November 18, 2021

Mark Foster, Shoshone National Forest Environmental Coordinator Lisa Timchak, Shoshone National Forest Supervisor Attention: Shoshone NF Travel Management Planning Project Shoshone National Forest 808 Meadow Lane Avenue Cody, Wyoming 82414

Submitted electronically to: SM.FS.shonfcomment@usda.gov

Re: Comments on Shoshone National Forest Travel Management Plan Environmental Assessment

Dear Supervisor Timchak and Mr. Foster,

Greater Yellowstone Coalition, Sierra Club, The Wilderness Society, WildEarth Guardians, Winter Wildlands Alliance, Wyoming Back Country Horsemen, and Wyoming Wilderness Association submit these comments on the United States Forest Service (USFS) Shoshone National Forest (SNF) Travel Management Plan (TMP) Environmental Assessment (EA) as released for public review and comment in October 2021. Our organizations have a long history of working with the SNF. Many of our organizations have been engaged in the Shoshone travel management planning process since 2015. We submitted timely scoping comments on this project in 2016 and 2017. We submitted exhaustive comments regarding the Preliminary Environmental Assessment (preliminary EA) that was released for public review and comment in July 2020. Prior to travel planning, many of our organizations also participated in the lengthy process that led to the 2015 revised SNF Land Management Plan (LMP).

Our thousands of members in Wyoming and millions from across the country visit the SNF to recreate in all seasons, and they deeply value the wild character of this backcountry forest and the wildlife it supports. Protecting these areas from the myriad adverse impacts associated with poorly managed motorized recreation is also necessary to satisfy the Biden Administration's commitment to protecting 30% of U.S lands and waters by 2030 and ensuring climate resilient ecosystems. When it is completed, the TMP will directly affect our members' experiences on the SNF and the conservation values that our organizations work to support.

During the project's scoping phase, many of our organizations sent SNF officials letters outlining the USFS's responsibilities under the 2005 Travel Management Rule (TMR) (as amended in 2015), including properly identifying the minimum road system under Subpart A and application of the minimization criteria as required under Subparts B and C. These letters were intended to provide USFS personnel with important information fundamental to travel management planning and the need to demonstrate rigorous site-specific analysis.

In our 2020 comments on the preliminary EA, we reiterated this information and detailed our many concerns, including, fundamentally, the failure of the SNF to comply with the TMR, among other substantive and procedural obligations. Because the USFS has failed to remedy a number of the deficiencies we identified in those comments, we incorporate them by reference (GYC et al., 2020), request that the agency review them again, and expect that they will be included in the project record.

We strongly urge the USFS to carefully review **all** of the many pre-scoping and scoping comments received from 2015-2017 and 2020 preliminary EA comments, to fully acknowledge the many obstacles that have prevented full and meaningful public participation, and to address the numerous deficiencies with the environmental analysis and proposed action. Given the scope of the action intended to implement subparts A, B, and C of the Travel Management Rule across an entire national forest, along with the numerous significant impacts associated with motorized recreation and the ongoing need for robust site-specific analysis and decision-making, this will likely require completion of an Environmental Impact Statement (EIS), as initially intended throughout the three year comment process.

While these comments and our previous comments identified numerous deficiencies with the environmental analysis and proposed action, several elements of the revised EA and proposed action/Alternative 4 raise particularly significant concerns that must be addressed. These include, but are not limited to:

- 1. Attempting to replace necessary site-specific analysis and decision-making with a novel programmatic, condition-based, adaptive management approach to travel planning that is fundamentally incompatible with the TMR— the Rule that necessarily prescribes discrete, site-specific, and granular road, trail, and area designation decisions and corresponding obligations under NEPA;
- 2. Sanctioning ongoing mismanagement of snowmobile use in the High Lakes Wilderness Study Area that fails to comply with the Wyoming Wilderness Act; and
- 3. Unsupported and highly problematic season of use dates that are likely to cause enforcement issues, resource damage, and increase rather than minimize conflicts between recreational uses.

Detailed discussion follows regarding some of the fundamental concerns and failures that we have identified in the revised EA.

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I. LACK OF MEANINGFUL STAKEHOLDER ENGAGEMENT

Lack of Meaningful Public Engagement

The public has not had adequate opportunity to review or comment on the EA, due to the complexity and scope of the project, the brief 30-day comment period, and the USFS's failure to provide quality data that is available and interpretable to the general public, as required by the 2000 Data Quality Act¹. These shortcomings were exacerbated by the ineffective virtual meetings that were substituted for in-person public meetings. We elaborate on our concerns with each below.

Supervisor Timchak received multiple requests for an extension to the brief 30-day comment period, but noted that she was prohibited from providing one due to regulations defining the comment period length for an EA. The many public requests for an extension to the 30-day comment period clearly highlighted that this was a woefully inadequate amount of time for the public to review a 450-page document with hundreds of site-specific proposals and to compare multiple appendices, tables and maps across alternatives and with numerous previous drafts. The USFS pointed to an extension on their draft preliminary EA comment period as somehow justifying their failure to provide adequate time for public input on the final EA, while completely ignoring the fact that the final EA includes significant new information and new proposals that were not even in the preliminary EA. This emphasizes the need for an EIS to adequately analyze a plan of this complexity and consequence, and to allow the public enough time to read, understand, and submit a meaningful response to the USFS.²

Public feedback to the USFS noted how difficult (and sometimes impossible) it was to interpret specific proposals, compare maps of varying scales across computer screens and between alternatives, and find basic descriptions of proposals and actual proposed changes by district. Printing files from the online resources resulted in text and maps that were too small to read. The USFS refused to provide hard copies of the documents to individuals or even to local libraries. USFS officials stated that the documents would be available at district offices, but when we checked, they were not available in at least some district offices. Given that we had similar difficulties with the preliminary EA in 2020, several of our organizations proactively encouraged the USFS to provide readable formats, interpretable maps, and helpful summary statistics, similar to resources that were provided in drafts prior to the preliminary EA. Ignoring our requests, the USFS chose not to provide these resources in the EA and continued to ignore

¹ The Data Quality Act (2000), P.L. 106-554, section 515, directed agencies to establish guidelines to ensure **"quality, objectivity, utility and integrity" of information disseminated by the agencies**. This law requires that the Forest Service identify sources of the information it is using to evaluate the present status of its open road system and strive to ensure information provided is "substantively accurate, reliable, and unbiased and presented in an accurate, clear, complete, and unbiased manner."

² Attachment 1. Frontier Article, November 11, 2021. Wind River District Plans Presented.

additional requests during the comment period.³ Much of that basic information requested by the public — maps showing specific proposals, maps highlighting proposed changes and new construction, total miles of new motorized trail proposed, and summary changes from the existing system -- was included in virtual presentations by the USFS during the week of November 2, nearly halfway through the comment period. We cannot understand why this critical information was not provided in the EA or earlier as we requested. There is no question that the failure of the USFS to provide such essential information until almost half way through the already too brief 30-day comment period seriously limited the public's opportunity to participate.

Explicit errors and inconsistencies further undermined the public's ability to review and understand the EA and its supporting documents, not to mention their faith in the quality of the agency's work. For example, significant errors in Appendix B of the 2020 preliminary EA were discovered and reported by the public during the comment period, but the USFS chose to provide no public correction or explanation at any point in the 60 day comment period.⁴ Following the release of the 2021 EA, after a week of reviewing the complex plan the public again discovered substantive errors that were raised with the USFS. Fortunately, this time a correction was posted on the SNF website, but not until a full 10 days of the 30 day comment period had passed.⁵ Multiple other inconsistencies and errors between proposal names and references were noted. Some information referenced in the EA was not available at all. For example, on page 38 the link meant to take the reader to previously submitted comments was not functional, and those comments were not made available to the public anytime during the 30-day comment period. Nor was the link on page 448 to FS responses to comments functional. These resources would have helped our organizations and the general public better understand how or if comments submitted on the 2020 preliminary EA informed the proposed action.⁶ As it is, we are left in the dark.

Given the short comment period, failure to provide hard copies, lack of readable maps, errors and inconsistencies in the EA and appendices, and across-the-board difficulty in interpreting the proposed action, public meetings were the only real opportunity for the public to ask questions and understand the proposed action. Unfortunately, the virtual public meetings provided by the USFS utterly failed to meet this need.⁷ The meetings failed because of poor planning, inadequate technology, and verbosity of USFS staff at the expense of the public's time and opportunity to ask questions and receive straightforward answers, all coupled with inherent limitations of virtual meetings. For each virtual meeting, the public had one hour at most to ask questions of

³ Attachment 2. TMP Requests, submitted June 11, 2021

⁴ Attachment 3. 2020 Sep_RE SNF TMP PEA Appendix B_inquiry_response_reply

⁵ Attachment 4. 2021 Oct_RE SNF TMP EA Appendix B_inquiry; Attachment 5. 2021 Oct_RE SNF TMP EA Appendix B_response_reply

⁶ The SNF dismisses over 6000 form letters that we can deduce were conservation oriented. No description of the 400 unique comments was provided.

⁷ https://www.codyenterprise.com/news/local/article_7faba97e-4268-11ec-82fa-b3796b1c200f.html

USFS staff. It was difficult to ask questions and nearly impossible to ask clarifying or follow up questions. The USFS's refusal to utilize the chat function or allow questions during presentations resulted in critical time wasted while USFS staff talked at length about slides that participants could not see. When the public was finally allowed to ask questions after lengthy and at times rambling presentations by USFS staff, many participants (50% during the Wind River meeting) were not able to unmute themselves to ask questions.

While we appreciate the USFS's attempt to provide virtual meetings, we also understand that even the most flawless virtual meeting could never provide large, appropriately scaled maps that a person could actually read, nor the opportunity to ask questions and receive clear answers for nearly a hundred location-specific proposals spread across the forest. We cannot think of any other planning process more reliant on adequate maps, hard copies of appendix tables, and USFS clarification to understand the proposed actions. Further accommodation for the pandemic should have been provided, including an extended comment period and additional virtual meetings with technology pretested to ensure functionality, where the public could review the EA along with all relevant appendices and maps, ask direct questions, receive clear answers, and discuss the proposals with USFS staff. This two-way interaction is essential for the public to understand what is being proposed and to trust that the USFS is actually listening and taking their concerns seriously.

When considering adequate opportunities for meaningful public participation on the proposed EA, the USFS must acknowledge and consider the effect of an almost complete turnover in staff leadership on the SNF between the extensive public travel planning process paused in 2017 and when a new draft plan was released as a preliminary EA in 2020. The preliminary EA was released under a new forest supervisor, new environmental coordinator, and two (out of three) new district rangers. Importantly, both comment periods of the new EA planning process were held during the Covid-19 pandemic through virtual meetings and using new communication systems, with zero opportunity for public site visits or public meetings. The environmental coordinator explained in public meetings that the preferred alternative in the EA was informed by comments submitted on the preliminary EA in 2020. It is insincere and misleading for the USFS to point to public comment conducted from 2015-2017 as informing the EA, for a variety of reasons elaborated upon in the following Purpose and Need section.

Lack of Meaningful Tribal Consultation

Federal agencies are legally required to consult Native American tribal historic preservation offices (THPOs) and Native American tribes when federal undertakings may affect historic properties to which a tribe attaches religious or cultural significance. The <u>National Historic</u> <u>Preservation Act</u> (NHPA) of 1966, <u>Section 106</u> regulations (36 CFR 800) place particular emphasis on consultation with THPOs and Native American tribes. Additionally, <u>Section 110</u> of

the NHPA defines tribal consultation as "the process of seeking, discussing, and considering the views of others, and where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply providing information."

While it is laudable that the USFS conducted outreach to 11 tribes by sending each tribe a letter, this simple outreach does not include the "exchange of ideas" and is "simply providing information" — exactly what Section 10 of the NHPA explicitly states is inadequate tribal consultation. Only two tribes were contacted beyond sending a letter and given the opportunity to engage in this process. The same opportunity to engage should have been provided to the other nine tribes with ancestral ties to the SNF. Additionally, the SNF should immediately seek approval to hire a tribal liaison, instead of relying on the district or forest archaeologist to conduct tribal consultation. Without meaningful tribal consultation, it will be virtually impossible for the USFS to include traditional ecological knowledge that could help the USFS achieve more sustainable land management practices on the SNF. Adequate tribal consultation is imperative when the USFS is proposing to approve 22 miles of new route construction on ancestral lands without completing any cultural surveys along those routes.

Lack of Federal and State Agency Consultation

Many federal and state government agencies manage public lands and roads on behalf of the general public. Quite often their jurisdictions abut or overlap, and it is customary and entirely appropriate for agencies with overlapping responsibilities or shared boundaries to consult on management decisions, particularly if a decision by one entity has the potential to affect, impact, or conflict with management efforts or authorities of another entity. Agency to agency consultation is an opportunity for management agencies to discuss long term strategies, historic agreements, and existing or future management directions to support each other within the parameters each separate agency must work within.

The USFS on the SNF failed to consult with the Custer Gallatin National Forest (CGNF), Montana Department of Transportation (MDT), National Park Service (NPS), Yellowstone National Park (YNP), or Department of Interior (DOI) during this TMP process.⁸

Line Creek Research Natural Area (RNA) is located on both the Shoshone and Custer Gallatin national forests, with both forests sharing management of this research natural area. Given the dual management responsibility, it is incumbent upon the two forests to consult each other when considering management actions that would affect this shared RNA. Our 2020 comments (GYC et al., 2020) presented concerns to the USFS regarding **over-snow vehicle (OSV) use** conflicting with the **research use** for which Line Creek RNA was designated. In addition to the RNA, the

⁸ SNF TMP EA, 2021, sec:Federal, State, and Local Agencies (4.1.3)

Beartooth U.S. Highway 212 crosses both the SNF and the CGNF. Visitors travel this scenic road for sightseeing from May through mid-October (depending on weather), providing another reason that the USFS on the SNF should have consulted with the agency on the CGNF.

According to the U.S. Department of Transportation Federal Highway Administration, the Beartooth All-American Byway U.S. Highway 212 remains in a perpetual state of unclaimed ownership, although efforts to resolve its ownership continue. Since at least the DOI's Office of the Solicitor's 1982 opinion, the NPS has "... the responsibility for the usual maintenance actions..." along this remote two lane highway. The MDT started to help maintain 15 miles of the eastern section inside Montana in 1965.⁹ One important element of this maintenance is annual spring snow removal so the highway can be open for highway vehicle traffic in May to connect Red Lodge, Montana to the northeast entrance of YNP. Although the USFS manages the land the highway crosses, all of these other agencies (DOI, MDT, NPS, and YNP) have shared responsibility for maintaining the highway and should be involved in discussions that may affect their efforts. Furthermore, care must be taken by all agencies to adhere to the purposes for which this highway was constructed, identified back in the early 1920s with the rise in tourism spurred by the introduction of cars.¹⁰ For nearly a century the Beartooth Highway has been cleared of snow annually for passenger vehicle pleasure driving from Red Lodge, MT into Yellowstone National Park and in recent times this has been done in time for Memorial Day weekend in May..

II. FAILURE TO MEET PURPOSE AND NEED

Proposed Action does not meet stated Purpose and Needs

The EA describes the following four needs for the travel management project:

- 1. To achieve multi-use goals for a discrete population of recreationalists. The Travel Management Project intends to address the increasing demand for motorized routes for a growing recreational group including providing opportunities for motorized loop routes.
- 2. To ensure a fiscally sustainable motorized route system.
- 3. To reduce adverse impacts to resources.... to arrive at a motorized route system that provides access and opportunity for use while minimizing adverse environmental impacts, consistent with 36 C.F.R. part 212.
- 4. To meet direction from the 2015 Revision to the Land Management Plan. The Record of Decision from the 2015 Revision to the Land Management Plan directed the Forest Service to conduct a Travel Management analysis for the Shoshone National Forest.

⁹ https://highways.dot.gov/public-roads/julyaugust-2006/orphaned-highway

¹⁰ https://highways.dot.gov/public-roads/julyaugust-2006/orphaned-highway

The EA as written fails to meet the stated needs, due to the USFS's attempt to accomplish travel planning through a landscape-level plan with no site-specific analysis or implementation plans for any of the proposed changes. The EA simply lists proposed changes and states that site-specific analysis surveys will be conducted at some unknown time and proposed changes will be implemented at some future time. The USFS has produced no concrete information to support any of the proposed changes, nor have they made any attempt to justify their decision to abandon the long-anticipated outcome (an EIS with site specific analyses of proposed changes to the current system) of a seven-year planning process.

At the highest level, none of the four listed needs can be met if Need #2, to ensure a fiscally sustainable motorized road and trail system on the SNF, is not met. In a very real sense, the four listed needs are akin to a house of cards, with Need #2 serving as the linchpin card. But the USFS provided no economic analyses of proposals that would be required to meet Need #1, and no economic analyses related to correction of existing resource damage that would be required to meet Need #3. It is impossible for the agency or the public to discern likelihood of economic sustainability without site-specific and comprehensive economic information and analyses.

Setting unknown economic sustainability aside for the moment, the proposed action fails to meet the remaining needs 1, 3, and 4 on other grounds as well. Need #1, the assumption of a need for more motorized loops for one specific type of forest use cannot be met if the proposed motorized routes are conditional, based on funding. Under the landscape planning approach, the USFS has provided no data-driven information about use and demand across the spectrum of forest uses, how that is distributed across the entire SNF, and how that should inform placement of any potential new motorized routes. Furthermore, the interplay between Need #1 and Need #3 remains unaddressed in the EA. Can additional motorized routes be constructed while also reducing adverse impacts to resources? It is impossible to know without site specific analyses of both existing resource damage, potential new resource damage that will accompany new routes, and the new proposed routes themselves. As already noted, Need #3 (the reversal of existing adverse impacts to resources) cannot be met without site-specific analysis of the current motorized system and development of mitigation plans to correct existing problems, without knowledge of potential adverse impacts of proposed new roads and trails, and without economic analyses of damage correction plans.

Finally, we contend that Need #4 is a misrepresentation of the intention expressed in the LMP. The intention to conduct travel planning after the completion of forest planning was a direct result of thousands of comments submitted during the forest plan revision regarding motorized use needs and concerns that could not be addressed under the LMP's landscape-scale analysis and programmatic decision authority, as well as the USFS's obligation to comply with the TMR. To suggest that these concerns can now be addressed by a second layer of landscape-level planning is disingenuous at best, and completely disrespects and disregards the literally

thousands of hours of public engagement during this seven year process since the updated LMP was adopted. We are unaware of any basis rooted in public participation for the USFS's identification of a need for a second landscape-level planning process that sidesteps the need for site specific analyses and implementation planning.

The USFS has made no attempt to explain to the public why current agency leadership has chosen to completely change the expected outcome of a 7-year planning process by adopting this new programmatic, condition-based management approach. Because this approach represents such a dramatic shift in the intent of travel planning, it may be helpful to review how the travel planning purpose and need, intent and scope, and public participation process has changed over time.

A Brief History

Immediately following adoption of the LMP in 2015, and directly springing from public concern about the condition of the existing motorized travel system, including the inability of the USFS to properly manage the current system, the travel planning process was launched. From the beginning, the USFS was clear that it intended to produce an EIS and they announced that notice of intent in the Federal Register in 2016. From the beginning, public participation was robust and represented all sides of the debate. Throughout 2015, 2016, and 2017, the USFS held multiple field trips and public meetings with a strong emphasis on enforcement and resource damage concerns.

There were public pre-scoping comment opportunities in 2015 and again in 2016, during which time the public was invited to submit and comment on ideas for proposed additions and subtractions to the motorized road system. In 2016, the USFS released a proposed action and accepted scoping comments, followed by a revised proposed action and supplemental scoping period in 2017. Simultaneously in 2016, the Forest Supervisor held a Motorized Enforcement and Compliance Workshop, and assembled a citizen's Working Group to develop recommendations for the USFS to address continuing forest-wide motorized compliance issues. All of these early efforts, while complicated, were reasonably accessible to the public and offered opportunities for meaningful public feedback on specific proposals. Following the 2017 revised proposed action and supplemental scoping period, the entire project was put on hold during a period of multiple USFS staff transitions.

The needs for travel planning as identified in the 2017 revised proposed action were (emphasis added):

1. There is a need to provide some level of motorized routes to a growing user group on the Shoshone National Forest. The forest plan directs us to look for opportunities to provide "loop" opportunities for motorized use.

- 2. An additional need of equal importance is to ensure or improve compliance and accountability on the existing road and trail system.
- 3. Another need is to consider if there are current routes with resource concerns or enforcement issues which could be removed or changed in the system.
- 4. Finally, there is a need to designate roads, trails and areas for winter motorized travel and produce an over-snow vehicle use map. This direction stems from a recent court decision and a subsequent revision of the 2005 Travel Management Rule.

In 2020, under the direction of an almost entirely new group of USFS leaders and project staff on the SNF (staff turnover included the forest supervisor, environmental coordinator, two of three district rangers, and other key staff specialists), a draft preliminary environmental assessment was released instead of the long anticipated draft EIS. This preliminary EA was filled with vague generalities, offered minimal details, and was extremely difficult to interpret and provide comments on. It was entirely unclear how previous public comments may (or may not) have informed the proposed action. The USFS apparently lost the email list identifying interested members of the public who had previously participated or expressed interest in the project, and many folks were not notified of the resumption of the process. Since the preliminary EA was released in spring 2020 during the height of the Covid-19 pandemic (an action that we strongly argued against), no in-person meetings were possible. The USFS released a final EA on October 19 for a 30-day comment period.

The USFS's insistence that the EA will accomplish travel planning through a landscape level analysis without any site-specific analysis or implementation plans for any of the approved changes represents an entirely unexpected and unprecedented approach to travel planning. It completely disregards hundreds of records of valuable site-specific comments intended to meet the purpose and needs of travel planning as described during the 2015-2017 scoping period. As already described, the original purpose and need is not met with the new condition-based management approach. There is no explanation for why the purpose and need has so dramatically changed since 2017, and the current 2021 proposed action in the EA does not meet the currently identified needs as noted above. The present 2021 EA is relying on a scoping process that was conducted around five years ago and that was based on an entirely different set of identified purpose and needs under different leadership, and we question its validity for use in the current, drastically changed process.

III. THE USFS SHOULD PREPARE AN EIS

As described throughout these comments, the EA suffers from a number of significant flaws and fails to take the required hard look at a host of likely significant impacts. The current EA does not support a Finding of No Significant Impact (FONSI), and we do not believe that the current proposed action can be authorized via a FONSI. To comply with NEPA, preparation of a full EIS is likely necessary.

NEPA requires preparation of an EIS for all "major Federal actions significantly affecting the quality of the human environment."¹¹ In determining whether an EIS is required, agencies must consider both the context and intensity of the proposed action.¹² Context refers to analysis of the action in several contexts such as the nation, the affected region, the affected locality, and in the short and long term.¹³ Intensity refers to the severity of the impact, considering factors and circumstances such as those enumerated below.¹⁴ As discussed throughout this letter and our previous comments this project may have numerous significant environmental impacts and triggers several of the enumerated "significance" factors articulated in the CEQ regulations, including:

- Significant context as a forest-wide travel planning effort covering compliance with subparts A, B, and C of the TMR one of the first forests to tackle all three subparts in a single plan and one of the first in the nation to address subpart C compliance. In less significant and multi-faceted contexts, national forests have prepared EISs for subpart B or subpart C travel plans.¹⁵
- Likely significant adverse impacts, as documented throughout this comment letter, including to non-motorized recreation opportunities, wilderness and roadless character and potential, wildlife habitat, water quality, enforcement capacity, and other resource impacts.
- Affects a geographic area with unique characteristics. The project area is uniquely situated along the eastern edge of the internationally revered Greater Yellowstone Ecosystem, with globally significant ecological and social values. It provides essential wildlife corridors and connectivity for numerous wildlife species. The diverse and unique geography and remote nature of the SNF with numerous wilderness and roadless areas is one reason many people visit Wyoming. This project proposes to increase motorized recreation in ways that will diminish the value of the wild backcountry forest that the public values.
- Will result in effects on the human environment that are likely to be highly controversial. This includes designating OSV use areas that have historic and ongoing value for non-motorized recreationists, widening motorized trails to the detriment of dirt bike users, and constructing new motorized trails in important wildlife habitat. The volume of public comment related to motorized recreation, mostly opposed to motorized expansion, that was received by the USFS during the LMP revision process and the pre-scoping and

¹¹ 42 U.S.C. § 4332(2)(C).

¹² 40 C.F.R. § 1508.27.

¹³ *Id.* § 1508.27(a).

¹⁴ Id. § 1508.27(b).

¹⁵ See, e.g., nearly complete winter travel plans for the Lassen, Plumas, Tahoe, Eldorado, and Stanislaus National Forests in California; the recent Bitterroot travel plan in Montana; or the White River Travel Plan in Colorado.

two scoping periods for travel management planning are a clear indication of the controversial nature of the effects of the proposed action.

- Establishes a precedent for future actions with significant effects, as the first subpart C winter travel plan in Region 2 and one of the first subpart A and subpart C plans in the entire National Forest System.
- Is related to other actions and factors that may have individually insignificant but cumulatively significant impacts, including factors ranging from climate change to human-caused wildfire (which is more likely to occur in areas open to motorized use) to indirect impacts from invasive weeds that will be introduced by motorized recreation, and many others. Particularly given the proposed condition-based management approach, the likelihood that future implementation decisions to build and expand new motorized route opportunities will have cumulatively significant impacts is high.
- Will significantly affect listed or candidate species or critical habitat designated under the ESA, including grizzly bear, Canada lynx, and wolverine.

For these and numerous other reasons set forth in this document, the USFS should prepare an EIS.

IV. FAILURE TO COMPLY WITH THE TRAVEL MANAGEMENT RULE

Our previous comments explained the need for the USFS to complete travel management planning in a manner that fulfills the requirements under each section of the TMR, and in particular, to demonstrate compliance with the criteria established under Executive Order 11644 as amended.¹⁶ We explained that those orders require the USFS to minimize impacts – not just identify or consider them – when designating areas or trails for off-road vehicle use, and to demonstrate in the administrative record how it did so.¹⁷ To satisfy its substantive duty to minimize impacts, the USFS must apply a transparent and common-sense methodology for meaningful application of each minimization criterion to each trail or area being considered for

¹⁶ See 36 C.F.R. 212

¹⁷ Importantly, efforts to mitigate impacts associated with a designated ORV/OSV system are insufficient to fully satisfy the duty to minimize impacts, as specified in the executive orders. See Exec. Order 11,644, § 3(a) ("Areas and trails shall be located to minimize" impacts and conflicts.). Thus, application of the minimization criteria should be approached in two steps: first, the agency locates areas and routes to minimize impacts, and second, the agency establishes site-specific management actions to further reduce impacts. Similarly, the Forest Service may not rely on compliance with the relevant forest plan as a proxy for application of the minimization criteria because doing so conflates separate and distinct legal obligations. See *Friends of the Clearwater v. U.S. Forest Serv.*, No. 3:13-CV-00515-EJL, slip op. at 30-38 (D. Idaho Mar. 11, 2015) at 34 ("Merely concluding that the proposed action is consistent with the Forest Plan does not satisfy the requirement that the Forest Service provide some explanation or analysis showing that it considered the minimizing criteria and took some action to minimize environmental damage when designating routes.").

designation. That methodology must include several key elements, none of which appear to be fully or properly implemented in the current EA as we detail below.

Our comments also explained the long standing need for the USFS to finally identify and ultimately implement an ecologically and fiscally sustainable minimum road system, and to decommission or close unneeded roads. We certainly appreciate and support the agency's commitment toward fulfilling its duty under subpart A of the TMR, but the USFS must still demonstrate how it meets its substantive duties under the rule. The current EA fails to do so.

Subpart A. Failure to identify an ecologically and fiscally sustainable minimum road system, and unneeded roads.

1. Failure to incorporate a science-based roads analysis.

Our past comments explained at length the shortfalls of the USFS's Travel Analysis Process (TAP) and associated reports. Specifically we questioned how the methods used to generate the 2017 TAP report recommendations represented a science-based analysis, particularly given that agency staff simply changed the 2015 recommendations for unneeded roads to a "needed" status based on discussions during a three-day workshop. The USFS did not respond to this comment - instead, it simply reiterated the TAP description with further statements that demonstrate the arbitrary nature of the process. For example, the USFS explained that "[r]oads were re-evaluated for timber need and if a road had a low benefit but was an important access route for timber management, the road was identified as Likely Needed for Future Use,"¹⁸ The agency did not explain what changed in the two years between the 2015 TAP recommendations and the three-day workshop where agency staff performed a "rapid analysis process" that would have necessitated such changes in the Minimum Road Standards (MRS) recommendations.¹⁹ Further, the USFS identified wildlife resources as a risk category in the 2017 TAP, but then explained that a wildlife biologist was not part of the ID Team during the review process, making it more than likely that wildlife risks were not represented on an equal basis as timber benefits.²⁰ Further, the wildlife risk scores of high, medium and low were based only on road use, which omits consideration of habitat fragmentation due to the presence of roads. In fact, the USFS omits any measure that would disclose the overall risks to wildlife habitat security and connectivity from the recommended MRS. Rather, the agency cites a U.S. Geological Survey study on ungulate migrations in the western U.S., and that the "wildlife analysis reviewed and incorporated this information into its assessment of effects."²¹ However, the USFS fails to explain how the ability for ungulates to migrate through the planning area serves as a proxy for other species, such as grizzly bears that are sensitive to the presence of roads, which reduces habitat security overall

¹⁸ EA at p. 74.

¹⁹ EA at p. 73.

²⁰ EA at p. 74.

²¹ EA at p. 31.

and, in particular, in areas of connectivity. Certainly the TAP risk assessment did not consider these issues, and apparently a wildlife biologist was not present at the ID team meetings to raise these concerns. At a minimum, the TAP report and the EA should have included road and motorized route densities as a measure for wildlife risk and an indicator of habitat fragmentation. Finally, our comments raised concerns about the TAP scoring methods that the USFS failed to address in its responses. As such, those concerns are still applicable.

> 2. Failure to demonstrate the proposed MRS provides for the protection of National Forest Service (NFS) system lands.

Our past comments detailed the USFS's need for and commitment to identifying an appropriate minimum road system. Specifically, we discussed how the Roads Rule created two important obligations for the agency. One obligation is to identify unneeded roads to prioritize for decommissioning or to be considered for other uses.²² Another obligation is to identify the MRS needed for safe and efficient travel and for the protection, management, and use of USFS system lands.²³ The modified proposed action fails to meet the requirements of both provisions.

First, the USFS fails to demonstrate that the MRS under the proposed action provides for the protection of NFS lands. The USFS analysis of the transportation system purports to measure the specific issues of road management, maintenance and funding. In regards to road management, the agency explains:

Road management involves managing NFS roads to: prevent damage to roadways, abate unsafe traffic conditions, control the use of vehicles that exceed the design capacity of a road, require cost recovery from commercial haulers to reduce maintenance costs, and meet any other road management objectives (RMOs), such as protecting wildlife habitat or achieving recreation opportunity spectrum (ROS) objectives.²⁴

In addition, the USFS uses miles of road as an indicator for this issue, but then fails to disclose how many currently meet their RMOs, or how that would change under each alternative. In particular, the USFS fails to discuss or disclose the miles of roads that have specific RMOs for resource protection, or if those RMOs adequately protect the resource. For example, the miles of road with seasons of use restrictions to provide for habitat security or the miles of roads closed to prevent erosion and sedimentation. In other words, the analysis fails to take a hard look at current road management as described in the analysis or how that would change under each alternative. The omission precludes the agency from making any conclusions that the MRS under the proposed action provides for the protection of NFS lands.

²² 36 C.F.R. § 212.5(b)(2). ²³ *Id.* §212.5(b)(1).

²⁴ EA at p. 76.

Further, the TMR directs the agency to identify a MRS "to reflect long-term funding expectations."²⁵ The USFS disclosed the amount of road maintenance required for each maintenance level (ML), and stated that "[t]he average annual operational funding is \$440,081 for the period of 2013 to 2021, supplemental funding has been increasing since 2017 (with the exception of 2020).²⁶ Yet, only a portion of the road system receives annual maintenance, 21%, while the SNF's LMP "sets an objective of annually maintaining 60% of ML 3 - 5 roads and 5% of ML 2 roads."27 The USFS did not disclose how the 21% of actual annual maintenance compares with the forest plan objectives. Specifically, the USFS did not explain what portion of the 768 miles of ML 2 roads received annual maintenance, or how that compares to the 5% objective in the forest plan. The omission is glaring considering ML 2 roads account for 67.5% of the total road system. Further, the USFS discloses that under Alt. 1, the agency maintains just 38 miles of ML 2 roads to meet the forest plan objective of 5% annual maintenance.²⁸ What the agency fails to discuss is whether or not the forest plan objective of 5% annual maintenance is sufficient to protect forest resources. Overall the USFS has an estimated \$25 million deferred maintenance backlog on the SNF, yet the agency fails to adequately analyze how the shortfalls affect its ability to meet road management objectives. Turning to the proposed action, the USFS states that "Alternative 4 would reduce the amount of desired annual funding by \$26,110 when compared to the current road system."²⁹ The agency also discloses the MRS would total 969 miles and need \$386,365 in annual funding to maintain the system, but that meeting the forest plan objectives would only require \$177,584 each year. The difference, \$208,801/yr, would certainly contribute to the deferred maintenance backlog and significantly hinder the agency's ability to protect forest resources. Yet, the USFS does not discuss how the proposed action would affect the deferred maintenance backlog, or if meeting the forest plan objectives would protect forest resources, or how an MRS of 969 miles reflects long-term funding expectations.

Subpart B. Failure to Comply with the Minimization Criteria

In earlier comments, we have gone to great lengths to provide guidance for compliance with the minimization criteria codified in Subpart B of the TMR. At every iteration of the process we have stressed how travel planning is not meant to be an office exercise and submitted repeated requests for site-specific information and analysis to meet the requirements of travel management regulations, the minimization criteria, and NEPA. The revised EA attempts to bypass the most critical elements of the travel rule and the minimization criteria with a new condition-based analysis approach and a "landscape-level analysis" by claiming that site-specific analysis will be completed before project implementation. The many challenges to that approach

²⁵ 36 C.F.R 212.5(b)(1).

²⁶ EA at p. 78.

²⁷ Id.

²⁸ *Id.* at 80, Table 36.

²⁹ *Id.* at 89.

are outlined above and also pp. 38-45 of these comments, but it is worth highlighting here how this unprecedented approach to travel planning is fundamentally incompatible with the TMR and minimization requirements. Without repeating our previous comments verbatim, we will include pertinent points of reference here.

When designating areas or trails available for ORV use agencies must locate them to:

(1) minimize damage to soil, watershed, vegetation, or other resources of the public lands;

(2) minimize harassment of wildlife or significant disruption of wildlife habitats; and

(3) minimize conflicts between ORV use and other existing or proposed recreational uses of the same or neighboring public lands.³⁰

To achieve compliance with the Executive Order "Minimization Criteria" for off-road vehicle (ORV) use, agencies must:

(1) Actually minimize impacts – not just identify or consider them – and show how they did so in the administrative record; and (2) Apply a transparent and common-sense methodology for meaningful application of the minimization criteria that provides opportunities for public participation, incorporates the best available scientific information and best management practices, addresses site-specific and larger-scale impacts, and accounts for monitoring and enforcement needs and available resources.³¹

Courts have also clearly explained what it means to "minimize":

"Minimize" as used in the regulation does not refer to the number of roads or trails, nor their overall mileage. It refers to the effects of road and trail designations, i.e. the [FS] is required to place routes specifically to minimize "damage" to public resources, "harassment" and "disruption" of wildlife and its habitat, and minimize "conflicts" of uses.³²

Most importantly, the USFS must *locate* trails to minimize impacts, not just mitigate them. It is impossible for the SNF to locate trails in this travel project decision without completing the site-specific analysis and still be in compliance with the minimization criteria. Section 7 of this letter further outlines how designating motorized trails without conducting the environmental analysis for site-specific activities fails to meet NEPA's hard-look mandate or the TMR.

³⁰ 36 C.F.R. §§ 212.55, 212.81(d). Minimization criteria as codified in subparts B and C of travel management regulations.

³¹ <u>Achieving Compliance with the Executive Order</u> "Minimization Criteria" for Off-Road Vehicle Use on Federal Public Lands: Background, Case Studies, and Recommendations. The Wilderness Society 2016

³² Idaho Conservation League v. Guzman, 2011 WL 447456, *16 (D. Idaho Feb. 4, 2011) (quoting Center for Biological Diversity v. U.S. Dept. of Interior, 2009 U.S. Dist. LEXIS 90016 (N.D. Cal. 2009)).

Proper application of the minimization criteria must address both site-specific and larger-scale impacts. Even from a landscape-scale analysis, the EA fails to adequately identify large-scale impacts and meet the minimization criteria in several significant ways. To satisfy its substantive duty to minimize impacts, the USFS must apply a **transparent** and common-sense methodology for meaningful application of *each* minimization criterion to *each* trail or area being considered for designation. Examining Appendix C and language in the EA, it is clear that the USFS has failed to meet even the simplest requirements for the screening criteria, *especially* for a landscape approach that relies on geospatial layers.

One, the USFS has not provided any of the map layers, data sets, materials or scientific reports that the agency relied upon for the screening criteria used in Appendix C. Not only did they fail to reference or cite the data used for each checkbox in Appendix C, they did not make any of it available for public review or reference. This is a serious violation of NEPA and the TMR, precludes meaningful public feedback, and once again disregards valuable scoping comments that requested this exact information.³³ Proper application of the minimization criteria must be informed by the best available scientific information and associated strategies and methodologies for minimizing impacts to particular resources. The failure to make these data sources publicly available is especially consequential given the many errors identified by the public in this EA (Attachments 4 and 5) and previous drafts. The public must have access to the data sources used to ensure it is not biased, is appropriately applied, and relies on the best available science.

Two, the screening criteria identified in Appendix C is insufficient to meet the minimization criteria. For example, proposals were not screened for cultural resources in any manner, ignoring the USFS's substantive duty to identify and minimize impacts to unique forest resources (36 CFR § 212.55(b)(1). (For comparison, the Stanislaus NF conducted ground cultural surveys within one half mile of any potential new route proposal before including them for consideration.)³⁴ Page 43 of the EA implies proposals were screened against big game secure habitat, parturition areas, **crucial winter range**, or migration routes, but Appendix C does not include any checkboxes for secure habitat or migration routes. Elk parturition appears to be the only wildlife screen applied to wheeled trails and it is unclear whether multiple wheeled motorized trails open Jan 1 - Dec 31 were screened against winter range habitat. It is not apparent how impacts to sensitive species, species of local concern, cutthroat trout or secure elk habitat were included in the screening process, since the FS did not provide the relevant data sources used in Appendix C. The final EA attempts to correct the previous draft's complete omission of any criteria relevant to conflict between uses (36 CFR § 212.55(b)(3). It appears to address this requirement in the latest draft with several more related checkboxes, but still fails to demonstrate how it considered existing non-motorized use on trails or areas proposed for motorized conversion. It is not clear how the criteria and data sources were chosen or why.

³³ Wyoming Wilderness, 2016. See "Recommended DEIS Maps and Publicly Available Map Layers" at p. 26.

³⁴ https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd593263.pdf

Every proposal on the Wind River Ranger District checked YES for moderate to high soil hazard, so it is entirely unclear how this is an informative criteria for minimizing impacts.

Three, the EA fails to demonstrate any transparent or common sense methodology for how the criteria in Appendix C were actually used to locate and carry trails forward, or to "screen" out trails to minimize or mitigate those impacts. Many proposals checking yes all across the board were carried forward -- without site visits to determine if those "checked" impacts were mitigable -- while proposals intended to protect forest resources with closures or seasonal restrictions were dropped as "not needed." Relatedly, blatant assertions made in the EA directly conflict with the data in Appendix C and with the EA's proposed actions. Page 43 of the EA asserts that "the Forest Service eliminated from consideration any proposal that overlaps with big game secure habitat, parturition areas, crucial winter range, or migration routes with potential impacts to species," yet the new NFST WR03 presented in the preferred alternative bisects crucial bighorn winter range and elk parturition areas and is proposed open to wheeled vehicles year round. In regards to meeting the minimization requirements for § 212.55(b)(1)), the USFS asserts they "reviewed each proposal to consider: 1. Whether the proposal implicates watershed and aquatic species resource concerns due to run-off, erosion, and sedimentation caused by proximity of motorized routes to water bodies, stream crossings occurrence and frequency, and road density; and 2. Whether the proposal occurs on steep slopes prone to erosion or landslides. Proposals were then screened out or dropped if the effect was unmitigable." EA at page 43. This statement conflicts with the preferred action to designate the new National Forest System Trail (NFST) crossing Warm Springs Canyon, WR7 and WR13. The USFS can not claim these screening criteria were determined to be mitigable since they have repeatedly admitted that they have not conducted any ground truthing, site visits, or resource surveys on this proposal in Alternative 4 of the final EA.³⁵ This misleading statement should be corrected and removed from the EA if it can not be demonstrated.

Given the USFS's refusal to conduct the site-specific analysis required to meet the minimization criteria and NEPA, and instead rely on a landscape scale analysis, we would expect a robust data set and comprehensive screening criteria using the best available science for a geospatial analysis meant to identify impacts to forest resources. The SNF's attempt at a landscape-scale office exercise using geospatial data fails to meet the most basic NEPA and TMR requirements. Site-specific analysis requirements aside, even from a landscape-level analysis the EA fails to meet the minimization criteria based on the incomplete criteria and unavailable data sources referenced in Appendix C.

Subpart C. Failure to Comply with the 2015 OSV Rule

³⁵ See page 64 of this letter and the referenced USFS correspondence on this topic.

From the beginning of the EA, Section 1.3.2.2 Desired Condition³⁶ indicates that the USFS, despite our extensive previous comments, and despite added language to the contrary later in the EA, has continued to misunderstand or ignore the paradigm shift to a "closed unless designated open" framework as required under the 2015 OSV Rule. This new framework, or management regime, must be based not merely on "where snowfall is adequate for OSV use to occur," but also on the rigorous application of the minimization criteria.

In other words, the USFS has not been directed to designate routes and areas for motorized over-snow use *everywhere* that snowfall may be adequate for OSV use to occur, or *wherever* OSV use currently or traditionally occurs, but rather where snowfall is adequate AND ALSO where discrete designated routes and areas *can be shown to have been located* expressly "to minimize damage to soil, watershed, vegetation, or other resources of the public lands"; "to minimize harassment of wildlife or significant disruption of wildlife habitats"; and "to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands [such as, for example, on the Beartooth Plateau on Memorial Day Weekend], and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors."³⁷

As we have stated above and in prior comments, application of the criteria requires the USFS to minimize impacts — not just identify or consider them — when designating areas or trails for OSV use, and, importantly, to demonstrate in the administrative record how it did so. This was confirmed by the Ninth Circuit Court of Appeals in WildEarth Guardians v. U.S. Forest Service³⁸ in which the Court held that the agency must "apply the minimization criteria to each area it designated for snowmobile use" and "provide a more granular minimization analysis to fulfill the objectives of Executive Order 11644, which the [Travel Management Rule] was designed to implement." More specifically, the Court held that "mere 'consideration' of the minimization criteria is not enough." The USFS must show not just that impacts have been studied, but specifically demonstrate how effective each of the alternatives presented in the EA is in minimizing impacts from OSVs. To satisfy its substantive duty to minimize impacts and conflicts, the USFS must apply a transparent and common-sense methodology for meaningful application of each minimization criterion to each area and trail being considered for designation. The USFS has not demonstrated compliance with that substantive obligation, and likely cannot do so for components of its proposed action/Alternative 4, given significant resource and recreational use conflicts we have identified. To properly apply the minimization criteria and meet the requirements of the OSV Rule, the SNF must, as described above for Subpart B, apply a transparent and common-sense methodology for meaningful application of each minimization

³⁶ EA at p. 15.

³⁷ 36 C.F.R. § 212.81. Nb. We do not at all agree with the Forest's assessment that ensuring the compatibility of uses in populated areas somehow "does not generally apply to the Forest due to the low population densities of adjacent Forest communities."

³⁸ WildEarth Guardians v. U.S. Forest Service, 790 F.3d 920 (9th. Cir. 2015).

criterion to *each* trail or area being considered for designation, and then document each step in an EIS.

a. Failure to Minimize Conflicts Between OSV Use and Other Recreational Uses

We appreciate that the Alternatives 2, 3, and 4 do not authorize OSV use around the Deception and Pinnacles cross-country ski trails on the Wind River Ranger District. We appreciate the USFS's statement/admission that such closures "would reduce conflicts between user groups."³⁹ We agree this will help to minimize conflicts between OSV use and cross-country skiing on Togwotee Pass. By contrast, with regard to well-documented use conflicts "along the Togwotee Pass area on the Wind River Ranger District and in the Beartooth mountains on the Clarks Fork Ranger District,"⁴⁰ the EA has not gone beyond "mere 'consideration' of the minimization criteria" to actually show that impacts have been studied in any meaningful way and minimized accordingly.

For instance, the boundaries of the Togwotee OSV area must be located in a manner that complies with the minimization criteria in all respects. This includes taking steps to minimize incursions into designated wilderness areas and separate uses. For example, the SNF should not designate the Breccia Cliffs area or the West and East Angle area for OSV use (reserving these two small areas on the other side of the highway from Two Ocean for non-motorized use only). See Figure 1. Not only would not designated Wilderness, it would allow backcountry skiers and boarders access to the wilderness without having to contend with OSVs, and would have minimal impact to OSV use. Currently, there is nowhere on Togwotee Pass where skiers can have an entirely non-motorized experience, as even trips into the Teton Wilderness require navigating OSV terrain before reaching the wilderness boundary.

Discussion of seasonal closure dates in the EA likewise focuses exclusively on the possibility that adequate snowfall (or snowpack, to be more accurate with regard to late-season recreation) may exist for OSV use until June 15,⁴¹ and the fact that "Line Officers have the authority to close areas and routes open to OSV use should adverse effects to forest resources occur."⁴² The USFS states that "[t]he dates set under Alternative 2 and Alternative 4 largely conform to the historical

³⁹ EA at pp. 145-6.

⁴⁰ EA at p. 118: "On Togwotee Pass, potential conflicts may occur during the entire winter season, while potential conflicts may occur on the Gardner Headwall area in late spring when U.S. Highway 212 (Beartooth All American Highway) is plowed. Additional screening identified 260,720 acres and 15.8 miles of cross country ski trails Table 58). Potential conflicts between user groups include OSVs consuming untracked powder snow that is desired by backcountry skiers, OSV users creating tracks across the snow surface making skiing difficult, and OSV users causing safety concerns in areas where motorized and non-motorized use occurs simultaneously. Interactions may cause non-motorized users to seek out alternative areas due to the effects to desired quiet, non-motorized experiences away from the sights, sounds, and smells of motorized use.

⁴¹ EA at pp. 37-40.

⁴² EA at p. 36. Also "No like mechanism is available to Line Officers to extend OSV use seasons should adequate snowfall exist beyond a set season-of-use date."

seasons-of-use on the Forest, and broadly correspond to the available snow," and yet the "season of use" identified both in the EA and the LMP is April 30.⁴³ None of the alternatives considered analyzes a seasonal closure for OSV use of April 30, and the many ways in which such a closure would minimize impacts and use conflict.



Figure 1. Togwotee Pass High Value Backcountry Skiing.

By way of example, this EA continues to dismiss the well-documented conflict (amply described in our previous comments) that occurs on the Beartooth Plateau beginning Memorial Day weekend each year between motorized OSV use and other non-motorized over-snow recreation uses as these other uses become accessible for the great majority of visitors interested in sight-seeing, family snow play, non-motorized backcountry skiing and snowboarding in this unique landscape. Despite the many reports from both motorized and non-motorized users of conflict between uses, and despite significant discussion of issues and concerns related to overlapping, conflicting uses in our previous comments, the USFS has apparently made no

⁴³ EA at pp. 242, 245; SNF LMP at p. 59.

attempt to verify or study — or even observe — these conflicts, much less to demonstrate how proposed management alternatives would represent effective minimization of such impacts.⁴⁴ Worse, the USFS has proposed an overall management scenario in Alternative 4 representing an increase in designated motorized use that, by the agency's own admission, not only does not minimize said conflicts, but in fact "may lead to a corresponding increase in the interaction between motorized use and non-motorized (including interference with non-motorized users [sic] recreation experiences)."⁴⁵

⁴⁴ EA at p. 118: "Conflicts may occur between users in these high traffic areas, as has been reported to the Forest Service between non-motorized winter users, such as backcountry skiers, and OSV users (i.e., snowmobilers). *Though not observed by Forest Service staff* [emphasis added], these potential conflicts have been described along the Togwotee Pass area on the Wind River Ranger District and in the Beartooth mountains on the Clarks Fork Ranger District."

⁴⁵ EA at p. 142. Nb. As noted above, the 2015 TMR requires minimization of "conflicts between off-road vehicle *use* [emphasis added] and other existing or proposed recreational *uses* [emphasis added] of the same or neighboring public lands." The distinction between the word "uses" and "users" is fundamental to the process of minimization. The Forest's apparent failure to recognize or understand the distinction presents further evidence of the Forest's failure to adequately apply the minimization criteria.



Figure 2. The Gardner Headwall attracts skiers and snowboarders once the Beartooth Highway opens on Memorial Day weekend. Photo taken by Brett French⁴⁶.

With specific regard to the proposed extension of the OSV season on the North Zone to June 15, the USFS admits that such action would likely increase "user [sic] conflict during the shoulder season," and that "[a]reas where conflicts between motorized and non-motorized winter uses have been observed as described in Alternative 1 will continue."⁴⁷Given the reality that these conflicts occur during a relatively short period each May-June, the USFS's rationale that "these effects are expected to be of limited duration"⁴⁸ is irrelevant. The agency has not demonstrated and cannot demonstrate that the current proposed action minimizes recreational use conflicts in this area.

⁴⁶ Taken by Brett French.

https://billingsgazette.com/news/state-and-regional/shoshone-national-forest-unveils-proposed-travel-plan/article_1a_0cf7b5-a9c9-589c-9d30-51432a87cb2b.html

⁴⁷ EA at p. 145.

⁴⁸ *Ibid*.

As we stated in previous comments, rather than *increase* use conflict by extending the duration of motorized over-snow vehicle use on the Beartooth Plateau to June 15, to overlap with springtime sight-seeing and the wide variety of popular non-motorized recreation opportunities *(uses)* that become available once the highway is open to vehicular access, the USFS is obligated to actually *minimize* use conflict, comply with the Area 3.3b Management Approach, and also minimize impacts to wildlife and natural resources.

We therefore reiterate that the range of alternatives considered in this EA is inadequate and that the USFS must fully analyze and adopt another alternative that closes the public OSV season by April 30 each year, to coincide with the "winter period" and "season of use" identified in the EA and the LMP.⁴⁹ Such an alternative presents the only way to adequately minimize recreational use conflicts, and is entirely reasonable because it would still provide a long and ample OSV season. Because it is necessary to use OSVs to prepare and operate the Beartooth Basin summer ski area, these restrictions should not apply to administrative uses, including those associated with the Beartooth Basin Summer Ski Area Special Use Permit. For more on this topic, see "Controversy Of Facts When Establishing OSV Use Season" below.

Finally, Winter Wildlands Alliance and Togwotee Backcountry Alliance have on various occasions and in prior comments provided specific proposals for winter use kiosks, signage and educational materials as a means to help minimize conflict between uses in zones of overlap, in particular for the popular Two Ocean parking area and other primary parking areas on Togwotee Pass. Despite the mention of REC-GOAL-02 from the LMP in the revised EA ("Education opportunities are used to minimize conflicts between user groups"⁵⁰), as well as the possible development of signage as a conflict mitigation tool,⁵¹ there is no mention of any such proposal in the revised EA. We have also suggested the implementation of posted speed limits on popular shared-use trails such as the trail to Brooks Lake Lodge (lower F.R. #515), as another means of reducing conflict, but the USFS seems also to have neglected to consider this in any of the current alternatives. Although we do not believe these suggested measures to be substitutes for actual minimization, we do hope that the USFS will give such suggestions due consideration for inclusion in a final TMP.

b. Failure to Minimize Harassment of Wildlife or Significant Disruption of Wildlife Habitats by OSV Use

As has been discussed above for summer motorized use, proper application of the minimization criteria must address both site-specific and larger-scale effects of OSV use. For example, the USFS must assess and minimize landscape-scale impacts such as habitat fragmentation and impacts on the integrity of crucial winter range. The USFS also must assess and minimize

⁴⁹ EA at pp. 242, 245; SNF LMP at 59.

⁵⁰ EA at p. 148.

⁵¹ EA at p. 110.

site-specific impacts to sensitive wildlife habitat, displacement of wildlife from critical habitats, and diminished quality of wildlife habitat. Best available science indicates a myriad of adverse effects from OSV use on grizzly bears, Canada lynx, wolverine, ungulates, subnivean mammals, birds and other wildlife.⁵² However, in this EA the USFS has failed to adequately analyze and/or show how significant threats to wildlife would in fact be minimized in any of the alternatives.

For example, Alternatives 2 and 4 propose two new designated over-snow motorized routes that occur partially within grizzly bear denning habitat: one in the Ghost Creek vicinity on the Clarks Fork Ranger District, and the second in the Sublette Pass area on the Wind River Ranger District. The USFS asserts that these changes are not expected to affect grizzly bear denning habitat or to increase the potential for disturbance, even though there is no baseline analysis or information regarding impacts to wildlife or resources under the No Action Alternative and so no apparent factual basis for this assertion.⁵³ Furthermore, the USFS admits, that "[s]easonal closures on some motorized trails during the spring period would help reduce effects of motorized use on grizzly bears," but rather than fully analyzing these effects using best available science and proposes monitoring, future site-specific evaluation, and possible short-term, condition-based closures.⁵⁴

For more on this topic see "Failure To Analyze Significant Threats To Endangered And Threatened Species" and "Failure To Analyze And/Or Show How Significant Threats To Wildlife Are Actually Being Minimized In All Alternatives" below.

c. Failure to Minimize Impacts to Natural Resources by OSV Use

The FS must assess and minimize landscape-scale impacts such as air and water quality impacts, as well as site-specific impacts to soils, vegetation, water and air quality, natural soundscapes and other public lands resources caused by OSV use. Best available science indicates that OSV use can cause significant adverse landscape-scale and site-specific impacts to these resources.⁵⁵ Unfortunately, the EA fails to show such analysis at either the landscape or site-specific level. For example, the USFS states that seasonal restrictions as proposed in Alternatives 2 and 4 "will

⁵² See Eisen et al., *Environmental Impacts of Winter Recreation: Best Available Science, May 2021*, <u>https://winterwildlands.org/wp-content/uploads/2021/05/Winter_Rec_Science_2021_EmailWeb.pdf</u> ⁵³ EA at p. 222.

⁵⁴ EA at p. 223: "Seasonal closures on some motorized trails during the spring period would help reduce effects of motorized use on grizzly bears. While these restrictions may be in place for other reasons such as roadbed protection, they would still have beneficial effects to bears. Monitoring of known grizzly bear den locations could be used to reduce effects of motorized OSV use on grizzly bears. The Forest Service could annually coordinate with the Interagency Grizzly Bear Study Team to derive locations of grizzly bear dens within areas open to motorized OSV use. Locations could then be evaluated for potential exposure to motorized OSV use, and a short-term closure order enacted if needed to protect the denning bear(s)."

⁵⁵ See Eisen et al., *Environmental Impacts of Winter Recreation: Best Available Science, May 2021*, https://winterwildlands.org/wp-content/uploads/2021/05/Winter_Rec_Science_2021_EmailWeb.pdf

limit impacts to other forest resources, minimizing potential wildlife harassment, soil compaction and rutting, and promoting desired settings conducive to semiprimitive settings."⁵⁶ However no specific analysis is provided in order to show how these impacts will be minimized, or how different alternative seasonal closures (eg. April 30 versus May 31 versus June 15) were arrived at or how each might be more or less effective at minimizing impacts.

With regard to soil compaction and other resource damage due to inadequate snow cover, the USFS admits that "[e]ffects from... concentrated use have the highest potential to occur during the spring when deep snow pockets are intermixed with bare ground in some areas. Areas where this is most likely to occur are in the Beartooth Mountains, in particular around the Gardner Headwall, Beartooth Butte Ski Area, Line Creek RNA, and other locations that stem from the Beartooth Highway access points."⁵⁷ And yet no specific analysis is provided in the EA to show how these effects would be minimized by proposed (extended) seasonal closures or other management scenarios.

With regard to watershed impacts, the USFS notes that "the science linking water chemistry and OSV use is growing, and additional BMPs may need to be incorporated in the future." It also states that "[m]inimum snow depths required for protecting [open OSV areas] range from 12 to 18 inches." However, the USFS also admits that the "[s]now depth necessary to protect water resources may not be achieved by the opening dates on the Wind River and Washakie Districts and may not be sustained to the end of season date on the Washakie and Clarks Fork District (on the North Zone)."⁵⁸ As discussed above and on pages 38-45 below, a reliance on future monitoring and adaptive, condition-based management options are no substitute for the required minimization in a TMP. As the USFS states, "[a]n earlier end of season date on the Washakie and Clarks Fork District would better reflect seasonal variability during this time period," and would therefore represent a closer approximation to the level of minimization required of the USFS by the Travel Management Rule and the 2015 OSV Rule.

V. CONTROVERSY OF FACTS WHEN ESTABLISHING OSV USE SEASON

Winter Season Bookend Socio-Economic Analysis Flawed

According to a University of Montana 2012 study, "From May 31 to September 30 the total traffic on the Beartooth highway was 178,904 vehicles. Nonresidents represent 91% of total traffic: 76,147 through YNP NE entrance; 57,727 from Red Lodge; 28,391 from WY highway 296."⁵⁹ During the same period In 2012, the YNP NE entrance counted 86,276 vehicles from

⁵⁶ EA at p. 123.

⁵⁷ EA at p. 301.

⁵⁸ EA at p. 338-339.

⁵⁹ Jorgenson, Jake; Nickerson, Norma P.; and Grau, Kara, "The Beartooth Highway: 2012-2013 Economic Impacts, Use, and Destination Image" (2013). Institute for Tourism and Recreation Research Publications.

May through September.⁶⁰ This suggests that 88% of those entrances also drove the Beartooth Highway. It seems logical to infer that the growth of use in YNP correlates to a similar growth in use of the Beartooth Highway. From May through September in subsequent years, YNP NE entrance counted 98,955 in 2016 and 123,068 in 2021, showing a pattern of consistent growth in vehicle traffic.⁶¹ In the month of June alone between 2012 and 2021, the Park has documented a 40% increase in vehicle traffic through the YNP NE entrance⁶², and it seems likely that the Beartooth Highway also has witnessed roughly 40% growth in use by sight-seeing highway vehicle pleasure driving traffic since 2012.

That same study published in the Institute for Tourism and Recreation Research reported that the economic contribution to the Beartooth region from non-resident visitors during the summer season (Jun 1-Sep 21, 2012) was \$44.96 million; while the economic contribution of the non-resident visitors during the winter season (Dec 17, 2012 - April 12, 2013) was \$2.53 million.⁶³ Clearly, summer visitors provide significantly higher economic benefit to nearby communities than winter visitors in the Beartooth region, which is centered around the Beartooth All-American Byway U.S. Highway 212 that passes through the SNF. In fact, the 1931 Federal Park Approach Act contributed significantly to the building of the Beartooth Highway U.S. Highway 212,⁶⁴ well before the recreation of snowmobiling became popular in the 1960s with the introduction of the Ski-Doo in November 1959.⁶⁵

The 2012 study surveyed summer visitors from May to September and learned that the top three activities along the Beartooth Highway were 84% scenic driving, 61% nature photography, and 58% wildlife watching. Less than 1% of visitors were snowmobiling and only 2% were skiing.⁶⁶ These data offer a measure of the lack of demand for snowmobiling in May. The Beartooth Plateau has a long standing small ski area with one poma lift that is only in operation after the highway is plowed in late May until the snow becomes unsuitable in mid-summer. The SNF plays an important role in the economic viability of adjacent communities. Neighboring communities would be better served if the USFS closed the winter season for OSV use (cross country travel) before the summer season with its wide variety of uses begins on Memorial Day weekend.

^{227;} pg 9.

 ⁶⁰ <u>https://irma.nps.gov/STATS/SSRSReports/Park%20Specific%20Reports/Traffic%20Counts?Park=YELL</u>
⁶¹ *Ibid*.

⁶² Ibid.

⁶³ Jorgenson, Jake; Nickerson, Norma P.; and Grau, Kara, "The Beartooth Highway: 2012-2013 Economic Impacts, Use, and Destination Image" (2013). Institute for Tourism and Recreation Research Publications. 227; pg 18 and 94.

⁶⁴ https://highways.dot.gov/public-roads/julyaugust-2006/orphaned-highway

 ⁶⁵ Reich, Leonard S. "Ski-Dogs, Pol-Cats, and the Mechanization of Winter: The Development of Recreational Snowmobiling in North America." *Technology and Culture*, vol. 40, no. 3, [The Johns Hopkins University Press, Society for the History of Technology], 1999, pp. 484–516, http://www.jstor.org/stable/25147357.
⁶⁶ Jorgenson et al.; pg 9.

Historically, the winter activity season in Wyoming has been December through April according to the Wyoming State Parks, Historic Sites, & Trails website that identifies many locations with "[s]nowmobile season typically mid-December through April 1."⁶⁷ The OSV maps published for northern Wyoming note that trail grooming typically occurs from "mid-December through mid-March, depending on snow condition and funding."⁶⁸ Inside YNP, all roads close to over snow travel by mid-March.⁶⁹ YNP's 2022 road open date for Cooke City to Chief Joseph Scenic Byway is May 11 and the Beartooth Highway is May 28⁷⁰. Historically, these highways open in time for Memorial Day weekend,⁷¹ and to meet these spring opening dates, snow removal usually starts in early May. These well-established timelines support winter use dates from November or December through April each year, leaving May as a transition season when managers can clear roads of lingering snow and prepare for the bulk of the economic activity that bolsters this region.

Furthermore, both YNP and MDT play a critical role in removing snow each spring from Highway 212, the Beartooth All-American Byway, running through the SNF from Yellowstone's north east entrance to Red Lodge, Montana. There is no mention in the EA that either agency was consulted about extending OSV use to June 15th. Although some sections of the highway retain snow along roadside edges in some years, the primary entry for all snowmobiling on the plateau is on the snow-packed groomed highway during the winter season -- snow that is plowed off every May. The image⁷² below (Figure 3) shows spring snow removal along the Beartooth Highway, which clearly is not compatible with snowmobiling.

⁶⁷ https://wyoparks.wyo.gov/index.php/snowmobile

⁶⁸ Wyoming State Trails OSV Northern Wyoming Map 2014 and 2020

⁶⁹ https://www.nps.gov/yell/planyourvisit/parkroads.htm

⁷⁰ https://www.nps.gov/yell/planyourvisit/parkroads.htm

⁷¹ https://www.fs.usda.gov/detail/custergallatin/home/?cid=FSEPRD890988

⁷² <u>https://wrrnetwork.com/2021/05/28/weather-permitting-the-beartooth-highway-to-open-today-may-28/</u>



Figure 3. YNP staff and machines removing compacted snow off the Beartooth Highway in May, to open the highway in time for Memorial Weekend. Photo by Jacob W. Frank, NPS.

By contrast the following image⁷³ (Figure 4) is also along the Beartooth Highway taken on May 27, 2017.

⁷³ <u>https://arteriesofamerica.files.wordpress.com/2017beartooth-pass-5-27-2017-finals-sm-9.jpg/06/</u>



Figure 4. Variability of snow cover along the Beartooth Highway once open in May, by Memorial Weekend for all highway passenger vehicles, two of which can bee seen in photo.

Winter Season Bookend Snowfall and Area Boundary Assessment Scientifically Incomplete

Historic snowfall analysis is faulty and based on inadequate data. For example, accurately determining the season and boundaries of the largest contiguous OSV use area lying north and south of the Beartooth All-American Highway would require more than one snotel data location in the Beartooth Plateau vicinity.⁷⁴ The only snotel site on the Beartooth Plateau is at Beartooth Lake at an elevation of 9360 ft and set within trees making it somewhat sheltered.⁷⁵ This location is on the far west side of a plateau that stretches 13 miles to the east, where it abruptly drops more than 5000 feet in less than two miles. Between Beartooth Lake and the drop of Bennett Creek drainage (west to east), elevations vary from 9000 feet to over 11,000 feet. The highest snotel site used for determining snowfall was Blackwater at 9780. The USFS has failed to provide scientific data that supports a conclusion of adequate snowfall at or above 10,000 feet, which comprises a significant portion of the Beartooth Plateau. Nor has the USFS provided scientific data that would support a conclusion of regularly adequate snowfall below 7000 feet, which includes the roughly two mile strip of the SNF from the east forest boundary to where the steep incline to the Beartooth Plateau begins. The 9.5 miles from Littlerock Creek north to the Montana border, also under 7000 feet in elevation, is open to OSV use under all alternatives with

⁷⁴ SNF TMP EA, 2021, Appendix D: Supplemental Materials from Effects Analysis; p. 32

⁷⁵ https://www.weather.gov/riw/cms_snotel_quicklinks

no data to suggest that it routinely carries enough snowpack to support such activity without resource damage. The lowest snotel site cited was at YNP NE entrance, at 7350 ft in elevation but in the complete opposite direction from the Beartooth Front.

Beyond the inadequate information regarding snowfall at various elevations to inform proposed dates of OSV open areas, the USFS has neglected to incorporate other climate data and patterns (including temperature and simulations of historic patterns into the future) that affect annual snowfall into its analysis to better inform the opening and closing dates for a rational winter OSV use season. A 2021 study of the Greater Yellowstone area, referring to analysis of snowfall trend from 1950 to 2010, states:

Snowfall is now highest above 7000 ft (2100 m) elevation, where total precipitation has increased by approximately 5.0 inches (13 cm) since the 1990s (figure 3-2), even though the mean temperatures at these elevations have also risen by 2.5F (1.4 C) since the 1980s. As temperatures increase above freezing, the snowfall increase has leveled off despite continued increases in precipitation (Figure 3-2).⁷⁶

Furthermore, in 2016 scientists Ann Rodman and Michael Tercek documented that the winter season at YNP is becoming shorter:

Our results project a substantial shortening in the average length of winter (Fig 7) but relatively less severe declines in the amount of snow during the months in which winter remains (Figs 8, 9, 10 and 11). The primary driver of these changes are projected temperature increases, rather than projected precipitation declines. These findings are consistent with similar studies that have used modeled climate data to project 21st century snowpack in the United States, Europe, and the Arctic [34–38]. The average number of days per year with daily maximum temperatures (Tmax) above freezing was projected by the models to increase dramatically at all SNOTEL locations under consideration, while winter precipitation was projected to either increase or decrease, depending on the model (not shown). For example, West Yellowstone, which was projected to experience the greatest snow declines, had a 3-model mean projected increase in December–March precipitation of 9 cm by late century relative to 1990–2010, while the number of December–March days above freezing was projected to increase from 29 during the historical period to a 3-model mean projection of 90 under RCP 8.5.

⁷⁶ Hostetler S, Whitlock C, Shuman B, Liefert D, Drimal C, Bischke S. 2021. Greater Yellowstone climate assessment past, present, and future climate change in greater Yellowstone watersheds. Bozeman MT: Montana State University, Institute on Ecosystems. 260p. https://doi.org/10.15788/GYCA2021. p. 46-47.

Regarding the disagreement among models with respect to whether snow cover will be lost primarily in the spring vs. the fall (Figs 8 vs. 9), historic SNOTEL station data show that the snow season is already ending earlier at most locations, but that change in the date of snow onset is less consistent.⁷⁷

These studies reveal that although average historic snowfall in the HUC6 Upper Yellowstone watershed has not changed greatly, March and April temperatures have warmed significantly.⁷⁸ This directly affects the seasonality of snowmelt and decreases the stability of spring snowpack. Within the Greater Yellowstone area, "The biggest changes are at mid and high elevations where runoff from snowmelt increases in spring (March through May) and decreases in summer (June through August). Timing of peak runoff is projected to shift by 1-2 months earlier in the year in the later part of the century..."⁷⁹ An 2018 article published at the Yale School of the Environment stated,"The rub is that early June temperatures are warming very rapidly, and so the snow melts in a matter of a few days. After the snow melts, it starts to get hot right away. It can go from 3 feet of snow to completely snow-free within four days."⁸⁰ The SNF is the eastern flank of the iconic Greater Yellowstone Area, and considering this scientific evidence, it makes logical sense to conclude the OSV winter use season on April 30, which still provides for five full months of OSV recreational access, in years when snow depth allows for a December 1st start.

VI. OSV USE OPEN AREA BOUNDARIES NEED TO BE SCALED AND CLEARLY **ARTICULATED FOR PUBLIC**

None of the OSV open areas are defined by a name or number or other identifying marker, although many are separated geographically from each other. This makes it challenging for the public to identify the area unless they happen to know common names that might be recognizable by others. Again, using the North Zone as an example, the Beartooth Plateau is part of a continuous blue blob on the Alternative 4 map that also includes an area that might be described as Pilot Creek to the Montana border on route to Cooke City; another area that centers around Crandall Creek; and yet another that is north of Russell Peak. This encompasses a massive area with extreme elevation and terrain variation. And to the south there is another blue blob centered somewhat around Pat O'Hara Mountain. It would be helpful to identify areas much more clearly so that visitors as well as locals can understand where they actually are.

Turning back to the giant blue blob on the Clarks Fork Ranger District: this area includes part of the Clarks Fork of the Yellowstone Wild River Corridor (management area 1.5A), which is the

⁷⁷ https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0159218#pone-0159218-t002

⁷⁸ Hostetler S, Whitlock C, Shuman B, Liefert D, Drimal C, Bischke S. 2021. Greater Yellowstone climate assessment past, present, and future climate change in greater Yellowstone watersheds. Bozeman MT: Montana State University, Institute on Ecosystems. 260p. https://doi.org/10.15788/GYCA2021.; pg. 52 ⁷⁹ Ibid p. 139

⁸⁰ https://e360.yale.edu/features/warming-signs-how-diminished-snow-cover-puts-species-in-peril

only designated Wild and Scenic River on the entire SNF. Motorized travel beyond the initial access road as identified in 1990 is not compatible with the legal designation of this river⁸¹ and must be excluded from any designated OSV Use Open Area. The management approach for 1.5A states, "Management of the corridor is in the context of providing opportunities for dispersed, primitive, river-oriented recreation as well as semi-primitive, non-motorized, and motorized recreation on the designated routes that existed when the river was designated."⁸² Also, the 2009 USFS Comprehensive Management Plan for the Clarks Fork of the Yellowstone River describes "types of recreation uses" within the corridor as:

The recreation settings and opportunities in the designated corridor include primitive and semi-primitive non-motorized and limited semi-primitive motorized recreation. Most of the corridor is extremely rugged with access limited to a few forest roads. Recreation use is highest in the Lower Canyon where activities such as fishing, kayaking, hunting, walking/hiking, horseback riding, mountain biking, scenic viewing, and camping occur. The Upper and Middle Canyons receive light use from hiking/fishing and kayak use. Tourism and scenic driving are promoted in the area adjacent to the river corridor. For example, the adjacent Highway 296, which provides access to Yellowstone National Park, is a Scenic Byway that receives a substantial amount of tourism traffic. Highway 296 parallels the designated river corridor, usually less than a mile away, but separated by steep terrain and canyon walls.⁸³

The Clarks Fork of the Yellowstone Wild and Scenic River Corridor should be removed from the OSV open area designation in all alternatives.

Next, Line Creek Research Natural Area also should be omitted from the OSV Open Area boundary. According to the 2015 SNF LMP, the management standard that must be followed for recreation within the management area 2.2A states, "Recreation use is not prohibited, but **shall not be encouraged**. However, **recreation use can be prohibited or restricted** by special orders if such use threatens or interferes with the objectives or purposes for which the research natural area was established." (MA2.2A-STAND-11, emphasis added).⁸⁴ The 2.2A management area goal states, "The ecological integrity of the research natural area, including processes, composition, and structure area maintained. (MA2.2A-GOAL-01)⁸⁵ A further guidance for the area states, "Manage for an adopted recreation opportunity spectrum **class of semi-primitive non-motorized**.(MA2.2A-GUIDE-30, emphasis added)⁸⁶ Within the 2021 TMP EA, another EA

⁸¹ <u>https://www.rivers.gov/documents/plans/clarks-fork-plan.pdf</u>

⁸² SNF LMP, 2015, pg.138.

⁸³ <u>https://www.rivers.gov/documents/plans/clarks-fork-plan.pdf</u> pg.9

⁸⁴ 2015 SNF LMP, p. 144.

⁸⁵ *Ibid.*, p. 143.

⁸⁶ *Ibid.*, p. 145

completed in 2000 is referenced as well as a 2003 objection, both which occurred prior to the 2015 SNF LMP that determined the above standard, goal, and guidance that prioritizes ecological integrity over recreational use within Link Creek Research Natural Area. Moreover, in the conclusion of one of the USFS environmental consequences EA sections the potential threats from OSV use to this area's ecological integrity is acknowledged, but somehow then contended that snow depth will ultimately protect the area:

In MA 2.2A, natural processes that sustain and support ecological processes are likely to be protected by snow depth criteria. However, should the intent of area management include the study of natural processes and reference conditions of alpine hydrology and snowpack (e.g., melt, ablation, climate, chemistry, groundwater recharge, air quality, etc.) or biophysical processes and ecosystem change, the preservation of this area may require additional protections for minimizing OSV use.⁸⁷

Although no Snotel site utilized in the analysis is within even five miles of the borders of Line Creek Research Natural Area was used in this analysis, nor has another method of determining adequate snow depth been described in the EA. Additionally, "(f)rom local knowledge of the area (Pers. Comm. M. Watkins-FS, R.Berntsen and H. Sorrel-MT FW&P, S.Stewart-MT FW&P, and B.Barrett-MT Dept. of Transportation, Project File), conditions near or on Line Creek Plateau are generally too severe from heavy winds, white-out conditions, avalanche danger, and poor snow conditions for any extensive [OSV] "playground" use to occur."⁸⁸ Considering the ecological risks, lack of scientifically relevant on-the-ground monitor process, the 2015 SNF LMP direction, and relevant on-the-ground condition information, removing MA 2.2A from an OSV Use Open Area is logical.

Finally, the USFS has failed to provide evidence that the terrain placed within the open areas is actually consistent with snowpack that protects the vegetation and soil during cross-country travel that is allowed within the boundaries of OSV use areas. For instance, the narrow bounds of the above-mentioned wild river corridor are quite steep, so much so that snow isn't likely to accumulate. Another example is the Beartooth Plateau, similar to Line Creek Plateau, encompasses a lot of landscape varying among lakes, slopes, flats, and steep rocky cliffs. (Please visit the Beartooth Highway Facebook Page for visuals)⁸⁹. A fair amount of Beartooth Plateau vegetation is alpine tundra with few trees to anchor snow amid the high winds that often blow regardless of season. This open grassland tundra is depicted in Figure 5.

⁸⁷ *Ibid*, pg. 329.

⁸⁸ SNF TMP EA, 2021, Pg. 180.

⁸⁹ <u>https://www.facebook.com/pg/beartoothhighway/photos/?ref=page_internal</u>


Figure 5. Vulnerable alpine tundra with inconsistent snow cover on the Beartooth Plateau.⁹⁰

Remember that the one Snotel site referenced on the Beartooth Plateau at Beartooth Lake is at lower elevation than depicted here and amid trees — see Figure 6 below.



Figure 6. Beartooth Lake Snotel Site.⁹¹

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 $[\]underline{https://www.visityellowstonecountry.com/photos-that-prove-that-the-beartooth-highway-is-the-most-beautiful-drive-in-america?slide=2 - photographer unknown$

⁹¹ <u>https://www.weather.gov/riw/cms_snotel_quicklinks</u> - Beartooth Lake site details, photographer unknown

The USFS analysis does not account for factors such as historic wind impacts on clearing or loading slopes (leeward/windward), slope aspect, slope angle, and other factors that significantly affect the on-the-ground snow pack across a huge territory. Incorporating these factors would help remove areas that are too steep to even hold a consistent snowpack, areas that are currently included in proposed open areas for OSV use. "Top alpinists these days are working pitches in the low to mid-60 degrees, but on anything much steeper, it becomes very difficult to maintain your ski's contact with the snow. In fact, snow's 'angle of repose,' the greatest tilt at which snow can stick to the slope, is, at most, 75 or so degrees."⁹² Some of this analysis may not be required by Subpart C, but considering the remoteness and scale of this landscape, it seems somewhat negligent not to consider these contributing factors when establishing boundaries for an open area where cross country motorized travel is occuring.

VII. FAILURE TO PROVIDE SITE-SPECIFIC ANALYSIS OF THE DIRECT, INDIRECT AND CUMULATIVE IMPACTS AS REQUIRED BY NEPA

Background

NEPA is "'our basic national charter for protection of the environment."⁹³ In enacting NEPA, Congress recognized the "profound impact" of human activities, including "resource exploitation," on the environment and declared a national policy "to create and maintain conditions under which man and nature can exist in productive harmony."⁹⁴

The statute has two fundamental two goals: "(1) to ensure that the agency will have detailed information on significant environmental impacts when it makes decisions; and (2) to guarantee that this information will be available to a larger audience."⁹⁵ "NEPA promotes its sweeping commitment to 'prevent or eliminate damage to the environment and biosphere' by focusing Government and public attention on the environmental effects of proposed agency action."⁹⁶ Stated more directly, NEPA's "'action-forcing' procedures . . . require the [Forest Service] to take a 'hard look' at environmental consequences" before the agency approves an action. ⁹⁷ "By so focusing agency attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."⁹⁸ To ensure that the agency has taken the

⁹² https://www.skimag.com/performance/how-steep-is-steep/

⁹³ Center for Biological Diversity v. United States Forest Serv., 349 F.3d 1157, 1166 (9th Cir. 2003) (quoting 40 C.F.R. § 1500.1 (2019)).

⁹⁴ 42 U.S.C. § 4331(a).

⁹⁵ Envtl. Prot. Info. Ctr. v. Blackwell, 389 F. Supp. 2d 1174, 1184 (N.D. Cal. 2004) (quoting Neighbors of Cuddy Mt. v. Alexander, 303 F.3d 1059, 1063 (9th Cir. 2002)); see also Earth Island v. United States Forest Serv., 351 F.3d 1291, 1300 (9th Cir. 2003) ("NEPA requires that a federal agency 'consider every significant aspect of the environmental impact of a proposed action . . . [and] inform the public that it has indeed considered environmental concerns in its decision-making process."").

⁹⁶ Marsh v. Or. Natural Res. Council, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321).

⁹⁷ Metcalf v. Daley, 214 F.3d 1135, 1141 (9th Cir. 2000) (quoting Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 348 (1989)).

⁹⁸ Marsh, 490 U.S. at 371 (citation omitted)

required "hard look," courts hold that the agency must utilize "public comment and the best available scientific information."⁹⁹

NEPA's review obligations are more stringent and detailed at the project level, or "implementation stage," given the nature of "individual site specific projects."¹⁰⁰ "[G]eneral statements about possible effects and some risk do not constitute a hard look, absent a justification regarding why more definitive information could not be provided."¹⁰¹

NEPA requires site-specificity to fulfill two basic purposes: 1) to ensure agencies are making informed decisions prior to acting and 2) to ensure the public is given a meaningful opportunity to participate in those decision-making processes.¹⁰² Federal courts apply these touchstone criteria when evaluating whether a NEPA document is adequately site-specific.¹⁰³ Analyzing and disclosing site-specific impacts is critical because where (and when and how) activities occur on a landscape strongly determines the nature of the impact. As the Tenth Circuit Court of Appeals has explained, the actual "location of development greatly influences the likelihood and extent of habitat preservation. Disturbances on the same total surface area may produce wildly different impacts on plants and wildlife depending on the amount of contiguous habitat between them."¹⁰⁴ The Court used the example of "building a dirt road along the edge of an ecosystem" and "building a four-lane highway straight down the middle" to explain how those activities may have similar types of impacts, but the extent of those impacts - in particular on habitat disturbance – is different.¹⁰⁵ Indeed, "location, not merely total surface disturbance, affects habitat fragmentation,"¹⁰⁶ and therefore location data is critical to the site-specific analysis NEPA requires. Merely disclosing the existence of particular geographic or biological features is inadequate - agencies must discuss their importance and substantiate their findings as to the impacts. 107

⁹⁹ Biodiversity Cons. Alliance v. Jiron, 762 F.3d at 1086 (internal citation omitted).

¹⁰⁰ Ecology Ctr., Inc. v. United States Forest Serv., 192 F.3d 922, 923 n.2 (9th Cir. 1999); see also Friends of Yosemite Valley v. Norton, 348 F.3d 789, 800-01 (9th Cir. 2003); New Mexico ex rel. Richardson v. Bureau of Land Management, 565 F.3d 683, 718-19 (10th Cir. 2009) (requiring site-specific NEPA analysis when no future NEPA process would occur); Colo. Envtl. Coal. v. Ofc. of Legacy Mgmt., 819 F. Supp. 2d 1193, 1209-10 (D. Colo. 2011) (requiring site-specific NEPA analysis even when future NEPA would occur because "environmental impacts were reasonably foreseeable").

¹⁰¹ Or. Natural Res. Council Fund v. Brong, 492 F.3d 1120, 1134 (9th Cir. 2007) (citation omitted); see also Or. Natural Res. Council Fund v. Goodman, 505 F.3d 884, 892 (9th Cir. 2007) (holding the USFS's failure to discuss the importance of maintaining a biological corridor violated NEPA, explaining that "[m]erely disclosing the existence of a biological corridor is inadequate" and that the agency must "meaningfully substantiate [its] finding"). ¹⁰² Stein v. Barton, 740 F. Supp. 743, 749 (D. Alaska 1990).

¹⁰³ See WildEarth Guardians, 790 F.3d at 921-25 (holding EIS inadequate for failure to disclose the location of moose range); Or. Nat. Desert Ass'n v. Rose, 2019 WL 1855419 (9th Cir. 2019) (holding environmental analysis violated NEPA by failing to establish "the physical condition of [roads and trails] and authorizing activity without assessing the actual baseline conditions").

¹⁰⁴ New Mexico ex rel. Richardson, 565 F.3d at 706.

¹⁰⁵ *Id.* at 707.

¹⁰⁶ *Id*.

¹⁰⁷ Or. Natural Res. Council Fund v. Goodman, 505 F.3d 884, 892 (9th Cir. 2007).

The USFS improperly relies on Conditions-Based Management to authorize specific travel management actions.

When explaining how this project will result in a designated system of roads, trails and areas available for motorized use, the USFS explains, "[a]dditional on-the-ground analysis and site-specific activities may be necessary for many components of the project before a route or area is opened to public use."¹⁰⁸ To be clear, the environmental analysis for site-specific activities must occur before the USFS designates motorized use, and absent such analysis the agency cannot demonstrate compliance with direction under the TMR, in particular the minimization criteria, or with NEPA's hard-look mandate. Further, the USFS states it will phase in the project decision, and that the "Line Officers (i.e., District Rangers) will have discretion to prioritize other items that require on-the-ground surveys or additional analysis, including but not limited to motorized mixed-use analysis on roads and assessment of suitability of having trails open to all vehicles."¹⁰⁹ Again, the decision to allow mixed use and all vehicle types must be supported by site-specific analysis, which the agency suggests will occur at a later unspecified date, yet it is unclear if the agency will also produce a separate decision supported by that analysis. Compounding the confusion is the fact that the proposed action includes designating trails for all vehicles, so it is unclear which specific roads and trails would receive additional analysis. Our comments herein pertaining to compliance with subpart B of the TMR and the agency's failure to analyze summer motorized designations provides further examples where the agency's reliance on conditions-based management fails to comply with NEPA or the TMR. Specifically, proposal responses for WR03, WR04b, and WR13 further illustrate the flaws of the agency's conditions-based management approach.

The USFS fails to analyze the extensive road to trail conversions, or demonstrate compliance with agency directives and the minimization criteria.

The USFS explains that under the modified proposed action it will "convert 173 miles of existing roads to trails open to wheeled vehicles."¹¹⁰ Yet, the agency fails to address its own direction related to general considerations and criteria for such actions. Internal USFS directives provide the following:

1. <u>General Considerations</u> Before converting an NFS road to an NFS trail, carefully consider the positive and negative effects of conversion, including but not limited to effects on the unit's trail system, user preferences and demands, NFS resources, and availability of funds to perform work needed to convert the NFS roads to NFS trails and maintain the NFS trails. When multiple NFS roads are being considered for conversion, consider the routes individually, rather than collectively. If an

¹⁰⁸ EA at p. 7.

¹⁰⁹ EA at p. 29.

¹¹⁰ EA at p. 20.

NFS road is identified for potential conversion to an NFS trail during travel analysis, consult FSM 2353.28, 7715.5 and 7703.27.

2. <u>Criteria for NFS Road to NFS Trail Conversion</u>. Based on a travel analysis report (FSM 7712), landscape scale analysis, or other analysis, as appropriate, a recommendation should be made to the responsible official regarding whether a particular NFS road should be converted to an NFS trail. To support a recommendation for conversion, the following three criteria should be met:

a. The converted route would meet its Trail Management Objectives (TMOs) and provide the desired recreation experience;

b. Adequate funding would be available to cover the work to convert and maintain the route; and

c. The environmental effects and mitigations of the converted route would be acceptable to the Responsible Official and would meet applicable requirements, including 36 CFR 212.55.

- 3. <u>Application of Conversion Criteria</u>. To determine whether these criteria are met, the following steps should be followed:
 - a. During the travel analysis process (FSM 7712) actively engage trails managers.

b. Develop draft TMOs for the potential trail so that it is clear how it would be managed (FSM 2353.12 and 2353.13; FSH 2309.18, sec. 14).

c. Describe the recreation experience to be offered by the potential trail based on the following considerations:

(1) Whether the conversion would be consistent with the standards and guidelines in the applicable land management plan; and

(2) Whether the conversion would provide quality recreation opportunities, such as enhancing trail connectivity, creating trail loops, or otherwise improving the quality of trail opportunities.

d. Identify the work needed for route conversion and maintenance and the short-term and long-term costs of conversion. The characteristics of the NFS road to be converted are an important factor. For example, the cost of converting and maintaining a two-track NFS road across flat terrain would likely be substantially less than the cost of converting and maintaining a full-bench NFS road with large fills and culverts.¹¹¹

The USFS failed to demonstrate its adherence to these considerations and criteria. For example, under the proposed action the agency explains "[c]onverting 152 miles of NFSRs to NFSTs open to all vehicles and 11 miles to NFSTs open to vehicles 64 inches wide or less will continue to provide motorized access while reducing reliance on road funds to maintain these routes."¹¹² Here the agency is simply playing a shell game with its maintenance budgets by shifting the

¹¹¹ FSH 2309.18 Ch. 21.2

¹¹² EA at p. 88.

burden to the trails program, and doing so without any discussion or analysis of the agency's ability to maintain the reclassified roads. Essentially this is a paper exercise since the USFS will still need to maintain the converted road, and the agency fails to address the resource impacts that will occur as a result of the reclassification. For example, how will trail maintenance address engineered road features such as drainage dips, ditches and culverts? The reclassified roads will still function as roads no matter their label, and the USFS fails to demonstrate that trail maintenance will be sufficient to protect forest resources. At no point does the agency discuss any physical activities necessary to complete the conversions or the associated costs. Overall, there is a general failure to acknowledge that even motorized trails have different design standards and less stringent maintenance requirements than roads, including less frequent scheduled maintenance, less clearing width, tighter turns and steeper slopes allowed.¹¹³ The difference in maintenance schedules and actions will most certainly result in greater resource impacts.

As another example, the directives require the responsible official to consider the road conversions during travel analysis or another comparable assessment. Here the USFS identified extensive road conversions during the TAP, but it is not clear to what extent those actions were considered in the context of the SNF's trail program since the TAP did not consider trails: "This TAR does not address non-motorized or motorized trail opportunities, it is focused only on National Forest System Roads (NFSR)."¹¹⁴ In fact, for the 2017 TAP, the ID Team did not include any recreation or trails specialists.¹¹⁵ As such, it is unclear if there was any discussion about whether or not there will be adequate funding available to cover the work to convert and maintain each road proposed for addition to the trail system, or how the extensive amount of conversions will affect overall trail maintenance and management. Certainly the risks associated with each road identified in the TAP Reports will remain, even if the roads are converted to motorized trails. As such, the agency should consider decommissioning or placing into long-term storage those roads proposed for conversion.

The Forest Service failure to consider the harmful consequences of its road-to-trail conversions is not only a violation of NEPA's hard-look mandate, but the lack of analysis also precludes the agency from demonstrating compliance with the TMR's minimization criteria. Under the proposed action, the Forest Service will add 163 miles of trail and yet, the analysis fails to demonstrate how each trail complies with the requirements under subpart B of the TMR. The omission must be corrected through the development of an EIS that properly discloses the environmental consequences of the massive road-to-trail conversion and demonstrates compliance with the minimization criteria.

¹¹³ Comparison of road standards in FSH 7709.56-40 with trail design parameters for motorized trails open to 4WD vehicles greater than 50" in width at FSH 2309.18 23.23.

¹¹⁴ Shoshone National Forest, Travel Analysis Report. 2017. p. 4.

¹¹⁵ *Id.* at 5.

The USFS Cannot Rely on Best Management Practices (BMP) or Mitigation Measures to Comply with NEPA or the TMR.

The USFS arbitrarily asserts that BMPs or project design criteria will effectively mitigate any resource concerns as we have seen in multiple other agency projects. We caution the USFS against such assumptions as they do not absolve the agency from its responsibilities under NEPA or other applicable laws such as the Clean Water Act. Should the agency propose specific BMPs or other measures to mitigate resource damage, in particular those from road maintenance, construction, reconstruction and use, then it must demonstrate a history of both proper implementation and effectiveness.

Specifically, when considering how effective BMPs or design features are at controlling nonpoint pollution on roads, both the rate of implementation and their effectiveness should be considered. The USFS tracks the rate of implementation and the relative effectiveness of BMPs from in-house audits. This information is summarized in the National BMP Monitoring Summary Report with the most recent data being the fiscal years 2013-2014.¹¹⁶ The rating categories for implementation are "fully implemented," "mostly implemented," "marginally implemented," "not implemented," and "no BMPs." "No BMPs" represents a failure to consider BMPs in the planning process. More than a hundred evaluations on roads were conducted in FY2014. Of these evaluations, only about one third of the road BMPs were found to be "fully implemented."¹¹⁷

The monitoring audit also rated the relative effectiveness of the BMP. The rating categories for effectiveness are "effective," "mostly effective," "marginally effective," and "not effective." "Effective" indicates no adverse impacts to water from projects or activities were evident. When treated roads were evaluated for effectiveness, almost half of the road BMPs were scored as either "marginally effective" or "not effective."¹¹⁸

Further, a technical report by the USFS entitled, "Effectiveness of Best Management Practices that Have Application to Forest Roads: A Literature Synthesis," summarized research and monitoring on the effectiveness of different BMP treatments for road construction, presence and use.¹¹⁹ The report found that while several studies have concluded that some road BMPs are effective at reducing delivery of sediment to streams, the degree of each treatment has not been rigorously evaluated. Few road BMPs have been evaluated under a variety of conditions, and

¹¹⁶ Carlson, J. P. Edwards, T. Ellsworth, and M. Eberle. 2015. National best management practices monitoring summary report. Program Phase-In Period Fiscal Years 2013-2014. USDA Forest Service. Washington, D.C. ¹¹⁷ *Id.* at 12

¹¹⁸ *Id.* at 13.

¹¹⁹ Edwards, P.J., F. Wood, and R. L. Quinlivan. 2016. Effectiveness of best management practices that have application to forest roads: a literature synthesis. General Technical Report NRS-163. Parsons, WV: U.S. Department of Agriculture, Forest Service, Northern Research Station. 171 p.

much more research is needed to determine the site-specific suitability of different BMPs.¹²⁰ Edwards et al. (2016) cites several reasons for why BMPs may not be as effective as commonly thought. Most watershed-scale studies are short-term and do not account for variation over time, sediment measurements taken at the mouth of a watershed do not account for in-channel sediment storage and lag times, and it is impossible to measure the impact of individual BMPs when taken at the watershed scale. When individual BMPs are examined there is rarely broad-scale testing in different geologic, topographic, physiological, and climatic conditions. Further, Edwards et al. (2016) observe, "[t]he similarity of forest road BMPs used in many different states' forestry BMP manuals and handbooks suggests a degree of confidence validation that may not be justified," because they rely on just a single study.¹²¹ Therefore, ensuring BMP effectiveness would require matching the site conditions found in that single study, a factor land managers rarely consider.

Climate change will further put into question the effectiveness of many road BMPs.¹²² While the impacts of climate will vary from region to region, more extreme weather is expected across the country which will increase the frequency of flooding, soil erosion, stream channel erosion, and variability of streamflow.¹²³ BMPs designed to limit erosion and stream sediment for current weather conditions may not be effective in the future. Edwards et al. (2016) states, "[m]ore-intense events, more frequent events, and longer duration events that accompany climate change may demonstrate that BMPs perform even more poorly in these situations. Research is urgently needed to identify BMP weaknesses under extreme events so that refinements, modifications, and development of BMPs do not lag behind the need."¹²⁴

Significant uncertainties persist about BMP or design feature effectiveness as a result of climate change, which compound the inconsistencies revealed by BMP evaluations and suggest that the USFS cannot simply rely on them to mitigate project-level activities. This is especially relevant where the USFS relies on the use of BMPs or design features instead of fully analyzing potentially harmful environmental consequences from road design, construction, maintenance or use, in studies and/or programmatic and site-specific NEPA analyses. It is also especially relevant in regard to watersheds and water quality. More so, the USFS must demonstrate how BMP effectiveness will be maintained in the long term, especially given the lack of adequate road maintenance capacity.

The USFS must address these findings before it can claim any reliance on BMPs or other mitigation measures to comply with the TMR's minimization criteria. The USFS explains:

¹²⁰ *Id.* See also, Anderson, C.J.; Lockaby, B.G. 2011. Research gaps related to forest management and stream sediment in the United States. Environmental Management. 47: 303-313.

¹²¹ Id. at 133.

¹²² Id.

¹²³ Furniss, Michael J & Roby, Ken & Cenderelli, Daniel & Chatel, John & Clifton, Caty & Clingenpeel, Alan & Hays, Polly & Higgins, Dale & Hodges, Ken & Howe, Carol & Jungst, Laura & Louie, Joan & Mai, Christine & Martinez, Ralph & Overton, Kerry & Staab, Brian & Steinke, Rory & Weinhold, Mark. (2013). Assessing the vulnerability of watersheds to climate change: Results of national forest watershed vulnerability pilot assessments. USDA PNW Research Station.General Technical Report PNW-GTR-884.

¹²⁴ Edwards et al. 2016. at 136.

Resource specialists developed screening criteria to determine where trails or areas intersected with a resource that implicated a minimization criterion. Points of intersection informed resource specialists' development of *appropriately tailored mitigation actions* that would minimize potential impacts from motorized use along the trail or in the area. Design criteria and mitigation activities that achieve sufficient minimization of impacts are set forth in Appendix C.¹²⁵

However, when looking closely at the mitigation actions that purport to minimize damage to watersheds, for example, the USFS found the following:

Between 2014 and 2019, nine reviews using three protocols were used to evaluate BMP implementation and effectiveness. The protocols were: Completed Road or Waterbody Crossing Construction or Reconstruction, Road Operation and Maintenance, and Stored Roads. The overall ratings show an inconsistency in BMP implementation and a general lack of effectiveness.¹²⁶

The findings have serious implications for roads proposed for trail conversion under the proposed action. Yet, the agency concludes that for the proposed action, "[a]ssuming that BMPs are appropriately applied and maintained across the NFS route system and that water resources and hydrologic processes are protected, the effects to water resources will be negligible."¹²⁷ The assumption is erroneous at best, and fails to acknowledge the agency's own findings regarding BMP effectiveness and implementation.

Further, the USFS cannot rely on BMPs or mitigation measures to comply with NEPA's hard look mandate. In other words, the agency cannot assume 100% proper BMP implementation and 100% effectiveness to conclude negligible effects when the agency's own findings contradict such assumptions, as it did for water resources. It is apparent that the USFS's conclusions here are arbitrary at best, and the agency's analysis fails to account for the lack of BMP effectiveness. The controversy in facts must be resolved in an EIS.

VIII. FAILURE TO ANALYZE SIGNIFICANT THREATS TO ENDANGERED AND THREATENED SPECIES

¹²⁵ EA at p. 44, emphasis added.

¹²⁶ *Id.* at p. 328.

¹²⁷ *Id.* at p. 338.

Grizzly Bears

The SNF provides habitat for grizzly bears, federally listed as threatened under the ESA. Grizzly bear populations should be recovered and managed as a large well-connected Northern Rockies meta-population.¹²⁸ The SNF is required by the National Forest Management Act to manage for diverse plant and animal communities and maintain viable populations.¹²⁹ Section 7 of the ESA also requires that the USFS consider effects of travel plan components on the viability of Greater Yellowstone Ecoregion (GYE) grizzly bears within a broader context, beyond the boundaries of the Conservation Strategy or Primary Conservation Area (PCA).¹³⁰

The SNF LMP set this standard for grizzly bear management:

Inside the primary conservation area, maintain the percent of secure habitat in bear management unit subunits at or above 1998 levels. Projects that change secure .habitat must follow the application rules.¹³¹ (TES-STAND-04, LMP p. 39)

The comprehensive *Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area*, states,

... secure habitat, defined as those areas more than 500 meters (550 yards) from a motorized access route during the non-denning period, are especially important to the survival and reproductive success of grizzly bears, especially adult female grizzly bears.¹³²

The SNF TMP ignored the 1993 Grizzly Bear Recovery Plan which states "Roads probably pose the most imminent threat to grizzly habitat today....the presence of open roads in grizzly habitat often leads to increased bear-human contact and conflict, and can ultimately end in grizzly mortality."¹³³ The USFS must consider that roads (permanent or temporary, open or closed) and site development will increase human-bear conflicts and grizzly bear mortality and affect the potential for connectivity through this important linkage area. Both roads and development significantly contribute to habitat deterioration and fragmentation and are the two strongest predictors of grizzly bear survival/mortality on the landscape.¹³⁴ Road density is also strongly

¹²⁸ 40 Fed. Reg. 31,734 (July 28, 1975).

¹²⁹ 16 U.S.C. § 1604(g)(3)(B).

¹³⁰ 16 U.S.C. §§1531-1544.

¹³¹ The Application Rules are outlined in the Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area (Interagency Conservation Strategy Team 2007).

¹³² http://igbconline.org/wp-content/uploads/2016/03/161216_Final-Conservation-Strategy_signed.pdf.

¹³³ US Fish and Wildlife Service. 1993. Grizzly bear recovery plan. Missoula, MT.

¹³⁴ Mace, R. D., and J. S. Waller, T. L. Manley, L. J. Lyon, and H. Zuuring. 1996. Relationships among grizzly bears, roads and habitat in the Swan Mountains, Montana. Journal of Applied Ecology 33:1395–1404. Schwartz, C. C., M. A. Haroldson, G.C. White. 2010. Hazards Affecting Grizzly Bear Survival in the Greater Yellowstone Ecosystem. Journal of Wildlife Management 74(4):654-667.

related to secure habitat, which is critical to the survival and reproductive success of grizzly bears¹³⁵ and is primarily achieved through motorized access management. As such, connectivity and secure habitat are often described in terms of open road density and large non-motorized habitat blocks. Managing the landscape to reduce hazards to bears requires balancing road density standards with the amount of secure habitat available;¹³⁶ according to researchers Mattson et al, "[If] road densities become too great, secure areas become isolated islands surrounded by heavily roaded areas. Travel among secure islands then becomes more hazardous, effectively fragmenting the landscape."¹³⁷ Open road densities above 1.0 mi/mi2 and total road densities above 2.0 mi/mi2 have been shown to suppress local habitat use by grizzly bears.¹³⁸

The GYE grizzly bear population has expanded its distribution far beyond the boundaries of the PCA where habitat standards apply. The PCA only makes up approximately 41% of the estimated population range.¹³⁹ However, the Final 2016 Conservation Strategy includes language, and the USFS agreed to this language in a signed memorandum of understanding, to manage for a stable population of grizzly bears within the Demographic Monitoring Area (DMA) for the foreseeable future, per Demographic Recovery Criterion 3.¹⁴⁰ Therefore, the TMP must fully evaluate the impacts of forest road density (both existing and proposed) on the current distribution of grizzly bears on SNF lands within the entire DMA (not exclusively the PCA as the stated standard above) to ensure secure habitat is available to maintain a stable population of bears into the foreseeable future. In analyzing these impacts, it is critical that the USFS include not only designated system roads and trails, but also stored, proposed new, and existing illegal, user-created trails.

The EA also fails to analyze the growing intensity of motorized dispersed camping and its attendant impacts along motorized trails and roads on grizzly bears and other wildlife. This is especially important within the PCA and in other known high quality grizzly bear habitats including the East Fork, Bear Creek, and Wiggins Fork drainages in the Wind River District. Not all roads and trails are appropriate for motorized dispersed camping, and not all of them should be open for motorized dispersed camping. Furthermore, within the PCA and in other areas of

¹³⁵ Mattson, D. J., R. R. Knight, and B. M. Blanchard. 1987. The effects of developments and primary roads on grizzly bear habitat use in Yellowstone National Park, Wyoming. Pages 259-273 in Bears: their biology and management. Proceedings of the 7th International Conference on Bear Research and Management, Williamsburg, Virginia, USA. & Interagency Grizzly Bear Committee. 1994. Interagency grizzly bear committee task force report: grizzly bear/motorized access management. Missoula, Montana, USA. & Schwartz, C. C., M. A. Haroldson, G.C. White. 2010. Hazards Affecting Grizzly Bear Survival in the Greater Yellowstone Ecosystem. Journal of Wildlife Management 74(4):654-667.

¹³⁶ Summerfield, B., W. Johnson, and D. Roberts. 2004. Trends in road development and access management in the Cabinet–Yaak and Selkirk grizzly bear Recovery Zones. Ursus 15:115–122.

¹³⁷ Schwartz, C. C., M. A. Haroldson, G.C. White. 2010. Hazards Affecting Grizzly Bear Survival in the Greater Yellowstone Ecosystem. Journal of Wildlife Management 74(4):pg.661.

¹³⁸ Mace, R. D, and T. L. Manley. 1993. South Fork Grizzly Study; Progress Report. Montana Department of Fish, Wildlife and Parks, Kalispell, Montana.

¹³⁹ <u>https://www.fws.gov/mountain-prairie/es/FINALCS.DRAFT_Feb_19_2016_FINAL.pdf;</u> pg. 56.

¹⁴⁰ <u>https://www.fws.gov/mountain-prairie/es/FINALCS.DRAFT_Feb_19_2016_FINAL.pdf;</u> pg. 35.

prime grizzly habitat like the East Fork, Bear Creek, and Wiggins Fork drainages on the Wind River District, unmanaged motorized dispersed camping has the potential to dramatically impact grizzly bears either by displacing them farther than 500 meters from motorized roads and trails or increasing potential bear-human encounters and conflicts with unsavvy recreational campers, pulling off the roads in bear country. While the USFS maintains a developed site standard in accordance with the 1998 baseline, motorized dispersed camping goes unchecked. Motorized dispersed camping is clearly a cumulative effect of roads and TMP that should be analyzed under a full EIS. We urge the USFS to evaluate and adopt minimization strategies including (but not necessarily limited to) eliminating motorized dispersed camping along key routes and designating specific motorized dispersed camping areas and installing bear boxes or food hanging poles to limit camper concentration in unsuitable places and minimizing the attraction of bears to campsites that have a higher likelihood of creating human-bear conflicts.

In addition to the well known and documented impacts of roads and summer motorized recreation to grizzly bears, the USFS must fully analyze the impacts of OSV use for this threatened species.

The SNF admitted on page 215 of the EA that "disturbance of female grizzly bears with newborn cubs following den emergence could result in abandonment and mortality of the cubs." Furthermore, on the same page the EA states "these effects have not been documented in the GYE". There is conflicting evidence presented in a study by Swenson et al¹⁴¹ and by Podruzney et al¹⁴². Swensen's study monitored 13 different grizzly bears in the GYE for at least 5 winters each and documented 18 instances of den abandonment, 12 of which were related to human activities. Four of these instances were hunting related (i.e., gunshots fired within 100 m (328 ft) of the den), two occurred after "forestry activity at the den site," one had moose and dog tracks within 10 m (33 ft) of a den, one had an excavation machine working within 75 m (246 ft) of a den, and two were categorized as "human related" without further details. Ultimately, the EA is incorrect in stating that there is no documented abandonment of grizzly bear dens in the GYE due to human activity.

Snowmobiling has the potential to disturb bears while in their dens and after emergence from their dens in the spring. Because grizzly bears are easily awakened in the den¹⁴³ and have been documented abandoning den sites after human disturbance (including in the GYE as noted above), the potential impact from snowmobiling should be considered. Disturbance in the den could result in increased energetic costs (increased activity and heart rate inside the den) and

¹⁴¹ Swenson et al. 1997, p. 37; Graves and Reams 2001, p. 41

¹⁴² Podruzny, Shannon R., et al. "Grizzly Bear Denning and Potential Conflict Areas in the Greater Yellowstone Ecosystem." *Ursus*, vol. 13, International Association for Bear Research and Management, 2002, pp. 19–28, http://www.jstor.org/stable/3873183.

¹⁴³ Schwartz et al. 2003b, p. 567

possibly den abandonment, which, in theory, could ultimately lead to a decline in physical condition of the individual or even cub mortality.¹⁴⁴ The potential for this type of disturbance while in the den certainly exists. Bears, particularly females with cubs, have more restricted habitat requirements and are more vulnerable to disturbance by snowmobiles immediately following den emergence than during the denning period.¹⁴⁵ Additionally, a study by Podruzny et al created a model that "can be used by land managers to identify potential conflict areas and thus minimize potential impacts of winter recreation and other activities on denning bears". There is no evidence that the USFS used this model when considering OSV use on grizzly bear habitat.

Based on this research, the conservation strategy, the SNF LMP Standard 4, and the travel rule obligation of the USFS to minimize harassment of wildlife or significant disruption of wildlife habitats when designating motorized areas and trails, further analysis and demonstration of minimization measures is required. The USFS failed to analyze the effects of allowing OSV use through May when denning animals, including grizzly bears, are emerging from light or true hibernation. The potential for risks of displacement or harassment of bears and other denning animals is further increased by off-trail, cross country OSV use that creates a vast footprint. Given that female bears with newborn cubs don't emerge from hibernation until late April or early May, we strongly encourage the USFS to implement an earlier, April 30th, closure of the OSV season especially within the PCA and on the Wind River District's East Fork, Bear Creek, and Wiggins Fork areas, where bear hibernacula are well documented.

Canada Lynx

The GYE is the only place in the contiguous U.S. that supports a lynx population that is not immediately adjacent to the Canadian border.¹⁴⁶ This elusive species sticks to our most wild places and depends on the snowshoe hare as prey. In 2017, region one of the USFS came out with the *Biological Assessment for the effects of the Northern Rockies Management Direction on designated Canada lynx critical habitat*.¹⁴⁷ The objective was to analyze the potential impacts of implementing programmatic management guidance for Northern Rockies Lynx critical habitat. As shown in Figure 7, there are only five units of lynx habitat in the United States. The EA does mention the Northern Rockies Management Direction but references a previous copy of that document produced in 2007. The USFS should use and reference the newest research and recommendations for protection of lynx habitat, not outdated sources.

¹⁴⁷ Northern Rockies Lynx Management Direction -

¹⁴⁴ Swenson et al. 1997, p. 37; Graves and Reams 2001, p. 41

¹⁴⁵ Mace and Waller 1997

¹⁴⁶ Squires, J.R. 2005. Conservation challenges of managing lynx. Yellowstone Science 13(2): 10–11.

 $https://www.biologicaldiversity.org/species/mammals/Canada_lynx/pdfs/US_Forest_Service_Biological_Assessment_of_Canada_Lynx.pdf$



Figure 7. Map of all Critical Habitat for Lynx in the United States.¹⁴⁸

On page 225 of the EA, it states that there are 648,480 acres of critical habitat for Canada lynx on the Clarks Fork, Wapiti, and Wind River Ranger Districts. As you can see in Figure 8, the SNF plays an important role in maintaining connective habitat to the Bridger-Teton National Forest critical habitat for lynx. Landscape connectivity is integral to the persistence of metapopulations of wide ranging carnivores and other terrestrial species.

¹⁴⁸https://www.fws.gov/mountain-prairie/es/species/mammals/lynx/CHFinalRule2014/Lynx_CH_AllUnits_2014.pdf



Lynx Critical Habitat -- Unit 5 -- Greater Yellowstone

Figure 8. A map of unit 5 of Lynx Critical Habitat¹⁴⁹

On page 226, the EA states that USFS questions whether lynx continue to exist on the SNF. However, this was based solely on a three-year effort from 2015-2017, so the research is inadequate. Because lynx are threatened and their population numbers remain low, the agency has a higher duty to protect critical lynx habitat from new and unnecessary human disturbance. Scientists have documented increased avoidance of areas preferred by motorized winter recreationists (snowmobiling off-trail), compared to increased use of areas shared with

¹⁴⁹ Northern Rockies Lynx Management Direction -

https://www.biologicaldiversity.org/species/mammals/Canada_lynx/pdfs/US_Forest_Service_Biological_Assessmen t_of_Canada_Lynx.pdf

non-motorized winter recreationists.¹⁵⁰ Winter motorized sports may be particularly invasive to sensitive wildlife such as lynx due to the noise and speed associated with snowmobilers.

The EA asserts that lynx do not avoid forest roads with low traffic volumes and speeds and so are unlikely to be displaced from important habitat, and it restricts its discussion of potential impacts from wheeled motorized use on lynx to the likelihood of direct mortality from vehicle strikes, non-target trapping kills, and illegal shooting (p. 220). For potential impacts from winter OSV activity, the EA limits its discussion to direct impacts of packed snowmobile trails that could increase competition from other carnivores that could access deep snow terrain more easily by using snowmobile-packed tracks and trails. These minimalist discussions with no actual analysis are completely inadequate to evaluate significance of possible impacts of motorized use on Canada lynx.

During summer, areas with high ORV use on roads and trails often have high traffic volumes, with ATVs running back and forth nearly continuously all day long on busy days, causing continual commotion and extreme noise levels. Simply asserting that lynx don't mind low traffic volume roads and trails completely ignores this reality. Likewise, the EA's assertion that accidental trapping or illegal shooting aren't a problem because there have been no recent records of lynx mortality from such causes completely ignores the fact that recreational trappers in Wyoming are not required to report accidental trapping of non-target species, and they frequently don't do it voluntarily. It is somewhat nonsensical to suggest that someone who illegally shoots a lynx, an endangered species, would be likely to report it. The lack of records of lynx mortality from illegal shooting or accidental trapping means nothing.

During winter, there is no discussion whatsoever of displacement of lynx from high quality habitat due to general snowmobile noise and commotion, which can be nearly constant in popular areas. The EA completely fails to consider recent research that has documented increased avoidance of areas heavily used by off-trail snowmobiling.¹⁵¹ Winter motorized sports may be particularly invasive to sensitive wildlife such as lynx due to the noise, speed, and near constant use of many areas associated with snowmobilers.

The EA admits that mapped lynx foraging habitat on the SNF is naturally highly fragmented, especially on the eastern side of the GYE (p. 228), but fails to analyze the cumulative effects of adding additional impacts from summer and winter motorized recreation use.

¹⁵⁰ Ruediger, Bill, Jim Claar, Steve Gniadek, Bryon Holt, Lyle Lewis, Steve Mighton, Bob Naney, Gary Patton, Tony Rinaldi, Joel Trick, Anne Vandehey, Fred Wahl, Nancy Warren, Dick Wenger, and Al Williamson. 2000. Canada lynx conservation assessment and strategy. USDA Forest Service, USDI Fish and Wildlife Service, USDI Bureau of Land Management, and USDI National Park Service. Missoula, MT.

¹⁵¹ Olson LE, Squires JR, Roberts EK, Ivan JS, Hebblewhite M. Sharing the same slope: Behavioral responses of a threatened mesocarnivore to motorized and nonmotorized winter recreation. *Ecol Evol.* 2018;8(16):8555-8572. Published 2018 Jul 30. doi:10.1002/ece3.4382.

Ruedigger et al.¹⁵² evaluated risks to Canada lynx and identified recreational use, non-target trapping, fragmentation and degradation of lynx refugia (ie, secure habitat), and degradation of habitat quality from invasive non-native plant species as key risks to lynx productivity and survival. The USFS must do a complete analysis of the cumulative and potentially significant impacts of these risk factors coupled with motorized recreational use on the SNF.

Wolverines

Wolverines once ranged across the northernmost tier of the United States from Maine to Washington, and south into the Adirondacks of New York, the Rocky Mountains as far south as Arizona and New Mexico, and the Sierra Nevada-Cascade and Siskiyou Mountains as far south as California. Today, the wolverine has been eliminated from all but a fragment of this historic range by the destruction of its wilderness habitat and trapping by European-American settlers. Wolverine populations are known to exist today in the contiguous United States only in the Rocky Mountain regions of Idaho, Montana, and Wyoming, in the Cascade Mountains of Washington, and in the Wallowa Mountains of eastern Oregon. Wolverines within the contiguous United States currently exist as a "metapopulation," or "a network of semi-isolated subpopulations" that "require some level of regular or intermittent migration and gene flow" to maintain genetic viability.¹⁵³

Though the USFS currently classifies wolverines as "no special status", they are a vulnerable species that deserves habitat protection within the national forest system. Heinemeyer 2019¹⁵⁴ – the best available science concerning winter recreation and wolverines – shows that human activity leads to indirect habitat loss for wolverines. While both motorized and non-motorized winter recreation have a significant negative impact on wolverines, the impact of OSV use on female wolverines is of particular concern. It is critically important to protect females in order to ensure the survival of the species and OSV use plays an outsized role in this story. Heinemeyer et al. demonstrated that female wolverines exhibited stronger avoidance of snowmobile use and experienced higher indirect habitat loss than male wolverine habitat selection. While the study showed that wolverines are not fully displaced from their home ranges because of winter recreation, it also showed this use has a significant impact by functionally reducing the habitat available to an animal within its home range. One can infer that OSV use is currently impacting the available habitat available to wolverines on the SNF. The analysis associated with this travel

¹⁵² Ruediger, Bill, Jim Claar, Steve Gniadek, Bryon Holt, Lyle Lewis, Steve Mighton, Bob Naney, Gary Patton, Tony Rinaldi, Joel Trick, Anne Vandehey, Fred Wahl, Nancy Warren, Dick Wenger, and Al Williamson. 2000. Canada lynx conservation assessment and strategy. USDA Forest Service, USDI Fish and Wildlife Service, USDI Bureau of Land Management, and USDI National Park Service. Missoula, MT.

¹⁵³ U.S. Fish and Wildlife Service, Threatened Status for the Distinct Population Segment of the North American Wolverine Occurring in the Contiguous United States; 2013.

¹⁵⁴ Heinemeyer, K., J. Squires, M. Hebblewhite, J. J. O'Keefe, J. D. Holbrook, and J. Copeland. 2019. *Wolverines in winter: indirect habitat loss and functional responses to backcountry recreation*. Ecosphere 10(2):e02611. 10.1002/ecs2. 2611.

plan should examine the current impact as well as options to lessen this impact, and the final plan should ensure that future OSV use on the forest has a minimal impact on wolverines.

Home range is defined by wildlife biologists as "That area traversed by an individual in its normal activities of food gathering, mating, and caring for young. Occasional sallies outside the area, perhaps exploratory in nature, should not be considered part of the home range."¹⁵⁵ It is, essentially, the minimal amount of habitat an individual needs to survive and reproduce. Any loss of this habitat is a threat, and for a species that is as rare as the wolverine, a threat to one individual can be a threat to the entire population. If even one female wolverine on the SNF is unable to reproduce because she has lost habitat to winter recreation, this would be a loss of a significant percentage of the total breeding population of the species in the continental United States.

Although wolverines are rare and few in number, it could be assumed that all suitable habitat on the SNF is currently occupied, as each individual has an extremely large home range. This does not, however, mean that wolverines have habitat to spare on the SNF. Wolverines are extremely territorial and it is unlikely that an individual would be able to establish a new home range, or shift the boundaries of its current territory, on the SNF to compensate for habitat loss from winter recreation.

The EA describes overlap between concentrated OSV use and wolverine maternal and primary habitat across several areas of the forest. All alternatives would impact wolverine primary and maternal habitat at the same rate. None of them adhere to the minimization criteria or give a range of differing overlap percentages per alternative (see Table 104). While wolverines can clearly tolerate some level of winter recreation use within their home ranges — even high levels — it is critically important to ensure that this use is not occurring in particularly high-value wolverine habitat, particularly habitat utilized by females during the denning season.

To minimize impacts to wolverines, the USFS should ensure that designated OSV areas do not comprise a majority of a single female wolverine's home range and that OSV areas and trails are not located in or near denning habitat. For additional information on how the SNF should manage OSV use wolverine habitat to minimize impacts to this species, please see attached *Winter Recreation Planning Recommendations for Wolverine Conservation.*¹⁵⁶

¹⁵⁵ Burt W. H. 1943. Territoriality and home range concepts as applied to mammals. Journal of Mammalogy 24:346–352.

¹⁵⁶ Attachment 6. Winter Recreation Planning Recommendations for Wolverine Conservation.

IX. FAILURE TO ANALYZE AND/OR SHOW HOW SIGNIFICANT THREATS TO WILDLIFE ARE ACTUALLY BEING MINIMIZED IN ALL ALTERNATIVES

When making decisions about motorized roads and trails, the USFS must identify and analyze impacts to high quality wildlife habitats and identify specific strategies for how to minimize impacts as they decide which specific roads and trails will be designated and where to avoid motorized use. The EA does not sufficiently consider sensitivity of wildlife to disturbance and probable or possible displacement that could result from the range and intensity of motorized uses along proposed routes; the effects of each class of use on wildlife habitat integrity including susceptibility to noxious weed infiltration based on vehicle classes for proposed routes (particularly trails); the seasonal needs of key species and effects of the proposed spectrum of motorized uses; and habitat fragmentation affecting wildlife's ability to safely access connected habitats throughout the forest and neighboring lands.

In the EA, the USFS relies on the analysis of ungulate crucial winter range in the SNF LMP, analysis that created exemption areas for OSV use. But the USFS still must clearly demonstrate how the LMP analysis justifies designating areas as open for OSV use that SNF LMP only determined were suitable for OSV use. The USFS now must explain and justify the decision to open crucial winter range exemption areas to OSV use. Unlike forest land management planning, winter travel planning is site-specific and requires the USFS to locate OSV area boundaries and trails in a manner that minimizes disturbance to wildlife and impacts to wildlife habitat. It is not as simple as assuring the reader that the Wyoming Game and Fish Department approved of a similar decision five years earlier. The USFS must demonstrate in the administrative record how the boundaries of OSV areas, or trails, within crucial winter range have been located in a manner that complies with the minimization criteria. For example, the USFS may be able to argue that OSV use on a designated trail within a crucial winter range exemption area meets the minimization criteria because there is scientific evidence showing that ungulates can habituate to predictable disturbances, such as motorized use on a linear route, but we are unaware of any literature that would support an assertion that cross-country OSV travel has a minimal impact on wintering ungulates.

As stated in the 2020 comment on the preliminary EA, the SNF LMP identifies moose as a species of local concern. A number of comments during scoping and prescoping expressed concerns with an increase of off-trail use by snowmobiling in riparian areas where a trail/road exists. One example from the Clarks Fork District is between the Beartooth parking lot and the Pilot Creek parking lot, where documented increases in off-trail exploration has raised concern that this is adding stress, harassing, and potentially displacing moose (and other wildlife) that use (and perhaps depend on) the riparian corridor. Neither action alternative in the EA analyzes this impact or provides any solution or minimization strategy to the issue of OSV trails within riparian zones that also provide critical habitat for wintering moose and other wildlife. The USFS should analyze off-trail restrictions within specific riparian corridors to decrease surprise

encounters with moose and other wildlife and to minimize harassment that may cause unnecessary energy loss, elevated heart rates, other physiological stress factors, and potential displacement from critical habitat. Moose are known to move away from areas of high snowmobile trail density and use when they can.¹⁵⁷ In some riparian corridors, the USFS should also analyze curtailing OSV use altogether. By keeping OSV use only on designated trails in narrow riparian corridors, wildlife may be more likely to become accustomed to more predictable and constrained OSV use which could reduce negative impacts. And obviously, curtailing OSV use in highest impact corridors would minimize impacts to zero.

Many new studies of wildlife migration have been completed and published in the last decade, ranging from understanding the ecological function of "surfing the green wave"¹⁵⁸ to the impacts that development and artificial obstacles¹⁵⁹ have on ungulate migration between seasonal habitats. The SNF provides critical migratory habitat for elk and mule deer¹⁶⁰ moving between summer and winter ranges, including the Clarks Fork, Shoshone, Meeteetse, Dubois and Lander mule deer herds; and the Clarks Fork, Cody, Wiggins Fork, and Muddy Creek elk herds.

Previously, the USFS has emphasized protecting ungulate winter range and parturition areas in the forest. New emerging science, however, is clearly showing that the migration corridors over which ungulates seasonally move to reach winter or summer habitats are also critically important.¹⁶¹ Stopover areas along the migration corridors provide the highest quality forage during migration, and the ability of the animals to time their migration to reach stopover areas when they offer peak nutritional value and to linger there as long as needed is essential for the ungulates' ability to survive and thrive during migration. One study revealed that mule deer spent 95% of their migrating time on stopover areas along their path.¹⁶² Although the SNF LMP identified management areas that could be suitable for motorized use, elk, mule deer, moose, bighorn sheep, and pronghorn use these habitats including for migration. Suitability does not pertain to every square meter, and during travel management planning the USFS is required to assess any significant disruption of wildlife use of habitats, including migration corridors and stopover areas.

¹⁵⁷ Colescott, J. H., and M. P. Gillingham. 1998. Reaction of moose (*Alces alces*) to snowmobile traffic in the Greys River Valley, Wyoming. *Alces* **34**:329–338.

¹⁵⁸ Merkle, J.A., K.L. Monteith, E.O. Aikens, M.M. Hayes, K.R. Hershey, A.D. Middleton, B.A. Oates, H. Sawyer, B.M. Scurlock, M.J. Kauffman. 2016. Large herbivores surf waves of green-up in spring. *Proceedings of the Royal Society B* 283:20160456.

¹⁵⁹ Sawyer, H., M.J. Kauffman, A.D. Middleton, T.A. Morrison, R.M. Nielson, and T.B. Wyckoff. 2013. A framework for understanding semi-permeable barrier effects on migratory ungulates. Journal of Applied Ecology 50:68-78.

¹⁶⁰ Kauffman, M.J., J.E. Meachan, H. Sawyer, A.Y. Steingisser, W.J. Rudd and E. Ostlind. 2018, Wild Migrations: Atlas of Wyoming/s Ungulates. 10-11.

¹⁶¹ Aikens E.O., M.J. Kauffman, J.A. Merkle, S.P.H. Dwinnell, G.L. Fralick and K.L. Monteith. 2017. The greenscape shapes surfing of resource waves in large migratory herbivore. *Ecology Letters* 20:741-750.

¹⁶² Sawyer, H.S. and M.J. Kauffman. 2011. Stopover ecology of a migratory ungulate. Journal of Animal Ecology 80:1078-87.

The EA does acknowledge migration corridors as important wildlife habitat, and identifies them as an issue that must receive detailed analysis:

Whether and to what extent wheeled vehicle and OSV use within the Shoshone National Forest will affect elk and mule deer migration corridors. (p. 252)

But unfortunately, the EA fails to actually accomplish the necessary detailed analysis. Migration corridors have not been formally designated, but extensive research assuredly has documented migration routes on the SNF.¹⁶³ The USFS must identify where motorized road and trail segments may impact elk and mule deer migrations on the SNF, perform a detailed analysis of what impacts those roads and trails may have on animals ability to successfully migrate, and identify specific strategies to minimize impacts, including the option of not designating or closing existing roads or trails where impacts may be too high.

For migratory elk, calving may occur during the early stages of spring migration, when elk begin to move from lower elevation habitat toward distant summer range. Adding stress and displacement of elk from motorized activity to already vulnerable cows with tiny calves, coupled with other factors like predation, clearly rises to the level of potential significant impacts on short- and long-term elk survival.

The EA acknowledges that mule deer in the Clarks Fork, Shoshone, Meeteetse, Dubois, and Lander (South Wind River) herds are all below population objectives due to low fawn recruitment and that they all make long distance migrations seasonally. Again, adding stress and displacement of mule deer from motorized activity to already vulnerable does and fawns, clearly rises to the level of potential significant impacts on short- and long-term mule deer survival. Cumulative impact analysis should also include growing threats of chronic wasting disease to mule deer survival.

Research shows that "...elk avoid trail-based recreation (**with the greatest distance being from ATV riding**), similarly to their avoidance of roads open to motorized traffic on public forests."¹⁶⁴ This research also identifies multiple other studies with similar conclusions:

Our review of the literature revealed displacement of elk from forest roads open to motorized traffic that often exceeded 0.5-1.5 km. Avoidance responses by elk distance to open roads, or to open road density, have been documented consistently and overwhelmingly by > 30 studies conducted during the past 5 decades in forested areas of

¹⁶³ Kauffman, M.J., J.E. Meachan, H. Sawyer, A.Y. Steingisser, W.J. Rudd and E. Ostlind. 2018, Wild Migrations: Atlas of Wyoming/s Ungulates. 10-11, 16, 20-21.

¹⁶⁴ Wisdom M.J, H.K. Preisler, L.M. Naylor, R.G. Anthony, B.K. Johnson, M.M. Rowland. 2018. Elk response to trail-based recreation on public forests. *Elsevier B.V.*: Forest Ecology and Management. 411(2018)223-233. Emphasis added.

western North America. Examples from each decade are Perry and Overly (1977), Lyon (1983), Cole et al. (1997), Rowland et al. (2000), and Prokopenko et al. (2016).¹⁶⁵

When determining whether or not impacts may be significant, both context and intensity of a proposed action must be considered. The USFS must consider both short- and long-term effects for site specific actions in each locale - in other words, for each proposed road or trail segment. The USFS must also consider the intensity, or severity, of potential impacts, including the potential cumulative significant impact of the proposed action coupled with other actions and circumstances. Even if an action is individually insignificant, it may be collectively significant when coupled with other actions or activities.¹⁶⁶ None of this detailed analysis has occurred for impacts of motorized roads and trails on ungulate migration corridors. The potential significance of impacts to migration corridors cannot be denied by simple omission. Travel planning must incorporate relevant ungulate migration science, evaluate the risks of each alternative to the security of migratory habitat for ungulates, and include assessment of the cumulative significance of impacts of all activities and actions that affect every migratory herd of elk and mule deer on the SNF. The USFS must assess the impacts and effects of each road and trail segment plus the intensity of use by each class across all alternatives.

X. FAILURE TO ADEQUATELY ANALYZE (WHEELED) MOTORIZED USE CONFLICT AND IMPACTS

Following USFS instruction, we will limit our proposal comments to new proposals or significant changes presented in Alternative 4. Please refer to all previous proposal-specific comments articulating various concerns beginning in 2015. In general, we continue to feel strongly that the USFS has failed to show fine scale assessment throughout the EA that demonstrates minimization and mitigation of ecological consequences associated with new route proposals across all four alternatives. Maintaining the status quo, Alternative 1, is literally what has been happening for years, with no environmental analysis or strategic planning for a system that actually meets the needs of those who use the motorized system of roads for access to hiking trailheads, horseback riding, and mountain biking; gathering Christmas trees, mushrooms, and firewood; pleasure driving along scenic byways; access to historic destinations and interpretive sites; river access for fishing; access to rock and ice climbing areas; and recreational OHV driving in circles, all while ensuring that natural resources are protected from harm.

¹⁶⁵ Wisdom M.J, H.K. Preisler, L.M. Naylor, R.G. Anthony, B.K. Johnson, M.M. Rowland. 2018. Elk response to trail-based recreation on public forests. *Elsevier B.V.*: Forest Ecology and Management. 411(2018)223-233. ¹⁶⁶ 40 CFR § 1508.27, see https://www.law.cornell.edu/cfr/text/40/1508.27.

Forest-wide Wheeled Proposals

Seasonal Closures

We support the many new seasonal closures proposed across the Forest. These are one of the best and least contentious tools in the toolbox to protect forest resources, from protecting wildlife to preserving road conditions. We continue to have concerns about the Forest Service's enforcement capacity to effectively enforce some of these closures. We expect the USFS will do its best to monitor and adapt to seasonal conditions with regards to lingering calving or wintering ungulates; grizzly bears with cubs within the PCA; nesting raptors; and other species of concern that may be negatively affected by motorized recreation along a route where they could be vulnerable and apply special orders or consider another method to adapt to the ecological shifts that are likely to happen in the face of a changing climate and landscape such as fire or other natural disasters. We also hope the USFS will show a similar nimbleness to adapt these seasonal closures to weather conditions that negatively affect the roadbed integrity in the same manner.

We are especially impressed by the Washakie Ranger District's proposal to implement seasonal closures (open May 1) on 90% of roads and trails. In comparison, the adjacent district has presented far fewer seasonal restrictions despite the higher, longer snowpack, the wetter spring roads, and despite many of those roads intersecting crucial winter range, elk parturition and migration routes. For example, all of the NFSRs south of Dubois in the Warm Springs mountain vicinity intersect MA 5.4, managed crucial winter range, but are open to wheeled vehicles from Jan 1 - Dec 31. The Forest Service should clarify why multiple proposals to implement seasonal closures on these and other roads were deemed unnecessary and dropped from any alternative, or demonstrate how the TAR or minimization criteria considered crucial winter range in its analysis of year round wheeled vehicle routes. We encourage the Forest Service to use this opportunity to consider any additional needed or beneficial seasonal restrictions in this area.

Decommissioned Routes

Alternative 4 proposes decommissioning 11 miles of road across the forest. We are in support of the proposed decommissions, but would find this proposal more meaningful if there were deadlines or priorities for implementation attached. The EA states that not all aspects of the selected alternative may be developed over the course of the project (due to availability of resources, changes in on-the-ground conditions, etc.), and also fails to identify financial resources for these proposed changes. We also note that this proposed eleven miles is in addition to a large number of existing non-system routes that are already prioritized for decommissioning in the LMP directions and desired conditions ."¹⁶⁷ This is another example of why the USFS must disclose and analyze those existing non-system or unauthorized routes in this plan, a requirement we have argued at length in earlier comments.

¹⁶⁷ LMP Roads and Trails RDTR-GOAL-02 and RDTR-GOAL-09

Roads Added to the System

Ten miles of road are proposed to be added to the designated system, primarily to provide access to dispersed camping. As mentioned above, motorized dispersed camping is clearly a cumulative effect of roads and TMP that should be fully analyzed for effects minimization under a full EIS. These roads must be signed open, monitored and effectively closed at their road end to ensure motorized users only travel on signed and designated open roads. Given the design and resource concerns inherent in user-created routes, described in the enforcement chapter of this letter, these road additions require site-specific analysis to properly identify and mitigate resource concerns.

Roads converted to Trail

Alternative 4 proposes to convert 173 miles of existing roads to trails open to wheeled vehicles, with corresponding management changes and associated designation of these routes on Motorized Vehicle Use Maps. Please see Section VII above, p. 39-41, "The USFS fails to analyze the extensive road to trail conversions, or demonstrate compliance with agency directives and the minimization criteria."

Trail expansions

Alternative 4 proposes expanding 22 miles on five discrete motorized trails from 50" to 65". (Proposal WR90). The USFS should provide more information, surveys and site specific analysis for each route considered for expansion, since the impacts of each will differ. The wheeled KMZ layer on the Shoshone's project page categorizes these proposals as requiring groundbreaking construction but no additional details are provided. USFS staff and the District Ranger have reported that 50" ATVs are becoming obsolete, and motorized trails must be expanded to 65" width to accommodate the majority of motorized users. The Forest Service must also then consider and disclose increased traffic as a direct impact of these proposals - not just on the proposed trail, but associated loop routes.

North Zone Wheeled Proposals

Once again, please reference our previous longstanding comments on specific NZ proposals. Worth noting again is our support for the Line Creek Alternative 3 (NZ01) with no new construction; and converting existing loop roads into motorized trails open to all highway vehicles, provided this is legal. This protects habitat and reduces conflicts between the SNF and its private land neighbors. We support the Sulphur Creek and Upper Sunlight gate closure at Winona Camp with administrative access to private inholding beyond that point followed by decommissioning of post inholding user created route that is within Alt 2, 3, and 4. This prevents illegal use and resource damage while providing a destination turn around that is safe for visitors.

South Zone Wheeled Proposals

New motorized trail proposals included in the new preferred Alternative 4 directly conflict with the misleading minimization screening criteria statements asserted in the EA¹⁶⁸. They are concrete examples of how a landscape-level approach to locating and designating motorized trails fails to meet travel planning regulations, NEPA, or the public expectations for this travel management project. The proposed action includes three significant new motorized loop additions that were previously screened out of any action proposals, in addition to three continuing loop proposals. Both of these newly presented proposals require nearly two miles of new motorized trail construction and the public has had no time to visit or review them on the ground. The USFS should review all previous comments specific to these Wind River proposals submitted from 2015-2017. It is discouraging that our organizations' substantive, detailed, proposal-specific comments - informed by valuable historic local input and on-the-ground surveys - appear to be dismissed, forgotten, or entirely disregarded in the proposed action. Our organizations continue to oppose any new motorized loops on the Wind River District based on the existing outstanding motorized trail opportunities, no demonstrated demand for additional motorized loops, and the USFS's demonstrated inability to enforce, maintain, or sign the existing 331 mile road system.

Benchmark IRA and MT14 Additions - WR11, WR78, WR90, WR03, WR63 and FSR961

While we were pleased to see the Bachelor Creek proposals (WR11,WR78) removed from the preferred alternative, the decision to instead propose another previously eliminated route through the same inventoried roadless area (IRA) is even more concerning. We cannot understand the USFS's insistence to add additional motorized access routes across the Benchmark IRA; proposals that would significantly increase traffic through the adjacent Warm Springs Subdivision, through the IRA, and along the Fitzpatrick Wilderness boundary. Please review the special designation chapter (p. 70) for further discussion on this area and related proposals.

Windy Mountain - WR03

Appendix B provides the following description for WR03. "Initially excluded from Alternative 2 and Alternative 3 due to potential impacts to inventoried roadless area characteristics, enforcement issues, and wildlife impacts, particularly bighorn sheep crucial winter range. Re-evaluated under Alternative 4 and determined to have less interaction with Forest resources than WR11." Please review <u>WWA 2015</u>, p. 15-20, to better understand previously described enforcement and erosion concerns. It is important to understand that WR03 was initially

¹⁶⁸ Ea at p. 43

proposed during prescoping to facilitate legal access to FS524. Since then, public access to FS524 was secured through a public easement along the Three Spears Road. The public access to FS524 negates any need for a second loop or *third* access point to the Fitzpatrick Wilderness boundary and the roadless area.

This proposal bisects crucial bighorn winter range for the imperiled Whiskey Mountain herd despite the assertion in the EA that "the Forest Service eliminated from consideration any proposal that overlaps with big game secure habitat, parturition areas, **crucial winter range**, or migration routes with potential impacts to species."¹⁶⁹. The USFS proposes the route be open to wheeled vehicles Jan 1 - Dec 31, failing to follow the simplest of its own mitigation measures referenced in Appendix C (seasonal restrictions).

The EA on page 43 also states "Use conflict, consistent with the travel management regulations (36 C.F.R. §§ 212(b)(3), (4)), was also considered during this initial review. Areas identified as offering high-value non-motorized recreation opportunities consistent with the backcountry aesthetic of the Forest were deemed unsuitable for motorized recreation." Please clarify this statement and explain how it aligns with the proposed action WR03. Does the USFS accidentally mean to reference the management areas decisions made in forest planning?

As with all other proposals, the lack of site-specific information for this proposal and failure to provide the most basic details of a proposal description further hinders public input. It is quite obvious that the trail on the .kmz layer has been hand drawn and is not an accurate representation of an actual route.

Grandy Reservoir - WR08 and WR63

The final EA includes a new proposal to open a closed road to the Grandy Reservoir and construct a new trail along a reclaimed road that currently provides single-track hiking and horseback riding opportunities to local residents. The proposal to open the Grandy road ignores our site-specific comments and photo documentation showing this road as currently open, unsigned and well-traveled. We first reported this discrepancy in 2015 and confirmed it again in November 2021. This reinforces our longstanding concerns that the Forest Service is unable to inventory, sign, or maintain its *existing* route system or accurately update its MVUM accordingly.¹⁷⁰

In addition to previously detailed resource concerns in earlier comments, both new proposals in this area would directly increase use conflict on popular existing non-motorized hiking and horseback trails and impact adjacent landowners in the Upper Warm Springs Lower

¹⁶⁹ EA at p. 43.

¹⁷⁰ As required annually under (36 CFR 212.56). See Wyoming Wilderness Association 2015 and 2016 for WR63 responses and photos.

Subdivision.¹⁷¹ The last minute inclusion of WR03 and WR63 reflects a rushed EA disconnected from the previous proposal-based EIS scoping process.

Warm Springs Mountain Additions- WR07, WR13, WR13

This "large effective motorized loop" is the most significant route construction proposal in the entire travel plan -- about four miles of new construction -- and has been included in every proposed action since 2016. This route has been one of the most highly questioned during all comment periods based on the dearth of details and questionable feasibility, as well as the significant cumulative impacts of the resulting larger motorized loop.

Below is an excerpt from comments submitted on this proposal in 2016.

Proposal to add three segments of trail, creating a loop that leaves from Crooked Creek Lodge, crosses Warm Spring Canyon, and provides increased access to the Wildcat Loop and Stoney Point subdivision (where significant unauthorized motorized use has been documented). Existing conflicts include: Non-motorized recreation, scenic driving opportunities, secure wildlife habitat, cultural resources, species of concern (bats) and wild and scenic river segments.

How many miles of construction are being considered for this proposal? What would it entail? What structures, like bridges, barricades or route guides, will be needed? What is the likelihood of securing the easement necessary to create this route?

Agency Capability. Multiple sections of construction required, FS will need to secure land easement on northern edge. Landslide potential in canyon crossing would require highly specialized engineering expertise.

Resource Concerns. Proposed trail crosses Warm Springs Canyon, a Wild and Scenic Eligible River and divides a large section of secure, effective big game habitat. The proposed trail crosses a spring-fed tributary of Warm Springs Creek at its beginning (WR07) and crosses Warm Springs Creek again in the remote scenic canyon (WR13). This is contrary to standard Best Management Practices, especially for a creek with cultural, ecological and local significance. Is the Shoshone proposing any bridge construction? Adjacent cliffs, canyons and natural bridge should be assessed for bat habitation or roosting.

Enforcement Capability. Proposal rewards illegal use- difficulty enforcing closure adjacent to popular Crooked Creek FS boundary was the subject of a Wind River District-led field trip. The beginning of this noted illegal use is 100 yards from one of the most popular FS portals, adjacent to the main road and highly visible, and should be easily enforced with any concerted law enforcement effort. If the Forest can not effectively close this highly visible trespass adjacent to the arterial

¹⁷¹ The USFS has failed to contact or engage stakeholders on these proposals

road, how does it propose to enforce compliance along the rest of the route? Multiple illegal or old timber roads off of 5291a will require barricading and patrol. Steep trail in alpine meadows will undoubtedly result in braided parallel routes without significant barrier implementation. Proposed loop will increase motorized access to the Wildcat Loop (SR545 - 554), the area where WWA documented more unauthorized routes and more illegal motorized use than anywhere else on the Forest.

Scenic Landscape and Soundscape Impact. WR07 follows a steep, illegal trail that crosses a creek before cutting across the high alpine meadow of Warm Springs Mountain. The first scene a visitor to the Shoshone National Forest would encounter would be multiple parallel eroding routes, and likely off-trail motorized use on a scenic mountain summit. Please describe how this PA meets scenic objectives identified in the Final Forest Plan. The route is easily visible on the scenic landscape enjoyed by Warm Springs Campground and fishermen, affecting non-motorized recreation and scenic objectives.

Cultural Resources. The proposed crossing across the Warm Springs Canyon is of natural and historical significance: several hundred yards of tie hack plume still hang to canyon wall along this section of creek eligible for Wild and Scenic River designation. Downstream of the crossing tie hack flumes continue under a natural geologic bridge, a local area attraction. The historic Union Pass Rd, connecting Dubois to Pinedale and the Shoshone and Bridger-Teton National Forests, is a "point of interest" popular for scenic driving tours."¹⁷²

This proposal has since been presented in three subsequent public comment periods, without any response to these repeatedly submitted questions or comments. This EA, however, is the *first* comment period where any USFS official has mentioned that analysis or feasibility would occur at a later date. The Wind River District Ranger articulated this new approach in a recent email.

"With respect to the Warm Springs loop of concern, site-specific review, analysis, and design has not occurred. Our Interdisciplinary Team reviewed and analyzed it at the forest scale. The proposal remains an option that the Forest would like to proceed with provided that during the ensuing site-specific review and analysis, issues of significance are not identified. That process will include public engagement (through appropriate project-specific scoping and comment periods) and compliance with all necessary regulatory processes."¹⁷³

It is unconscionable that the USFS would solicit hundreds of site specific comments on this proposal, over six public comment periods, only to punt the proposal's confirmed feasibility or possible future comment opportunity to *after* the seven-year planning process. Regardless of the need for site-specific analysis, the impacts of this proposal are particularly well suited to the "landscape level" analysis proposed in the EA. Recent public comment highlighted the

¹⁷² Wyoming Wilderness Association, 2016.

¹⁷³ Attachment 7. Warm Springs Mountain Correspondence November 12, 2021.

implications of increased access to NFSRs that currently have no public legal access. How has the landscape-level analysis considered the direct effects of increased traffic from the high traffic Union Pass FSR to the entire loop of *previously inaccessible* FSRs? Has this landscape level analysis calculated the total loop mileage to be considered? How has the fragmentation of secure elk habitat and the unique impact of motorized loops been considered in the landscape level analysis? How have the additional miles of enforcement and area requiring FS patrol been considered in the EA?

No Man's Trail - WR04b

This new proposal in Alternative 4 would add 1.5 miles of new motorized trail construction. It is described in Appendix B."Proposal covers two separate additions that would connect NFSR 732 with MT 11. One route follows the "J" snowmobile trail; a separate trail is a user-created route, with feasibility considered in the context of appropriate mitigation measures. The user-created was dropped from further consideration due to hydrology and erosion risks. The overlapping route with the OSV trail will be further evaluated through on-the-ground site-specific reviews to consider feasibility and appropriate mitigations. (Otherwise referred to as the No Mans Trail.) Initially excluded from Alternative 2 and Alternative 3 due to interaction with hydrology features and potential effects to aquatic species. Re-evaluated in 2020 and determined that on-the-ground analysis and mitigation measures may mitigate interactions and lessen effects to an acceptable level. Further site-specific analysis required. The WR04B proposed trail is included as a proposal under Alternative 4 and will be evaluated in greater detail. Carried forward with minimization criteria applicable per 36 C.F.R. §§ 212.55(b)(1)-(5). Apply minimization criteria tools and options under Appendix C." We are unable to provide additional comment with the information provided, but object to a new NFST being approved or designated in this EA if it has not been evaluated for feasibility.

Bear Creek - WR26

Previous proposals to address known significant resource concerns on this historic access route to the Washakie Wilderness (FSR501) included decommissioning the route, or making the road 65" or less. The proposed action in alternative 4 suggests redesignating the road as a trail open to all-wheeled vehicles, presenting a no-change solution to a known and quite substantial resource concern. This route impacts incredibly important cutthroat, grizzly bear and elk habitat and deserves a strategic solution involving impacted stakeholders.¹⁷⁴ We do not have a solution to propose but are puzzled as to why the USFS hasn't considered other proposals including extending a seasonal closure until after snowmelt (June 1 at earliest), or any attempt at minimal repairs. (Even one or two hand dug drains would greatly improve known resource concerns on this trail). Other reasonable proposals to evaluate should include closing the road at the Bear

¹⁷⁴ The USFS has not contacted the East Fork Grazing Association or Bear Basin Outfitters on this proposal or notified them of comment opportunities since 2017.

Creek ford 1.5 miles from the wilderness boundary or at other logical earlier points. We are opposed to the WR71 proposal that would compound known resource concerns at the Bear Creek crossing and increase human-grizzly motorized dispersed camping conflicts along the wilderness boundary. The impacts of motorized dispersed camping is a cumulative effect of roads and trails that should be analyzed under an EIS.

WR90 - WR District - Wide Trail Expansions

WR90 proposes to convert the Wind River District's five existing motorized trails MT10-14 for a total of 22 miles of NFST <50" trail to NFST open to 65"vehicles. As outlined in the Inventoried Roadless Area section, MT14 should not be expanded for any reason until the FS is able to provide a record of designation for this motorized trail. The FS must provide more information, surveys and site specific analysis for each route considered for expansion, rather than a lump proposal. The wheeled KMZ layer on the Shoshone's project page categorizes these proposals as requiring groundbreaking construction but no additional details are provided. FS staff and the District Ranger have reported that 50" ATVs are becoming obsolete, and motorized trails must be expanded to 65" width to accommodate the majority of motorized users. The Forest Service must also then consider and disclose increased traffic as a direct impact of these proposals - not just on the proposed trail, but associated loop routes.

XI. SPECIAL DESIGNATION AREAS

High Lakes Wilderness Study Area

We appreciate that the USFS apparently took seriously our comments that the data and information it presented in the preliminary EA was inadequate to support an assertion that OSV use levels and patterns in the High Lakes Wilderness Study Area (WSA) are similar today to what they were in the early 1980s when the WSA was designated.¹⁷⁵ Unfortunately, the USFS now appears to have thrown up its hands on attempting to establish a factually based and defensible 1984 baseline for intensity and location of OSV use. Instead, the EA advances a flawed and novel interpretation of the Wyoming Wilderness Act that attempts to render inoperative Congress' explicit limitation that OSV use be permitted to "the same manner and degree as was occurring prior to" 1984.¹⁷⁶ The USFS cannot continue to ignore the significant changes in OSV technology and corresponding changes in use – particularly geographical extent of use – over the past four decades that necessarily impact wilderness character and must guide this planning process.¹⁷⁷ We are disappointed that the agency continues to be focused on

¹⁷⁵ See EA p. 164 (admitting that attempt to identify manner and degree of OSV use in 1984 was frustrated by inconclusive data that utilized different methodologies).

¹⁷⁶ Pub. L. 98-550 § 301(c)(4).

¹⁷⁷ As just one example of the rapidly evolving capabilities of timber sleds, please see

https://www.youtube.com/watch?v=R_byTMZY0xw ("It's just crazy because we're up there yesterday climbing hills, going places that nobody ever thought a machine could make it without a helicopter, and we're doing in it like 30 seconds.").

sanctioning the effectively unregulated status quo for OSV use in the WSA rather than seriously considering more balanced alternatives that would better satisfy the letter and intent of the Wyoming Wilderness Act, as well as the agency's other substantive and procedural legal obligations, including but not limited to compliance with the minimization criteria.

Rather than addressing the data gaps and interpretation errors we raised in our comments on the preliminary EA, the USFS now advances two novel, flawed, and internally inconsistent interpretations of the Wyoming Wilderness Act: (1) that the "manner and degree" language provides only a floor – not a ceiling – on OSV use,¹⁷⁸ and (2) that the "manner and degree" inquiry "ultimately distracts from the core consideration [of] whether [the WSA] retains the wilderness characteristics existing at the time of establishment."¹⁷⁹ The USFS makes the puzzling statement that the legislative history supports these interpretations.¹⁸⁰ It points to no specific legislative history language in support, and fails to explain how or why – under fundamental rules of statutory interpretation – it can rely on ambiguous legislative history to effectively render meaningless explicit statutory language. Instead, it advances a nonsensical red herring that, if the "manner and degree" language were actually given effect, it could require use of the heavier, noisier, and more polluting snowmobiles that existed in 1984.¹⁸¹ This bizarre suggestion actually illustrates the critical point that the EA continues to avoid: that snowmobile technology and capability has changed dramatically since 1984. In any event, the USFS's suggestion that the Wyoming Wilderness Act somehow obligates it to require the entire WSA be open to cross-country OSV use¹⁸² ignores the express limitations included in the Act (both the "manner and degree" language and the requirement to maintain wilderness character as it existed in 1984) - which necessarily require an examination of the 1984 baseline. Indeed, in an analogous situation under the Montana Wilderness Act, the Ninth Circuit Court of Appeals rejected an argument that similar statutory language imposed a floor that prevented a decision to reduce motorized use in a WSA.¹⁸³

Even setting aside how the USFS effectuates the "manner and degree" language, establishing an accurate baseline that encompasses OSV use at the time of WSA designation is required. Indeed, in an analogous situation in a WSA designated under the Montana Wilderness Act, the Ninth Circuit Court of Appeals held that an obligation "to maintain wilderness character as it existed" at the time of designation necessarily required maintaining similar levels of motorized use – not just the area's physical potential for future wilderness designation.¹⁸⁴ The Wyoming Wilderness

¹⁷⁸ EA p. 163 ("the Forest Service cannot restrict snowmobiling to less than the manner and degree as was occurring in 1984").

¹⁷⁹ *Id.* p. 164.

¹⁸⁰ *Id.* pp. 163-164 (the only specific passage from the legislative history cited in this section of the EA – a quote from Senator Simpson that "some nonwilderness activities will be allowed" during the study period" – does not address or support the Forest Service's novel interpretations).

¹⁸¹ *Id.* p. 164.

¹⁸² See, e.g., EA p. 175 (suggesting that Alternative 3 would be inconsistent with the Wyoming Wilderness Act and congressional intent).

¹⁸³ See Russell Country Sportsmen v. U.S. Forest Serv., 668 F.3d 1037, 1042-43 (9th Cir. 2011) (explaining that the Montana Study Act "plainly mandates preservation of a base level, but does not prohibit enhancing the area's wilderness character above that level [by reducing motorized use").

¹⁸⁴ See Mont. Wilderness Ass 'n v. McAllister, 666 F.3d 549, 555-56 (9th Cir. 2011).

Act includes a nearly identical requirement "to maintain [the WSA's] *presently existing* wilderness character."¹⁸⁵ The USFS cannot comply with this obligation absent an accurate assessment of how OSV use was impacting wilderness character in 1984 as a basis for comparison. Indeed, Congress further modified the obligation to maintain 1984 wilderness character in the High Lakes WSA with the explicit limitation that OSV use be limited to "the same manner and degree as was occurring in" 1984.¹⁸⁶ In other words, Congress directed that an examination of changes in intensity and location of OSV use be the barometer for maintaining the wilderness character of the WSA.

In place of any legitimate attempt to identify OSV use levels and locations in 1984 and how they impacted wilderness character to formulate the necessary baseline for "presently existing wilderness character," including "manner and degree" of OSV use, the EA provides an entirely unsupported and high-level qualitative ranking of "Extrapolated 1984 Wilderness Study Area Wilderness Characteristics."¹⁸⁷ It is unclear what data sources the USFS used to arrive at these extrapolated rankings. Amazingly, they do not appear to address or account for OSV use at all, with the lower "moderate" ranking for solitude relying on high use and visitation during summer months when the Beartooth Highway is open.¹⁸⁸ This is a similar error to that made by the USFS in its unlawful attempt to authorize helicopter skiing operations in the Palisades WSA, which is also governed by the Wyoming Wilderness Act: "While the FEIS contains a paragraph discussing the 1984 wilderness character, ... it is very general, contains no specific discussion of motorized use in 1984, and most importantly, is never referred to again as a benchmark for comparison."¹⁸⁹ In short, the USFS has gone from making some attempt – albeit a flawed one – to establish a 1984 baseline for OSV use and wilderness character in the preliminary EA to no attempt to do so. Neither approach is sufficient to comply with the law or arrive at a balanced and defensible travel management plan for the WSA.

Absent an accurate baseline, it is impossible to gauge the accuracy of the EA's analysis and ultimate conclusion that wilderness character has not diminished over time.¹⁹⁰ The agency's blunt-instrument qualitative assessment ignores the well-established point that increases in motorized non-conforming uses degrade opportunities for solitude and that the Wyoming Wilderness Act does not permit diminishment of 1984 wilderness character. The EA also claims that reliance on the 2013 wilderness evaluation is warranted because the USFS has not seen major changes in use since that time.¹⁹¹ However, the agency provides no data or information supporting this assertion, and given rapidly evolving OSV technology, it is probable that use patterns have changed over the past 8+ years since the evaluation was conducted.

¹⁸⁵ Pub. L. 98-550 § 301(c) (emphasis added).

¹⁸⁶ Pub. L. 98-550 § 301(c)(4).

¹⁸⁷ EA p. 168 Table 81 (ranking natural integrity, apparent naturalness, and opportunities for primitive recreation experience "high" and solitude "moderate").

¹⁸⁸*See* EA p. 168.

¹⁸⁹ Greater Yellowstone Coal. v. Timchak, 2006 U.S. Dist. LEXIS 85067, at *8 (D. Idaho Nov. 21, 2006).

¹⁹⁰ See, e.g., EA p. 172 (statement that factors including changes in technology and increases in users have not diminished wilderness character, as documented through the 2013 forest plan revision process).

¹⁹¹ EA p. 173.

Relative to an accurate baseline, the USFS also must demonstrate that it has met the mapping directives for the High Lakes WSA outlined in the 2015 LMP Record of Decision (ROD). The ROD directs the USFS to "Acknowledge that there has been a significant delay in complying with the 1972 and 1984 statutory requirements to complete maps and legal descriptions of Dunoir Special Management Unit and High Lakes Wilderness Study Area and make a commitment to complete the work as soon as the Forest is funded to do so and is practicable." (B-5, p. 26). The attached objection further outlines the congressional instructions for legal descriptions and maps for congressionally-designated areas. The USFS has yet to confirm these requirements have been met and must do so before approving any related travel planning decision.¹⁹²

The EA's faulty analysis is further frustrated by an inadequate range of alternatives for the WSA, which violates NEPA's requirement to analyze a range of reasonable alternatives.¹⁹³ As an initial matter, one alternative should designate none of the WSA for OSV use to provide a more accurate baseline for analysis and reflect the likelihood that the limited OSV technology of the early 1980s mean that OSVs were not accessing significant portions of the WSA. Another alternative should limit OSV use in the WSA to established trails to account for the high likelihood that early 1980s OSVs were generally constrained to those routes. We are proposing this alternative now – limiting OSV use in the WSA to established trails – as an opportunity for the Forest Service to analyze and consider an alternative that more accurately reflects that early 1980s baseline. It can and should be assumed that snowmobiles in 1984 were physically incapable of travelling off established routes and traversing the more inaccessible terrain within the WSA. Given the clear limitation in the Wyoming Wilderness Act, it is entirely reasonable and consistent with the statute not to designate portions of the WSA for OSV use or to limit OSV use to the established trails.

While Alternative 3 captures some of our earlier recommendations not to designate for OSV use portions of the WSA with terrain too rugged for available OSV technologies of 1984, the agency should further refine this alternative to ensure it reflects all the terrain that was functionally unavailable for OSV use in the early 1980s, as well as any particularly sensitive areas within the WSA or areas that are facilitating trespass into the adjacent designated Wilderness. Each of these alternatives should also include an April 30 season close date that helps minimize – rather than exacerbates, like the current proposed June 15 close date – conflicts with backcountry skiers and diminishment of their opportunities for primitive recreation during a limited window of time, safety concerns with plowing operations, enforcement issues, and impacts to wilderness character and potential due to low snowpack and increased likelihood of tracks being left on the sensitive high-elevation landscape. Ultimately, the USFS can and should adopt one of these more balanced alternatives for the WSA.

Because the USFS's lack of an accurate baseline and impacts analysis, inadequate range of alternatives, and proposed action/preferred alternative for the WSA remain deeply flawed and

¹⁹² Attachment 8 . Hocker Objection on LMP

¹⁹³ 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1502.14.

inconsistent with the Wyoming Wilderness Act, the agency must go back to the drawing board and should do so as part of preparing a full EIS.

IRAs and Designated Wilderness

Previously submitted comments detailing the need to consider effects to designated IRAs, wilderness, and wilderness study areas appear to have gone unaddressed in both drafts of the EA.¹⁹⁴ Both drafts of the environmental analysis have proposed almost two miles of significant new 65" NFST construction through the Benchmark IRA, as well as expanding the width of MT14, a contested 50" motorized trail that divides the IRA from the Fitzpatrick Wilderness. All associated proposals to create additional motorized access and a large motorized loop to the otherwise low use NFST would significantly increase OHV traffic in the IRA and along the wilderness boundary and directly affect wilderness character and potential for this area.

Proposals that would substantially alter the undeveloped character of an IRA or a potential wilderness area are considered a class of action normally requiring an EIS.¹⁹⁵ Although construction of motorized trails has historically received less scrutiny than road construction in IRAs, the USFS's loose exchange of roads and trails in this plan implies a motorized trail should trigger the same level of analysis. Well-documented OHV enforcement concerns in this area suggests that the impacts of a newly constructed NFST would cause significantly more impact to the wilderness character of the IRA than a road. The Windy Mountain and Bachelor Creek proposals alone warrant an EIS rather than EA.

The Benchmark IRA was considered for recommended wilderness in the forest planning process. The area borders the Fitzpatrick Wilderness, is greater than 8,000 acres, and rated high in many categories in Appendix C potential wilderness evaluation. When considered in combination with the Warm Springs Mountain Roadless Area and its border with the Fitzpatrick Wilderness, the Benchmark IRA's wilderness potential is even more notable. The Benchmark IRA was recommended for wilderness by many organizations and individuals during forest planning as recently as 2009. The proposal to significantly increase OHV traffic in this area would certainly affect any future wilderness potential and should be analyzed accordingly. As we've outlined in almost all of our comments, the proposals to create additional motorized access points, construct new loop opportunities, and widen MT14 would significantly increase OHV use in this area. All of these proposals would conflict with existing popular and historic non-motorized recreation, the wilderness potential of the area, and directly affect the adjacent designated wilderness. Proposals to increase OHV traffic to this wide open roadless area at nearly 10,000 feet ignore documented enforcement concerns in this IRA, disregard BMPs, and ignore

¹⁹⁴ Wyoming Wilderness Association, 2016 at page 22

¹⁹⁵ 36 CFR § 220.5(a)(2).

recommendations from the SNF's own Enforcement and Compliance Working Group.¹⁹⁶

Relative to the Benchmark IRA, it is unclear why closures to support MT14 were not included in any action alternative. It is also unclear why two proposed additions to this trail - proposals that should have dropped by the SNF's own description of its screening criteria on page 43 - were included in both of the EA's preferred alternatives. Appendix B notes that proposals to close MT14 were not considered because of 'no known resource issues', yet a blasting operation was attempted during the height of the 2021 fire season to address resource issues" on MT14. ¹⁹⁷ WR73 was proposed in the 2020 preliminary EA to "address resource concerns" on MT14, but the final EA dropped the proposal and insteads proposes increasing traffic on this trail with proposal WR90. The USFS therefore has provided no justification for excluding proposals to close this trail to address known resource concerns. The USFS should address the inadequate range of alternatives and its responsibility to protect the resources and wilderness character of the inventoried roadless area by including at least one action alternative that closes MT14 and an alternative that does not include any additions to or expansions of this trail.

Separate but relatedly, we have submitted multiple comments since 2016 requesting clarification on the history of the designation of the MT14 motorized trail. Local accounts have raised questions regarding how and when this route along the wilderness boundary became a motorized trail. The USFS has failed to respond to submitted comments on this issue in any capacity or subsequent drafts. In summer of 2021 the USFS scheduled blasting operations on this contentious and highly debated trail in the height of fire season. The blasting operation to address known resource concerns was conducted under a categorical exclusion with no opportunity for public comment. Upon public protest and further inquiry the USFS confirmed it is unable to produce any history, public record, or public comment opportunity for designating MT14 as a motorized trail.¹⁹⁸ The USFS must provide a public record of the designation of this trail in accordance with the requirements of the Travel Management Rule, including the minimization criteria, before proposing any additions or expansions through this travel plan, or any other categorical exclusions.

Illegal motorized use has also been documented extending well beyond SR600 into the Benchmark IRA¹⁹⁹. We request an update on what monitoring or infrastructure efforts have been made here since concerns were documented in 2016. We again request that the preferred alternative include a proposal to close SR600 at its origin from Wildcat Loop, rather than dead-ending at the IRA boundary (as proposed in WR55) where illegal motorized use will continue into the IRA.

¹⁹⁶ Reference <u>Wyoming Wilderness Association 2015</u>, pages 15-20 for photo examples of illegal motorized use stemming from WR3 proposed in the Inventoried Roadless Area.

¹⁹⁷ Attachment 9. MT14 Comments Submitted by the Wyoming Wilderness Association, July 2021

¹⁹⁸ Attachment 10. MT14 Response from Wind River District Ranger regarding MT14 designation

¹⁹⁹ <u>Travel Monitoring Report</u>, Wyoming Wilderness Association, 2016.

Given the known resource concerns on MT14 and known enforcement concerns in the Benchmark IRA, and the lack of public record for designating MT14 as a motorized trail, the preferred alternative should, at a minimum, exclude any additional motorized routes in the IRA or any expansions of MT14. (WR90, WR11, WR73, WR3, WR08).

XII. ENFORCEMENT, UNAUTHORIZED ROADS, AND COMPLIANCE

Enforcement and Illegal Motorized Use

As previously noted in this comment letter, our organizations collectively and individually have submitted comments at every opportunity since 2015, including 2015 pre-scoping comments, 2016 pre-scoping comments, 2016 scoping comments, 2017 supplemental scoping comments, and 2020 preliminary EA comments. Since the beginning of this travel planning process, we have at every opportunity highlighted the failure of the USFS to effectively enforce the existing motorized system on the SNF. Because the USFS has failed to remedy the enforcement deficiencies we identified in earlier comments, we hereby incorporate all of our previous comments on this topic by reference, request that the agency review them again, and expect that they will be included in the project record.

We briefly reiterate that the USFS must consider the effects of proposed actions on its ability to enforce the entire existing and proposed system of roads and trails on the forest. NEPA requires the agency to take a hard look at the impacts of illegal motorized use on forest resources and the likelihood of illegal use continuing or expanding under each alternative. To date, the USFS has refused to create an effective enforcement plan or to analyze the many miles of illegal trails and roads currently being used across the SNF. Lack of enforcement is a pervasive problem that concerns both motorized and non-motorized users, and it must be addressed. The USFS's obligation to enforce the existing system and to effectively and permanently close non-system routes is defined in the TMR, LMP, and previous NEPA decisions. However, the USFS's ongoing struggle to effectively enforce the existing designated motorized system and to effectively close and reclaim illegal routes is a reality that underlies all of the current travel planning efforts, has on-the-ground direct, indirect, and cumulative impacts, and must be analyzed.

While we agree that having accurate maps of the legal motorized system is important, so that law-abiding forest users know where and when they are allowed to enjoy motorized recreation, claiming that creating a map will magically achieve effective enforcement is laughable. Yet that, and that alone, is precisely what this EA offers:

This approach will also lead to effective enforcement. The MVUMs and OSVUMs will govern motorized use on the Forest, allowing the public a clear description of routes open
to wheeled vehicle use when, and trails and areas open to over-snow vehicle use when. Law enforcement officers will be able to enforce these provisions consistent with subpart A of 36 C.F.R. part 261, rather than through subpart B and the confusing array of special orders. This effective system will ensure that use occurs where it is authorized; if and when it occurs outside of those appropriate areas, law enforcement will have an efficient and effective tool in the MVUMs and OSVUMs to both educate and appropriately respond to any unauthorized use.²⁰⁰

This is akin to claiming that having an accurate highway map will lead to effective enforcement of speed limits, rules against driving while impaired, etc. This comment also ignores the fact that the USFS has an MVUM for the SNF and has had this enforcement tool for many years, yet the existence of the MVUM has not eliminated the enforcement concerns that have dominated public comment throughout forest planning and travel planning.

In addressing the Issue of enforcement, the EA provides the following:

1.6.7 Enforcement and Unauthorized Use. Enforcement of unauthorized motor vehicle use, including off-road and off-trail use, occurs on the Shoshone National Forest. Unauthorized use has the potential to cause resource degradation, increased user conflicts, and decreased safety for nonmotorized users. The Shoshone National Forest consistently monitors its routes open to public motor vehicles for appropriate use. Once an alternative is chosen and decision is signed, MVUMs and OSVUMs will be released to the public reflecting and will indicate appropriate vehicle class, and seasonal limits of use. Future monitoring, partnerships, and education efforts offer effective and integral means of addressing unauthorized use.

This response to an overriding issue central to travel planning is especially concerning for two reasons. One, claiming that future monitoring and partnerships will offer an effective means to address unauthorized use is disingenuous at best. The EA fails to mention existing efforts of this kind that have been largely ignored. For example, the SNF's Enforcement and Compliance Working Group spent six months producing recommendations that have been ignored in this EA and elsewhere.²⁰¹ The SNF has not provided any update on how or if those recommendations have been utilized or if any additional enforcement or infrastructure efforts have been made since. Many of the proposals in the EA go directly against recommendations and observations made in that report. The Travel Monitoring Report produced by conservation partners at the SNF's own suggestion included site-specific documentation submitted by dozens of individuals demonstrating areas of known enforcement concerns and infrastructure needs. To our knowledge

²⁰⁰ EA at p. 29

²⁰¹ Attachment 11. Final Recommendations from the Enforcement and Compliance Working Group

the USFS has not utilized or addressed any of the enforcement issues or infrastructure needs documented in that report, and the EA ignores the conclusions and recommendations made therein. As one example, that report in 2016 photo-documented the need for a closed sign or closure of any type on the Grandy road to reflect the closure shown on the MVUM. That issue has still not been addressed in 2021 and the road remains open and well-travelled with no signage or indication of closure. The EA includes new proposals that ignore the important on-the-ground discrepancies documented in that report that are essential to understanding the impacts of proposals like WR63 and WR08. The USFS can not and should not claim future monitoring or partnerships will address unauthorized use if they have already demonstrated that those monitoring and partnership efforts will be ignored.

Two, the EA's refusal to even acknowledge that enforcement is an issue worth addressing is a serious departure from earlier planning efforts and does little to inspire public confidence. Throughout the earlier stages of travel planning, travel management leadership openly acknowledged and shared the same concerns as the public regarding motorized enforcement and compliance. This was evident in the earlier purpose and need statement that "An additional need of equal importance is to ensure or improve compliance and accountability on the existing road and trail system," as well as the enforcement and compliance working group initiative. The need for enforcement and compliance did not override the USFS's intention to add motorized loops in earlier planning efforts, but the need was at least acknowledged. Earlier comments highlight this past approach:

Supervisor Alexander held a motorized use compliance summit in February 2016, which led to the formation of a working group in March. We participated in the summit, designated a representative to serve on the working group, and fully participated in every meeting. At the compliance summit, we were heartened to hear Supervisor Alexander explicitly state that the SNF would not add new motorized roads or trails to the existing system until the Service has gained effective control of illegal use and can deal with resource damage that is occurring from illegal use, improperly placed legal roads, and inability to adequately maintain the current system. Unfortunately, that resolve is only minimally expressed in the Purpose and Need statement or in the Proposed Action for the travel plan.²⁰²

The refusal to acknowledge enforcement capabilities or concerns anywhere in the EA, and the newly entrenched position that enforcement is not and will not be a concern on the Shoshone National Forest, is frankly alarming. It illustrates a serious disconnect between the on-the-ground reality and overwhelming public comment and assumptions from previous planning efforts. We reiterate that the USFS can not claim the EA is informed by the earlier public comment process,

²⁰² Sierra Club comments, 2017

including public field trips focused on enforcement concerns, if those earlier assumptions and public comments are not reflected in this EA.

Proposals to Convert Illegal, User-created Routes to System Roads or Trails

The EA correctly notes that the motorized road and trail system must be consistent with the LMP and the 2005 TMR.²⁰³ But converting illegal, user-created roads to NFSRs or NFSTs as proposed in the EA directly conflicts with this LMP goal:

Resource impacts from use of unauthorized motorized routes are **eliminated**, **along with the unauthorized route**. (RDTR-GOAL-09, emphasis added).²⁰⁴

Since illegal roads by their very nature cannot have not been subject to travel analysis, they cannot be converted to become legal roads or trails without violating the requirements and spirit of subpart A of the TMR. Please review our comments in Section IV, Subpart A above. To fulfill its duty under subpart A of the TMR, the USFS must still demonstrate how it meets its substantive duties under the rule. Simply converting illegal user-created tracks and trails into legal roads or trails absolutely cannot be done to avoid the application of the minimization criteria.

Additionally, the conversion of illegal roads to system roads or trails (for example, WR7, WR13, WR04b ²⁰⁵) will allow serious environmental damage to continue. By their very nature, illegal user-created roads and trails have never been assessed by a qualified engineer, were not constructed to any standards, and often cause significant resource damage including improper water drainage and runoff, erosion, stream sedimentation, damage to sensitive vegetation, etc. Their unplanned placement threatens cultural resources, native vegetation, stream hydrology, water quality, and critical habitat for wildlife. Furthermore, the act of rewarding illegal behavior of traveling off-road by transforming those same illegal tracks into official USFS roads will only encourage more off-road illegal traffic, and will set a harmful precedent that will be impossible to pull back. During every public comment period since 2015, the public has repeatedly requested that the USFS not legitimize any illegal, user-created routes, and this best practice was also recommended by the SNF collaborative Enforcement and Compliance Working Group. Yet again, we request that the USFS review **all of the comments** received during this long process and acknowledge that the public does not want illegal roads to be "grandfathered" into the legal system, for a variety of reasons.

An accurate inventory of the entire current collection of motorized roads and trails on the SNF, including illegal, user-created roads and trails, is an essential first step to developing a coherent,

²⁰³ EA at p. 12

²⁰⁴ EA at p. 12

²⁰⁵ EA Appendix B

comprehensive, and strategic motorized travel system. This approach is consistent with the USFS's duty to address impacts, in particular cumulative impacts, and to determine those impacts' significance.²⁰⁶

Wilderness Snowmobile Encroachment

In March of 2021, eight snowmobilers from Minnesota and Wisconsin had to be rescued from Granite Lake within the Absaroka Beartooth Wilderness by the Wyoming Park County Search and Rescue team. These men were issued citations by USFS law enforcement as no motorized recreation is allowed within designated wilderness. These snowmobilers were at least two miles from a non-wilderness access point. They ran out of gas which incited the rescue and alerted the authorities to their illegal activity.²⁰⁷ Trespass into wilderness from areas open to OSV use (over 500,000 acres of the SNF in all four alternatives) is more common than is reported and is unlikely to be witnessed by the very few SNF law enforcement officers. In the EA, the USFS fails to demonstrate how it will minimize these types of violations. Establishing manageable boundaries for areas open to OSV use and identifying and implementing effective public notification strategies about those boundaries would support enforcement, public safety, and resource protection. Creating strategic small areas not designated for OSV use as suggested above for Breccia area and East/West Angle area on Togwotee Pass where the proximity of the road to the Wilderness Boundary has historically encouraged trespass is another management approach that would meaningfully minimize use conflict and Wilderness encroachment.

In conclusion, thank you in advance for considering and responding meaningfully to our comments. We appreciate the opportunity to share our grave and extensive concerns about the EA for the SNF TMP, and we sincerely hope the USFS will step back and develop a full EIS that corrects the many deficiencies we have pointed out in the EA, and that includes substantive, site-specific analysis of proposed changes. As always, please do not hesitate to contact any of us if you have any questions about our concerns, or would like more information.

Signed,

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²⁰⁶ 40 C.F.R. § 1508.27

²⁰⁷ https://www.powelltribune.com/stories/eight-snowmobilers-rescued,29498

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