



September 25, 2020

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

Submitted via email to [mark.foster@usda.gov](mailto:mark.foster@usda.gov)

Dear Mr. Foster,

I appreciate the opportunity to provide comments with regard to the Shoshone National Forest Travel Management Plan Preliminary Environmental Assessment (EA) on behalf of Winter Wildlands Alliance. Winter Wildlands Alliance (WWA) is a national non-profit, whose mission is to promote and protect winter wildlands and quality non-motorized snowsports experiences on public lands. Our alliance includes 34 grassroots groups in 16 states, including Togwotee Pass Backcountry Alliance, and has a collective membership exceeding 130,000.

We have been deeply engaged in this travel planning process since its start in 2015. We were also active participants Shoshone Forest Plan revision. Since 2015, WWA has submitted 5 formal comment letters to the Shoshone National Forest (SNF) regarding the travel management plan, in addition to 3 winter travel proposals submitted response to the Forest's request for this specific type of public input. To summarize, our formal participation in this process thus far has included the following:

- March 11, 2016 – letter outlining the forest's responsibilities under Subpart C of the Travel Management Rule and application of the minimization criteria
- September 22, 2015 – pre-scoping comments
- June 24, 2016 – scoping comments
- January 2016 - 3 proposals in response to SNF request for public input
- December 5, 2017 – revised PA scoping comments
- August 6, 2020 – letter requesting the SNF delay publication of the Preliminary EA due to the covid-19 pandemic

In addition to these comment letters we have attended several public meetings and webinars, met with both Supervisor Timchak and the previous Forest Supervisor (Joe Alexander) and several other SNF staff to discuss our concerns. In June 2017 we took former Clarks Fork District Ranger Sue Eickhoff and former SNF planning team member Olga Troxel on a field trip to the Beartooth Pass to meet with backcountry skiers from Cody, Cooke City, and Red Lodge and discuss backcountry skiing, use conflict, and Wilderness Study Area management on the Beartooth Pass. We have made every possible effort to engage in this travel planning process and to ensure that the SNF is aware of our interests, concerns, and management proposals. Therefore, we were very surprised and disappointed to see that much of what we have discussed in our previous engagement with the SNF was not addressed or even acknowledged in the EA. Because most of our previously submitted comments and proposals are not addressed in any of the Alternatives in the preliminary EA, we do not see how the forest can possibly respond to our concerns without drafting an Environmental Impact Statement (EIS).



In drafting this EA the Forest Service has ignored substantive public comment in violation of NEPA.<sup>1</sup> Furthermore, if the forest moves forward with any of the Alternatives in this EA, the final plan will not comply with the Travel Management Rule. If the Forest Service does not address these and other deficiencies, the SNF risks finalizing an arbitrary travel plan in violation of the Travel Management Rule and Executive Orders.

If the Forest Service attempts to address our concerns without issuing a new draft EIS, the agency will improperly add significant new information to the final decision without an opportunity for the public to comment on it, in violation of the NEPA and the Administrative Procedures Act. And, given the deficiencies of this EA, and the many significant issues that the SNF has failed to consider, the only credible path forward is for the SNF to conduct additional NEPA analysis in a draft EIS.

**I. PUBLISHING THE PRELIMINARY ENVIRONMENTAL ASSESSMENT IN THE MIDST OF A PANDEMIC HAS GREATLY REDUCED OPPORTUNITIES FOR PUBLIC ENGAGEMENT DURING THIS COMMENT PERIOD**

I, and representatives from several other organizations, met with Forest Supervisor Lisa Timchak, Casey McQuiston, and yourself on June 24, 2020 to discuss our concerns with the pending publication of this EA in the midst of the covid-19 pandemic. We re-iterated our concerns in our August 6, 2020 letter. During the June meeting, Supervisor Timchak insisted that the SNF was fully confident of its abilities to solicit public engagement during the EA comment period, during a pandemic. Unfortunately, having now witnessed this comment period, it is clear that our concerns were justified. Because the pandemic prevented public meetings, the SNF held 3 webinars to discuss the EA with the public. The webinars were announced with less than 1 week lead time, leaving many people unable to participate because they had existing conflicts and not enough time to re-schedule their lives to accommodate the webinars. For those who did participate, the question and answer session was unsatisfying, as technological delays made it impossible to hold a conversation or ask follow up questions. And when, after reviewing the plan and attending the webinars, we requested a meeting with Supervisor Timchak in order to discuss questions and concerns, our request was denied. Throughout this comment period, the SNF's engagement with the public has been one-sided, with every question answered as "please send us your feedback in a comment letter, we can't wait to read it." Considering many of our questions relate to the apparent disregard of our earlier comments, this is not a satisfying answer.

It has been 5 years since the start of this process, with no apparent concern from the SNF that the Travel Plan be completed in a timely manner until this year. Now, in the midst of a pandemic, we have been informed by the Forest Supervisor that if the Plan is not finished now, it will go back on the shelf forever. This is simply not true – the Forest is legally required to complete travel management planning. And, as much as we'd like to see this plan completed, this sudden rush to finish in the middle of the pandemic when the public can't fully engage in the process is absurd and irresponsible. We've waited 5 years; we

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<sup>1</sup> See, e.g., *Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 711 (10th Cir. 2010) (explaining NEPA has twin aims: "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that is has indeed considered environmental concerns in its decisionmaking process.")



can wait one more. We strongly encourage the SNF to re-consider its approach, go back to the scoping (and pre-scoping) comments received from 2015-2017, draft an EIS that fully considers all of the significant issues the public has previously raised, and publish the draft EIS for public review and comment once the pandemic is behind us and it is safe to hold meetings and otherwise meaningfully engage with the public.

## **II. TRAVEL MANAGEMENT RULE**

Winter travel planning under the 2015 Over-Snow Vehicle (OSV) Rule (revised subpart C of the 2005 Travel Management Rule) represents a major shift from how the Forest Service has historically managed OSVs. Rather than allowing OSV use largely by default wherever that use is not specifically prohibited, the OSV Rule changes the paradigm to a “closed unless designated open” management regime. While this may seem to be two sides of the same coin, in truth this change leads to a significant shift in how national forests must approach winter travel management. Under a “closed unless designated open” framework, the environmental analysis supporting the travel management plan must show that the areas and trails designated for OSV use receive sufficient snowfall to support winter recreation, have boundaries that can realistically be enforced with existing staff and resources, and that OSV use within these places will have minimal impact on natural resources and wildlife and will not lead to significant conflict with other recreation uses. Subpart C travel management planning cannot be a process by which certain areas of the forest are closed to OSV use and the rest of the forest is “designated open” by default. We understand that this can be a difficult concept to wrap one’s head around when the status quo, or no-action alternative, is that the forest is open to OSVs unless otherwise prohibited but it is fundamental to the Travel Management Rule.

In this EA the SNF appears to have focused on determining which areas to close to OSVs, designating the remaining lands as open (i.e. open unless otherwise prohibited) regardless of whether those lands are appropriate for OSV use. All of the Alternatives described in the EA identify discrete and specifically delineated areas where OSV use is prohibited and designate the rest of the planning area for OSV use. For example, the EA repeatedly refers to specific OSV closures.<sup>2</sup> Likewise, the EA fails to explain that Alternative 1 – the No Action – is inconsistent with the Travel Management Rule and that change is needed to bring the Forest into a “closed unless designated open” management paradigm as required by the Travel Management Rule.

The result of this approach is that the Forest Service has not designated OSV areas in a manner that reflects where OSV use actually occurs, where it’s feasible for OSV use to occur, or which areas of the forest provide quality OSV recreation opportunities, much less minimized the impacts of OSV area and trail designations. There is no discussion of how the boundaries of designated OSV areas have been located to minimize impacts to other forest resources or uses, and there is no discussion of why specific areas are or should be open to OSVs other than that they are the subtractive result of closing various other places on the forest. Instead, in the 3 small areas of the Forest where the EA proposes to change

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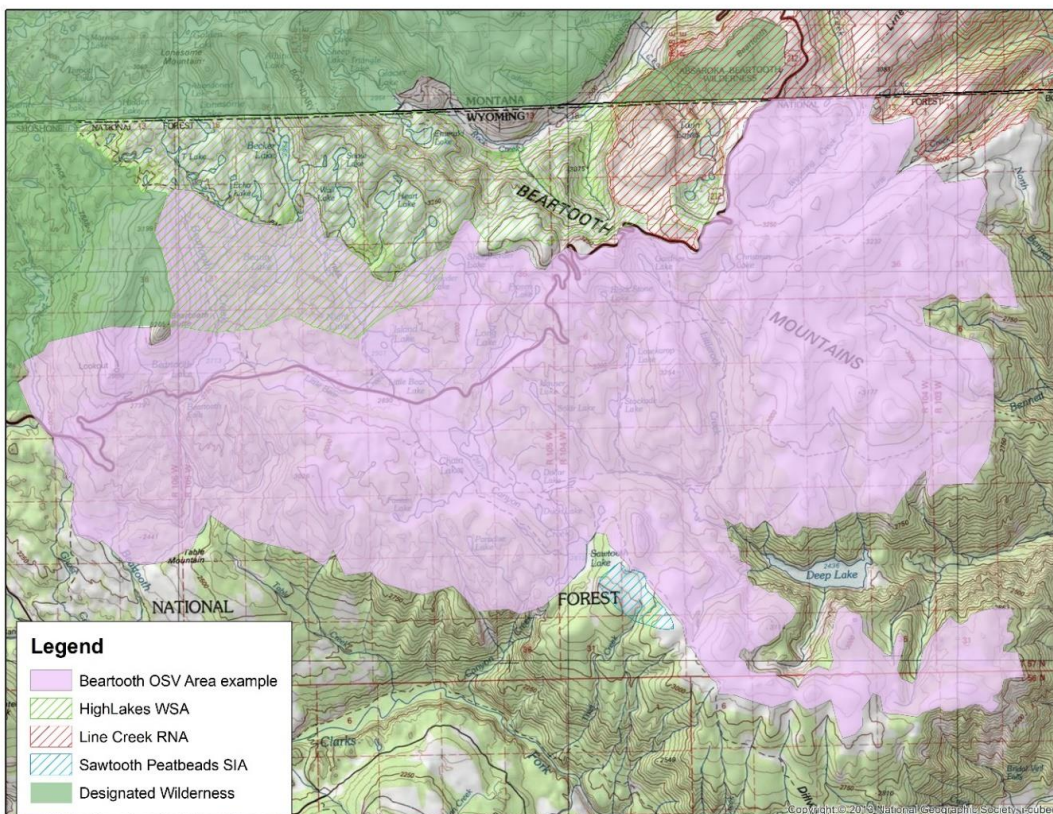
<sup>2</sup> For example, see page 34 of the EA (describing Alternative 2): “Closing approximately 1,350 acres to OSV use...”, or the maps in Appendix A, which depict proposed motorized use closure areas and lands where motorized use is prohibited but do not specify areas designated for motorized (OSV) use.



OSV management from the status quo, the focus in the EA is on justifying why these areas should be closed to OSVs.

There are only minor differences across the 3 Alternatives with regard to winter travel management in the EA and all 3 Alternatives designate places that don't make any sense for OSV use. Indeed, as a result of this approach, all 3 Alternatives in this EA would designate OSV use on lands that clearly do not support this use. For example, all 3 Alternatives designate the Beartooth Front for OSV use, despite the fact that SNF lands in this area are either extremely rugged and inaccessible for OSV use or so dry and windy that they never hold enough snow to support winter recreation.

Thoughtful winter travel planning results in designated OSV areas that provide quality OSV recreation opportunities. As an example, we have created a map demonstrating what a legitimate Beartooth OSV Area might look like. In this map, we've "designated" OSV use in areas where it's physically possible for OSV use to occur (suitable terrain and snowpack) and in a manner that we believe minimizes conflict between uses. Not being resource specialists (nor having ground-truthed this polygon), we cannot warrant that this hypothetical proposal *fully* complies with the minimization criteria, but this polygon is more consistent with what the OSV Rule intends than either Alternative 2 or 3. The SNF should follow this example on the Beartooth Plateau, and apply the same principles to the Crandall/Sunlight area, Carter Mountain, Wood River, Togwotee Pass, and other areas of the forest where it makes sense to designate OSV use.



Example Beartooth OSV Area





We fully support not designating the land surrounding the Pinnacles and Deception cross-country ski trails on Togwotee Pass for OSV use, and we fully support not designating lands within the High Lakes WSA as described in Alternative 3. However, not designating these three areas and designating the rest of the land zoned as “OSV use allowed” in the Forest Plan is not sufficient for a winter travel plan. We understand that the Forest Plan allocated areas where winter motorized use is suitable and that the Forest Plan protects most of the big game winter range on the forest from OSV use but this alone – or paired with a handful of additional closures – does not meet the site-specific requirements of travel management planning. To satisfy legal requirements of the OSV Rule, the SNF must look closely at the lands allocated for winter motorized use on the Forest Plan and designate discrete, delineated OSV play areas where OSV impacts on the environment, natural resources, and other uses are minimized. Designated areas should have easily enforceable boundaries using topographic or geographic features such as a ridgetop, highway, or watershed boundaries. This takes thoughtful planning and rigorous analysis, both of which appear to be missing in the EA.

The 3 Alternatives proposed in the EA are a starting point, but the SNF must revisit each Alternative and refine them to reflect a true “closed unless designated open” management plan that is in compliance with the minimization criteria. Again, to comply with the Travel Management Rule and do this process justice the SNF will need to conduct an EIS.

### **III. MINIMIZATION CRITERIA**

Starting with our March 2016 letter, we have repeatedly provided detailed comments explaining what the SNF is legally required to do to properly apply the minimization criteria. Our comments come from our experiences working on Subpart C planning in Region 5, where there are 5 forests that are early adopters of the OSV Rule. Our intent throughout this process has been to communicate lessons learned in Region 5 so that the SNF does not repeat the mistakes that Region 5 forests such as the Lassen made (and eventually corrected) as they worked through this process. Unfortunately, it does not appear that the SNF considered or applied our comments regarding the minimization criteria in this EA and is unfortunately on track to repeat — and also have to correct — many of the same mistakes.

The minimization criteria are the heart of travel management planning. These criteria were initially referenced in Executive Order No. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972), as amended by Executive Order No. 11989, 42 Fed. Reg. 26959 (May 24, 1977). They require the Forest Service, when designating routes and areas open to motorized travel, 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; 3) minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands; and 4) minimize conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands. These minimization criteria were codified in the 2005 Travel Management Rule, as amended by the 2015 Over-Snow Vehicle Rule.

National forests must apply and implement the minimization criteria when *designating* each area and trail where OSV use is permitted,<sup>3</sup> not as a means of justifying existing management. Any areas where

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<sup>3</sup> 36 C.F.R. §§ 212.81(d), 212.55(b).



cross-country OSV use is permitted must be “discrete, specifically delineated space[s] that [are] smaller . . . than a Ranger District” and *located* to minimize resource damage and conflicts with other recreational uses.<sup>4</sup> The minimization criteria must come first, followed by drawing lines on the map.

Application of the criteria requires the SNF to minimize impacts — not just identify or consider them — when designating areas or trails for OSV use, and 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 Service*<sup>5</sup> 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 Forest Service 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, the Forest Service must apply a transparent and common-sense methodology for meaningful application of *each* minimization criterion to *each* area and trail being considered for designation.

Appendix C includes tables listing minimization screening questions, data sources, mitigation actions, and project design features for the EA and tables showing how these questions were applied in Alternatives 2 and 3. Tables 3 and 4 describe how the Forest screened areas and trails open for OSV use in Alternative 2 and Tables 6 and 7 do so for Alternative 3. However, when the answer to a screening question is “Yes”, the EA provides no further information regarding what action will be taken to minimize the identified impacts.

Furthermore, there are no screening questions related to two of the four required minimization criteria. There are no screening questions for criterion 3, “conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands” or criterion 4, “conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.”<sup>6</sup> These tables also do not describe or account for how the Forest will comply with 36 CFR §212.55(b)(5), which states that the responsible official shall also consider “compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.”

Neither Appendix C, nor any other place else in the EA, explains how the boundaries of each OSV area in Alternatives 2 and 3 were located in order to minimize impacts, or how OSV trails in these alternatives were located to minimize impacts. Furthermore, the EA only includes 3 measures to minimize impacts related to OSV use: season dates, closing 1,300 acres to OSV use around the groomed cross-country ski trails on Togwotee Pass, and closing a portion of the High Lakes WSA. These 3 measures are insufficient and problematic. The season dates proposed in Alternative 2 are problematic for a number of reasons that we will discuss in Section III of this objection. Closing areas to minimize impacts reflects an “open

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<sup>4</sup> 36 C.F.R. §§ 212.1, 212.81(d), 212.55(b).

<sup>5</sup> *WildEarth Guardians v. U.S. Forest Service*, 790 F.3d 920 (9th. Cir. 2015).

<sup>6</sup> (36 CFR §212.55(b)(1)-(4))



unless designated closed” approach to OSV planning, and while minimizing use conflict on the Togwotee cross-country ski trails is good and the right thing to do in that area, it is not sufficient for minimizing conflict across the entire planning area or even the Togwotee area. Likewise, while not designating a portion of the High Lakes WSA helps to minimize conflict between uses (specifically between OSV use and Wilderness management), the rationale given in the EA doesn’t fully capture what this will accomplish or why this management is necessary, despite the SNF having received comments from Winter Wildlands Alliance and many others about the High Lakes WSA.

In relation to specific species, soil types, or other forest resources, the EA states that the effects are very similar across alternatives, presumably because there is little difference between alternatives. This limited range of alternatives means that the EA fails to sufficiently analyze what the effects of OSV use on these resources will be under the travel plan, but even with the limited analysis in this EA, it is clear that the SNF has not complied with the minimization criteria.

#### *Damage to soil, watershed, vegetation, and other forest resources*

The alternatives in this EA do not minimize damage to soil, watershed, vegetation, and other forest resources. Contrary to the statement on page 246 of the EA, “damage to shrubs and young trees due to off-trail OSV travel may occur...but are expected to be rare as this use occurs predominantly in alpine areas devoid of vegetation above the snow surface”, most areas proposed open to OSV use in all 3 alternatives are below treeline and vegetation is common above the snow surface. Treeline on the SNF is at approximately 9,500 feet, and a simple GIS exercise shows that the majority of OSV areas in all 3 alternatives are below this elevation. Whitebark pine, a Region 2 sensitive species, is most frequently found above 9,500 feet and is common in all areas of the SNF where OSV recreation occurs. Cross-country OSV travel poses a significant threat to whitebark pine, as riding over saplings that are just sticking out of the snow causes damage and tree mortality. We described this issue in detail in our scoping comments. We are surprised, considering the extensive overlap between whitebark pine habitat and areas that support OSV use, that Appendix C does not include any screening questions related to whitebark pine (or any other plant species). The SNF should at least consider an alternative that does not designate OSV use in areas that support dense populations of whitebark pine. This alternative is necessary for the SNF to understand how its designations may impact whitebark pine. Furthermore, the final plan must include meaningful steps to minimize impacts to this species.

The EA does not analyze OSV impacts to soils because, presumably, snow protects soils. This is true when there is sufficient snow on the ground, but all of the alternatives in the EA designate significant acreage that does not consistently receive or retain significant snow. Although the SNF cites Fassnacht (2018) to justify 12 inches as the minimum amount necessary to protect soils, this justification is inconsistent with Fassnacht’s findings and other research on this subject. Fassnacht classifies a 30 centimeter (approximately 12 inch) snowpack as “shallow” and concludes that starting snowmobile use (from an undisturbed snowpack) on a shallow snowpack increases snowpack density, hardness, and ram resistance, with corresponding effects on soils and that these factors increase as use increases. However, starting snowmobile use when there is a deep (120 centimeters, or 47 inches) snowpack has a limited effect on these same snowpack properties. Fassnacht concludes that land managers who wish to



limit impacts to land resources below the snowpack should *limit* snowmobile use in shallow conditions, i.e. 12 inches or less.<sup>7</sup>

Based on this research, the SNF should not designate areas that do not consistently hold **47** inches of snow throughout the winter season. At the very least, the SNF should limit use to places that consistently hold 35 inches (90 centimeters) of snow throughout the winter. This less conservative number comes from Thumlert (2013), which found that this is the depth to which snowmobiles have an impact on the snowpack.<sup>8</sup> This “minimum snow depth” should be considered as a starting point to guide the SNF in making a first-cut decision about which areas to designate for OSV use. Many other factors must be also considered when managing OSV use.

In addition to only allowing OSV use when and where there is sufficient snow, the SNF should also not designate OSV use in areas with sensitive soils unless the forest can ensure that OSV use will not impact these soils, and the SNF should set OSV use seasons that restrict OSV use before the ground freezes and after it begins to melt.

#### *Harassment of wildlife and significant disruption of wildlife habitats*

The EA is also insufficient in its consideration of the requirement to minimize harassment of wildlife and significant disruption of wildlife habitats. In general, the SNF’s approach appears to be to argue that because less than a third of any given sensitive species or management indicator species’ habitat would be subject to disturbance and displacement effects from OSV use, that this disturbance and displacement is inconsequential. It is absurd to argue that if “only” one third of a species’ habitat is impacted by an activity then the effects of that activity are inconsequential. In addition to one third of a species’ habitat being a significant amount of habitat, one poorly located route, or cross-country travel in a particularly sensitive area (such near a den or in a migration corridor) can have an outsized impact.

We are also concerned that the SNF has used OSV routes as the primary metric for determining the impact of OSV use on sensitive species and species of local concern. Cross-country travel has a far greater impact on wildlife, as it is less predictable than route-based travel. Furthermore, cross-country travel is far more extensive on the SNF than OSV use on designated routes. In addition, the SNF’s argument that OSV impacts to wildlife on parturition habitat raise less concern than disturbance or displacement on winter range is illogical. While this may be true for wheeled vehicles, OSVs operate over snow. If there is enough snow for an OSV to properly operate then wildlife are in a high-stress situation. Once the snow melts energetic costs may be lower and forage may be of high quality and more widely available (as stated in the EA), but so long as there is snow on the ground, energetic costs remain high and forage difficult to find. Regardless of whether an animal is on winter or parturition habitat, snow makes life difficult, and the added stress of OSV disturbance is a significant concern.

The travel plan cannot simply designate OSV use in all areas that are “open” under the forest plan. For example, while the Forest Plan includes big game winter range exemption areas, these areas cannot be

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<sup>7</sup> Fassnacht, S. R., Heath, J. T., Venable, N. B. H., and Elder, K. J. 2018. Snowmobile impacts on snowpack physical and mechanical properties, *The Cryosphere*, 12, 1121–1135, <https://doi.org/10.5194/tc-12-1121-2018>

<sup>8</sup> Thumlert, S., Exner, T., Jamieson, B., and Bellaire, S. 2013: Measurements of localized dynamic loading in a mountain snow cover, *Cold Reg. Sci. Technol.*, 85, 94–101, <https://doi.org/10.1016/j.coldregions.2012.08.005>





designated for OSV use unless the SNF can demonstrate in the administrative record that doing so complies with the minimization criteria. Simply referring back to the Forest Plan is insufficient to meet this requirement.

Appendix C includes 5 screening questions related to wildlife but simply screening for conflict does not minimize impacts to wildlife. For example, Heinemeyer 2019<sup>9</sup> – the best available science concerning winter recreation and wolverines – describes how winter recreation use results in functional habitat loss for wolverines. This study shows that is necessary to protect more than just wolverine denning habitat in order to minimize OSV impacts to wolverines. Female wolverines don't rest or forage in areas of high or moderate winter recreation use, and a wolverine that is unable to engage in these activities will not successfully raise kits, even if denning habitat is protected.<sup>10</sup> Therefore, to minimize impacts to wolverines, the SNF should ensure that designated OSV areas do not comprise a majority of a single female wolverine's home range. As currently written, all that we can infer from the EA is that every OSV area *except* Wapiti North occurs within ½ mile of a wolverine den site, but it is not clear what exactly this means in the context of minimizing OSV impacts to wolverines, nor is there any explanation of how the SNF shaped the Alternatives in response to this information. The EA also doesn't provide any information about other aspects of wolverine habitat that will be impacted by OSV use or how these other areas could – and will – be managed to minimize impacts to the species.

It appears that the SNF's primary approach to minimizing impacts to wildlife in this EA is to assume that since the SNF is a large forest with a lot of Wilderness, any impact to any wildlife species is insignificant. This assumes that all habitat across the forest is of equal quality and value and that all species use the forest in similar ways. These assumptions are invalid. For example, wolverines are an extremely rare and territorial species with very large home ranges. It is possible that one, or several, of the designated OSV areas in this EA comprise a majority of a single individual's home range. If so, not only is the impact to that individual significant, if that individual is a female then the impact could be significant for the entire population. However, the EA does not consider this possibility, much less provide any information that would allow a reader to understand if this is a valid concern.

The SNF should develop additional alternatives that restrict OSV use more than any of the alternatives in this EA, so that the forest can truly analyze what the impacts of the proposed OSV designations will be on wildlife. Given the number of sensitive, management indicator, and listed species on the SNF, an EIS is necessary for the SNF to fully identify and analyze these impacts.

#### *Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands*

Our previous comments extensively described types of winter recreation use conflict, when and where winter recreation use conflict occurs on the Forest, and what the travel plan should include to minimize this conflict. Winter recreation use conflict takes many forms, including safety (motor vehicles and

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<sup>9</sup> 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.

<sup>10</sup> *Id.* "Female wolverines exhibited stronger avoidance of off-road motorized recreation and experienced higher indirect habitat loss than male wolverines...female wolverines show the strongest functional response to motorized winter recreation."



pedestrians sharing trails and space), noise, air pollution, competition for untracked snow, and disturbance of the snow surface (groomed or otherwise) resulting in a diminished non-motorized experience. Aside from a brief statement about how closing 1,300 acres in Alternative 2 will protect the values of the cross-country ski area, there is no discussion of any of these types of use conflict or minimization of this conflict in the EA. We will discuss use conflict in more detail in the next section of these comments.

Page 25 of the EA states that resource specialists developed mitigation actions to minimize potential impacts from motorized use. Under the Travel Management Rule, however, mitigation is not a substitute for minimization and mitigation cannot be the first line of defense in minimizing OSV impacts. The OSV use system on the forest – designated routes and areas – must be *designed* to minimize impacts. Mitigation is a secondary measure. Furthermore, since the EA does not explicitly state what these mitigation measures are, we have no way of even understanding the SNF's attempts to comply with the minimization criteria.

The SNF's failure to properly apply the minimization criteria has not only resulted in alternatives that are not in compliance with the Travel Management Rule, it led to the creation of alternatives that fail to address the issues raised during scoping. Proper application of the minimization criteria will require an EIS, as the SNF must demonstrate in detail how it has applied the criteria to the full range of relevant (and significant) issues, as mandated by the 9<sup>th</sup> Circuit in *WildEarth Guardians v. U.S. Forest Service*.

#### IV. USE CONFLICT

The SNF's failure to properly apply the minimization criteria is most notable in its failure to minimize conflict between OSV use other existing or proposed recreational uses of National Forest System lands or neighboring Federal lands. Minimizing conflict between OSV use and non-motorized winter recreation uses is of utmost importance for WWA and our members. The fact that OSV use creates significant conflict with other recreational uses is well documented in Forest Service literature, including in EIS documents prepared by the Forest Service for other winter travel plans. For example, the Plumas National Forest analyzes 5 ways in which OSV use presents a conflict with other recreation uses in the FEIS for its winter travel management plan.<sup>11</sup> These 5 sources of conflict are: 1) OSVs consuming untracked powder desired by non-motorized winter recreationists, particularly backcountry downhill skiers, 2) OSVs compacting, tracking, and rutting the snow, making the snow surface difficult and potentially unsafe for non-motorized users to cross-country ski, sled, snowshoe, or walk on, 3) OSVs creating a real or perceived risk of injury or mortality, 4) OSVs creating noise which may affect solitude and quiet recreational opportunities, and 5) OSVs impacting the scenery by reducing the amount of unaltered views. There is also a considerable amount of information in the scientific literature – including studies from Forest Service scientists – concerning use conflict. For example, Miller et al. (2016) examines interpersonal conflict between OSV users and skiers on Forest Service lands and discusses winter travel management approaches to reduce this conflict.<sup>12</sup> Likewise, Olson et al. (2017)

<sup>11</sup> Plumas Over-Snow Vehicle Use Designation Final Environmental Impact Statement Volume I, Chapter 3. Available at [https://www.fs.usda.gov/nfs/11558/www/nepa/101835\\_FSPLT3\\_4729820.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/101835_FSPLT3_4729820.pdf)

<sup>12</sup> Miller, Aubrey, D.; Vaske, Jerry J.; Squires, John R.; Olson, Lucretia E. 2016. *Does zoning winter recreationists reduce recreation conflict?* Environmental Management. 59: 50-67. Available at <https://www.fs.usda.gov/rmrs/publications/does-zoning-winter-recreationists-reduce-recreation-conflict>



discusses use conflict and presents maps depicting areas that recreation activities were predicted to select, showing areas of potential ecological disturbance or interpersonal conflict between motorized and non-motorized activities.<sup>13</sup> These studies were conducted specifically to inform Forest Service winter travel planning, yet the SNF has not utilized them in this process.

The majority of winter use on the SNF is non-motorized recreation. The EA states that according to latest NVUM data (USDA 2019), approximately 5% of visitors to the SNF reported that OSV use was their main activity and 0.1% of all visitors reported motorized trail activity as their main activity. In contrast, the EA states that the most popular activities reported by visitors to the SNF were viewing natural features, hiking, and cross-country skiing. While the 2019 NVUM data is not available online, the 2014 NVUM data show that cross-country skiing was the primary activity for 12.5% of SNF visitors (compared to snowmobiling at 4.8% of visitors). Despite the clear dominance of non-motorized recreation on the SNF the EA does not describe where non-motorized recreation occurs or how the OSV area and trail designations in the EA are – or are not – located in a manner that minimizes conflict between OSV use and non-motorized recreational uses. It is well documented that use conflict between motorized and non-motorized recreation is generally one-sided, with non-motorized recreation users experiencing conflict and motorized recreation users not experiencing conflict. In plain terms, what this means is that motorized recreation has an outsized negative impact on non-motorized recreation, even if the number of non-motorized recreationists is larger than the number of motorized recreationists in a given setting. The EA also fails to address conflict between different classes of OSVs (timber sleds versus snowmobiles versus tracked side-by-sides, as well as versus tracked full-size vehicles and electric fatbikes). While this also represents a failure to comply with the OSV Rule, our focus is on the requirement to minimize conflict between OSVs and other recreational uses, specifically non-motorized winter recreation.

In all of our earlier comments we discussed the ways in which OSV use creates conflict with non-motorized winter recreation uses. We described where there are existing winter use conflicts on the SNF, as well as what the SNF should do in this travel plan to minimize these conflicts. We also have repeatedly described why the SNF is *required* to minimize these conflicts. The preliminary EA should have discussed use conflict and included information about how each designated OSV area and trail in Alternatives 2 and 3 would contribute to, or minimize, use conflict stemming from the 5 sources identified by the Plumas National Forest.<sup>14</sup> The SNF should develop an EIS that includes additional alternatives to help the forest better understand use conflict and that more fully considers this issue. Of all of the issues the SNF must address during travel planning, use conflict is the one that has the most significant impact on the majority of forest visitors' experiences.

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<sup>13</sup> Olson, Lucretia E.; Squires, John R.; Roberts, Elizabeth K.; Miller, Aubrey D.; Ivan, Jacob S.; Hebblewhite, Mark. 2017. *Modeling large-scale winter recreation terrain selection with implications for recreation management and wildlife*. Applied Geography. 86: 66-91. Available at <https://www.fs.usda.gov/treesearch/pubs/54918>

<sup>14</sup> The Plumas is not unique – the Lassen, Tahoe, Stanislaus, and Eldorado National Forests included similar information in their OSV Travel Plan FEIS'.



As we have previously noted in our earlier comments and in this letter, there are two areas on the SNF where winter recreation use is most popular, and where winter use conflict is of greatest concern – the Beartooth Pass and Togwotee Pass.

#### *Beartooth Pass Use Conflict and Solutions*

The Beartooth Pass, on the Clarks Fork Ranger District, is a renowned spring and summer ski destination. Skiers begin accessing terrain on Clay and Beartooth Buttes in late April and early May, as Highway 212 begins to melt out from the junction with Highway 296. In late May, when Highway 212 is fully plowed and open to wheeled vehicles, the Beartooth Pass provides easy access to thousands of acres of world-class skiing. As a result, there is a decades-long tradition of skiers flocking to the Beartooth Pass for Memorial Day weekend. While some skiers use the Pass as a launching point to access the Absaroka-Beartooth Wilderness and High Lakes Wilderness Study Area, the most popular Beartooth Pass ski destinations are roadside terrain on the Shoshone National Forest, such as the headwall above the Gardner Lakes basin and the slopes north of the switchbacks on the west side of the Pass. However, in recent years there has been a significant and concerning increase in the amount of spring snowmobile use on the Beartooth Pass, leading to extreme use conflict and safety issues. Snowmobiles travelling up or down on the same slopes as skiers and snowboarders create a serious safety hazard. Snowmobilers traveling through the beloved Beartooth Basin Summer Ski Area also create conflict with ski area operations, and are a public safety hazard.

OSV use when Beartooth Pass is open for the summer season is counter to the Area 3.3b Management Approach in the Forest Plan, negatively impacting the experience of spring and summer visitors. Many long-time Beartooth Pass skiers have become so frustrated by the growth in snowmobile activity that they've simply stopped going to the Pass. Because of the SNF's lack of OSV management, snowmobile use is displacing skiers and ending a long and treasured tradition of human-powered spring skiing on the Beartooth Pass.

Spring snowmobile use presents substantial conflict with the non-skiing public on the Beartooth Pass as well. Just as skiers have a long tradition of flocking to the Pass, thousands of non-skiers also drive the Beartooth Highway as soon as the road is open. People from Red Lodge, Billings, Cody, and farther afield come to the Pass to play in the snow – a summer novelty – and drive “the most beautiful drive in America.”<sup>15</sup> However, in recent years, the growth in snowmobile activity has created conflict by reducing parking opportunities (snowmobile trailers take up substantial excess parking) and creating a public safety hazard (people riding snowmobiles recklessly around families playing in the snow), and is a public nuisance (people come to the Beartooth Pass to breathe clean mountain air, not snowmobile exhaust).

The SNF can minimize use conflict on the Beartooth Pass by ending the OSV season on April 30 each year. It *may* be possible to extend this season by 1 or 2 weeks *if* the SNF can show that late-season use complies with the minimization criteria but the season *must* end by May 15. This seasonal restriction should not apply to administrative uses, including uses associated with operation of the Beartooth Basin Summer Ski Area. While we understand that “minimize” does not require the Forest Service to eliminate conflict, this is the only option for minimizing conflict on the Beartooth Pass. Because of the nature of

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<sup>15</sup> <https://www.dangerousroads.org/north-america/usa/810-beartooth-highway-usa.html>



the use conflict starting in May through the end of the snow season, eliminating OSV use during this time is the only effective way to manage and minimize conflict. A late April season end date still allows for months of OSV recreation on the Beartooth Plateau. Ski activity on the Beartooth Pass occurs throughout the winter and early spring – with skiers primarily accessing it from the west – but conflict is minimal during this time because use is low and users are not concentrated in the same way that they are later in May and into June.

#### *Togwotee Pass Use Conflict and Solutions*

Unlike the Beartooth Pass where use conflict is concentrated over a time period of a few weeks in late spring, Togwotee Pass on the Wind River District draws skiers and snowmobilers all winter long, and use conflict is ongoing throughout the entire snow season. Snowmobile use has displaced skiers from historically used recreation areas; there are significant public safety concerns associated with pedestrian and motorized use occurring on the same trails and same areas; and there is a public safety concern with motorized and non-motorized use conflict in avalanche terrain.

This was a major topic in SNF forest plan revision, and during forest plan revision the ski community advocated for the SNF to close Two Oceans Mountain, approximately 1 square mile of forest, to OSV use to preserve historic backcountry skiing opportunities. We described this history in our scoping comments. And, in our scoping comments, we asked that the SNF not designate a small area in the Breccia Cliffs area for OSV use, both to reduce Wilderness incursions and so that skiers could have the option of an entirely non-motorized ski experience on one small part of Togwotee. Although there are places – such as the Breccia Cliffs area – where one can access Wilderness relatively easily on foot, skiers still have to contend with snowmobile traffic before they reach the Wilderness boundary. Both of these proposals were rejected from consideration by the SNF in this EA with no explanation other than that they may be considered in a separate analysis.<sup>16</sup> Because the SNF does not discuss use conflict in the EA, it may seem that these proposals are unrelated to travel management planning when in fact they are not. We are unsure of what “separate analysis” the SNF would be conducting to consider OSV designations, when the travel management planning process is the specific process through which the SNF should be considering these proposals. The SNF should draft a new alternative where these areas are not designated for OSV use and analyze this alternative as part of an EIS.

We support not designating the area around the Pinnacles and Deception ski trails for OSV use, as this will minimize conflicts between OSV use and cross-country skiing (and cross-country ski trail grooming) on Togwotee Pass and significantly improve the non-motorized recreation experience. However, this alone is not sufficient for minimizing winter use conflict on the SNF, nor is it sufficient for minimizing winter use conflict on Togwotee Pass. There are other areas on Togwotee that deserve examination in this plan. For example, the Sublette Pass trail was historically a cross-country ski trail but many skiers have been displaced by unmanaged OSV use. Although the Forest Service has removed the cross-country skier signs from the trail it is still a traditional non-motorized route and should not be designated for OSV use. The EA fails to mention that this trail is a historic ski route, or that designating it for OSV use will pose a conflict with non-motorized uses, despite our having brought attention to this fact during scoping. Designating this route for OSV use will cause conflict with skiers who use and value this historic route.

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<sup>16</sup> Preliminary EA, Appendix B, page 24





While the SNF is proposing to designating this ski trail for OSV use, the EA makes no mention of use conflict associated with this trail, or that it was once a designated ski trail. The SNF must consider how designating the Sublette Pass trail for OSV use contributes to use conflict on Togwotee and the final plan should not designate this trail for OSV use.

Cross-country skiing, especially on a groomed trail, is a considerably different discipline than alpine touring – commonly referred to as backcountry skiing and splitboarding. Our organization represents both cross-country skiers and backcountry skiers, as well as snowshoers, winter hikers, sledders, and people who enjoy other forms of non-motorized snow play but this does not mean all of these activities are the same. Cross-country skiing (and snowshoeing) generally occurs on flat or rolling terrain on narrow skis. Some, but not all, types of cross-country skiing require groomed trails. Backcountry skiing and splitboarding, in contrast, requires gear that would be familiar at an alpine resort and the focus is on gaining elevation in order to ski back down in untracked snow. Backcountry skiing and splitboarding often occur in avalanche terrain and requires specific skills and education for user safety. Not designating the Pinnacles and Deception ski trails for OSV use minimizes conflict with cross-country skiers seeking a groomed trail experience. However, OSV use on Togwotee Pass presents conflicts with other winter recreation uses that are not resolved by simply protecting the Pinnacles and Deception cross-country ski trails. To minimize this conflict, the SNF must consider other areas on Togwotee where use conflict presents a concern, include elements in the final travel plan that will minimize use conflict across elsewhere on Togwotee, and commit to working with user groups to educate the recreating public about how to share the backcountry.

In our 2016 scoping comments we discussed the need for separate winter recreation parking area on Togwotee Pass. As we did then, we recommend creating a new non-motorized trailhead at Wind River Lake to separate skiers and snowshoers from the OSV staging area. This will help skiers and snowshoers limit their exposure to snowmobile exhaust – a major source of use conflict – and help to ensure that non-motorized users and snowmobilers alike have a place to park. Snowmobile trailers take up considerably more space than passenger vehicles, leaving little or no room for non-motorized users to park at busy shared-use trailheads, creating conflict before visitors even step foot onto the forest.

At Wind River Lake, skiers and snowshoers currently share a parking lot with a busy OSV staging area and then cross the highway to access the popular Brooks Lake winter trail. By plowing a non-motorized parking area on the north side of the highway at Wind River Lake the Forest Service can minimize conflict in this area and improve public safety by eliminating a potentially dangerous highway crossing.

Had the EA addressed the requirement to minimize use conflict, the SNF could have drawn from our previous comments, and the Forest Plan, for inspiration on how to do so. For example, in the Forest Plan, REC-GOAL-02 states that “Education opportunities are used to minimize conflicts between user groups.” In our 2016 scoping letter we provided a specific idea for something the SNF could do to minimize this conflict and meet REC-GOAL-02.<sup>17</sup> There is no mention of any desire to educate users for

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<sup>17</sup> From page 25 of our June 2016 letter: “The travel plan should also include language that directs the Forest Service to support and encourage education efforts aimed at resolving conflict between motorized and non-motorized uses on Togwotee Pass and other popular multi-use areas. Togwotee Backcountry Alliance has



the purposes of minimizing use conflict, on Togwotee or elsewhere, in the EA. As we said in 2016, the travel plan should include language that directs the Forest Service to support and encourage education efforts aimed at resolving conflict between motorized and non-motorized uses on Togwotee Pass and other popular multi-use areas. Togwotee Pass Backcountry Alliance has approached the Forest Service in the past with ideas of trailhead kiosks, signage, and other educational materials. This effort lost momentum when Rick Metzger retired from the position of Wind River district ranger but we would like to see the Forest Service continue to embrace and promote these types of ideas. Closures are an important way to minimize use conflict, but the Forest Service should also engage with other options to minimize conflict in shared use areas. A substantial amount of conflict arises from user groups not understanding each other and how other users recreate on the forest. Visitor education, especially in partnership with OSV and ski clubs, can help to grow understanding, reduce conflicts and enhance everyone's recreational experience.

#### V. SEASON DATES

Alternative 2 proposes 2 OSV use seasons for the SNF as follows: November 1 - May 31 for the North Zone and Wind River District and December 1 – May 31 for the Washakie Ranger District. These dates are completely different from what was discussed in either the 2016 or 2017 Proposed Actions, don't match management on neighboring forests, and fail to address significant issues raised and proposals provided during scoping.

In the 2016 Proposed Action the SNF proposed 2 OSV seasons – a low elevation season of December 1 – March 30 and a high elevation season of November 15 – April 30. Then, in the 2017 revised Proposed Action, the SNF proposed different seasons for different areas of the forest. The revised Proposed Action included 3 winter motorized seasons: November 15 to May 15 on the North Zone, a "high elevation" zone with a season of November 15 to April 30 and a "low elevation" zone with a season of December 1 – April 1 on the Wind River District, and December 1 – April 1 on the Washakie District. In response, we proposed in our December 2017 comments that the SNF set a forest-wide OSV season of December 1- April 30, with an extended spring season on the Beartooth pass ending May 15 *if* the Forest could show that late-season use complied with the minimization criteria. As we explained in that letter, these dates coincide with the season set by the neighboring Bridger-Teton, avoids any conflict with hunting season, allows for late-season use on the Beartooth Pass, and eliminates conflict with backcountry skiers on the Beartooth Pass.

Despite receiving detailed comments about season dates from Winter Wildlands Alliance and many others during *both* scoping periods, the EA proposes an entirely new set of season dates that fail to account for any of the relevant issues raised during scoping. Instead, the SNF has based the Alternative 2 OSV season dates on snow depth (as measured by SNOTEL), setting dates that correspond with when select SNOTEL stations historically have at least 12 inches of snow on the ground. Minimum snow depth is an important management tool, especially for minimizing impacts to soils, low-growing vegetation, and subnivalian wildlife habitat. It can also provide a starting point for understanding when it is

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approached the Forest Service in the past with ideas of trailhead kiosks, signage, and other educational materials and we would like to see the Forest Service embrace and promote these types of ideas."



appropriate for OSVs to operate. Using snow depth as the sole determinant for setting seasonal use dates, however, misses many other important issues and is not a good approach. We have repeatedly shared and discussed a variety of issues with SNF staff that should inform the SNF's OSV season dates. Furthermore, the snow depth modeling presented in the EA does not take into account the extreme terrain variability on some areas of the forest, particularly in the North Zone. The three SNOTEL stations used to determine season dates for the North Zone are situated at 7,650 (Wolverine), 9,360 (Beartooth Lake), and 9,200 (Evening Star) feet in elevation. Meanwhile, SNF lands along the Beartooth Front are as low as 4,600 feet. It is illogical to assume that snow depth would be the same at 4,600 feet as at 9,000 feet at any time of the winter, much less during shoulder seasons, even if not accounting for wind and other factors that influence snow accumulation. This may be the most extreme example, but it illustrates the disconnect between the SNF's snow depth modeling and application of this effort to setting OSV season dates. The SNF does not need to discount its snow depth modeling efforts entirely, but this modeling only provides a coarse-scale understanding of the landscape.

It seems that the Forest Service intends to make up for poor planning with special orders when and where the Forest deems them necessary. The EA states that "variability of weather during the shoulder seasons (i.e., November and May) can present conditions that do not support OSV use (especially at lower elevations). To address any concerns regarding potential resource damage during such periods, Line Officers will retain authority to adjust open and close dates district-wide and on an area-specific-basis."<sup>18</sup> This approach relies on the Forest having the capacity to monitor for resource damage and implement temporary closure orders. Considering the Forest does not currently monitor for resource damage or implement temporary OSV closure orders in response to damage or conflict, it seems unlikely that the Forest would do so in the future. While closure orders are a useful way to supplement travel plan direction in unusual circumstances, they should not be a substitute for real travel planning. Rather than making actual decisions in this travel plan, the SNF is simply kicking the can down the road. Alternatives 2 and 3 essentially enact the status quo (with minor closures) and Alternative 2 sets season dates that are so broad they are essentially meaningless. The Alternative 2 season dates don't address issues raised in scoping concerning early-season conflict with hunting (and related impacts to wildlife), late-season use conflict, late-season impacts to grizzly bears emerging from their dens, late-season impacts to ground-nesting birds on the Beartooth plateau, or late-season impacts to vegetation and other natural resources stemming from OSV use in a time of rapid snowmelt and saturated soils.

As we have explained in our previous comments, there are numerous factors that should influence the OSV season beyond simply whether there is enough snow on the ground to go snowmobiling. OSV use does not occur in a vacuum and the Travel Management Rule requires the Forest Service to manage this use in a manner that minimizes impacts to other forest resources and uses. Setting seasonal restrictions can help the forest comply with the minimization criteria, but only if the seasonal restrictions address the relevant issues. We will explain each of these issues in turn below:

#### *Beartooth Pass Use Conflict and Resource Damage*

In our 2016 and 2017 comments (and in Section IV of these comments) we discussed the significant – and growing – conflict between human-powered skiers and OSV use on the Beartooth Pass that starts each year in late May. We have said clearly and repeatedly that the only way to minimize this conflict is

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<sup>18</sup> Preliminary EA, page 19



to completely eliminate it, by ending the OSV season on the Beartooth Pass before the road opens to wheeled vehicle traffic. However, the EA proposes a May 31 end date for OSV use on the Beartooth Pass – a date that was not previously discussed in any SNF documents or meetings, and one that does nothing to address the use conflict we and others have repeatedly brought to the forest’s attention.

Spring snowmobile use on the Beartooth Pass is also causing resource damage. We have documented this damage (with photos) in our previous comments, and we are aware of at least one scientist who has contacted the Forest with concerns about snowmobile-caused damage to the tundra on the Beartooth Plateau. In addition, skiers have reported incidents of snowmobiles trespassing into Wilderness on the Line Creek plateau (on the Custer Gallatin National Forest) and have observed an increase in OSV use within the Line Creek Research Natural Area at a time when the tundra is most susceptible to damage.

Spring snowmobile use on the Beartooth Pass has a significant impact on wildlife as well. The comment letter submitted to the SNF on July 18, 2016 by local ecologist, WWA member, and longtime Beartooth Pass skier, Patrick Cross provided substantive information about bear emergence, subnivean mammals, migratory and ground-nesting birds, native red foxes, and vegetation. Our earlier comments also provided substantive information about how late-season OSV use on the Beartooth Pass impacts wildlife and vegetation. None of the information we provided appears to have been utilized in Alternative development or the analysis in this EA. The EA makes no mention of how the spring snowpack differs from midwinter snowpack and what these differences mean for wildlife and vegetation, especially with OSV use. The EA also fails to address concerns about resource damage from OSV use when snow is patchy and rapidly melting. Rather than repeat ourselves, we ask that the SNF re-examine the comments provided during scoping and to address our previously stated concerns regarding resource damage and wildlife conflict associated with spring OSV use on the Beartooth Pass.

The Wyoming State Trails website describes the state’s snowmobiling season as “typically mid-December through April 1” and historically, the State Trails grooming season for the Beartooth area goes from mid-December through mid-March. The Montana Department of Transportation begins plowing the Beartooth Highway from Red Lodge to the Wyoming-Montana border in April and Yellowstone National Park begins plowing the Beartooth Highway from Cooke City the first weekend of May. Clearly, by early May, it should no longer be snowmobile season on the SNF.

For the reasons we have described above, and in our previous comments, the OSV season on the Beartooth Plateau should end by April 30, although May 15 *may* be an acceptable end date *if* the SNF can show that OSV use in May will have a minimal impact on other forest resources and uses. This date provides a winters-worth of OSV recreation opportunity on the Beartooth Plateau yet protects fragile natural resources in the spring and ensures that the long tradition of human-powered skiing on the Pass will continue.

#### *Coordinated Management with the Bridger-Teton National Forest on Togwotee Pass*

Togwotee Pass divides the Shoshone and Bridger-Teton National Forests and winter recreationists travel freely across forest boundaries. The Bridger-Teton National Forest allows OSV use on their side of Togwotee Pass from December 1 through April 30.<sup>19</sup> The SNF should implement the same season dates

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<sup>19</sup> See Bridger-Teton National Forest Blackrock Ranger District Winter Travel Map, Northern Portion, available at



in order to minimize conflict with other uses and ensure consistent winter recreation management in this area. Not allowing OSV use until December 1 and prohibiting it after April 30 minimizes impacts to wildlife and hunters during hunting season and protects forest resources such as soils and low growing vegetation during the spring melt. It also ensures that there is plenty of snow on the ground when OSVs are allowed. Furthermore, backcountry skiers who have been displaced from Togwotee in the winter due to the extensive amount of snowmobile use on the Pass have developed new traditions of visiting and skiing Togwotee in the spring, once the snowmobile season has ended and quiet use can prevail.

It is surprising that the SNF appears to have not consulted with the Bridger-Teton in developing the season dates for the Wind River District in Alternative 2, especially considering that we, and several other commenters, alerted the Forest to this issue in our scoping comments. To ensure coordinated management of OSV use on Togwotee Pass and help to comply with the minimization criteria, the OSV season on the Wind River District must be December 1 – April 30.

#### *Conflicts during hunting season*

Allowing OSVs on the forest as early as November 1 will cause significant conflicts during hunting season between hunters and OSV users (including those using OSVs to hunt) and greatly impact wildlife by reducing habitat security. In our 2017 scoping comments we expressed concern about starting the OSV season on November 15 on certain parts of the forest for this reason, and we are disappointed to see that the EA not only failed to address our concerns, Alternative 2 sets a season date that is even earlier! November is peak season for big-game hunting, a time when many wildlife are already stressed and when hiding cover and habitat security is paramount. For this reason, many National Forests close certain roads to vehicles before the start of hunting season. In addition, hunters who are quietly stalking their game, after parking their wheeled vehicles at the end of road, a trailhead, or a gate, don't appreciate having snowmobiles bursting onto the scene and spooking the game. To minimize impacts to wildlife and conflicts with hunters, the OSV season across the SNF must not begin before December 1.

We stand by the suggestion we proposed in our 2017 scoping comments: the OSV season across the SNF should start on December 1 and end on April 30, possibly with an extended spring season on the Beartooth pass ending no later than May 15. This, coupled with only designating OSV use in areas of the forest that consistently see at least 35 inches of accumulated snow during this time, and setting the boundaries of designated OSV areas in a manner that is understandable and enforceable will go a considerable way towards ensuring that the SNF's Subpart C travel plan is in compliance with the Travel Management Rule.

## **VI. SAWTOOTH PEATBEDS SPECIAL INTEREST AREA**

The Shoshone Forest Plan calls for the Forest to manage the Sawtooth Peatbeds Special Interest Area "for an adopted recreation opportunity spectrum class of non-motorized."<sup>20</sup> Therefore, designating this area for OSV use conflicts with forest plan direction. The SNF must develop and analyze an alternative that does not designate this site for OSV use. Such an alternative would allow the Forest to truly understand what the environmental impacts of designating OSV use in this area are, and what kind of

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[https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd566835.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd566835.pdf)

<sup>20</sup> Shoshone Forest Plan MA3.1C-GUIDE-03





travel management will allow the Forest to meet the desired condition stated in the Forest Plan for this area, which is “Ecological processes prevail, with minimal human intervention, providing natural conditions.” Given the special status of this area and the significance of its unique ecology, the SNF must develop an EIS if it is going to consider any alternatives that designate the Sawtooth Peatbeds for OSV use.

## **VII. LINE CREEK RESEARCH NATURAL AREA**

Under Alternatives 1 and 2, the SNF authorizes OSV use on approximately 1,000 acres of the Line Creek Research Natural Area, while Alternative 3 authorizes OSV use on approximately 500 acres of the RNA. The portion of the RNA managed by the SNF is not large – approximately 3,000 acres – yet even under the most restrictive alternative (Alternative 3), the SNF is still proposing to authorize OSV use on 1/6<sup>th</sup> of the area. Under the Alternatives provided in this EA, OSV use, and its impacts, in the Line Creek RNA will conflict with forest plan direction and Forest Service policy.

The EA does not explain why it is necessary or advisable to designate any part of the RNA for OSV use, how doing so will comply with the minimization criteria, or what value such a designation will bring to OSV users. The vast majority of the RNA is unavailable for OSV use under the Shoshone Forest Plan (Alternative 1). There are only 2 isolated parcels that the SNF can even consider designating for OSV use in this plan, and neither of them provide great snowmobiling opportunities. The first, a small area adjacent to the Absaroka Beartooth Wilderness and High Lakes Wilderness Study Area that consists of steep cliffs and terrain that goes nowhere as far as a snowmobile is concerned. Designating this area does not provide any value for OSV recreation. The only time we are aware of snowmobiles traveling through this area is when Highway 212 is open from Red Lodge, MT to the state line and people ride snowmobiles from the state line parking lot into the part of the RNA that is not cliffs – generally this only occurs on Memorial Day weekend and results in considerable use conflict and resource damage. The other area, a small parcel on the north side of Highway 212 across from the Gardner Lake trailhead, also primarily sees use on and around Memorial Day weekend. Midwinter, there is really no reason for snowmobilers to ride up and over the summit of the Beartooth Highway, as the better riding terrain is in the sheltered lake basins adjacent to the highway. On and around Memorial Day weekend, however, the same snowmobile activity that is displacing skiers from the Beartooth Pass is also causing resource damage in this area of the RNA.

The EA states that “localized damage to vegetation and soils may occur from OSV use in the RNA, particularly during shoulder seasons when windswept and exposed ridges with little snow cover become exposed due to melting and wind scour... any impact may persist on the landscape indefinitely. If damage is found, line officers have authority to limit or restrict cross-country OSV use throughout the RNA<sup>21</sup>.” But the EA fails to note that this damage *is already occurring* and that the Forest has taken no steps in response. The following photo, which we included with our June 2016 scoping comments, illustrates the damage caused by spring OSV use in the RNA.

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<sup>21</sup> Preliminary EA, page 111



OSV impacts on Rocky Mountain tundra within the Line Creek Research Natural Area, May 28 2016

Winter travel planning is the ideal time to address this problem, rather than waiting for it to get worse. Without enacting restrictions now, the damage *will* get worse because the amount of spring snowmobile use in the RNA is increasing annually. Spring is when damage is most likely to occur because the snow and tundra are melting. Damage to vegetation in the spring is also more likely to have a lasting impact than damage to tundra plants in the winter.

The EA states that it would be difficult to enforce a closure of this area as there are no natural boundaries. We disagree. There are no natural boundaries marking the Absaroka Beartooth Wilderness on the Line Creek plateau, yet with easily visible signage, the Custer Gallatin National Forest manages to keep snowmobiles out of the Wilderness. The same type of signage could easily be posted to inform snowmobile riders that motorized use is prohibited in the RNA. The SNF could also choose to not designate any lands north of Highway 212 on the east side of the Pass Summit for OSV use, with the road as an obvious and enforceable boundary. This would solve several problems, from unintentional Wilderness incursions to RNA damage. The SNF can further preserve the integrity of the RNA and comply with forest plan direction by prohibiting OSV use after April 30. If the OSV season ends on April 30 there would not be any danger of OSVs accidentally traveling through the RNA when the snow is melting and resource damage is most likely to occur.

In the Forest Plan, the desired condition for the Line Creek RNA is for it to provide “an opportunity for research, study, observation, monitoring, and educational activities that maintain the natural conditions for which the area was established.” It is also supposed to provide opportunities for solitude, primitive recreation and summer non-motorized recreation. In the winter, when the road isn’t open there is no



doubt that solitude is in great supply within the Line Creek RNA. This solitude is harder to come by in the spring and summer, however, especially when people begin snowmobiling almost exclusively in and around the RNA. As page 348 of Vol 1 of the Forest Plan EIS states, “In general... the greater the motorized recreational use, the greater the potential impact on rare plants habitat.” This is evident, as damage to the RNA is increasing each year in conjunction with the increase in spring OSV use on the Beartooth Pass. Spring OSV use on the Beartooth Pass is concentrated in and around the RNA because OSV users primarily park at the Gardner Lakes and State Line parking areas once the road is plowed. And, as use grows, so has damage to the RNA, just as forecast in the Forest Plan. Any damage to any part of the RNA is unacceptable, as the RNA is specifically intended to be managed in an undamaged condition for research purposes.

The Forest Plan aligns with national Forest Service policy for Research Natural Areas, which states that RNAs “may be used only for Research and Development, study, observation, monitoring, and those educational activities that do not modify the conditions for which the Research Natural Area was established.”<sup>22</sup> Designating OSV use within the RNA violates this policy. Furthermore, RNAs are to be managed for “nonmanipulative research, observation, and study.”<sup>23</sup> In establishing an RNA, the Forest Service is directed to meet a variety of objectives<sup>24</sup> – none of which includes providing opportunities for motorized recreation.

One of the standards in the Forest Plan states that “Recreation use is not prohibited, but shall not be encouraged” in the Line Creek Plateau RNA.<sup>25</sup> Designating any part of the RNA for OSV use and thus showing this designation on the Over Snow Vehicle Use Map constitutes “encouraging” recreation use. Therefore, designating any part of the RNA for OSV use conflicts with this Forest Plan standard. The Line Creek Plateau RNA should not be designated for any motorized use in order to maintain the integrity of the area for research purposes. The RNA only constitutes a small area of the Line Creek Plateau and even if no part of the RNA is designated for OSV use there is still a substantial amount of similar terrain available for OSV recreation.

Because all of the Alternatives in the EA authorize some portion of the RNA for OSV use, the SNF must develop (and adopt) another alternative where OSV use is prohibited in the entirety of the RNA. In addition, the EA’s analysis of OSV impacts within the RNA under Alternatives 1-3 is insufficient. The EA fails to consider how OSV use within the RNA will impact flora, fauna, soils, or scientific research nor

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<sup>22</sup> FSM 4063-3

<sup>23</sup> FSM 4063-2

<sup>24</sup> FSM 4063-2: 1) Maintain a wide spectrum of high-quality representative areas that represent the major forms of variability found in forest, shrubland, grassland, alpine, and natural situations that have scientific interest and important that, in combination, form a national network of ecological areas for research, education, and maintenance of biological diversity; 2) Preserve and maintain genetic diversity including threatened, endangered, and sensitive species; 3) Protect against human-caused environmental disruptions; 4) Serve as reference areas for study of natural ecological processes including disturbance; 5) Provide onsite and extension education activities; 6) Serve as baseline areas for comparing results from manipulative research; 7) Monitor effects of resource management techniques and practices.

<sup>25</sup> MA2.2A-STAND-11



does it explain why the current damage is not believed to be “affecting the integrity of ecological functions of the RNA as a whole” or how the SNF reached this conclusion. This is particularly surprising, given that we are aware that the SNF has been contacted repeatedly by at least one scientist with strong concerns about OSV damage in the RNA. Over the past year, Dr. Jennifer Lyman has provided detailed reports of damage from OSV use in the RNA (and elsewhere on the Beartooth Plateau), explained how this damage is causing ecological harm and interfering with scientific studies, and requested that the SNF take actions to remedy this problem.<sup>26</sup> As travel management is the ideal time to remedy an issue related to impacts from motor vehicles, the SNF should include Dr. Lyman’s reports in its analysis of OSV impacts. Furthermore, as this is clearly a significant issue, any Alternative that would designate OSV use within the Line Creek Plateau RNA should trigger an EIS. Not only should the SNF develop (and adopt) an additional Alternative that does not designate OSV use within the RNA, it must conduct an EIS in order to adequately consider the impacts of any Alternatives that would authorize OSV use within the RNA.

#### **VIII. HIGH LAKES WILDERNESS STUDY AREA**

We appreciate that the SNF incorporated our suggested High Lakes Wilderness Study Area (WSA) management into Alternative 3. This is one of the only examples from the EA where it is evident that the forest considered our scoping comments. At a bare minimum, the final plan should designate OSV use in the High Lakes WSA as mapped in Alternative 3, but additional restrictions within the WSA may be necessary.

Under the 1984 Wyoming Wilderness Act snowmobiling is allowed within the High Lakes WSA “in the same manner and degree as was occurring prior to” 1984. The Shoshone Forest Plan echoes this language, stating that the WSA will be managed to prevent long-term impairment of wilderness characteristics until released from wilderness study area status and that snowmobiling is authorized to the same manner and degree as was occurring prior to the Wyoming Wilderness Act of 1984.<sup>27</sup> We appreciate that the SNF has made an effort to consider the impact OSV use on Wilderness character in the WSA in this EA. However, we have questions about the data used, and doubts about the validity of the SNF’s conclusion that use patterns have not deviated significantly since the 1970s.

In the EA, the SNF relies on information from the 1982 Clark Fork Snowmobile Trail EA. This information is interesting, but not entirely relevant to understanding what use was in the WSA in 1982. Some of the data used – the Wyoming Recreation Commission use study data – can be compared to the more recent data collected by the SNF, as it was collected between the Montana/Wyoming state line and Island Lake. This data shows that there were 1,315 OSVs counted during 41 days of grooming in the 1978/79 season and 1,702 OSVs counted during the 55 days of grooming in the 1979/1980 season. The Upper Yellowstone Snowmobile Club traffic counter data, however, cannot be used to estimate use in the WSA. Not only does this data face all of the limitations described on page 138 of the EA,<sup>28</sup> a traffic

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<sup>26</sup> Exhibit 1

<sup>27</sup> Shoshone 2015 Revised Forest Plan. Pages 17 and 122.

<sup>28</sup> The underlying EA noted that “[t]he traffic counter counted the passage of each machine, some of which made more than one trip in and out of town during the day and night.” The EA calculated the average daily machines by dividing the total machines counted (33,073 machines) by total days for which machines were counted (171 days). This produced a rough daily usage rate of 193.4 machines. The Forest Service acknowledged that this 193.4 usage rate “is merely an indicator of daily use.”



counter set on the edge of Cooke City captures everybody coming and going from Cooke City, most of whom are not going to the WSA. The Daisy/Lulu areas on the Custer Gallatin National Forest are (and always have been) far more popular destinations for OSV users, and riders going to those areas are not going to also ride through the WSA in the same trip. It is not clear why this data was included in the current EA, especially as it does not appear to be included in Table 83.

While the data in Table 83 is interesting, and we're glad to see that the SNF has tracked OSV usage in – or near - the WSA to some degree, we could not agree more with the following sentence, from page 140 of the EA: "These usage statistics can inform decision-making, but should not drive decision-making." To determine the "manner and degree" that OSV use was occurring prior to 1984 requires more than traffic counters. As the EA states, "documented frequency, intensity, and duration of OSV use within the HLWSA is largely unavailable. Places traveled to, routes taken, and other information is not available."<sup>29</sup> Frequency, intensity, and duration of visits, as well as the places traveled to and routes taken are all important for understanding the "manner and degree" of use. OSV users traveling on Highway 212 may turn north, into the WSA, but they may just as likely travel south, onto lands that are not in the WSA. And, even for those users that do go into the WSA, the SNF does not know where within the WSA they go. Absent concrete data, the SNF must make inferences based on understanding the technological capabilities of an early 1980's OSV versus a modern-day OSV.

We discussed OSV technology in our 2015 pre-scoping comments and 2016 scoping comments, but the EA fails to provide any discussion of OSV technology and how changes in this technology may affect the manner and degree of OSV use within the WSA. Snowmobile technology has changed considerably since 1984, to the point where modern OSVs bear only a passing resemblance to the snowmobiles of the early 1980s. Until the 1990s, snowmobiles were generally restricted to groomed or packed trails and roads as the earlier machines would easily become bogged down in deep snow. In the mid-1990s, the development of the "powder sled" vastly changed the pattern of snowmobile use. Developments in OSV technology continue to lead to lighter, more powerful, and more agile machines. Modern snowmobiles – especially the mountain sleds popular with Beartooth riders - are able to travel easily through deep snow and up steep slopes. In addition, the newest type of OSV – the timber sled – can navigate through tight trees and other areas that snowmobiles cannot reach, able to travel almost anywhere a skier can travel. Both high-powered mountain sleds and timber sleds are widely used by people recreating in the High Lakes WSA, and no part of the WSA is physically off-limits to riders on today's machines.

Given that 1984-era snowmobiles could only travel off-trail in very specific conditions (on consolidated spring snow, if at all), it is extremely unlikely that snowmobiles ventured far from the groomed Beartooth Highway when the High Lakes WSA was established. Therefore, it seems likely that in 1984 there was limited, if any, snowmobile use within the WSA. In contrast, current OSV use within the WSA is common and wide-ranging. Even still, WWA members who have spent considerable time in the High Lakes WSA in winter have observed that most OSV users in the WSA stay within the area that would be designated for use in Alternative 3. OSV use in the area that would not be authorized under Alternative

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Some of the limitations of the data included: "(1) not all of the machines entering and leaving the Cooke City limits passed through the counter; (2) each machine that leaves and re-enters town via this route is two counts; (3) many of the machines leave and re-enter more than once, and (4) most of the snowmobilers stay for more than one day per visit."

<sup>29</sup> Preliminary EA, page 140





3 is rare and generally limited to late-spring, when we feel that OSV use should not be allowed on the forest at all.

Alternative 3 allows OSV use to continue to occur across the areas of the WSA that receive the most consistent use today, and where use was most likely occurring prior to 1984, including where the designated OSV trails are. It provides for the highly valued recreation experience that the Wyoming Wilderness Act speaks to, while protecting Wilderness character in the WSA. Contrary to the SNF's assertions on page 156 of the EA, this change would not substantially decrease opportunities for primitive recreation and solitude for OSV users. For one, OSV use is not a form of primitive recreation. Also, this statement fails to account for the large amount of terrain on the south side of Highway 212 on the Beartooth Plateau, which is not within the WSA but provides the same type of riding experience as within the WSA. Under Alternative 3, there would still be over 58,000 acres available for OSV use on the Beartooth Plateau, from Muddy Creek to the state line. And, whether inside of the WSA or not, all of this area provides the same amount of solitude and "primitive" recreation in winter as the WSA. Not allowing OSV use within 15,224 acres can hardly be said to "substantially decrease" these opportunities for OSV users on the Beartooth Plateau.

We do appreciate that the EA mentions the value the WSA holds for non-motorized users, and that Alternative 3 would increase opportunities for solitude and primitive recreation for non-motorized users. Backcountry skiers primarily visit the WSA once Highway 212 is plowed. Therefore, while winters in the WSA are long, the ski season is short – only a few weeks. During this time, the growing prevalence of spring OSV use in the WSA, especially in the easternmost portions of the WSA, is significantly detracting from the primitive recreation experience and solitude that skiers have long sought in this area. From a skier's perspective, OSV use is significantly detracting from the character and recreation opportunities of the WSA. However, this can be resolved by not designating OSV use in the parts of the WSA mapped in Alternative 3, and ending the OSV season on the Beartooth Plateau by April 30.

The EA's discussion of OSV management in the WSA is an excellent example of how the SNF has gotten travel planning backwards. Rather than discuss and analyze the consequences of *designating* OSV use in all or certain parts of the WSA, the EA discusses and analyzes the consequences of *closing* the area mapped in Alternative 3. This is contrary to how the forest should be approaching OSV planning given the Travel Management Rule's requirement to manage motorized use under a closed unless designated open paradigm. Had the SNF done this correctly, the EA would likely have discussed the issue of OSV incursions into the Absaroka Beartooth Wilderness, and what designating use – or not - adjacent to the Wilderness and within the WSA might mean for future Wilderness management. While we know that Wilderness incursions are a longstanding problem on the Beartooth Plateau, this issue is not mentioned even once in the EA. We find it curious that this issue is not included as a screening question in Appendix C or otherwise addressed in the EA, and given the significance of the issue, it is yet another reason the SNF must conduct an EIS.



## IX. ENVIRONMENTAL IMPACT STATEMENT VERSUS ENVIRONMENTAL ASSESSMENT

The Council for Environmental Quality's (CEQ) regulations require agencies to prepare an EIS if a project may significantly affect the human environment. As we have demonstrated in these comments, this project may significantly affect the human environment in a number of ways, from possibly designating motorized use in areas or times of year that are highly controversial to taking actions that will impact threatened and endangered wildlife species.

The SNF is conducting travel management planning following the recent completion of a forest plan revision. The Forest Plan set the stage for this process by identifying areas on the forest that are suitable for motorized use and which areas are not. However, this does not mean that the travel plan should designate every acre that the Forest Plan deems suitable. As the Bitterroot National Forest Supervisor said in her Record of Decision for the 2016 Bitterroot Travel Plan, "forest plans are permissive by nature. While certain uses may be permissible under the plan, the plan itself does not require those uses to occur."<sup>30</sup> We've said much the same in our earlier comments – forest plans are programmatic and do not make site-specific decisions in the same manner as required by travel planning. In this process the SNF should carefully consider where OSV use is appropriate, and physically possible, on the forest and where this use can occur in a manner that complies with the minimization criteria. This designation process requires detailed analysis and consideration of many different issues and an EIS is necessary to properly conduct the process. Not only does this EA lack an adequate range of alternatives, the alternatives presented fail to comply with the Travel Management Rule in numerous ways and the analysis of these alternatives ignores or lightly brushes over many substantive and significant issues.

There is a need to develop several new alternatives for this project. One alternative that is needed is one that provides a true baseline for comparison. Throughout the EA the SNF refers to Alternative 1 as if it is a true baseline and that any additional OSV trails beyond what currently exist are the only trails that have an impact that might require consideration. This implies that the existing network of OSV trails has no impact. Likewise, the EA implies that Alternative 1 is a "baseline" for OSV areas and while it is not possible to designate additional OSV areas beyond what is in Alternative 1, the EA implies that any reduction in this acreage represents a loss of the OSV community. This does not account for the many acres currently open to OSV use that provide no OSV opportunity due to terrain, access, or lack of snow. Alternative 1 is not a "no action" alternative in the sense that it provides a baseline against which to measure Alternatives 2 and 3. It is simply the current state of OSV management on the forest in the absence of winter travel planning – a management scenario that is inconsistent with the Travel Management Rule and must be remedied.

Application of the minimization criteria under the executive orders and analysis of the direct, indirect, and cumulative impacts of a range of reasonable alternatives under NEPA should complement and reinforce one another. As discussed earlier, the minimization criteria must be applied to *each* designated area and route, and the corresponding NEPA analysis should analyze impacts associated with the *entire* system proposed for designation under each alternative – regardless of the extent to which that system is already reflected in current OSV management.

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<sup>30</sup> Bitterroot National Forest Travel Management Planning Project Record of Decision, page 17



In most cases, including on the SNF, OSV use and its associated impacts has never been subjected to a thorough NEPA analysis or application of the minimization criteria. The NEPA analysis for this travel plan must analyze – and *minimize* – the impacts of OSV designations, even where these designations simply allow continued OSV travel in areas where it already occurs. Similarly, the SNF must analyze and minimize impacts associated with designating existing OSV routes that have not previously been subject to NEPA or the minimization criteria.

To facilitate this required analysis and comply with NEPA, the EIS must include an alternative under which no areas or routes would be designated as open to recreational OSV use.<sup>31</sup> This alternative is necessary to provide an accurate comparison for analysis of the impacts associated with all the area and route designations made in the winter travel plan – including those that allow continued OSV travel in existing areas or on existing routes. Unlike in a typical NEPA analysis where the no action alternative provides that baseline for comparison, Alternative 1 in this EA reflects the current management status quo allowing cross-country OSV travel by default across many areas of the forest. This is similar to the situation in *Western Watersheds Project v. Abbey*, where the Ninth Circuit overturned a BLM NEPA analysis that failed to analyze an alternative that would eliminate grazing in the Missouri Breaks National Monument.<sup>32</sup> Absent such an alternative, and where both the no action and action alternatives permitted continued grazing, the court found that the agency was “operating with limited information on grazing impacts,” in violation of NEPA.<sup>33</sup> The same is true here, where an alternative that designates no areas or trails open to OSV use is necessary to facilitate a fully informed decision about the impacts of the action alternatives.

Aside from developing a true “no action” alternative, an EIS could – and should – include modified versions of the alternatives presented in this EA, but it should also include additional alternatives that reflect proposals discussed in this comment letter and in other comments the SNF has received since 2015. The SNF is drafting a year-round, forest-wide travel plan. By its very nature, travel management is wrought with conflict and of significant public interest. Compounding this, potential OSV areas on the Shoshone border multiple designated Wilderness areas, the forest is an integral piece of the Greater Yellowstone Ecosystem, and is home to numerous sensitive species. If only one of these issues were at stake perhaps an EA would be appropriate but considering the numerous significant issues at hand, an EIS is necessary.

## **X. MONITORING AND IMPLEMENTATION**

We look forward to the day that the SNF completes its travel management plan. However, a travel management plan is no more than a heavy paperweight if it doesn’t include a plan for monitoring and implementation. While this plan may be separate from the final travel plan, the travel plan should

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<sup>31</sup> Specially authorized or permitted OSV uses to, for example, access valid existing rights would still be allowed. See 36 C.F.R. § 212.81(a) (describing exempted uses).

<sup>32</sup> 719 F.3d 1035, 1050-53 (9th Cir. 2013).

<sup>33</sup> See also, e.g., *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 708-11 (10th Cir. 2009) (invalidating NEPA analysis that failed to analyze an alternative that would close the entire area to oil and gas development because, “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded”).



include direction for developing a monitoring and implementation plan. One of the SNF's fellow Region 2 forests – the White River – provides a good model for the SNF follow.

The White River travel plan covers both summer and winter uses and defines modes of travel across the forest by area and by route. In order to ensure the travel plan was successfully implemented, the Forest Service drafted a Travel Management Implementation Plan (TMIP)<sup>34</sup> to accompany the travel plan. The TMIP was specifically focused on the 3-year period immediately following the publication of the travel plan: 2012-2015.

The White River emphasized the “4Es” throughout travel planning and implementation – Education, Engineering, Enforcement, and Evaluation (monitoring). Recognizing that “without appropriate and adequate information and education materials available for the public, and personnel to create and distribute them, the designation process alone will not provide the change in awareness and behavior necessary to ensure that the desired positive effects of the new travel rule are realized”<sup>35</sup>, the implementation initially focused on education. The forest budgeted \$300,000 annually for new signs and other education materials to inform the public about (summer and winter) travel plan designations and restrictions for the first three years of plan implementation. Education materials included up-to-date information posted on the forest website, public information kiosks, digital brochures and interactive maps, motor vehicle and over-snow vehicle use maps, visitor use maps, brochures on responsible use, specific brochures for high-use areas, brochures on safety in mixed-use areas, and talking points for forest staff. These talking points (and other materials) focused on positive messaging. Rather than emphasizing where people *couldn't* go for their desired activity, the forest emphasized telling the public where they *could* go. Furthermore, much of the travel plan-related messaging and educational materials were developed with partners who had participated in the travel planning process. Partner organizations – including state agencies – provided funding, volunteer and staff time, and materials to develop and post information about the travel plan.

The goal of the education component of the TMIP was to provide sufficient information to the public so that enforcement would not need to be the primary focus for travel plan implementation. However, enforcement still plays an important role. At the start of the enforcement phase of the TMIP, the Forest increased the number of staff who were trained and certified as Forest Protection Officers (FPOs) and encouraged all staff to spend more time in the field, to increase Forest Service visibility and presence. The TMIP also calls for close coordination between forest law enforcement officers (LEOs) and district staff, with districts identifying priority or problem areas and LEOs coordinating with FPOs to carry out enforcement. Today, many years into implementation, the Forest continues to conduct routine patrols at identified “hot spots” where compliance is an ongoing issue – such as where Wilderness boundaries are near OSV routes.

District staff are primarily responsible for enforcing the travel plan. The forest's only full-time snow rangers work within the Vail Pass Winter Recreation Area. Vail Pass is the most heavily used winter recreation area on the forest and requires the most resources to manage. Vail Pass is also the only

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<sup>34</sup> Available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5365835.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5365835.pdf)

<sup>35</sup> White River TMIP, page 6



winter fee area on the forest, with fees going to support grooming, trail maintenance, signage, patrols, plowing parking lots, and staffing.

Monitoring is another important element of the TMIP and has been critical to evaluating the success of the plan. The Vail Pass Winter Recreation Area was among the study sites chosen for a multi-year, in-depth research project examining the impact of winter recreation on lynx. Research methods for this study included having backcountry skiers and snowmobilers carry GPS units while recreating on the forest. This provided a treasure trove of detailed information about how and where the public recreates at Vail Pass and provided data for four peer-reviewed research papers (two of which we cited in these comments). Aside from the lynx study, however, monitoring has been informal, with the public, partners, and agency staff noting violations or conflicts.

Another example the SNF should look to for understanding the monitoring and implementation piece of travel management is its neighbor to the north – the Custer Gallatin National Forest. The Gallatin immediately launched into implementation once its 2006 travel plan was complete. While the Gallatin’s Travel Plan Implementation Strategy<sup>36</sup> is not as detailed as the White River TMIP, it nevertheless provides a basic outline for how the forest intended to implement its new travel plan. The 3-phase implementation plan started with setting the stage by educating the public about the new plan, identifying grants and volunteers to help with plan implementation, initiating monitoring, developing maps, and putting up new signs/removing obsolete signs. The second phase, 1-5 years after the ROD was signed, focused on implementing the site-specific projects necessary to open the motorized routes approved in the Travel Plan, increasing enforcement through saturation patrols, formalizing relationships with partners through user group agreements, and designating and managing major forest access corridors. Finally, phase 3 of plan implementation, 5-10 years out from the ROD, was focused on implementing the site-specific projects necessary to provide for the non-motorized opportunities in the Travel Plan, improving or creating new parking areas where needed, decommissioning roads and trails as called for in the Travel Plan, and conducting routine maintenance and improvements for roads, trails, trailheads, and parking areas.

In addition to creating maps, signs, and educational materials related to the new travel plan, there were several major on-the-ground changes that the Forest needed to enact to implement the plan. One reason that the Gallatin travel plan has endured for over a decade is that it reduces use conflict and incursions into non-motorized areas by creating separate trailheads for motorized and non-motorized uses (such as what we have recommended at Wind River Lake). In some cases, these trailheads already existed and just needed to be plowed, while in others the Forest had to construct new trailheads. In order to ensure the new trailheads would serve their intended purpose, the Forest also did some work to connect the new OSV trailheads to the designated route system. Because the Travel Plan designated routes for different uses but did not authorize “dirt moving” such as building new parking areas or trail construction, the Gallatin prioritized completing related site-specific NEPA for project implementation as soon as the Travel Plan Record of Decision was signed.<sup>37</sup> Not only did this subsequent EA approve travel

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<sup>36</sup> Available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5130759.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5130759.pdf)

<sup>37</sup> Road and Trail Work Environmental Assessment, Decision Notice signed April 15, 2009. Available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd591527.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd591527.pdf)





management-related projects, it helped the Forest Service identify priorities and create an annual program of work to guide the forest in implementing the plan.

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It is clear from public discussion<sup>38</sup> and the comments submitted throughout this process that the SNF has failed to clearly explain what travel management planning is, why the forest is going through this process, and what the sideboards and rules governing the process are. We have seen that elsewhere in the Forest Service system that when the Agency fails to explain this foundational information it creates substantial conflict in the planning process—conflict which soon enough extends to user groups in the field. For example, by failing to explain that travel planning is not simply a matter of designating use in the places that the motorized community desires, but rather that the process places motorized designations in context and on equal footing with other uses, the Forest Service sets the stage for motorized users to feel attacked when other stakeholder groups question or challenge proposed designations. Travel management does not need to pit stakeholder interests against one another, but by failing to frame this process as one in which the Forest Service must meaningfully consider and minimize impacts from motorized use on natural resources and other uses, this is exactly what happens. Similarly, by failing to explain that the Travel Management Rule changes how OSV use is managed, from “open unless designated closed” to “closed unless designated open” the Forest sets an expectation that there must be justification to “close” an area to OSV use, when in fact the opposite is true.

We encourage the SNF to develop a range of new alternatives based on the information received during this comment period and from 2015-2017 and develop an EIS. The SNF should wait to present its draft EIS to the public until after the covid-19 pandemic has ended and then hold in-person public meetings where Forest Service staff can better explain this entire process, so that the public can engage in a meaningful way to help the SNF draft a sustainable travel plan.

We appreciate your attention to these comments. We understand that they are lengthy and complex, so to summarize, here are our key points:

- The alternatives in this EA do not comply with the Travel Management Rule requirement to manage OSV use under a “closed unless designated open” paradigm – the SNF must develop new Alternatives that do so.
- The SNF has failed to properly apply the minimization criteria and must develop new alternatives in compliance with these criteria.
- The final plan should only allow OSVs in designated areas and trails on the SNF from December 1-April 30.
- The final plan should not designate SNF lands that rarely, if ever, receive sufficient snow for OSV use, or are otherwise not conducive to or appropriate for OSV use.
- The final plan should not designate the area around the Pinnacles and Deception cross-country ski trails for OSV use (as mapped in both Alternatives 2 and 3), nor should it designate the Breccia Cliffs area for OSV use.
- The final plan should not designate lands in the High Lakes WSA for OSV use as mapped in Alternative 3

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<sup>38</sup> For example, the recent Park County Commission meeting as reported by the Cody Enterprise here: [https://www.codyenterprise.com/news/local/article\\_241412a4-f859-11ea-92af-0750b8d039c7.html](https://www.codyenterprise.com/news/local/article_241412a4-f859-11ea-92af-0750b8d039c7.html)



- The final plan should authorize plowing for a new non-motorized winter trailhead at Wind River Lake.
- The final plan should include direction for SNF staff to work with recreation users on signage and education efforts to reduce use conflict.
- The final plan should include direction to develop a monitoring and implementation plan.
- An EIS is required.

In addition to these comments, WWA has submitted a second comment letter jointly with our conservation partners – the content of that letter is herein incorporated into these comments by reference.

I look forward to discussing these comments with you further. Please do not hesitate to contact me with any questions related to these comments and the travel management plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary Eisen". The signature is fluid and cursive, with a large loop at the end.

Hilary Eisen  
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*On behalf of*

Charlie Manganiello  
President  
Togwotee Pass Backcountry Alliance