



**BlueRibbon Coalition / Sharetrails**

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**Ben Burr, Executive Director**

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**November 5, 2021**

Travis Moseley`

Lincoln National Forest Supervisor's Office

3463 Las Palomas Rd

Alamogordo, NM 88310

Dear Mr. Moseley,

BlueRibbon Coalition/ShareTrails (BRC) is writing to provide feedback for the Lincoln National Forest Revised Management Plan. BRC is a national non-profit organization that champions responsible recreation and encourages a strong conservation ethic and individual stewardship. We champion responsible use of public lands and waters for the benefit of all recreationists by educating and empowering our members to secure, protect, and expand shared outdoor recreation access and use by working collaboratively with natural resource managers and other recreationists. Our members use motorized and non-motorized means of recreation, including OHVs, horses, mountain bikes, and hiking to enjoy federally managed lands throughout the United States, including those of the Forest Service. Many of our members and supporters live in New Mexico or travel across the country to visit New Mexico and use motorized vehicles to access USFS managed lands throughout New Mexico. BRC members visit the Lincoln National Forest for motorized recreation, snowmobiling, sightseeing, photography, rockhounding, hunting, wildlife and nature study, camping, observing cultural resources, and other similar pursuits. We would like to add our support to any comment submitted by New Mexico 4 Wheelers and any other individuals or organizations that advocate for motorized use. BRC

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members and supporters have concrete, definite, and immediate plans to continue such activities in the future.

### **Recreation Special Uses**

Many of our members hold organized events that include organized rides in this area. A significant portion of the education mission of organizations like ours and the fundraising that supports organizations like ours comes from these organized events, and we see the continuation of these events as an integral expression of protected rights including freedom of speech and freedom of assembly. We appreciate that the planners recognize that Special Uses are often educational in nature. We recommend making changes (change language in italics) to this sentence in the Special Uses section of the plan, “Recreation special use authorizations allow the use and occupancy of National Forest System lands when the proposed activity supports the Forest Service mission, meets demonstrated public needs, and aligns with the desired conditions for the use area, *or is simply an expression of Constitutionally protected rights such as freedom of speech and freedom of assembly.*”

We consider the Recreation Special Uses Desired Conditions, Guidelines, Standards, and Management Approaches to be a scheme of prior restraint that could potentially limit protected rights such as freedom of speech and freedom of assembly. We are especially concerned that vaguely defined “resource impacts” are used to justify denial of authorization of special use permits. A “scheme” of prior restraint is one which gives “public officials the power to deny use of a forum in advance of actual expression” and “comes to the Court bearing a heavy presumption against its constitutional validity.” *Am. Target Advert., Inc. v. Giani*, 199 F.3d 1241, 1250 (10th Cir. 2000) (quotation and citation omitted). The Supreme Court of the United States and the Tenth Circuit have long held that “there are ‘two evils’ that will not be tolerated” in prior restraint schemes; first, “a prior restraint that fails to place limits on the time within which the decision maker must issue the license is impermissible[.]” and second, “no system of prior restraint may place ‘unbridled discretion in the hands of a government official or other agency.’” *Id.* (quoting *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 225, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990)). The Recreation Special Uses section of the plan needs to be modified to recognize these legal constraints on the agency. For example, FW-RECSU-DC-02 could define “timely more clearly.” Also, FW-RECSU-DC-03 should recognize that public demand should be balanced with desired conditions for ecological resources *and Constitutionally protected rights*. All efforts to mitigate resource impacts should be done through the least restrictive means possible.

## **Roads**

We support the USFS in recognizing the need and vitality for roads, that they provide essential access for many different entities and users. “About 1,131 of these miles are currently closed to motorized vehicle use. These closed roads have been put in storage for administrative purposes.” These roads should be evaluated and available for public use, as the agency has recognized the need for these roads for a variety of purposes. As popularity of outdoor recreation grows, management needs to grow with it. As we constrict more and more users into confined areas, impacts will most definitely increase. USFS should set themselves up for success in order to accommodate future use.

“In addition to National Forest System roads, unauthorized routes exist that are not part of the Lincoln National Forest transportation system; however, a current inventory of unauthorized routes has not been completed.” USFS should complete the inventory of roads and seriously consider the need to add them to the system.

FW-ROADS-O 02: Decommission 75 miles of road within 15 years.

*BRC Response: These are arbitrary numbers. Decommissioning roads is not consistent with the recognition of road uses within the forest. Roads are needed for forest health and safety.*

FW-ROADS-S 01: Motor vehicle use by the public is only authorized where designated by the motor vehicle use map (except where motor vehicle use is authorized by law, permit, valid right, or order).

02: New motorized routes must not be constructed in areas where the desired recreation opportunity spectrum is designated as primitive.

*BRC Response: The motor vehicle use map needs to be accurate to ensure primitive ROS zones are not created where current roads are located. Stating that new routes must not be constructed is limiting the forest service and all future use as these areas could need roads for emergency response, this is the problem with primitive designations.*

There are several guidelines (FW-ROADS-G) that describe the need for new roads and we support the USFS in acknowledging these potential needs and look forward to working with the agency on said projects.

## Roads Management Approaches:

01 Within project areas, prioritize decommissioning of roads and routes that are redundant, adversely impact flow regimes, or cause resource damage.

*BRC Response: We recommend replacing “rerouting” for “decommissioning”. Management should manage roads rather than decommission them.*

02 Mitigate or decommission roads that may be susceptible to erosion, landslides, rock falls, or other landslide movements and hazard trees.

*BRC Response: We again, recommend replacing “reroute” for “decommission”. These are natural occurrences in nature and again should be managed rather than used as an excuse to close roads.*

We support any additional comments that encourage the USFS to designate the maximum number of routes in this area as open. Many of our members are organizations with extensive on-the-ground experience. If any route or area specific comments are made which identify missing routes or errors in Recreation Opportunity Spectrum maps that lead to restricted access, we support USFS addressing these comments in the development of an alternative that maximizes motorized recreation access to the planning area. We strongly advocate against a “conservation alternative” as this area is already surrounded by and includes, wilderness areas and highly restrictive management areas. Specifically, we support any comments made by our members.

The Lincoln area is an incredibly popular area for off-highway use and over snow vehicles. It covers large areas throughout New Mexico. Encompassing the Captain Mountains and White Mountain Wilderness areas this travel area is surrounded by land managed with aggressive restrictions on motorized recreation, dispersed camping, and other forms of outdoor recreation, USFS should work to maximize OHV use in this area, since minimization of OHV related impacts occurs by land management designations in surrounding areas.

BlueRibbon Coalition has members who enjoy recreation in the Lincoln National Forest area and who will be irreparably harmed by Alternatives B, C or D. Specifically, creation of more recommended wilderness areas will cause immediate loss of access to various trails, routes, dispersed camping sites, and areas with high recreation potential within the forest. The plan states, “support local recreation-based economic development.” Alternative E is the only

alternative that would truly support this part of the plan. In 2019 the Bureau of Economic Analysis showed outdoor recreation contributed \$459.8 billion. The desire and need for outdoor recreation and meaningful experiences with nature has only increased since then and will continue to increase. Local economies should be able to benefit from this trend as long as the USFS uses proper management techniques.

### **Users with Disabilities**

We recommend that the USFS use this planning process to finally begin to reverse its decades-long systematic discrimination against those with mobility impairment-related 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.” 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 biases 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 or areas 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 disabled community, but only requires that they be given access to public lands on equal terms with everyone else. As a result, the USFS 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 USFS is therefore required by this executive order and others mandating that federal agencies consider “environmental justice” in NEPA proceedings to consider whether any route closures in the Lincoln management plan would disproportionately harm disabled users’ ability to access public lands.

Any approach to travel management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing 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 USFS consider the access needs of disabled users in drafting the alternatives for this travel plan and ensure that people with disabilities who depend on motorized means do not lose access.

### **OSV Use**

FW-DEVREC-G 08: Over-the-snow vehicle travel should be allowed where snow depth is adequate—except in wilderness areas or areas closed to over-snow vehicles—in order to

protect other resources such as administrative sites, reforestation, and sensitive plant and wildlife areas.

The management plan requires adequate snow depth for OSV use. This depth number needs to be based on best available science and not an arbitrary number. Typically OSV users won't attempt to recreate unless there is adequate snow depth in the first place. This requirement sets another arbitrary requirement for recreation users to discourage use and should not be abused by the USFS.

ROS zones should reflect accurate snow use. When creating non-motorized zones, winter recreation needs to be considered. BRC recommends Alternative E, that recommends the least amount of wilderness that will support recreation access across the forest.

According to the Winter Use Monitoring: Summary of Findings 2014-2020 from the National Park Service in Yellowstone<sup>1</sup> regarding the effects on OSV use on wildlife, there is not a significant impact. NPS states, "83% of the observed responses by all groups of wildlife were categorized as no apparent response, 11% look/resume, 3% travel, 1% attention/alarm, and 1% for flight and defense/charge combined." Therefore, there should not be other areas closed to OSV use and proper management techniques should be utilized instead. In addition to this study, we recommend that the USFS include the findings found in the Snowmobile Fact Book published by the International Snowmobile Association.<sup>2</sup>

### **Developed Recreation Use**

The Lincoln Forest, primarily the Sacramento Ranger District has many forms of recreation use that have developed over the years. The plan states, "Locals are proud of their railroad logging history, which they highlight with their railroad grades converted to trails." USFS should continue to honor that history and keep all trails open and available as these trails offer a historical complexity that often gives spiritual connection to the land. These trails need to be ensured that they are accurate on the land agencies maps and protected for future generations education and use.

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<sup>1</sup> <https://www.nps.gov/yell/learn/news/21030.htm>

<sup>2</sup> <https://snowmobile.org/docs/isma-snowmobiling-fact-book.pdf>

FW-DEVREC-G 06 The use of new recreation technologies and trends (such as drones and slacklining), at developed recreation sites, should be considered on a case-by-case basis for the protection of public safety, other resources, and quality recreation opportunities.

*BRC Response: Many forms of recreation are apparent in the Lincoln National Forest. New forms of recreation technologies are being considered in the plan, specifically slacklining and drone use. The management plan recommends limited use within designated campgrounds. The FAA is the agency tasked with monitoring and setting boundaries for drone use. If drone users are within the limits and requirements set by the FAA then the Forest Service should not set more arbitrary restrictions not within their jurisdiction.*

*Restrictions of slacklining in designated campsites needs to follow current science and the agency needs to address the specific concerns of the impacts of slacklining. Possible solutions could be created to mitigate possible negative impacts and should be explored before arbitrary allowances and restrictions are created.*

### **Dispersed Recreation**

Chapter 2 FW-DEVREC-G, 02: Consider the volume of use, resource protection needs, and opportunities for public-private partnerships, geographic distribution, and operating costs and revenues to determine the operation or closure of a site.

*BRC Response: We are concerned the closure of a site is already being recommended. All management options should be exhausted before recommending restrictions or closures. We prefer the language used here:*

FW-DISREC-G 03: Trails (motorized and non-motorized) that adversely impact cultural resources, at-risk species, or riparian areas should be relocated where possible.

*BRC Response: Relocation of trails will protect sites without closures and accommodate all user groups. USFS should seek to relocate any trails that may cause negative impacts rather than restricting public use.*

Chapter 2 FW-DISREC-DC 01: Dispersed recreation opportunities range from remote backcountry solitude to roadside campsites along popular corridors. Dispersed recreation is consistent with management tools (motor vehicle use map and recreation opportunity spectrum classes) and does not adversely affect ecological resources.



04: Trail and dispersed recreation use conflicts are rare and easily resolved (for example, signs display designated uses and uses are separated with a schedule).

05: Unauthorized access (roads and trails) and non-system routes are not present on the landscape.

*BRC Response: Designating non-motorized ROS zones will greatly inhibit these dispersed recreation opportunities which is a crucial element to the forest's landscape and history. Allowing dispersed recreation is beneficial for mental and physical health and the desire for these experiences have greatly increased in the last few years. It is only predicted to increase more and if the USFS restricts areas now then it will not be able to accommodate future needs, creating more problems in years to come. We also recommend a thorough inventory be done of current roads and trails to ensure that no trails or roads are closed through ROS zones because of inaccurate maps.*

### **Wildfires**

Chapter 3, DA-WILD-G 07: In designated and recommended wilderness areas, prescribed fire should be considered to reduce the risks and consequences of uncharacteristic wildfire, if necessary, to meet fire management objectives. Naturally occurring fires should be allowed to perform, as much as possible, their natural ecological role.

Chapter 2, FW-FIRE-G 08: Naturally ignited wildfire should only be suppressed when behavior and effects are outside the natural range of variation or where necessary to protect life, investments, and valuable resources.

*BRC Response: Naturally occurring wildfires should be treated with as much tenacity to extinguish said fire as possible within reasonable safety precautions. Wildfires should never be allowed to continue to burn to meet prescribed fire objectives. Forest treatments and projects should be high priority in order to keep the forest healthy and safe and reduce the possibility of trails and forest closures.*

### **Conclusion**

We would like to close by saying we support “shared use”. As long as overall visitation numbers are appropriate for the affected resources, motorized and non-motorized users can be compatible with one another so long as individual users understand designations and plan their activities accordingly. Indeed, motorized and nonmotorized recreation use often overlap as OHV's often increase accessibility to non-motorized recreational activities such as hiking,

camping, equestrian use, etc. We also hold that responsible recreational use of public lands can exist in harmony with ecosystem needs.

BRC would like to be considered an interested public for this project. Information can be sent to the following address and email address:

Ben Burr  
BlueRibbon Coalition  
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Pocatello, ID 83202  
brmedia@sharetrails.org

Sincerely,

A handwritten signature in black ink, consisting of stylized initials 'BB' followed by a long horizontal line.

Ben Burr  
Executive Director  
BlueRibbon Coalition  
brben@sharetrails.org

A handwritten signature in black ink, appearing to read 'Simone Griffin' in a cursive script.

Simone Griffin  
Policy Director  
BlueRibbon Coalition  
brsimone@sharetrails.org