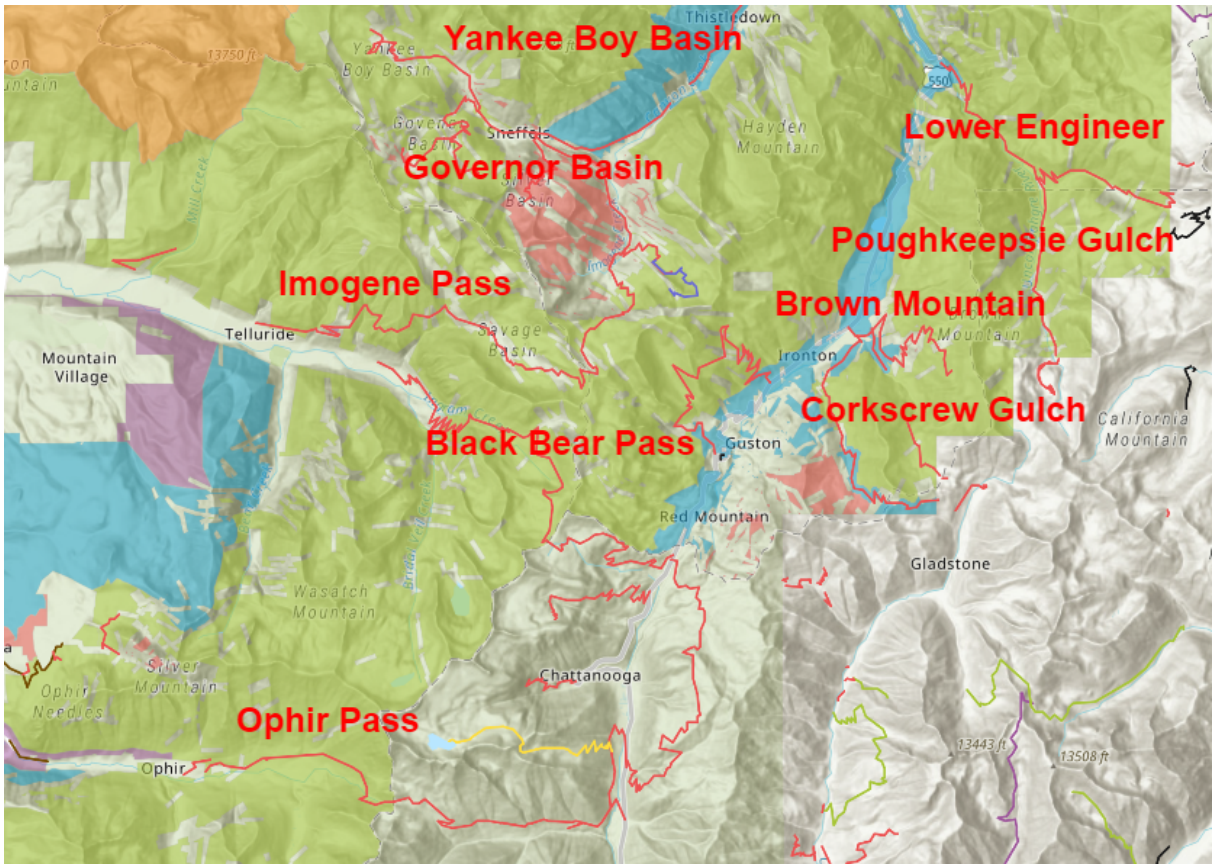
I am uncertain of the exact status of this road, as I attempted to drive it this summer and found it blocked

by a locked gate. It is shown as a legal motorized route on the current MVUM, however the interactive ROS maps list it as an admin road. If this is still a legal road, I ask the Forest Service to investigate why it is gated and to remove the gate. Otherwise the GMUG NF should explain why it is closed without any travel management decision to close it.

While these are the most significant mapping errors I have found with the ROS zone and management area boundaries in Alternative B, I am sure there are others that will not be caught before the new Forest Plan is finalized. As a result, it is critical that the GMUG build some flexibility into the management areas and ROS zones such that minor mapping errors which cause short segments of motorized routes to be shown in non-motorized areas do not force those routes to be closed in the future. This indeed is what happened to several valuable routes in the litigation around the Pike San Isabel National Forest's travel plan, and the motorized community does NOT want to see such inadvertent closures happen again. Explicit wording should therefore be added to the definitions of non-motorized ROS zones to allow for short segments of motorized routes to be present.

C. Alternative C

While the winter ROS zones in Alternative C are much better than Alternative B and maximize available opportunities for snowmobiling, we have serious concerns about errors in the summer ROS zones. There are numerous places where current designated MVUM routes are shown in semi-primitive non-motorized zones.



The most egregious of these errors occur in the San Juan Mountains around Ouray and Telluride, where world-famous motorized routes such as Black Bear Pass, Imogene Pass, Ophir Pass, Yankee Boy Basin, Corkscrew Gulch, Lower Engineer Pass, and Poughkeepsie Gulch are all shown inside semi-primitive non-motorized zones. Most of these are recognized county-roads, and as such cannot be closed by the Forest Service. However, to the extent that any of these roads are under the sole jurisdiction of the Forest Service, these clearly erroneous ROS zones could end up inadvertently forcing the closure of these inestimably valuable motorized routes.

The map image above shows each of these routes partially or almost entirely within green semi-primitive non-motorized ROS zones in Alternative C. Of these routes, Black Bear Pass, Imogene Pass, Ophir Pass, and Poughkeepsie Gulch are all Jeep Badge of Honor trails, and are easily among the most famous four-wheel-drive roads in Colorado. Corkscrew Gulch, Lower Engineer Pass, and Poughkeepsie Gulch connect to the famous Alpine Loop, which consists of Engineer Pass and Cinnamon Pass. All of these routes are considered part of the Alpine Loop Backcountry Area.

Given that all these routes are designated as high use recreation corridors in the management area maps for Alternative C, which are mainly used along popular motorized routes, placing all of these routes in semi-primitive non-motorized ROS zones is clearly erroneous and must be corrected in the maps and GIS data for the final EIS. Numerous other designated motorized routes are also shown inside non-motorized ROS zones -- too many to discuss each one in detail.

We are at a loss as to how this occurred, and cannot believe it was intentional that the alternative described as *favoring* motorized recreation would in fact force the closure of numerous popular motorized routes by placing them inside semi-primitive non-motorized ROS zones. We can only conclude that the GMUG GIS staff failed to compare the ROS zone maps against the Forest Service's own MVUM route GIS layers, which would have immediately revealed the significant number of motorized routes inside non-motorized zones.

Because of the extreme number of designated motorized routes inside non-motorized ROS zones, we cannot support Alternative C as currently drafted. We urge the GMUG NF to undertake a thorough review of the ROS maps for Alternative C and correct all instances where existing motorized routes are shown inside non-motorized ROS zones prior to publication of the FEIS. Finally we note that the mapping errors along Wilderness boundaries at the summits of Pearl and Taylor Passes discussed in relation to Alternative B are also present in Alternative C.

D. Alternative D

1. Oppose the GPLI

Colorado Offroad Trail Defenders are unequivocally opposed to Alternative D and the GPLI upon which it is based. If this alternative is chosen in the final ROD, litigation by the motorized community is almost certain. The sham public process through which the GPLI was created

(from which motorized groups were largely excluded), likely violated Colorado open meetings laws and makes it extremely vulnerable to legal challenges.

We caution the Forest Service against basing the new Forest Plan on such a controversial and biased "community" proposal. The GMUG National Forest belongs to all Americans and should be managed to benefit everyone, not just a few well-funded environmental groups and local politicians in Gunnison County. Given that over 50% of the GMUG NF is already required to be managed under the highly restrictive standards imposed by the Wilderness Act and the Colorado Roadless Rule, the last thing the Forest Service should do is lock up more acreage under restrictive "Special Management Area" and "recommended wilderness" designations which severely limit active management.

Motorized advocacy groups have long opposed the GPLI, and we endorse the prior comments[1] of the Trails Preservation Alliance on this subject, which we have included below:

> **We continue to oppose Gunnison Public Lands Initiative to date.**
>
> The Organizations again wish to memorialize our ongoing concern over and opposition to the Gunnison Public Lands Initiative ("GPLI") process, as there has again been extensive press around the efforts and release of a final version of this recently. It has been our experience that this process was not about actually involving the public to develop a balanced legal plan for the Gunnison Valley but rather was an effort by a small group to create the appearance that there was public involvement to support an agenda that had been developed by them prior to any public involvement. Too often the public was not provided notice of meetings or other basic materials for public meetings like agendas and minutes were never available and those of our members that were able to locate a meeting were treated poorly and any input provided was overlooked after discussions started from a position that areas should be Wilderness unless that person could prove otherwise. Clearly, that is not the way to engage the public in questions of land management and as a result really draws the value of this proposal into question.
>
> In discussions with many of the county officials representing counties adjacent to Gunnison County, we have found there to be overwhelming opposition to the GPLI proposal from these adjacent counties. Initially, many of these counties raised concerns about the failure of the GPLI efforts to engage those counties on the management of public lands outside Gunnison County. Rather than engaging with these counties to address concerns, GPLI representatives simply reduced the proposal to Gunnison County lands only assuming that this was sufficient. For reasons that remain unclear GPLI simply assumed that management of public lands on the boundary areas of Gunnison County would not impact adjacent lands in other counties. That assumption has proven to be less than accurate and has resulted in significant conflict between the counties that never existed previously.
>
> It should be noted that after a review of the Gunnison County Commissioners meeting minutes for the years after they convened the GPLI, GCC met with numerous adjacent counties to attempt to build support for GPLI. This would include meeting with the Town

[1] http://www.coloradotpa.org/2019/07/26/pre-nepa-draft-gmug-rmp/.

of Marble on Feb 2, 2017 meeting with Hinsdale County on September 5, 2017 and Delta County on July 11, 2017. None of these counties supported the recommendation and we believe this is an indication that significantly more work needs to be done on the GPLI recommendation.

It should also be noted that the Organizations submitted extensive comments to the GPLI and asked to meet with GLPI representatives. Despite being in the Gunnison area repeated times over the last 18 months since the comments were submitted, we were unable to meet with anyone. Representatives were always busy or calls were made after trips to the Gunnison area had concluded. Also, our local clubs that did have limited participation in the GPLI process are now struggling to clarify basic steps of any large discussion, mainly that their participation in the process does not mean than they endorse the conclusion. That is an entirely separate step and any approval of the final conclusion of GPLI must be done by the Organizations Board and members. Despite requests to allow such a vote the GPLI continues to assert that the motorized community supports the conclusions that have been reached. We are simply unsure of how that conclusion was reached.

The failure of the public process around the GPLI efforts have led to conclusions that are rather comical in nature. GPLI asserts that the Curecanti/Blue Mesa Reservoir should be managed as priority Sage Grouse habitat despite the large number of developed campsites that have existed in this area for decades and the area was not identified as priority grouse habitat for either the Greater or Gunnison Sage Grouse. We must wonder about that conclusion, especially since most [of] the area was clearly found to be unoccupied.

Another significant concern about the basic direction of the GPLI efforts relates to the priority management concerns in the conclusions. Almost every management restriction relates to motorize[d] access to particular areas and the GPLI essentially would prohibit the construction of roads and trails in the Gunnison Valley in the future. Again, the Organizations must question the basis for this type of a conclusion as any assertion that multiple use recreation is the major impactor of Gunnison Valley landscapes is probably without merit and fails to address the fact the multiple use community is also the single largest funding partner with the USFS to address many landscape level challenges.

The third example of the complete failure of the GPLI process is the fact that the GMUG identified several priority forest health treatment areas across the forest with their SBEADMR efforts concluded in 2015. Under GPLI, each of these areas would now be managed as Wilderness rendering the decisions and their NEPA review scientific basis irrelevant. This simply makes no sense.

GPLI and Colorado Sunshine Laws violations.

In a very troubling turn of events surrounding the GPLI, which was convened by Gunnison County, in no way complies with Colorado Sunshine Law 32 requirements for a public effort that is being convened by what the statute refers to as an “other public agency”. Given the GPLI has claimed broad public support and collaboration, any violation of the Sunshine Laws would be concerning. Any claim of public support and transparency in the process is removed by the fact there does not appear to have been

> any attempt to publish hearing notices or minutes in any publicly noticed venue such as a newspaper.
>
> Based on a review of the statute as Gunnison County Commissioners convened the GPLI group to obtain public input regarding management of public lands and development of possible statutory language. In addition to the GPLI efforts being convened by Gunnison County, County commissioners served in ex officio roles with GPLI, periodically reported back to the entire county commission, approached other counties regarding support for the efforts and sought out funding for the project. Any one of these actions was sufficient to trigger the Colorado sunshine laws, which clearly made the process entirely subject to all notice and record keeping requirements of the statute. For reasons that remain unclear, the requirements of the Colorado Sunshine law were simply never complied with.
>
> Additionally, the Organizations put GPLI on written notice May 7, 2018 that the public process surrounding the effort needed significant improvement. Rather than address these basic concerns, the Organizations concerns about the complete lack of transparency in the process were never addressed. the Organizations were never contacted to substantively discuss our concerns on how to improve the "public" process around the effort. This open disregard for public input in the alleged open public process of the GPLI continued as Gunnison County recently rubber stamped the GPLI recommendation and is now submitting it to the USFS as their "community" recommendation and is pursuing federal legislation based on its recommendation.
>
> As the Gunnison County Commissioners only recently announced this decision, the Organizations have not finalized research efforts on this concern but we expect to have a notice of intent drafted and served on the County in the near future.

2. Special Management Areas

If the Special Management Areas proposed in Alternative D were enacted, they would do great harm to motorized recreation in the GMUG National Forest, and would inevitably result in the forced closure of numerous existing motorized roads and trails.

The GPLI continues to claim on their website that the SMAs in their proposal would not close any existing motorized routes, stating:

> Within the current areas of agreement, no roads or trails will be closed by the GPLI proposal. Existing trail use in these area[s] would not be changed by the GPLI proposal and certain future trails can still be considered for construction and management through standard agency decision making by the BLM and Forest Service. The GPLI worked diligently to balance interests in motorized, mechanized, and quiet recreational uses.[2]

Having looked at the Forest Service's maps of the management areas proposed in Alternative D, we must conclude that either the GPLI proponents never took the simple and obvious step of comparing their proposed SMAs against the Forest Service's current Motor Vehicle Use Maps, or this statement is a bald-faced lie. Such a basic comparison reveals that there are numerous designated MVUM routes inside SMAs which are listed as allowing no summer

[2] GPLI Website, "FAQ", https://www.gunnisonpubliclands.org/frequently-asked-questions.

motorized use (not just no new routes). Nor are these routes cherry-stemmed out of these SMAs, but they are solidly within them.

In Table 21 of the Draft Forest Plan listing the proposed SMAs in Alternative D, there is a column for summer motorized suitability with four possible options for a given SMA: “Yes”, “Limited”, “No New”, and “No”. 14 SMAs are listed as “No” for summer motorized suitability. Of these, seven SMAs contain existing designated MVUM routes:

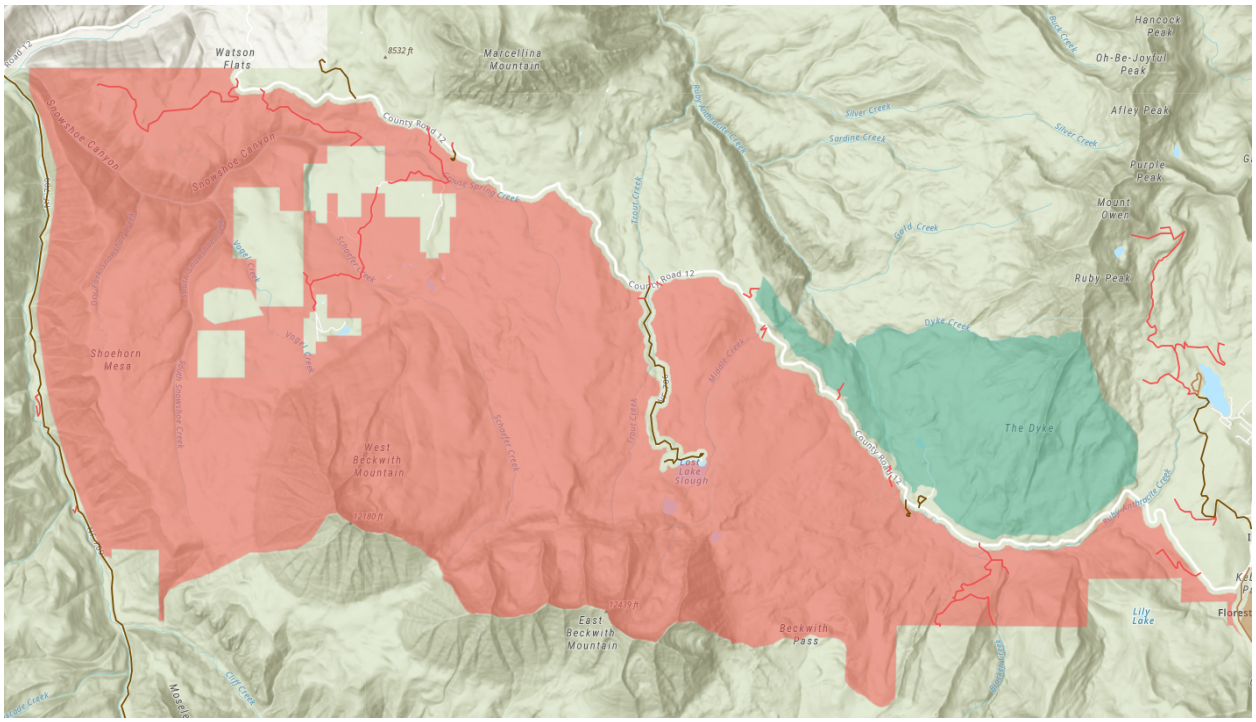
1) The Beckwiths SMA
2) The Horse Ranch Park SMA
3) The Flat Top SMA
4) The Rocky Mountain Biological Research Area SMA
5) The Poverty Gulch North SMA,
6) The Granite Basin SMA
7) The Lone Cone SMA.

Even though the GPLI proponents claim that their proposal will not mandate any motorized route closures, the Draft Forest Plan implicitly acknowledges that these SMAs *will* in fact require such closures, stating: *“**(Alternative D only) MA-SMA-OBJ-01**: Within 3 years, initiate travel management to implement special management area suitability designations.”*

If the SMAs in Alternative D are not intended to close existing motorized routes, then why would travel management be necessary to implement them? We can only conclude that SMAs created in Alternative D would in fact mandate the closure of numerous high-value motorized routes, listed below. If that is not the intended result, then either all of the routes mentioned below must be cherry-stemmed out of the SMAs in question, or else the motorized suitability designation for each of them must be changed from “no” to “no new.”

In the maps below, brown lines represent ML3 roads, red lines represent ML2 roads, pink lines represent full-size motorized trails, and yellow lines represent motorcycle trails. Motorized route data is from the current MVUM roads and trails layers on the Forest Service’s public GIS portal.

Again, each of these SMAs lists no summer motorized suitability, not just no new. The only way these SMAs could ever be acceptable to the motorized community is if these suitability designations were changed to “no new” summer motorized routes and kept all existing designated routes open.

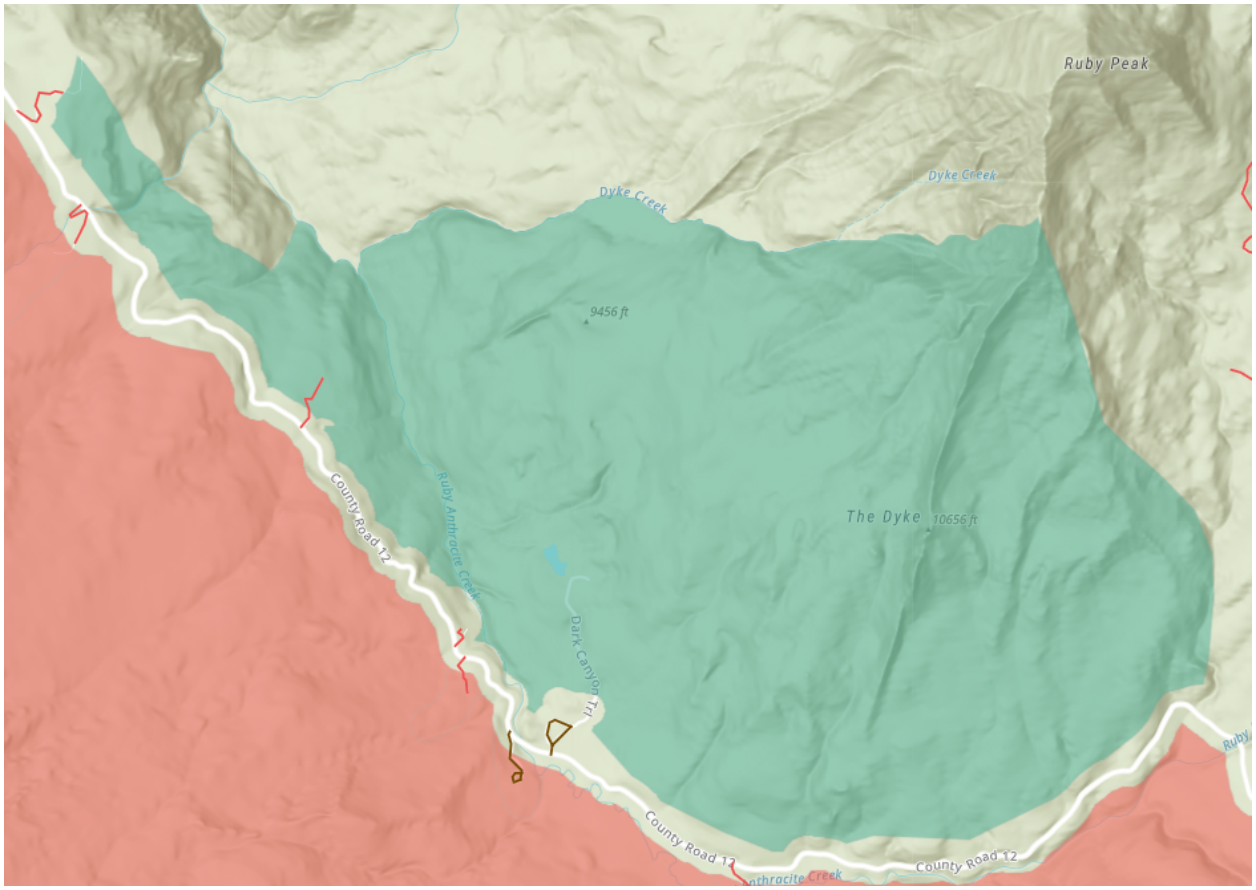


(1) Beckwiths SMA

Contains the following motorized routes:

- NFSR 830: BRACKEN CREEK
- NFSR 830.1A: BRACKEN CREEK EAST
- NFSR 830.1B
- NFSR 778: GROUSE SPRING RD
- NFSR 913: SCHAEFER
- NFSR 913.1B
- NFSR 822: SNOW SHOE CREEK
- NFSR 776: WATSON FLATS RD
- NFSR 12.5H: KEBLER GRAVEL PIT RD

This SMA includes all land south of Kebler Pass Road, which is a designated High-Use Recreation Area. While one spur off Kebler Pass is cherry-stemmed, the rest are not, leaving them vulnerable to closure being mandated by the ‘no’ motorized suitability designation.

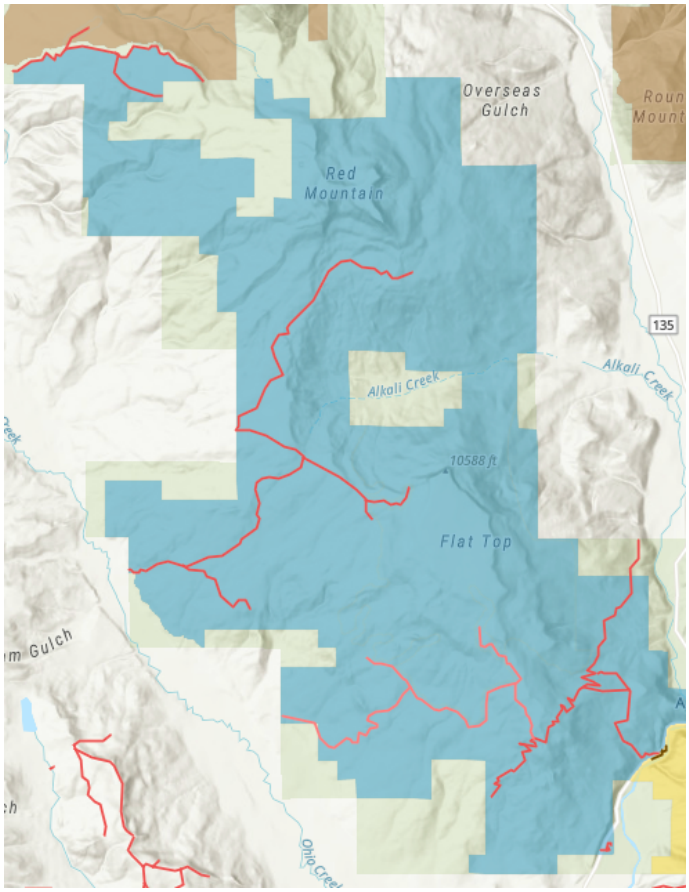


(2) Horse Ranch Park SMA

Contains the following motorized routes:

- NFSR 12.1F: KEBLER SPUR 1F

This SMA is north of Kebler Pass Road. While it mostly excludes existing motorized routes, one short spur extends into it.

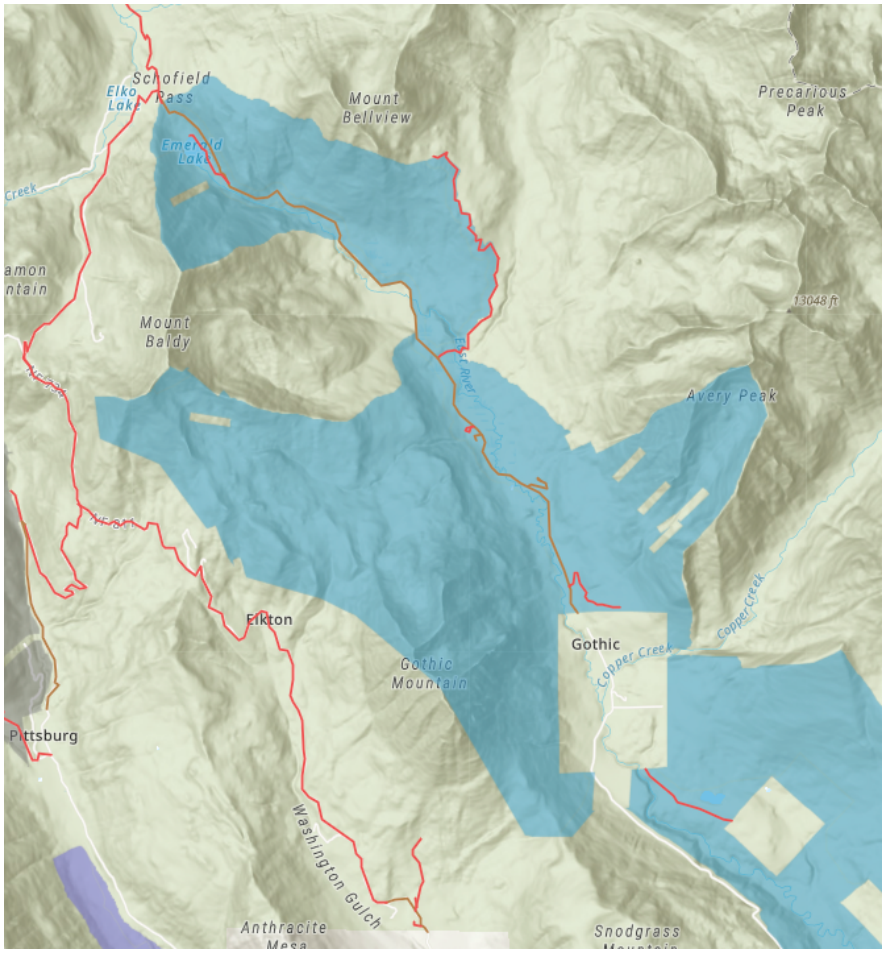


(3) Flat Top SMA

Contains the following motorized routes:

- NFSR 7563: CARBON-RED MTN
- NFSR 7829: RED MOUNTAIN
- NFSR 7955: FLAT TOP BENCH
- NFSR 7955.1E: FLAT TOP BENCH SPUR E
- NFSR 7829.1A: RED MTN BR NO 1
- NFST 9863 (trail open to all vehicles)
- NFST 9863.2A (trail open to all vehicles)
- NFST 9863.2E (trail open to all vehicles)
- NFSR 7862: POWER LINE
- NFSR 7860.1C: POWERLINE CONNECTOR
- NFSR 7860.1A: SMOKEY BEAR
- NFSR 7820: ROPERS STORAGE

The Flat Top SMA contains numerous roads and motorized trails and is a popular destination for motorized recreation. We cannot imagine why this SMA was given a no motorized suitability designation, as the vast majority of its area is criss-crossed with motorized routes which would all have to be closed to meet the no motorized suitability standard.



(4) Rocky Mountain Biological Research Area SMA

Contains the following motorized routes:

- NFSR 7317: SCHOFIELD PASS (ML3 road)
- NFSR 7317.3E: EMERALD LAKE PG
- NFSR 7569: BELLVIEW
- NFSR 7317.3C: RUSTLER GULCH
- NFSR 7317.3H: WASHINGTON GULCH TH
- NFSR 7317.3G: GOTHIC CG
- NFSR 7317.3B: AVERY PEAK PG
- NFSR 7317.3A: GOTHIC BYPASS
- NFSR 7956: EAST RIVER

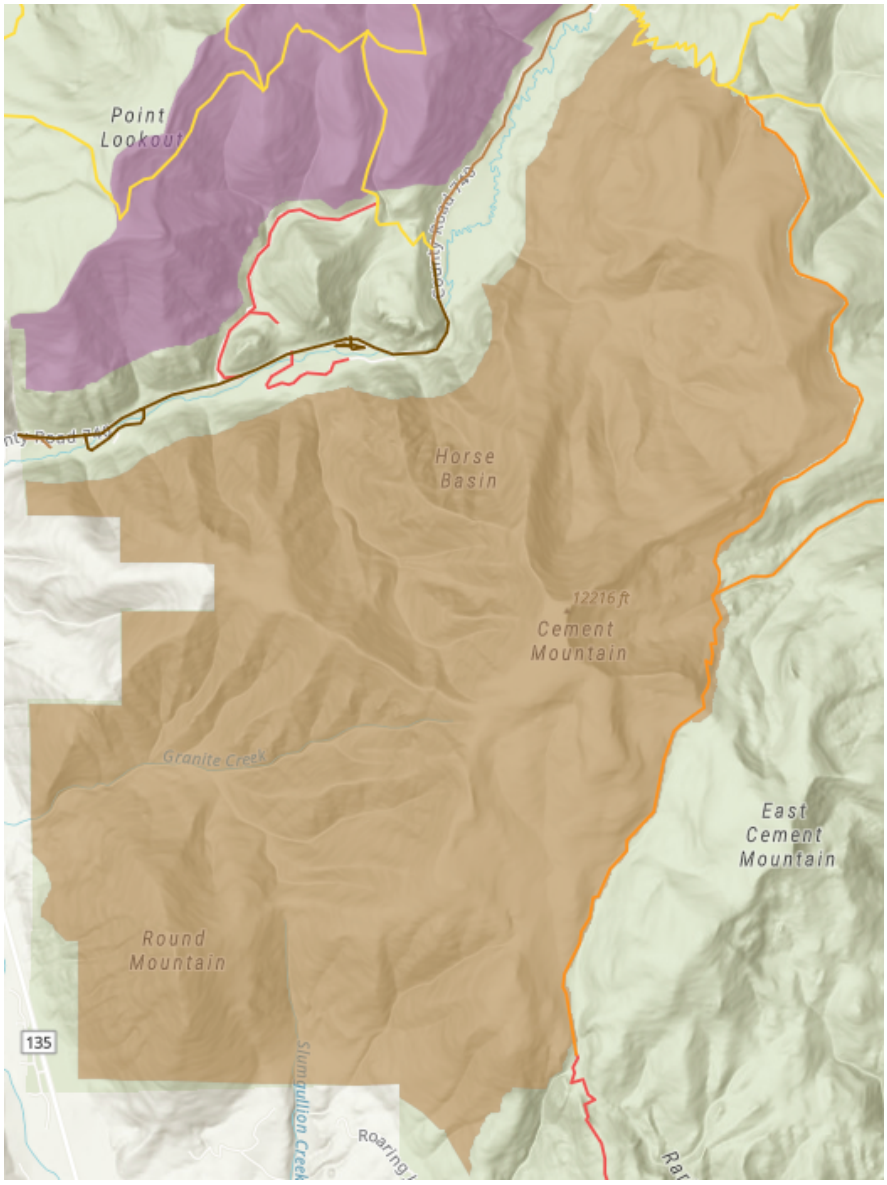
Note that this SMA also contains multiple developed campgrounds and designated dispersed camping sites, and is an extremely popular motorized use area. Schofield Pass Road is also a county road and likely cannot be closed by the Forest Service. Listing this SMA as no motorized suitability especially makes no sense.

(5) Poverty Gulch North SMA

Contains the following motorized routes:

- NFSR 7552: POVERTY GULCH

The Poverty Gulch SMA contains one popular 4x4 road up Poverty Gulch, which should have been excluded from its boundaries but wasn't. This needs to be corrected.

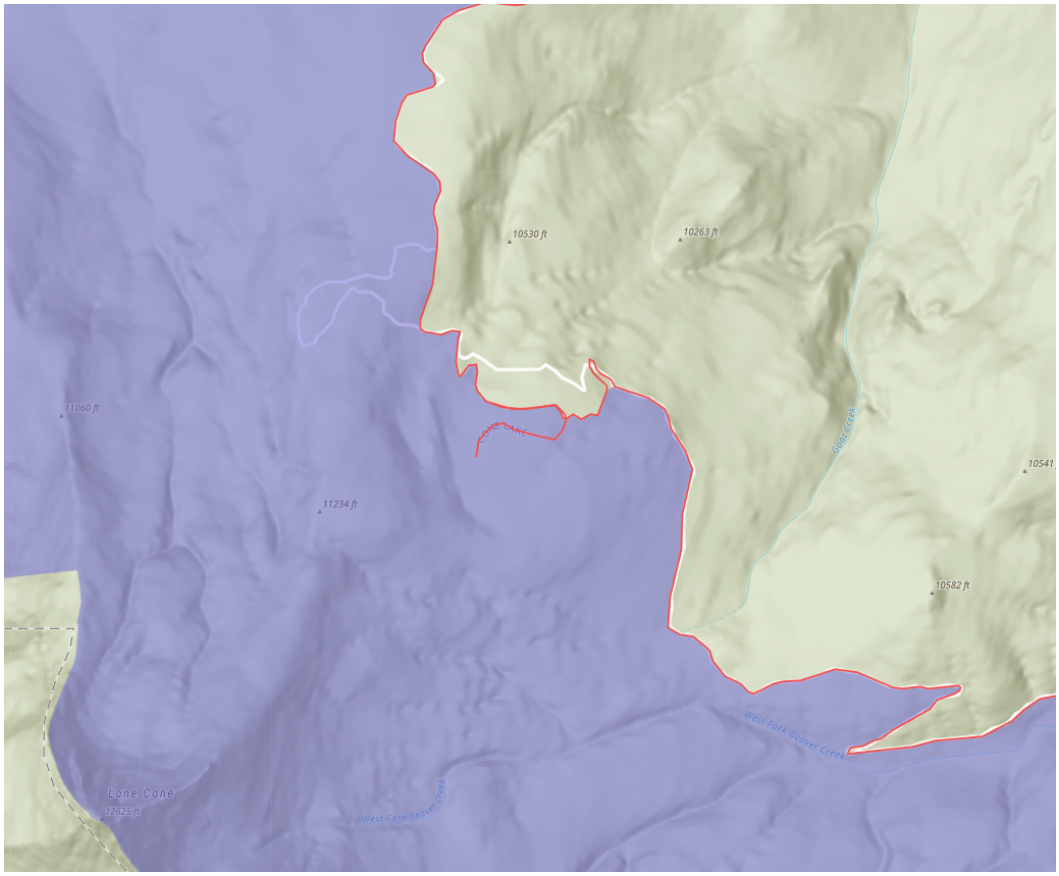


(6) Granite Basin SMA

Contains the following motorized routes:

- NFST 9553 (motorcycle trail)

It looks like the boundary was intended to be drawn to exclude this trail but erroneously included it anyway. This needs to be corrected.



(7) Lone Cone SMA

Contains the following motorized routes:

- NFSR 612.1B: CONE LAKE

Adjacent motorized routes appear to have been deliberately excluded from the boundaries of this SMA, but one short spur to Cone Lake is included and would be required to be closed. This must be corrected.

3. ROS Zones

The proposed ROS zones in Alternative D do not in any way match current conditions and would be disastrous for motorized recreation on the Forest if adopted. Alternative D has so many popular motorized routes placed in semi-primitive non-motorized ROS zones it is impossible to list them all.

To start with, Alternative D includes all the same problems as Alternative C in the Ouray and Telluride area, placing nearly all of the most popular Jeep roads, including Black Bear Pass, Imogene Pass, Ophir Pass, Yankee Boy Basin, Governor Basin, Poughkeepsie Gulch, and Lower Engineer Pass, in semi-primitive non-motorized zones. This would appear to mandate the closure of these roads, including multiple Jeep Badge of Honor trails and other extremely popular routes in the Alpine Loop trail system.

However, given that most of these are recognized county roads, it is doubtful the Forest Service actually has jurisdiction to close most of these roads, making the ROS designation of semi-primitive non-motorized simply inaccurate. Most of these roads are also designated as recreation emphasis corridors which are designated exclusively around motorized routes, causing the management area maps to contradict the ROS zone maps.

In the northeastern part of the Forest, Alternative D places portions of Hancock Pass, Tomichi Pass, and Williams Pass in semi-primitive non-motorized zones. These are all highly popular motorized routes. Hancock and Williams Passes both connect over the Continental Divide to the Pike San Isabel National Forest, which recently affirmed that they should stay open to motorized use in the draft decision of its travel management plan, with a final decision expected sometime in the next couple months. Numerous dirt bike and ATV trails west of Tincup are also in non-motorized ROS zones.

Because of the same error with Wilderness boundaries discussed in relation to the other alternatives, roads at the summits of both Pearl Pass and Taylor Pass are placed in primitive ROS zones. And near Crested Butte, NFSR 7585: GUNSITE PASS, NFSR 7826.1D: GREEN LAKE, NFSR 913: SCHAEFER, and other roads are in semi-primitive non-motorized ROS zones. Similar issues can be found in the western and southern parts of the Forest. Only the Grand Mesa area does not appear to have significant numbers of roads and other motorized routes in semi-primitive non-motorized ROS zones.

During the webinars, Forest staff stated that instances of designated motorized routes appearing in non-motorized ROS zones were mistakes. If that is true, then we wonder how the ROS maps for Alternative D made it to this point in the process without someone noticing that easily over a hundred miles of existing designated summer motorized routes have been placed in non-motorized ROS zones?

We cannot help but assume that this number of motorized routes being placed in non-motorized zones was deliberate, and that Alternative D really does intend to force the closure of almost all of the most popular motorized routes in the GMUG National Forest by zoning them solely for non-motorized recreation. This is utterly intolerable to the motorized community, and we strongly oppose this alternative.

4. Recommended Wilderness

While we discuss recommended wilderness generally below, we note here that Alternative D would surround numerous popular motorized routes with recommended wilderness, turning these roads into either cherry-stems or narrow corridors though recommended wilderness zones. These include Pearl Pass, which (assuming the mapping error with the existing wilderness boundary at the summit is corrected), would be sandwiched in between a designated wilderness area on one side and a recommended wilderness area on the other side.

While these designations may not outright close any roads, they will inevitably increase future pressure from environmental groups to close these roads in future travel management

decisions, as these groups will seek to fill in cherry-stemmed gaps or create buffer zones around “proposed wilderness” areas. As we have seen elsewhere, cherry-stemmed motorized routes into wilderness or recommended wilderness areas are highly offensive to wilderness advocates, and any such road would instantly be in jeopardy of closure.

Therefore we cannot support the designation of recommended wilderness areas anywhere near existing motorized routes, and we strongly oppose all of the recommended wilderness areas in Alternative D.

IV. Other Issues and General Plan Provisions

A. Recommended Wilderness

We strongly oppose any recommended wilderness / areas to be analyzed as wilderness beyond the minimal expansions of existing designated Wilderness areas proposed in Alternative B. The Wilderness Act makes it quite clear that new Wilderness areas are supposed to be designated by Congress, not created by administrative agencies.

Indeed, the creation of new de facto Wilderness areas by administrative agencies was precisely what the Wilderness Act was intended to prevent. As the U.S. District Court for the District of Wyoming explained in *State of Wyoming v. United States Department of Agriculture*, No. 01-CV-86-B, at *1 (D. Wyo. July 14, 2003):

> The Wilderness Act declared it the policy of Congress to "secure for the American people of present and future generations the benefits of an enduring resource of wilderness." 16 U.S.C. § 1131 (a). To effectuate this policy, Congress established the National Wilderness Preservation System ("NWPS"), which would be composed of congressionally designated "wilderness areas." Id. The Wilderness Act also immediately designated certain areas as wilderness, Id. § 1132(a), and provided the procedure for future designation of wilderness areas, id. § 1132(b). In establishing the NWPS, Congress unambiguously provided that "no Federal lands shall be designated as `wilderness areas' except as provided for in [the Wilderness Act] or by a subsequent Act." Id. § 1131(a).
>
> Therefore, Congress has the sole power to create and set aside federally designated wilderness areas pursuant to the Wilderness Act. Parker v. United States, 309 F. Supp. 593, 597 (D. Colo. 1970), aff'd, 448 F.2d 793 (10th Cir. 1971). In fact, the primary purpose of the Wilderness Act was to provide:
>
> > [a] statutory framework for the preservation of wilderness [that] would permit long-range planning and assure that no further administrator could arbitrarily or capriciously either abolish wilderness areas that should be retained or make wholesale designations of additional areas in which use would be limited.
>
> Id. (quoting H.R. Rep. No. 88-1538). To this end, the Wilderness Act removed the Secretary of Agriculture's and the Forest Service's discretion to establish de facto administrative wilderness areas, a practice the executive branch had engaged in for over forty years. Parker,309 F. Supp. at 597, aff'd,448 F.2d at 797. Instead, the Wilderness Act

> places the ultimate responsibility for wilderness designation on Congress. Id.16 U.S.C. § 1131 (a). In this regard, the Wilderness Act functions as a "proceed slowly order" until Congress — through the democratic process rather than by administrative fiat — can strike the proper balance between multiple uses and preservation. Parker,448 F.2d at 795. This statutory framework necessarily acts as a limitation on agency action. Id. at 797.

While the Forest Service may manage areas to preserve existing wilderness character, it would be inappropriate and contrary to the Wilderness Act to use “recommended wilderness” status to effectively create large de facto wilderness areas where Congress has not chosen to do so.

Additionally, most of the recommended wilderness areas proposed in Alternative D and the GPLI are not even upper tier roadless areas, and are thus wholly undeserving of wilderness status. Given that these areas have been previously considered and rejected for even the most restrictive roadless area classification, they certainly should not be managed as de facto wilderness.

Excessive recommended wilderness management would only serve to prohibit legitimate multiple uses of the Forest while needlessly hindering the Forest’s ability to actively manage these areas to promote forest health and reduce fire danger. We are especially concerned that any recommended wilderness areas that either include existing motorized routes or are adjacent to them would only be used as an excuse to close those routes in future travel management proceedings.

We therefore strongly oppose the creation of any additional recommended wilderness areas beyond the limited ones contemplated in Alternative B and urge the Forest to resist pressure from wilderness expansion groups to incorporate additional recommended wilderness areas into the final Forest Plan.

B. ROS Zone Descriptions

As mentioned above, it is critical that the Forest Service clarify what effect ROS allocations are intended to have on future travel management decisions, particularly when existing designated motorized routes are inside non-motorized ROS zones, of which there are numerous instances under at least two alternatives. In the various webinars, the Forest has given confusing and contradictory answers regarding the intended effect of such designations.

Forest employees have at times insisted that non-motorized ROS allocations around existing motorized routes are a mistake. However this would mean that the summer ROS maps for both alternatives C and D contain so many errors as to be practically useless. We cannot accept that such a large proportion of the ROS allocations for two different alternatives were made in error, and must assume they were intentional. If so, what is the intended effect of such allocations?

On October 18, 2021 the Forest sent out an email with an attached FAQ sheet on the ROS allocations. This FAQ sheet asserted that ROS allocations would only affect new routes being considered in the future and would not affect existing designated routes. It stated:

> - The forest plan will NOT close existing routes or areas.
> - Area-wide travel management is not part of the forest plan. And it's also almost complete on the forest. The only exception is winter travel management for Gunnison, where we really are trying to build a new vision for future management. Because most travel management is complete, we are generally not in the business of closing more areas or trails. But we do get a lot of proposals for new trails to consider.[3]

These statements are inaccurate at best or at worst disingenuous. We acknowledge that the Forest Plan itself will not close existing routes because it is not a travel management plan. However this Forest Plan *will* govern any future travel management decisions made during the time it is in effect. It is a well-settled principle of law under the NFMA that all program-level decisions including travel management plans must be consistent with the Forest Plan. The Draft Forest Plan itself acknowledges this in **FW-GDL-REC-16:** which states:

> To achieve and maintain an array of place-based, desired recreation settings and opportunities across the landscape for the long-term, project-level planning (including the development of new facilities), **travel management planning** (designation of National Forest System roads, trails, and/or areas for motorized/mechanized use), development of area management plans (including wilderness), and all national forest management decisions and activities (range, timber, vegetation, wildlife, minerals, lands, etc.) **should be consistent with the (1) desired recreation opportunity spectrum setting parameters detailed in tables 9-14 and (2) corresponding broad-scale desired summer and winter recreation opportunity spectrum allocations (see table 8 and table 9) and maps.** See Recreation Management Approaches section for implementation.

The FAQ document makes the apparent assumption that summer travel management on the GMUG NF has been completed and will not be revisited. However, anyone with experience in this field knows that travel management decisions are never permanent. Just like Forest Plans, travel plans must be regularly revised, and it is highly likely that at some point during the life of the new Forest Plan, the GMUG will once again engage in a Forest-wide summer travel management planning process. That process could be triggered by the adoption of the new Forest Plan, or some other event.

Recent events in the Pike San Isabel National Forest are informative. There, a lawsuit by anti-motorized activists resulted in a settlement agreement in 2015 where the Forest agreed to re-do its entire travel management plan, which had previously been completed in 2009. That new travel planning process is in its final stages now, with a final decision expected in the next few months.

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[3] "Forest Plan Revision Recreation Opportunity Settings FAQs", GMUG NF, Oct. 18, 2021, p.2.

One of the main contentions in the PSI lawsuit was that existing route designations were inconsistent with the Forest Plan because mapping errors had resulted in motorized routes occurring inside non-motorized Forest Plan management areas. If the GMUG makes significant changes to the motorized/non-motorized ROS allocations that result in a significant number of motorized routes falling inside non-motorized ROS zones, it is highly likely that a similar lawsuit by anti-motorized activists will likewise force the GMUG to re-do its Forest-wide travel plan.

Even if there is no lawsuit, the GMUG itself could decide that revising the Forest Plan requires it to also develop a new travel management plan in a separate process. The Rio Grande National Forest recently completed its Forest Plan revision, and we have been informed that it intends to begin working on a new travel management plan soon, even though like the GMUG, it has already completed a previous travel management plan under the 2005 Travel Management Rule. It appears to be a common opinion among Forest Service staff that a revised Forest Plan automatically requires a new travel management plan to be completed as well.

Regardless of the triggering event, it is likely that during the life of the new Forest Plan, the GMUG will conduct another Forest-wide travel management process which will be governed by the terms of the new plan. For the Forest to fail to plan for that eventuality would be short-sighted in the extreme. Should such a new travel planning process occur, every existing motorized route on the Forest would be at risk of closure, especially those that are inconsistent with current Forest Plan direction.

As it stands now, it seems to us that any existing motorized routes within non-motorized ROS zones or other incompatible management areas would be required to be closed in future travel planning processes. If this is not the intended result (and we hope it isn't), then it is critical that explicit language be added to the Draft Forest Plan clarifying that existing motorized routes in non-motorized ROS zones may remain open and shall not be required to be closed in future travel planning processes. We suggest adding something along the lines of the following language:

"Existing designated motorized routes inside primitive and semi-primitive non-motorized ROS classes are consistent with these categories and shall not be required to be closed in travel management planning."

The GMUG may also consider adding language similar to that in the Draft Forest Plan for the Manti-La Sal National Forest, which is also going through the revision process. For example:

> Semi-primitive Nonmotorized and Primitive Classes - These classes account for the largest amount of nonmotorized recreation opportunities, such as hiking, horseback riding, mountain biking, fishing, hunting, and climbing on the Manti-La Sal. This setting emphasizes nonmotorized use, **but it may have some motorized inclusions.**[4]

[4] Manti-La Sal National Forest Draft Forest Plan, p. 60, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd814959.pdf.

And:

> Dead-end roads extending into Semi-Primitive Nonmotorized areas **are consistent** with this desired recreation opportunity spectrum setting.[5]

If language similar to this is not added to the Draft Forest Plan clarifying that existing motorized routes in non-motorized ROS zones may remain open, we believe it likely that such routes will be required to be closed in future travel management decisions, regardless of whether that is the intended result of those drafting it.

C. Dispersed Camping

One of the most popular activities in the GMUG National Forest among all user groups is dispersed camping. If there is one commonality between off-roaders, hikers, mountain bikers, rock climbers, river rafters, and horseback riders, it is that all of them enjoy dispersed camping during their trips to the region.

The GMUG National Forest already heavily restricts dispersed camping in certain areas, especially around Crested Butte, where a recently completed camping management plan limits camping to a small number of designated dispersed sites, which we understand will soon also charge a fee and be subject to advanced reservation. Even before these new restrictions were imposed, there were not enough campsites in the area to satisfy demand. That problem (and resulting overcrowding in areas immediately outside those restricted areas) will only get worse in the future.

We strongly oppose any provisions in the new Forest Plan which would lead to the imposition of similar restrictions on dispersed camping in other areas. Expanding opportunities for dispersed camping would be preferable to further limiting people to designated campsites and official campgrounds. For people who desire both the low cost and freedom of dispersed camping, paid campgrounds simply do not provide an acceptable camping experience.

Accordingly, we are highly concerned by **FW-STND-REC-07**, which appears to set the stage for similar camping restrictions to those around Crested Butte, based on nebulous considerations like “social impacts.” We note that “overcrowding” is highly subjective, and what some people may consider to be an overcrowded area many others are perfectly fine with. Not everyone values solitude as their primary goal when camping. Plenty of people value close access to towns or recreation sites over solitude and do not mind camping in crowded areas as long as the location is convenient.

We are concerned that the Forest Service intends to manage dispersed camping based on the sole value of solitude to the exclusion of all other values. We urge the Forest Service to make this standard clearer as to what constitutes excessive use, and to clarify that a high density of campsites alone does not mean a particular area is unacceptably overcrowded.

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[5] Id.

We are also concerned by the addition of this sentence to FW-STND-REC-07, "*Other considerations that may inform dispersed overnight use management could include concerns voiced from local communities, partners, and/or user groups*." Based on recent experiences in nearby Chaffee County, groups submitting such complaints tend to be extremely biased anti-recreation special interest groups, which typically exaggerate impacts of dispersed camping in order to close popular areas to an activity they categorically oppose. It is highly concerning that complaints from such groups alone could be sufficient to trigger heightened restrictions on dispersed camping, and we urge the removal of this sentence.

D. Equity, Environmental Justice, and People With Disabilities

It is crucial that the GMUG Forest Plan recognizes the importance of motorized recreation in contributing to equitable access to public lands for people with disabilities.

On his first day in office, President Joe Biden issued an "Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government."[6] This executive order established "an ambitious whole-of-government equity agenda" which focuses on addressing "entrenched disparities in our laws and public policies," and mandates a "comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."

Under this executive order, "The term 'equity' means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as ... persons with disabilities...." Historically, there has been no group more greatly marginalized and excluded by public land management policies, and motorized travel management policies in particular, than people with disabilities. Outdoor enthusiasts with ambulatory disabilities frequently rely on motorized travel as their sole means to enjoy recreating on public lands. Not everyone has the ability to hike into a remote wilderness area, but many such people are still able to drive Jeeps, side-by-sides, and ATVs, which are restricted to the designated motorized route network.

Travel management policies focused on "minimizing" the environmental impacts of motorized recreation have resulted in a dramatic decrease in motorized recreation opportunities on public lands over the last 20 years which has disproportionately impacted people with disabilities. Wilderness focused environmental groups with extreme ableist baises have pushed for more and more areas to be closed to motorized recreation and reserved exclusively for hikers, mountain bikers, and other "human powered" and "quiet use" forms of recreation in which many people with disabilities are unable to participate.

Every time motorized routes are closed, people with disabilities that require the use of motorized means to access public lands are barred from those areas forever. There has been little recourse for such people in the past because the Americans With Disabilities Act does not require public land management agencies to consider disproportionate effects on the

[6] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.

disabled community, but only requires that they be given access to public lands on equal terms with everyone else. As a result, the Forest Service has historically failed to give any real consideration to the impacts of motorized route closures on the disabled community when developing travel management plans.

The Biden Administration's focus on equity, however, changes the equation. While the ADA focuses only on equality of opportunity, equity inherently focuses on equality of outcome. Any policy that is facially neutral but disproportionately harms a disadvantaged or marginalized group is considered inequitable. The Forest Service is therefore required by this executive order and others mandating that federal agencies consider "environmental justice" in NEPA proceedings and to consider whether any motorized route closures mandated by the new Forest Plan would disproportionately harm disabled users' ability to access public lands.

Any approach to ROS zoning or management zones that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized routes on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large scale closures of existing motorized routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the Forest Service consider the access needs of disabled users when selecting the alternative chosen for the final Forest Plan and ensure that people with disabilities who depend on motorized means do not lose access.

We believe that selecting either alternatives C or D, with their proposed conversions of numerous current motorized areas into non-motorized zones, would violate the Administration's commitment to equity for the disabled. Therefore the Forest must select Alternative B in order to preserve current levels of access for persons with disabilities.

E. User Conflict

We have strong concerns with any references to the concept of "user conflict" in the Draft Forest Plan, and any plan components motivated by this concern. This term is extremely vague and has been used many times in past management decisions by the Forest Service and the BLM to include simple ideological opposition to motorized recreation by anti-motorized activists. This in turn categorically delegitimizes motorized recreation as a valid activity on public lands, in direct contradiction to the express language of the Travel Management Rule.

We believe that all references to "user conflict" in the Forest Plan should be clarified to *only* refer to demonstrable cases of interpersonal conflict, and should *not* refer to social values or ideological conflict. Greater discussion of this issue is provided below.

1. The Forest Service must clearly distinguish between interpersonal and social values conflict

It is critical that the agency clearly define what is considered "user conflict" for purposes of Forest Plan guidance. "User conflict" has proven to be a very slippery term when it comes to travel management processes, with a wide variety of meanings that are frequently conflated -- most often to the detriment of motorized recreationists.

While conducting any form of environmental analysis under NEPA, the Forest Service is obligated to use the best available science. This applies to user conflict analysis as well. Researchers have found that properly determining the basis and type of user conflict is critical to determining the proper method of managing this conflict. In particular, any analysis of user conflict must distinguish between interpersonal conflicts and social values conflicts, which studies have identified as two distinct categories of recreational user conflict on public lands.

Simply put, interpersonal conflict involves actual on-the-ground conflicts between user groups sharings the same trails, while social values conflict consists of ideological opposition by one group to allowing another user group's activity to take place on public lands. Scientific analysis defines these two forms of conflict as follows:

> For interpersonal conflict to occur, the physical presence or behavior of an individual or a group of recreationists must interfere with the goals of another individual or group…. Social values conflict, on the other hand, can occur between groups who do not share the same norms (Ruddell & Gramann, 1994) and/or values (Saremba & Gill, 1991), independent of the physical presence or actual contact between the groups…. When the conflict stems from interpersonal conflict, zoning incompatible users into different locations of the resource is an effective strategy. When the source of conflict is differences in values, however, zoning is not likely to be very effective. In the Mt. Evans study (Vaske et al., 1995), for example, physically separating hunters from nonhunters did not resolve the conflict in social values expressed by the nonhunting group. Just knowing that people hunt in the area resulted in the perception of conflict. For these types of situations, efforts designed to educate and inform the different visiting publics about the reasons underlying management actions may be more effective in reducing conflict.[7]

Other researchers have distinguished types of user conflicts based on a goal's interference distinction, described as follows:

> The travel management planning process did not directly assess the prevalence of on-site conflict between non-motorized groups accessing and using the yurts and adjacent motorized users…. The common definition of recreation conflict for an individual assumes that people recreate in order to achieve certain goals, and defines conflict as "goal interference attributed to another's behavior" (Jacob & Schreyer, 1980, p. 369). Therefore, conflict as goal interference is not an objective state, but is an individual's appraisal of past and future social contacts that influences either direct or indirect conflict. It is important to note that the absence of recreational goal attainment

[7]See, Carothers, P., Vaske, J. J., & Donnelly, M. P. (2001).Social Values versus Interpersonal Conflict among Hikers and Mountain Bikers; Journal of Leisure Sciences, 23(1) at p. 58.

> alone is insufficient to denote the presence of conflict. The perceived source of this goal interference must be identified as other individuals.[8]

It is significant to note that Mr. Norling's study was specifically created to determine why travel management closures had not resolved user conflicts for winter users of a group of yurts on the Wasache-Cache National Forest. As noted in Mr. Norling's study, the travel management decisions addressing the areas surrounding the yurts failed to distinguish why the conflict was occurring and this failure prevented the land managers from effectively resolving the conflict.

Properly defining which category of user conflict is occuring in a particular area is critical to resolving that conflict. Interpersonal conflicts involve specific situations that can be resolved with practical solutions. For example, where motorized recreationists and hikers share the same route and experience conflicts such as hikers feeling endangered by vehicles approaching them at high speeds, such interpersonal conflict could be addressed by measures designed to control motorists' speed. Separating users can also be an effective solution, such as by relocating a hiking trail onto a separate path.

With social values / ideological conflict however, there often is no practical solution, as one group is so ideologically opposed to the other group's activity that its mere presence on public lands in any capacity is offensive. As the Carothers study described in reference to managing hunting on Mount Evans in Colorado, "Even though nearly all of the nonhunters did not physically observe any hunting-associated events (e.g., seeing hunters, seeing an animal being shot), many expressed a conflict in social values. Simply knowing that hunting occurred on the mountain was apparently sufficient to activate perceptions of conflict."[9]

In the case of social values conflict, the root problem is the ideologically-driven intolerance of one user group toward another. No amount of on-the-ground management can mitigate this form of user conflict. As long as the disfavored user group is allowed to have any presence on public lands at all, the intolerant group will still perceive conflict.

We submit that when it comes to motorized recreation in the GMUG National Forest, the vast majority of alleged user conflict consists of social values conflict rather than interpersonal conflict. On the whole, motorized and non-motorized recreation in the Forest are already well-separated, and there are relatively few instances of non-motorized and motorized users sharing the same routes in any significant numbers.

While interpersonal conflict between motorized and non-motorized recreationists is rare, social values conflict is endemic in the area, as evidenced by the decades long battles over Wilderness designations and endless litigation over motorized travel management plans throughout south central Colorado. Anti-motorized groups have made it quite clear that they are ideologically opposed to virtually all motorized recreation in Colorado, and they try to get

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[8] See, Norling et al; Conflict Attributed To Snowmobiles In A Sample Of Backcountry, Non-motorized Yurt Users In The Wasatch-cache National Forest, Logan Ranger District; Utah State University; 2009 at p. 3.
[9] Carothers, p. 48.

motorized trails closed wherever possible. Specious claims of “user conflict” are but one tool in their toolbag.

We maintain that social value conflict is a wholly inappropriate basis for the Forest Service to close motorized routes, and that any analysis or actions taken based on user conflict must be based solely on specific documented instances of interpersonal conflict. The Forest Service has a responsibility to manage American public lands for the benefit of all Americans, rather than catering to a few narrow-minded anti-motorized bigots.

2. Subjective preferences are an improper basis for route closures

Even where interpersonal conflicts are alleged regarding specific routes, the Forest Service must closely examine whether such allegations of conflict concern genuine conflicts of uses or are simply subjective preferences regarding the preferred use of a given route. NEPA analysis must be based on facts, rather than subjective preferences and beliefs. Subjective preferences of users, individually or collectively, cannot justify elimination of access to the less popular or less conflicted users.

The Forest Service’s obligation to consider user conflicts in travel management is derived from the Executive Orders issued by Presidents Nixon and Carter. See, E.O. 11644, 11989; 42 Fed. Reg. 26959. The present-day interpretation by some special interests and land managers does not rationally interpret this language. The actual wording refers to conflicts between “uses” not “users.” The historical context is relevant, as in the early 1970’s off-highway vehicles were relatively new and largely unregulated. The EO’s reflect a crude first step at the anticipated need to balance a new and developing use with the conservation efforts of the era reflected in contemporaneously adopted statutes like NEPA and FLPMA. In any event, it was not intended then, nor does it make sense now, to allow some quantum of subjective complaining by some class of “user” to exclude other users from public lands.

Nor is subjective “user conflict” an “environmental” impact under NEPA. A recent Ninth Circuit decision correctly notes that “controversy” as a NEPA intensity factor “refers to disputes over the size or effect of the action itself, not whether or how passionately people oppose it.” *Wild Wilderness v. Allen*, 871 F.3d 719, 728 (9th Cir. 2017). The panel further indicated it “need not address the question of whether on-snow user conflicts are outside the scope of the agency’s required NEPA analysis entirely because they are ‘citizens’ subjective experiences,’ not the ‘physical environment.’” *Id.* at 729 n.2 (citations omitted).

In a largely forgotten effort, the U.S. Supreme Court emphasized that NEPA focuses on impacts to the physical environment. “It would be extraordinarily difficult for agencies to differentiate between ‘genuine’ claims of psychological health damage and claims that are grounded solely in disagreement with a democratically adopted policy. Until Congress provides a more explicit statutory instruction than NEPA now contains, we do not think agencies are obliged to undertake the inquiry*.” Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 778 (1983).

The governing law only authorizes the Forest Service to analyze and minimize conflicts between *uses*, not the subjective preferences of *users*. Proposing to designate a motorized route inside a Wilderness Area would be a conflicting use, since the nature of Wilderness legally precludes motorized use. Likewise proposing a public motorized route through an active mining or logging site could also be a conflicting use, since it would not be safe for members of the public to travel through such a hazardous area.

Proposing to allow motorized use on a route that some members of the public would prefer was reserved exclusively for hikers, however, has no such inherent conflict of uses. Hikers and motorized users share the same routes all the time, and every route on Forest Service land that is open to motorized vehicles is also open to hikers. That some people who choose to hike on a motorized route find motorized use of that route annoying and would prefer that motorized use be disallowed is merely a subjective preference. Those who choose to hike on or near motorized routes have no one but themselves to blame if they are disturbed by motorized traffic. Someone who chooses to hike on a road open to motor vehicles has no right to complain that motor vehicles are using that road and demand that road be closed to improve their “quiet use experience.”

Allegations of user conflict based on general subjective management preferences are therefore really just social value conflicts, even when disguised in the language of interpersonal conflicts. These conflicts largely exist solely in the minds of intolerant non-motorized users who refuse to peacefully coexist with other users of public lands, but demand that they be given exclusive access to trails that have historically been managed for multiple use.

It would be highly unfair to exclude motorized users based solely on the attitudes and opinions of non-motorized users, punishing them for the intolerance of others. These kinds of manufactured user conflicts and claimed harm to quiet use recreation in areas that are designated for motorized use should not be used as a basis to close motorized routes.

When the Forest Service closes a motorized route because of alleged “user conflicts”, what it is really doing is depriving motorized users of recreational opportunities in order to give exclusive access to non-motorized users. This is antithetical to the Travel Management Rule, which recognizes that, “Motor vehicles are a **legitimate and appropriate** way for people to enjoy their National Forests,” and again, “Motor vehicles remain a **legitimate recreational use** of NFS lands.” Travel Management; Designated Routes and Areas for Motor Vehicle Use, 70 Fed. Reg. 68264, 68272 (November 9, 2005).

Motorized recreation is a legitimate, co-equal form of recreational activity that is by no means inferior to hiking, biking, horseback riding, or other so-called “quiet uses.” The Forest Service’s travel management regulations which require it to minimize user conflicts were never intended as a mandate to disfavor motorized recreation and to favor other forms of recreation by depriving motorized users of routes in order to award them to others. Yet that is precisely what the Forest Service would be doing if it considers assertions of user conflict by non-motorized users sufficient justification to close motorized routes. (While we acknowledge the Forest is not making route-specific travel management decisions in this process, in the case of a Forest

Plan, the Forest would indirectly close motorized routes by putting them in non-motorized ROS zones or incompatible management areas, thereby mandating their eventual closure.)

That approach inherently presumes the superiority of non-motorized recreation and the inferiority of motorized recreation. It presumes that the subjective desires and qualitative recreational experiences of non-motorized users are more important than the desires and recreational experiences of motorized users, so that when in conflict, the desires of non-motorized users must prevail.

This view is directly contrary to the Travel Management Rule. It inherently treats motorized recreation as an illegitimate, inappropriate, and disfavored activity that is to be allowed only when it does not inconvenience other more favored user groups. It allows motorized users to be excluded from public lands simply because *other people don't like them*.

If the Travel Management Rule's mandate that motorized travel is to be considered a legitimate recreational use of Forest Service lands has any meaning, it demands that the Forest treat motorized and non-motorized users as equals. Rather than allocating routes based on a presumed hierarchy of users with non-motorized users at the top and motorized users at the bottom, the Forest Service should treat the recreational experiences of both groups as equally valuable.

That does not mean that motorized use must be allowed on every route in the Forest. But it does mean that where motorized use has historically been allowed, the presumption should weigh in favor of allowing that use to continue, with all user groups sharing the route under the principle of multiple use.

Wherever possible, the Forest Service should allow for a wide variety of uses in keeping with its multiple use mandate, rather than playing favorites between user groups and robbing one in order to give to another. Where user conflicts are occuring, the Forest Service must endeavor to follow an approach which balances the interests of both competing user groups, rather than automatically presuming that one must be sacrificed to favor the other.

3. Conclusion

For these reasons, we are highly suspicious of any language in the proposed Forest Plan that would require future management decisions to consider closing motorized routes based on user conflicts. While we would prefer for such language to be removed entirely, if it is to remain, **we ask that clarifying language be added to explain that this term includes only documented cases of interpersonal conflict and not ideological or social values conflicts.**

As described in more detail above, we also oppose any attempt to mandate the future closure of existing motorized routes by placing them in non-motorized ROS zones or other incompatible management areas. Such action would inherently favor non-motorized recreation over motorized recreation, thus denying the legitimacy of motorized recreation as an activity.

F. Drones

We strongly oppose FW-STND-REC-09 as currently written, which would impose unreasonable, irrational, and ultimately unenforceable restrictions on operating unmanned aircraft (drones) throughout the GMUG National Forest. This standard was added in the most recent draft of the Forest Plan, replacing a simpler standard (which I also commented on and objected to) which would have only prohibited drones in designated and recommended Wilderness. The new draft standard is included in all alternatives except Alternative A and states:

> **FW-STND-REC-09**: All unmanned aircraft systems, also known as drones, flown from and above National Forest System lands must comply with Federal Aviation Administration and U.S. Forest Service laws, regulations, and policies. Public recreational use, including launching, landing, and operating of unmanned aircraft systems shall be prohibited within MA 1.1 (Wilderness), 1.2 (Wilderness to be Analyzed), 2.1 (Special Interest Areas), 2.2 (Research Natural Areas), 4.1 (Mountain Resorts), 4.2 (Recreation Emphasis Corridors), at developed recreation sites (campgrounds, designated campsites, trailheads, visitor centers, parking lots, overlooks, day-use areas, boat launches), on Forestwide roads and trails, and at trail summits. Consistent with Federal law, drones shall be prohibited to be flown overhead any visitor to National Forest System lands. Exception: Recreational operation of unmanned aircraft systems via special use permit could involve flight over or close to occupied use areas under certain circumstances, only if all permit requirements ensure compliance with Federal Aviation Administration and Forest Service laws, regulations, and policies. See Recreation Management Approaches section for more information on responsible recreational use of unmanned aircraft systems on National Forest System lands and links to Federal Aviation Administration regulations and guidelines.

1. Background

To briefly discuss my background with drones, in addition to being an off-road vehicle enthusiast I have been flying drones and RC aircraft as a hobby for 10 years. I enjoy flying a variety of both fixed-wing RC airplanes and quadcopter drones, flown using first-person-view (FPV) video piloting systems. It is a thrilling activity that gives me the ability to experience virtual flight as if I was a bird while staying on the ground. It also allows me to take spectacular aerial photographs and videos that would not be possible with a manned aircraft, which I like to use to make scenic music videos that I post on YouTube.

As a former attorney, I have always closely followed the legal atmosphere surrounding the hobbies I participate in. During the time I have been involved in RC flying, I have seen what was formerly considered a harmless hobby become increasingly vilified in the eyes of both the general public and government officials. RC flying has increasingly become subject to a dizzying array of restrictions and regulations from every level of American government.

The actual operation and flight of unmanned aircraft is now subject to strict regulation by the Federal Aviation Administration (FAA), while it has become fashionable among many public land managers ranging from the National Park Service to municipal parks departments to ban

drones from being flown in parks with no real justification. As a result, drone enthusiasts like myself have been left with an ever shrinking number of legal places to fly. Drones are now subject to such a confusing patchwork quilt of Federal, state, and local government regulation that one practically has to be an attorney to understand where and how they can legally fly a simple RC plane or consumer quadcopter drone.

2. Current Forest Service Drone Policy

With drone flying increasingly banned in state and local parks, one of the last remaining places where drone enthusiasts can fly relatively unhindered is on Federal public lands. Drones have been banned in National Parks and other land units under the jurisdiction of the National Park Service since 2012. However, drones have long been allowed on most other Federal lands outside of designated Wilderness Areas. This has provided drone enthusiasts with a much needed clear cut rule that is easy to understand and abide by. They can assume that in general, if they are on Forest Service or BLM land that is not in a National Park or Wilderness Area, they are free to fly.

This indeed matches the current guidance from the Forest Service for recreational drone flying, published online at https://www.fs.usda.gov/visit/know-before-you-go/recreational-drone-tips. That website tells the public that as long as they don't fly in Wilderness Areas or near forest fires and avoid harassing wildlife and other Forest users, they are generally free to fly drones and unmanned aircraft on Forest Service lands.

This guidance is easy for the drone flying public to understand and obey, as Wilderness Areas are clearly marked on most maps, and forest fires typically have temporary flight restrictions imposed by the FAA that are shown on mapping apps commonly used by drone operators to determine legal airspace like Aloft, AirMap, or B4UFLY.

In my own experience, there are a few other exceptions to this rule, but generally it holds true. The main exceptions I have encountered are a handful of special management areas such as Maroon Bells or Hanging Lake in Colorado, where public access is already tightly controlled through quotas and shuttle bus systems, and the public can easily be made aware of restrictions on drone flying through signage. These are both also small areas that are heavily patrolled by rangers who can easily enforce the rules and ticket violations.

I find it extremely disturbing that the GMUG National Forest is proposing to take a rule which has heretofore only applied in designated Wilderness Areas and apply it broadly across an area that is managed for multiple use recreation, including motorized use. This sets the precedent that flying drones is an illegitimate activity on public lands and that the default management approach should be to ban it.

In reality, flying drones is a perfectly legitimate activity to do on public lands. As long as all existing Forest Service and FAA regulations are followed (including not harassing wildlife and not flying directly over people), drones have minimal impact on either wildlife or other public

lands users and should continue to be allowed to be flown on National Forest land outside of designated Wilderness Areas.

3. The proposed drone restrictions are arbitrary and capricious, irrational, and lacking justification

The draft Forest Plan does not appear to give any actual rationale for why drones should be singled out for special prohibitions in these specific areas, nor are the proposed drone restrictions discussed anywhere in the DEIS. Such restrictions are not only unwarranted, but are utterly nonsensical when one considers other more impactful activities that would continue to be allowed in the same areas under the proposed Forest Plan.

Enacting such broad restrictions with no discussion of the rationale for them is by definition arbitrary and capricious, and fails to meet the requirements of NEPA and section 706(2) of the Administrative Procedure Act, which requires agency actions to be "supported by substantial evidence." As the Supreme Court has held, the agency:

> must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made….Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) (citations omitted). The applicable "arbitrary and capricious" standard is narrow and the 10th Circuit advises, "[w]e confine our review to ascertaining whether the agency examined the relevant data and articulated a satisfactory explanation for its decision." *Colorado Wild v. U.S. Forest Service*, 435 F.3d 1204, 1213 (10th Cir. 2006).

The focus is "on the rationality of an agency's decision making process rather than on the rationality of the actual decision" and the "'agency's action must be upheld, if at all, on the basis articulated by the agency itself.'" *Id*. "Thus, the grounds upon which the agency acted must be clearly disclosed in, and sustained by, the record." *Id.* (emphasis added).

Even this deferential review "requires an agency's action to be supported by facts in the record." *Id*. Such facts must rise to at least the level of "substantial evidence" which is "'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion'" (quoting *Pennaco Energy v. U.S. Dep't of Interior*, 377 F.3d 1147, 1156 (10th Cir. 2004)) and is "'something more than a mere scintilla but something less that the weight of the evidence.'" *Id.* (quoting *Foust v. Lujan*, 942 F.2d 712, 714 (10th Cir. 1991)).

While we understand that the Draft Forest Plan and EIS are not in their final forms, unless the Forest Service adds significant analysis to the EIS which provides a rationale for banning drones across such broad areas of the Forest, its failure to do so would render the proposed drone restrictions arbitrary and capricious and therefore vulnerable to legal challenge.

The closest the Forest has yet come to providing a rationale for the proposed drone restrictions are vague concerns expressed during the webinars regarding (1) safety (specifically regarding drones flying over people, which is already regulated by the FAA), (2) user experience and user conflicts, and (3) wildlife impacts. The last of these is the only one mentioned in the DIES, where there is a single sentence stating that drones "have the ability to harass wildlife."[10]

First, if safety issues regarding drones being flown over people are the Forest's primary concern, all that would be necessary is this single sentence from the proposed standard: "*Consistent with Federal law, drones shall be prohibited to be flown overhead any visitor to National Forest System lands.*" Even that sentence is self-admittedly redundant with FAA regulations and is already outdated, given that the FAA has recently promulgated regulations which allow flight over people in limited circumstances. But if the Forest feels it must address this issue in the Forest Plan, that is all that is needed. Everything else is unnecessary and has no clear connection to the goal of preventing drones from being flown over people.

The second issue expressed during the webinars concerns user conflict and user experience. This likely refers to fears that drones being flown around other Forest visitors would annoy them or somehow diminish the quality of their recreational experience. The primary impact here would be from noise, though visual impacts are also a possible concern.

We are generally opposed to one activity being excluded from public lands based on subjective preferences and ideologies under the guise of "user conflict" (see the preceding section of these comments). Forest Service lands belong to all Americans, and that land should be shared by all users rather than favoring specific activities over others.

The Forest Service should not be in the business of banning certain activities on Forest lands simply because others may find them annoying. Those who find the prospect of a drone disturbing their visit to the Forest intolerable are welcome to hike in one of the many designated Wilderness areas in the GMUG National Forest, where drones are and always will be categorically forbidden. In other areas, the Forest should consider not only impacts on the recreational experience of those who dislike drones, but should also consider how the experience of drone enthusiasts will be diminished if they are not allowed to fly and capture footage of many of the most scenic areas in the Forest.

Even assuming that preventing annoyance to other Forest users is a legitimate basis to ban drones, we note that for most of the specific locations referenced in FW-STND-REC-09, there is no clear connection to that goal. Most of these areas are unlikely to have significant numbers of people in them, and many others (especially Forest roads and recreation emphasis corridors) allow other motorized devices which are far noisier and far more annoying than drones.

We grant that perhaps in some highly trafficked locations drone use may be too disruptive or too dangerous simply because of the sheer number of people in the area at any given time. It

[10] DEIS p. 230.

is for these reasons that the White River National Forest has banned drones from being flown at Maroon Lake and Hanging Lake. If restrictions on drones are needed at such locations, that can be done either through Forest Order or through area-specific management plans and need not be imposed in the Forest Plan. A general statement in the Forest Plan giving the Forest the authority to adopt such orders in the future would be all that is necessary.

Third, regarding harassing wildlife, the Forest has not provided any rationale showing why drones must be prohibited from being flown from each of these specific areas in order to prevent harassment of wildlife. We suggest that if that is a concern, it would be better for the Forest to address the issue directly with language prohibiting drones from being used to harass wildlife, and establishing standards such as minimum distances drones may be flown from animals. We suggest simply incorporating the Forest Service's existing guidelines for drone use around wildlife:

- Do not fly over or near wildlife as this can create stress that may cause significant harm and even death. Intentional disturbance of animals during breeding, nesting, rearing of young, or other critical life history functions is not allowed unless approved as research or management.
- Follow State wildlife and fish agency regulations on the use of UAS to search for or detect wildlife and fish.
- Launch the UAS more than 100 meters (328 feet) from wildlife. Do not approach animals or birds vertically with the UAS.[11]

Finally we note that the proposed drone restrictions contradict the recreation management approaches listed in the Draft Forest Plan, specifically the provision which states, "*When and where possible, consider phasing management actions by first selecting a less obtrusive approach (such as stewardship education) and observing visitor behavior over a specific timeframe before implementing restrictions....*"[12]

When it comes to drones, the Forest is taking the most restrictive approach possible first, mandating highly obtrusive restrictions in the Forest Plan without ever having tried addressing specific concerns at a more localized level. This approach is inimical both to the recreation management approaches in the Forest Plan and to the general principle of multiple use.

In the webinar discussing the proposed drone use standard, GMUG personnel were unable to cite any actual instances of drones causing significant problems in the Forest. Therefore, instead of imposing the maximum level of restriction in the Forest Plan now, the Forest should take the least obtrusive approach first and address specific problems later as they arise.

We suggest that the best approach would be to follow this guideline in the recreation management approaches section: "*Promote education regarding responsible recreational use of unmanned aircraft systems to support compliance with all Federal Aviation Administration regulations and guidance*."[13] We strongly agree with this guideline and believe it is the only

[11] https://www.fs.usda.gov/visit/know-before-you-go/recreational-drone-tips.
[12] Draft Forest Plan, p. 71.
[13] Draft Forest Plan, p. 72.

reference to drone use needed in the Forest Plan. Education, not baseless restrictions, is the best way to promote responsible drone use in the Forest that minimizes impacts on other users and wildlife.

4. Imposing drone restrictions through the Forest Plan is unprecedented and inappropriate

As discussed above, so far the GMUG NF has failed to describe any concrete harms the proposed drone restrictions are intended to solve. Even if the GMUG National Forest did have specific concerns with drone flying that needed to be addressed, we question why these specific prohibitions on drone flying must be included in the Forest Plan as opposed to being promulgated by Forest Order or included in project level management plans.

It is our understanding that one of the primary goals of the GMUG Forest Plan Revision Process is to produce a simpler plan that provides only broad guidance and allows greater flexibility for future management decisions, rather than getting bogged down in the details of regulating specific activities in specific areas. Why then is the Forest seeking to include detailed regulations on drone flying in the Forest Plan?

A Forest Plan is, after all, akin to the constitution of a National Forest. It provides the overall governance framework for a National Forest much as the Federal Constitution provides the overall governance framework for the Federal government and state constitutions provide the governance frameworks for state governments. Just as detailed laws governing specific activities do not belong in the Constitution, detailed rules regulating specific activities do not belong in the Forest Plan. The Forest Plan should provide general guidance for project level management decisions, not dictate every minute detail.

To my knowledge, imposing restrictions on drone flying through a Forest Plan in wide-ranging areas that are not Wilderness Areas, Wilderness Study Areas, or some kind of clearly defined special management area is completely unprecedented. Such restrictions are inconsistent with existing Forest Service guidance regarding drone flying, and will be difficult or impossible for the general public to either know about or follow.

The average person recreating on National Forest land who may wish to fly a drone will never have even heard of the Forest Plan, let alone read it. Forest management units such as recommended wilderness areas, special interest areas, research natural areas, and recreation emphasis corridors are concepts that exist solely within obscure bureaucratic documents and are typically something that only land managers or dedicated special interest groups are concerned with. Any rules governing drone use that depend on the general public understanding these obscure concepts of forest management policy are doomed to failure.

While the proposed standard in the Forest Plan is likely intended to be implemented through Forest Orders, those orders will still reference management areas described in the Forest Plan and will therefore require the public to understand what and where these areas are. The same would be true if the GMUG decided to follow the alternate approach discussed in the drone webinar of regulating drone use based on ROS zones, as members of the public would

first have to understand what an ROS zone even is, and then would have to be able to consult sufficiently detailed maps to determine what kind of ROS zone they are recreating in. ROS zones are therefore highly unlikely to be an effective tool for managing drone use, as they are simply not concepts the general public is familiar with.

Forest Orders are generally only effective if they can clearly describe a discrete restricted area and if those restrictions are then signed on the ground. The areas where the proposed restrictions on drone flying would apply are not small, but encompass vast areas of land where it will be difficult or impossible to give notice of or enforce restrictions on drone operation. They include large management areas with numerous access points, as well as every single road and trail in the National Forest, plus vague and undefined areas like “trail summits” and “day use areas.” They are not marked on maps that any member of the recreating public is likely to use, nor are they typically signed on the ground or displayed on kiosk maps along roads or hiking trails.

Unless the GMUG National Forest devotes significant resources to putting up signage or manages to have these management areas included in maps and mapping apps that the recreating public commonly uses (Google Maps, GaiaGPS, AllTrails, National Geographic topo maps, etc.), the average member of the public will have no idea if they are in a recommended wilderness area or another kind of management area where drones are prohibited, and will have no effective notice that they are not supposed to fly drones there.

It is conceivable that for recommended wilderness areas (which would typically not have open roads), the public could at least be given notice through signs at hiking trailheads, where people will be more likely to read them. Even there, enforcement will be difficult without regular ranger patrols along hiking trails. This is to say nothing of the difficulty of signing and then patrolling every road and trail in the Forest to prevent drones from being flown from them. Without either effective notice or enforcement, the proposed drone restrictions will be a dead letter from the beginning, and would be unlikely to produce any real benefits.

We submit that any problems with drones would be far better addressed through project level management plans or Forest Orders regarding specific locations where drone use has proven to be a problem. Other National Forests and BLM Field Offices have done this successfully. For example, the Pike San Isabel National Forest (which is still operating under a Forest Plan written in 1984 that certainly did not contemplate drones) issued two seasonal closure orders this year (found here and here) for raptor nesting sites, which included the following language:

> Restricted activities include but are not limited to motorized use, non-motorized use, climbing, rappelling, shooting, hiking, fishing, kayaking, **drone flying**, and any and all other human or mechanical presence within the Restricted Areas.[14]

The absence of specific language in the Forest Plan addressing drones clearly did not prevent the Pike San Isabel NF from issuing Forest Orders prohibiting them in certain locations for purposes of wildlife protection. As for recreational conflicts, I am fairly certain I have seen a past version of the Forest Order from the White River National

[14] https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd893161.pdf.

Forest prohibiting drones at the Maroon Bells Scenic Area around Maroon Lake, though the current version does not contain that prohibition. And the White River National Forest's current web page for Hanging Lake states that drones are prohibited, though they are not mentioned in any current Forest Order and I am uncertain of the exact legal basis for this prohibition. Finally, the BLM Moab Field Office recently enacted restrictions on drone flying in certain canyons through a location specific activity management plan, even though the relevant Resource Management Plan from 2008 makes no mention of drones.

It is clear that the GMUG NF does not need to incorporate express language regarding drones in its Forest Plan in order to regulate them by Forest Orde0sr or location specific management plans. However, if the Forest believes such language is needed, a general grant of such authority should be sufficient, without the need for the detailed restrictions contained in the current proposed standard. In that case, we recommend something along the lines of the following language:

"When deemed necessary for purposes of wildlife or resource protection, or to resolve unacceptable conflicts of use, the Forest Supervisor may, by Forest Order, restrict or prohibit the recreational operation of UAS in specific locations."

If the goal of the proposed FW-STND-REC-09 is simply to give the Forest Supervisor authority to restrict drone operations where necessary by Forest Order, the above language should be wholly sufficient, and we recommend replacing it with that language.

5. Specific Language Discussion

Moving to the specifics of the proposed drone standard, much of its wording is vague and insufficiently defined to create a legally enforceable standard, and the specific locations where drones are proposed to be prohibited are extremely problematic. While we have no objection to prohibiting drones in designated Wilderness Areas, which is already the case and is mandated by the Wilderness Act, we oppose general prohibitions on drone flying in any other areas.

A. "Public recreational use"

We note that the activity the proposed standard prohibits is "*Public recreational use, including launching, landing, and operating of unmanned aircraft systems*." This term is extremely vague and confusing. How does the Forest intend to define "recreational use" of unmanned aircraft?

Under FAA regulations, all drone operations are governed by Part 107 of the Federal Aviation Regulations unless they qualify for the "Exception for limited recreational operations of unmanned aircraft" under 49 USC 44809. This requires, among other things, that "The aircraft is flown strictly for recreational purposes." The FAA explains on its website that, "The

exception for recreational flyers only applies to flights that are purely for fun or personal enjoyment."[15]

Does the Forest intend to use the same definition of "public recreational use," such that the prohibitions in FW-STND-REC-09 only apply to UAS operated purely for personal enjoyment operating under the "Exception for limited recreational operations of unmanned aircraft"? If so, would these prohibitions not apply to drone operations under Part 107? Is the intent to draw some other kind of distinction between recreational or commercial operations? If so, why should commercial drone operators be allowed to fly in these areas while recreational operators may not?

During the drone-focused webinar the Forest held on September 28, 2021, agency staff seemed to refer to recreational use as encompassing all drone use other than that conducted under a special use permit or for research purposes. In that case, it appears the Forest intends to use a broader definition of recreational use that encompasses all civilian drone operations, both recreational and commercial. If that is true, why use the word "recreational" at all? That term will simply cause confusion with the FAA's regulations regarding recreational drone use and may cause many people to falsely assume operations under Part 107 are exempt.

Either way, the proposed standard fails to clearly define what activities it even applies to, and would likely be found to be impermissibly vague if challenged in court.

B. Recommended Wilderness Areas

We suppose a case could at least be made for excluding drones from recommended wilderness areas because the Forest Service wishes to manage those areas to preserve their wilderness character. That argument is weak when applied to drones however, as the Draft Forest Plan specifically allows that "*Pre-existing non-conforming uses may continue so long as they do not impair the area's wilderness characteristics.*"[16]

Drone flights are inherently ephemeral and, as they occur entirely in the air, do not have any lasting impact on the underlying land. Brief drone flights therefore cannot cause any permanent impairment to the wilderness character of the underlying lands and pose no obstacle to future Wilderness designation. At most they are a temporary annoyance to people seeking quiet and solitude while recreating on those lands. It is unreasonable to apply the same level of protections to mere recommended wilderness as to actual designated Wilderness, or for people to expect the same quality of experience while recreating in both.

If a recommended wilderness area was officially designated as Wilderness by Congress, drone operation would automatically be prohibited then. That decision should be left to Congress, rather than the Forest Service managing these areas as de facto Wilderness and imposing the same restrictions now as if they were already designated Wilderness. Instead,

[15] https://www.faa.gov/uas/recreational_fliers/.
[16] Draft Forest Plan, MA-STND-RECWLD-02, p. 90.

drone operations should be considering a pre-existing non-conforming use which does not impair the area's wilderness characteristics, and should continue to be allowed.

C. Special Interest Areas and Research Natural Areas

There is no obvious reason why drones should be prohibited from being flown from all Special Interest Areas and Research Natural Areas.

According to MA-DC-SIA-01: "Special interest areas (table 19) preserve the characteristics for which the areas are established. Interpretive opportunities for public education and enjoyment are emphasized at Alpine Tunnel, Slumgullion Earthflow, and Ophir Needles Special Interest Areas."[17] Other Special Interest Areas are listed for geologic, botanical, paleontological, or research values. The management area guidance for these areas only prescribes limits on surface disturbing activities that would harm the values for which they are managed.

Likewise all the Research Natural Areas described in the Draft Forest Plan appear to focus on protecting vegetation for purposes of botanical research. Again all prohibitions unique to those management areas concern surface disturbing activities.

Given that Special Interest Areas and Research Natural Areas are solely concerned with protecting surface conditions on the ground, there is no rational basis for prohibiting an activity within them that takes place solely in the air. Drone flights over these areas will not cause any surface disturbance, and so will not cause any negative impacts on the ground-based values which these areas are intended to protect.

The sole conceivable impact of drones in these areas is noise, which would only really be a concern for recreation-based Special Interest Areas. Even at those, some are quite remote (Alpine Tunnel for instance) and it would be quite easy to fly at one of those with no one else around.

Absent some analysis showing a clear need to prohibit drones in these areas in order to preserve their protected values, there is simply no justification for banning drones from all Special Interest Areas and Research Natural Areas.

D. Mountain Resorts

The mountain resorts management area applies solely to developed ski resorts, which already have their own rules prohibiting drone use. There is no need to include a prohibition on drones in these areas in the Forest Plan. Whether or not to prohibit drones should be left to the discretion of the ski area operator. If ski areas wish to permit members of the public to fly drones, or wish to fly drones themselves to film events or create advertising videos, they should be allowed to do so.

[17] Draft Forest Plan, p. 91.

E. Developed Recreation sites

What exactly constitutes a developed recreation site is quite vague. The proposed standard gives a series of examples (campgrounds, designated campsites, trailheads, visitor centers, parking lots, overlooks, day-use areas, boat launches), but fails to define the boundaries of these sites, or provide any justification for banning drones at all of them.

We grant that it may make sense to prohibit drones from being flown at some of these, particularly developed campgrounds, where drones could especially cause unwanted disturbance and raise fears of invasion of privacy. However that same concern would not necessarily apply at remote designated dispersed campsites where there could be no one else nearby. Likewise it could be appropriate to prohibit drones at crowded trailheads and parking lots, but not at a remote trailhead that receives little use.

Day use areas is a highly nebulous term that is impossible for the public to understand what is intended. Does this include lakes? Picnic areas? If so, how far must one be from these sites in order to operate a drone?

There is also no reason to prohibit drones from being flown at overlooks and boat launches. At both of these locations, the drone would most likely be flown out over a valley or lake where it would not be directly above anyone. If these areas are crowded with people, perhaps the noise of a drone could be annoying to some visitors. But would a drone be any noisier than the vehicles and/or motorboats that would also be present at these locations?

Additionally, what constitutes an overlook? Any wide spot along a road with a scenic view? Or, since this is under the category of developed sites, would it have to have a railing and interpretative signs to qualify?

There is simply no justification for including a general ban on drone flying at all developed recreation sites in the Forest Plan. While we grant that it may make sense to ban drones at certain individual recreation sites, particularly developed campgrounds, that decision should be made on a case-by-case basis for specific sites. Such prohibitions should be imposed either through site-specific Forest Orders or program level management plans. It is simply not appropriate to regulate this in the Forest Plan, which is intended for broad Forest-wide guidance rather than managing specific activities at specific locations.

F. Roads, trails, trail summits, and recreation emphasis corridors

By far the most concerning parts of the proposed drone standard are the prohibitions on operating drones from all roads, trails, “trail sumits”, and recreation emphasis corridors in the Forest. While other areas where drones are prohibited are managed to preserve specific natural values, these are areas that are inherently managed for multiple use recreation, including numerous activities that cause far greater impacts than drones.

It is especially nonsensical to prohibit drones from being flown from roads and motorized trails, which already allow other forms of motorized devices. A good shorthand for understanding the current rules for flying drones on Forest Service land is that if you can drive a vehicle there,

you can fly a drone there. This makes inherent sense because drones are a kind of motorized device. That is indeed the very reason why they are prohibited in designated Wilderness Areas in the first place.

The Forest Service's current approach sets the expectation that motorized devices are regulated consistently, at least in broad terms. Where motorized vehicles are prohibited, drones are prohibited; and where motorized vehicles are allowed, drones are allowed. Because they are aircraft, drones are not subject to the Travel Management Rule governing ground vehicles, but in all other respects they are managed similarly.

The proposed standard prohibiting launching and landing drones on Forest roads and motorized trails breaks that existing paradigm. It sets up the absurd scenario where the public may drive Jeeps, side-by-sides, dirt bikes, and other OHVs on roads and motorized trails but may not fly a drone from those same roads. While I am a Jeeper and fully support preserving opportunities for all forms of motorized recreation on public lands, there is no conceivable way that operating a drone from these roads would have greater impacts on wildlife or other recreationists than operating an off-highway vehicle on them does.

It is utterly irrational, as well as arbitrary and capricious, to tell an OHV driver he may drive a vehicle on a road but not fly a drone from that same road to film his vehicle. This is not a theoretical issue. The crossover between OHV enthusiasts and drone owners is actually quite high. With the advent of newer drones that can automatically follow a vehicle while avoiding obstacles in their path, it has become a popular activity for offroaders to film themselves driving off-road trails with a drone following their vehicle.

It is extremely likely that visitors to the GMUG National Forest may wish to do this, as well as to fly drones from campsites and scenic overlooks to capture the beauty of this area from the air. Indeed, it is already extremely common for offroaders to fly drones along the most popular 4x4 trails in the GMUG National Forest such as Black Bear and Imogene Passes. A quick YouTube search would likely reveal hundreds of videos featuring drone footage along these routes.

Such visitors will not see any reason why they should not be allowed to fly a drone from the same roads on which they can drive a motor vehicle, and will be unlikely to abide by any restrictions on drone flying assuming they are even aware of them. People tend to obey rules that make sense and are consistently applied, while they tend to ignore rules that seem arbitrary and irrational. This rule is a prime example of the latter.

While the chief concern regarding them is typically noise, drones are getting smaller and quieter all the time, and even the loudest drone is still far quieter than the average ATV, dirt bike, or side-by-side. Most consumer quadcopters are largely inaudible once they are a couple hundred feet up and a few hundred feet away laterally. ATVs and dirt bikes, in contrast, can often be heard for miles.

To ban drones from being operated from all roads and trails because of noise concerns is the height of inconsistency, as it arbitrarily singles out one kind of motorized device for unequal

prohibition--and the least noisy one at that. Anyone on or near a motorized route should expect to encounter noise from motorized devices, so noise from drones is not a valid reason to prohibit them from being operated where other motor vehicles are allowed. The same principle applies to recreation emphasis corridors, which are all along popular roads, but also include the 600 foot wide dispersed camping corridor surrounding roads. Where motorized travel is allowed, drones should also be allowed.

There is also no rational basis for prohibiting drones from being flown from non-motorized trails outside of designated Wilderness Areas. By now the public is accustomed to the fact that while drones cannot be flown in Wilderness, they can be flown everywhere else. Plenty of non-motorized recreationists enjoy flying drones while out on a hike, and mountain bikers frequently use them to film their rides. Non-motorized users should continue to be able to fly drones from their trails as long as they are not in a designated Wilderness area.

Finally regarding “trail summits,” this term has no clear definition. What exactly is a “trail summit,” and how broad an area does that encompass? If someone reaches the summit of a mountain, but then steps off trail and walks 10 feet back down the mountain, is he still within the prohibited “trail summit” zone? How about 100 feet, or 500 feet?

6. The proposed drone restrictions will be ineffective and unenforceable

The questions above bring up the simple fact that all of the prohibitions on operating drones from roads, trails, trail summits, developed recreation sites, and recreation emphasis corridors can easily be circumvented simply by stepping off the road or trail or walking a few feet away from the prohibited area. In the case of recreation emphasis corridors, which are defined as a corridor 300 feet in both directions from the centerline of a road, someone would just have to walk 301 feet from the road before they could legally fly a drone. They would then be free to fly the drone back over the road or trail perfectly legally.

What then is the point of these prohibitions? If it is to keep people from flying drones over people or vehicles, why not simply prohibit that as mentioned earlier? If it is to prevent harassment of wildlife, why not address that issue? If it is to prevent annoyance from noise, why are drones treated differently than other noisy machines that are allowed where they are not? These prohibitions seem to be a solution in search of a problem, and an ineffective one at that.

All this plan component accomplishes is to deprive drone operators of the best launching and landing sites (flat open ground along a road or trail, or at scenic overlooks and other recreation sites) and force them to walk to a less suitable and less safe location to fly. This would only increase environmental impacts from people trampling vegetation walking off trail, while making the drone operation itself less safe because the operator is forced to fly from a poorer vantage point where they could be surrounded by trees. In some places, it could endanger the drone pilot by forcing them to scramble down steep slopes to get away from a road. That of course is assuming anyone even attempts to follow this standard, which they will not.

In reality, people will continue flying drones from Forest roads and trails and at other recreation sites as they are already accustomed to doing, and as they are allowed to do in every other National Forest in Colorado. If this standard is included in the final Forest Plan, it would make the GMUG National Forest the only National Forest in Colorado (and likely the entire country) to prohibit drones from being flown from all Forest roads, trails, and recreation sites -- completely upending the public's expectations of where drone use is and is not allowed.

Rather than making itself an outlier and committing its rangers to the impossible task of trying to enforce irrational restrictions that no one is going to obey, the GMUG National Forest should scrap this provision entirely, or else significantly modify it in the final draft to be something that the drone flying public would actually accept as reasonable.

Of all the locations discussed above, developed campgrounds are the only ones which most members of the public would agree are reasonable to prohibit drones, and they are also the only locations where the Forest Service would always have personnel available to enforce that prohibition. If this rule were modified to only prohibit drones in designated Wilderness and developed campgrounds, we would have no objection to it. Anything more would be unreasonable, unenforceable, and completely lacking justification.

7. Conclusion and recommended changes to the draft standard

For the reasons discussed above, we believe the proposed standard FW-STND-REC-09 is excessively restrictive, unnecessary, and ultimately impractical and unenforceable. Therefore we urge the Forest to remove it from the final draft of the Forest Plan.

If the Forest determines that it is necessary to have some language in the Forest Plan addressing drones, we suggest that FW-STND-REC-09 be replaced with the following language:

> **FW-STND-REC-09 (proposed replacement):**
>
> All unmanned aircraft systems, also known as drones, flown from and above National Forest System lands must comply with Federal Aviation Administration and U.S. Forest Service laws, regulations, and policies. Drone operators shall be encouraged to follow existing U.S. Forest Service guidance on avoiding disturbance to wildlife and other Forest users.
>
> When deemed necessary for purposes of wildlife or resource protection, or to resolve unacceptable conflicts of use, the Forest Supervisor may, by Forest Order, restrict or prohibit the recreational operation of UAS in specific locations.
>
> See the Recreation Management Approaches section for more information on responsible recreational use of unmanned aircraft systems on National Forest System lands and links to Federal Aviation Administration regulations and guidelines.

We believe that replacement language would better achieve the Forest's goal of providing sufficient authority in the Forest Plan to enable flexible management of drones

in areas where their operation may be problematic, without mandating a complex and restrictive regulatory scheme that would likely be impractical to implement.

V. Conclusion

To conclude, we reiterate the importance of providing continued high quality opportunities for motorized recreation in the GMUG National Forest. We ask that Alternative B be adopted as this alternative best maintains existing opportunities for motorized recreation while minimizing restrictive management classes such as recommended wilderness and special management areas. However, we also request that Alternates C and D be modified in the Final EIS to correct the significant mapping errors we identified in the ROS maps, which place numerous high value motorized routes in semi-primitive non-motorized zones.

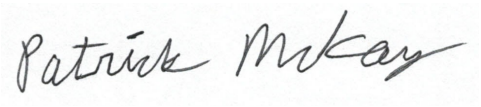
We also ask the Forest to change the special management areas in Alternative D that are listed as having no summer motorized suitability, yet contain existing designated motorized routes, to “no new” instead.

Finally, we strongly oppose the proposed standard restricting recreational drone flying across wide areas of the National Forest as well as all roads and trails, and ask for this proposed standard to be removed from the final Forest Plan entirely, or else replaced with the alternate language recommended above.

We hope that the Forest will make the changes to the management direction we have requested above, and reserve our right to object on these grounds if the requested changes are not made.

Thank you for your consideration.

Sincerely,



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