

# **CAPITAL TRAIL VEHICLE ASSOCIATION (CTVA)**

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May 14, 2023

Lolo National Forest Supervisor's Office  
c/o Amanda Milburn, Plan Revision  
24 Fort Missoula Rd.  
Missoula, MT 59804  
[SM.FS.LFNRevision@usda.gov](mailto:SM.FS.LFNRevision@usda.gov)

Re: Lolo National Forest Land Management Plan Revision #62960

Dear Project Team,

We have assembled the following comments, information and issues from our members and other motorized recreationists for the project record. We appreciate the opportunity to provide our comments for the Lolo National Forest Land Management Plan Revision.

The following comments are provided to identify and demonstrate significant issues that should be adequately addressed by the agency as part of a travel management action.

The following comments also contain examples of the types of information that should be adequately developed and addressed by the agency in order to adequately identify and address the significant issues associated with motorized recreation, travel management, motorized closures.

We do not have access to all of the types of information needed to address all of the significant issues that we have identified.

Yellow highlight has been used to call out the types of information that needs to be developed and used by the Lolo National Forest as part of the forest plan revision process.

The development of information similar to that demonstrated in the examples and the analysis of that information is the agency's responsibility.

The types of information outlined in the examples provided on the following pages should be undertaken for an adequate NEPA analysis and for full public disclosure.

We believe that full and adequate consideration of these issues, comments, and information will justify the development of a reasonable Pro-Recreation alternative that would enhance existing motorized recreational opportunities.

We ask the Forest Plan Revision Team to use these comments, significant issues, information, and examples as support and justification for more motorized access and recreational opportunities and the development of a Pro-Recreation alternative.

Thank you for considering our comments and issues.

Sincerely,

/s/ CTVA Action Committee on behalf of our 240 members and their families and friends  
Capital Trail Vehicle Association (CTVA)<sup>1</sup>  
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Attachments: CTVA Comments

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<sup>1</sup> CTVA members also belong to Montana Trail Vehicle Riders Association ([mtvra.com](http://mtvra.com)), Blue Ribbon Coalition ([sharetrails.org](http://sharetrails.org)), New Mexico Off highway Vehicle Alliance ([nmohva.org](http://nmohva.org)), American Motorcycle Association ([ama-cycle.org](http://ama-cycle.org)), Citizens for Balanced Use ([citizensforbalanceduse.com](http://citizensforbalanceduse.com)), Montana 4X4 Association, Inc. ([m4x4a.org](http://m4x4a.org)), Snowmobile Alliance of Western States ([snowmobile-alliance.org](http://snowmobile-alliance.org)), and United Four Wheel Drive Association ([ufwda.org](http://ufwda.org))

**COMMENTS IN SUPPORT OF SIGNIFICANT ISSUES,  
ANALYSIS, AND INFORMATION THAT MUST BE  
ADEQUATELY ADDRESSED BY  
LOLO NATIONAL FOREST  
LAND MANAGEMENT PLAN REVISION #62960**

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*The following comments also contain examples of the types of information that should be adequately developed and addressed by the agency in order to adequately identify and address the significant issues associated with motorized recreation, travel management, motorized closures.*

*We do not have access to all of the types of information needed to address all of the significant issues that we have identified.*

*Yellow highlight has been used to call out the information that should be developed and used by the Lolo National Forest.*

## 5. Avoid Over Representing the Public's Need for More Wilderness

1. The majority of the population in the United States lives in big city urban settings and their definition and understanding of "wilderness" is settings like Central Park. Therefore, the work "wilderness" is used by the majority of the public to describe any outdoor setting.
2. The use of the word "wilderness" should recognize that most people refer to "wilderness" as any place that is remote and oftentimes that is someplace that they have driven to. This use of the word should not be taken as support of designated wilderness as defined by congress. This use simply refers to remote places many of which can be accessed and enjoyed by the public with their vehicles.
3. Ninety-nine percent of the self-reported hikes are taken either on a road or motorized trail or within a mile of a road. Actual wilderness visits and hikes are very limited in number. Most wilderness areas are not accessible to the public. The evaluation and decision should adequately recognize this condition and the important that roads and motorized trails play for the majority of the public.
4. The current allotment of recreation resources on all Forest Service lands is way out of balance with 44,919,000 acres out of 192,300,000 acres or 24% in wilderness designation while no more than 2.55% of the visitors are wilderness visitors. Designation as wilderness is further out of touch with the needs of the public because recreation is not a stated purpose of the wilderness act and, therefore, recreation in wilderness area cannot and should not be emphasized. Note that we could oppose any recreation development in wilderness areas in retaliation to non-motorized groups that go after our recreation opportunities, but we have chosen not to do so. Recreation is a stated purpose in the multiple-use laws and, therefore, should be emphasized in the purpose and action.
5. If Roadless acres are included in this total, it becomes even more unbalanced with at total of 103,437,000 acres or 54% in wilderness or roadless designation while only 2.55% of the visitors are wilderness visitors.
6. The evaluation must adequately consider and address the fact that motorized access to public land is relatively limited as shown by the miles of roads versus the number of acres in the following table. The miles and percentage of non-motorized trails is excessive compared to the use that they receive and this does not consider the endless cross-country opportunities that available to non-motorized recreationists. The total route opportunity available to non-motorized recreationists is 510,575 miles; the total miles of exclusive non-motorized trails are 93,088 or 75% of the existing total. The miles of non-motorized cross-country opportunity are infinite.
7. The total miles of roads open to motorized recreationists are 286,445 and the total miles of trails open to motorized recreationists are 31,853 or 25% of the existing total. The cross-country miles are or will be shortly equal to zero. Therefore, the overall allocation of non-motorized versus motorized access and trail riding opportunities in public lands is way out of balance with the needs of the public for motorized access and the recreational needs of motorized recreationists.

Furthermore, we request that the data in the next two tables be updated to reflect the significant reduction in miles of roads and motorized trails that decisions have produced since this data was assembled. This revised data should be used to guide the decision-making and travel plan alternatives that adequately meet the needs of the public by increasing motorized recreational opportunities in the project area.

Region	Forest	District	NFS Acres	Current Status	Projected Date for Designation	Existing NFS Roads	Existing NFS Roads Open to Motor Vehicle Use	Existing NFS Trails	Existing NFS Trails Open to Motor Vehicle Use	Existing NFS Trails Open to Motor Vehicle Use (Single-Track)	Acres Currently Open to Cross-Country Motor Vehicle Use	
			Totals			194,015,494	385,634	286,445	124,941	31,853	15,526	65,887,245
							Miles of Open Road per Square Mile =	0.74				
							Total Roads and Trails Open to Non-Motorized Use, Miles	510,575				
							Non-Motorized Trails, Miles =	93,088				
							Non-Motorized Trails, % =	74.51%				
							Motorized Trails, miles =		31,853		15,526	
							Motorized Trails, % =		25.49%			
							Trails Open to Motorcycles %			12.43%		
							<a href="http://www.fs.fed.us/recreation/programs/ohw/">http://www.fs.fed.us/recreation/programs/ohw/</a>					
							<a href="http://www.fs.fed.us/recreation/programs/ohw/travel_mgmt_schedule.pdf">http://www.fs.fed.us/recreation/programs/ohw/travel_mgmt_schedule.pdf</a>					

NOTE: This data is out of date by at least 16 years and does not reflect significant motorized closures that have occurred since this table was put together.

8. The evaluation should adequately consider and address the fact that motorized access to the national forest in Region 1 is relatively limited as shown by the miles of roads versus the number of acres in the following table. The miles and percentage of non-motorized trails is excessive compared to the use that they receive and this does not consider the endless cross-country opportunities that available to non-motorized recreationists. The total route opportunity available to non-motorized recreationists in Region 1 is 73,348 miles; the total miles of exclusive non-motorized trails are 14,521 or 66% of the total existing miles of trail. The miles of cross-country opportunity are infinite.

The total miles of roads open to motorized recreationists are 26,259 and the total miles of trails open to motorized recreationists are 7,521 or 34% of the total existing miles of trail. The miles of cross-country opportunity are or will be shortly equal to zero. Therefore, the overall allocation of non-motorized versus motorized access and trail riding opportunities in Region 1 is way out of balance with the needs of the public for motorized access and the recreational needs of motorized recreationists.

Region	Forest	District	NFS Acres	Current Status	Projected Date for Designation	Existing NFS Roads	Existing NFS Roads Open to Motor Vehicle Use	Existing NFS Trails	Existing NFS Trails Open to Motor Vehicle Use	Existing NFS Trails Open to Motor Vehicle Use (Single-Track)	Acres Currently Open to Cross-Country Motor Vehicle Use	
			Totals			26,254,657	51,306	26,259	22,042	7,521	5,052	4,352,849
							Miles of Open Road per Square Mile =	0.51				
							Total Roads and Trails Open to Non-Motorized Use, Miles	73,348				
							Non-Motorized Trails, Miles =	14,521				
							Non-Motorized Trails, % =	65.88%				
							Motorized Trails, miles =		7,521		5,052	
							Motorized Trails, % =		34.12%			
							Trails Open to Motorcycles %			22.92%		
							<a href="http://www.fs.fed.us/recreation/programs/ohw/">http://www.fs.fed.us/recreation/programs/ohw/</a>					
							<a href="http://www.fs.fed.us/recreation/programs/ohw/travel_mgmt_schedule.pdf">http://www.fs.fed.us/recreation/programs/ohw/travel_mgmt_schedule.pdf</a>					

**Note that this data was assembled in 2006 does not reflect the motorized closures that have occurred in the last 16 years due to lack of adequate evaluation and disclosure by the agencies. The percentage of non-motorized trails is even higher than 65.88% now.**

9. Additionally, specific NVUM data for Montana National Forests shows that there were 10,055,000 total site visits to the forest and only 304,000 wilderness visits ([http://www.fs.fed.us/recreation/programs/nvum/revised\\_vis\\_est.pdf](http://www.fs.fed.us/recreation/programs/nvum/revised_vis_est.pdf)). Therefore, wilderness visits in Montana are only 3.02% of the total visits yet past decisions have produced both a

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disproportionately large and an increased number of recreation opportunities for non-motorized and wilderness visitors and at the expense of the multiple-use and motorized visitors. The remaining 96.98% of the visitors are for the most part associated with multiple-uses. The public comments and votes by how they use the forest, and more motorized access and recreation is what they are asking for with every visit regardless of whether they provide comments in a cumbersome NEPA process.

**Table of Wilderness Visits to Montana National Forests versus Multiple-Use Visits**

Forest	All Site Visits (000's)	Wilderness Visits (000's)	Wilderness Visits (%)	Multiple-Use Visits (%)
Beaverhead-Deerlodge	1,377	15	1.09%	98.91%
Bitterroot	731	122	16.69%	83.31%
Custer	845	12	1.42%	98.58%
Flathead	1,514	24	1.59%	98.41%
Gallatin	1,650	46	2.79%	97.21%
Helena	508	3	0.59%	99.41%
Kootenai	1,400	32	2.29%	97.71%
Lewis & Clark	536	26	4.85%	95.15%
Lolo	1,494	24	1.61%	98.39%
<b>Total</b>	<b>10,055</b>	<b>304</b>	<b>3.02%</b>	<b>96.98%</b>

[http://www.fs.fed.us/recreation/programs/nvum/revised\\_vis\\_est.pdf](http://www.fs.fed.us/recreation/programs/nvum/revised_vis_est.pdf)

10. Additionally, specific NVUM data for the Helena National Forest shows that there were 508,000 total site visits to the forest and only 3,000 wilderness visits ([http://www.fs.fed.us/recreation/programs/nvum/revised\\_vis\\_est.pdf](http://www.fs.fed.us/recreation/programs/nvum/revised_vis_est.pdf)). Therefore, wilderness visits in the Helena National Forest are 0.59% of the total visits and all of the people who want to “keep it wild” don’t actually visit wilderness yet past decisions in Region 1 and the proposed plan by the Helena National Forest have produced both a disproportionately large and an increased number of recreation opportunities for non-motorized and wilderness visitors and at the expense of the multiple-use and motorized visitors. The remaining 99.41% of the visitors are associated with multiple-uses. The public comments and votes by how they use the forest, and more motorized access and recreation is what they are asking for with every visit regardless of whether they provide comments in a cumbersome NEPA process.

11. The NVUM and Southern Research Station reports cited prove that there are 146,000 (508,000 forest visitors x 29.1% OHV) OHV visitors to the Helena National Forest and 3,000 wilderness visitors. The ratio of trail users is 49 motorized to 1 non-motorized yet the balance of existing trails is 21% motorized versus 79% non-motorized. Clearly there is an imbalance of opportunity that justifies more (not less) motorized recreational opportunities.

12. As demonstrated by Table 3, the ratio of acres available to wilderness/non-motorized visitors versus the acres available to multiple-use visitors is way out of balance in the existing condition with 39 acres per wilderness visitor and 1.70 acres per multiple-use visitor for a ratio of about 23:1. The proposed action to designate all roadless areas non-motorized areas makes this inequity even worse by providing 187 acres per wilderness visitor and 0.82 acre per multiple-use visitor for a ratio of about 228:1. The available multiple-use (MU) acres and acres per MU visitors is less than this example because even though lands are designated as MU by congress the agency is effectively managing many multiple-use acres as non-motorized/defacto wilderness. Therefore, the acres per MU visitor are significantly less than shown and the imbalance of the ratio of defacto wilderness acres per visitor to MU acres per visitor is significantly greater than this example.

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**Table 3 Acres per Forest Visitor and Ratio**

Total Annual Forest Visitors =	508,000
Wilderness Visitors =	3,000
Multiple-use Visitors =	505,000
Forest Acreage =	977,000
Existing Wilderness Acreage =	117,000
Existing Multiple-use Acreage =	860,000
Proposed Defacto Wilderness Acreage =	445,000
Total Proposed Defacto Wilderness =	562,000
Total Proposed Multiple-use Acreage =	415,000
Existing Acres/Wilderness Visitor =	39.00
Proposed Acres/Wilderness Visitor =	187.33
Percent Increase =	380%
Existing Acres/Multiple-use Visitor =	1.70
Proposed Acres/Multiple-use Visitor =	0.82
Percent Decrease =	-52%
Existing Ratio of Defacto Wilderness to MU Acres per Visitor	22.90
Proposed Ratio of Defacto Wilderness to MU Acres per Visitor	227.96
Note 1: Total Proposed Defacto Wilderness includes all Roadless Areas which the Agency is inappropriately managing as non-motorized.	
Note 2: The available multiple-use (MU) acres and acres per MU visitors is less than this example because even though lands are designated as MU by congress the agency is effectively managing many multiple-use acres as non-motorized/defacto wilderness. Therefore, the acres per MU visitor is significantly less than shown and the imbalance of the ratio of defacto wilderness acres per visitor to MU acres per visitor is significantly greater than this example.	

13. We recognize the desire for a quiet experience in the forest as a legitimate value. To varying degrees, we all visit the forest to enjoy the natural sounds of streams, trees, and wildlife. Forest visitors who require an absolutely natural acoustic experience in the forest should be encouraged to use the portions of the forest which have been set aside for their exclusive benefit where they are guaranteed a quiet experience, i.e., wilderness areas. Given the demonstrated underutilization of existing wilderness areas, it is entirely reasonable to conclude that there is adequate wilderness area. Given that vast areas of our forests have been set aside for the exclusive benefit of this relatively small group of quiet visitors, it is not reasonable to set aside more areas and trails for their needs.
14. There is no need for additional Wilderness for recreational usage based on the following information. Wilderness also includes all defacto Wilderness areas (in practice but not ordained by law) such as non-motorized Roadless areas and designated non-motorized areas.
- a) The huge lack of wilderness use is documented in an article on a 20 day, 200 mile hike through the Bob Marshall and Mission Mountains in the Montana Standard ([http://mtstandard.com/lifestyles/outdoors/photographer-retraces-bob-marshall-s-epic-hike-in-spirit/article\\_a84bfa47-f841-5ae8-9f95-a9fc08e20a07.html](http://mtstandard.com/lifestyles/outdoors/photographer-retraces-bob-marshall-s-epic-hike-in-spirit/article_a84bfa47-f841-5ae8-9f95-a9fc08e20a07.html)). "Other than some scattered encounters, he found the solitude remarkable. On the Swan Crest, he only saw only four hikers on 40 of the 48 miles before reaching the Jewel Basin. In the Bob Marshall portion, he saw only four hikers in 90 miles, not counting outfitters and horse riders."
  - b)
  - c) Twenty percent of USFS trails are in Wilderness areas (Source #1 below), and these areas receive only 4% of all visitor days to USFS lands (Source #2). Routes in Wilderness

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areas are difficult and exceptionally expensive to maintain, due to strict management limitations (Source #3). Teams of horses and mules can move large amounts of materials but are not cost effective when compared to a pickup truck, and the maintenance equipment cannot be left on the mules overnight.

- i. #1. United States Government Accountability Office Report GAO-13-618; Forest Service Trails; Long- and Short-Term Improvements Could Reduce Maintenance Backlog and Enhance System Sustainability; June 2013 at page 30. Complete report is available here: <http://www.gao.gov/assets/660/655555.pdf>
  - ii. #2. USDA Forest Service: National Visitor Use Monitoring Results USDA Forest Service National Summary Report Data collected FY 2008 through FY 2012 Last updated 20 May2013; at page 8.
  - iii. United States Government Accountability Office Report GAO-13-618; Forest Service Trails; Long- and Short-Term Improvements Could Reduce Maintenance Backlog and Enhance System Sustainability; June 2013 at page 30.
- d) The Government Accountability Office (GAO) recently identified that motorized users are the only ones who “pay to play” on USFS trails. And even with this funding, only 25% of all routes are financially sustainable due to high percentages of routes in Wilderness designations (Source #4). If motorized funding is not available for management of dispersed recreational opportunities, the resources available to maintain any trail greatly diminish and possible impacts expand.
- i. #4. United States Government Accountability Office Report GAO-13-618; Forest Service Trails; Long- and Short-Term Improvements Could Reduce Maintenance Backlog and Enhance System Sustainability; June 2013 at page 30.
- e) The true economic driver for local economies is multiple-use recreation on public lands. USFS comparisons of user group spending profiles, made as part of the National Visitor Use Monitoring process, estimate that the motorized user spends 2 to 3 times the amount of money spent by non-motorized users (Source #5). This significant difference translates to significant negative economic impacts to local communities from significantly lower levels of visitation after Wilderness designations.
- i. #5. USDA Forest Service; White and Stynes et al; Updated Spending Profiles for National Forest Recreation Visitors by Activity November 2010 at page 6.
- f) Many Wilderness Proposals erroneously rely on the newly released Outdoor Industry Association (OIA) Report that concluded that \$646 billion is annually spent on outdoor recreation. Wilderness Proposals frequently assert this was the result of quiet use recreation. This is simply incorrect, as the 2012 OIA study included motorized usage in their analysis (Source #6). Previously, versions of the OIA study attempted to only include non-motorized usage.
- i. #6 Outdoor Industry Association; The Outdoor Recreation Economy; Take it Outside for American Jobs and a Strong Economy; 2012 report.
- g) A recent USFS report to Senator Mark Udall (D-CO) specifically stated that Wilderness Areas are a significant factor contributing to poor forest health and the outbreak of mountain pine beetle throughout the western U.S. (Source #7). This position has been repeatedly stated by the Colorado State Forest Service, which has found management restrictions in Wilderness Areas have caused significant outbreaks of Spruce Beetle infestations (Source #8). USFS guidelines for management and protection of watersheds identify the critical need for active management of watersheds to insure water quality (Source #9). This management is impossible in a Wilderness Area. Limited forest

management is specifically identified as a major factor negatively impacting endangered species such as the Canadian lynx (Source #10).

- i. #7. USDA Forest Service; Review of the Forest Service Response: The Bark Beetle Outbreak in Northern Colorado and Southern Wyoming; September 2011; at pages i, 5, 12. Complete report is available here: <http://www.fs.usda.gov/detail/barkbeetle/home/?cid=stelprdb5340741>
  - ii. #8. Colorado State Forest Service; 2012 Report on the Health of Colorado's Forests; Forest Steward Ship through Active Management; at page 5. A copy of this report is available here: <http://csfs.colostate.edu/pdfs/137233-forestreport-12-www.pdf> .
  - iii. #9 Executive Summary; PROTECTING FRONT RANGE FOREST WATERSHEDS FROM HIGH-SEVERITY WILDFIRES AN ASSESSMENT BY THE PINCHOT INSTITUTE FOR CONSERVATION FUNDED BY THE FRONT RANGE FUELS TREATMENT PARTNERSHIP. A complete copy of this report is available here. [http://www.pinchot.org/gp/Colorado\\_watersheds](http://www.pinchot.org/gp/Colorado_watersheds)
  - iv. #10 Interagency Lynx Biology Team. 2013. Canada lynx conservation assessment and strategy. 3rd edition. USDA Forest Service, USDI Fish and Wildlife Service, USDI Bureau of Land Management, and USDI National Park Service. Forest Service Publication R1-13-19, Missoula, MT. 128 pp. at page 75.
- h) The critical need for motorized access to multiple-use recreation was recently identified by the National Shooting Sports Foundation (NSSF). It found that a lack of motorized access was the largest single barrier to those wanting to hunt and fish (Source #11). A lack of multiple-use access is also identified as a significant limitation to herd management and herd health (Source #12).
- i. #11. National Shooting Sports Foundation: Issues Related to Hunting Access in the United States; Final Report November 2010 at page 7, 13, 56.
  - ii. #12 National Shooting Sports Foundation; Issues Related to Hunting Access in the United States; Final Report November 2010 at page 11.
- i) Agency inventories and determinations on possible designations of Roadless Areas are not management decisions but are rather inventories of characteristics of that area. Roadless areas are still governed by multiple-use management and changes to management require NEPA analysis or Congressional action. There are significant limitations on the scope of the Roadless Rule, as it only applies to new road construction or major reconstructions. Trails, even those over 50 inches wide, are not impacted by the Roadless Rule. Many areas that are involved in citizen Wilderness Proposals have been inventoried and found to be unsuitable for Roadless designation and this should weigh heavily against any suitability for Wilderness designation.
15. The Forest Service and BLM do not have the authority to create de-facto wilderness. It is critical that the agency differentiate between the powers of rule promulgating and enforcement agencies (like the BLM and Forest Service) and our federal rulemaking body (Congress). Rulemaking agencies cannot create areas that are wilderness in all but name. Wilderness study areas and non-motorized areas are managed as wilderness areas and are simply a mechanism to evade the measures set forth in the Wilderness Act. If these lands are important wilderness-type lands, then the agency must follow the laws set forth in the Wilderness Act (Public Law 88-577 - 16 U.S.C. 1131-1136) including: *Presidential recommendation to Congress. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries...Congressional approval. Each*

*recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress.*

16. There simply is no justification for creating more wilderness or defacto wilderness areas on our forests. If forest management continues to allow anti-access groups to use the travel planning process to further their agendas the travel plan will certainly fail! It should not be the purpose or intent of the travel planning process to exclude OHV travel or to crowd these users into small areas. To do so will produce unacceptable impacts on the forest and ultimately result in inappropriate use brought on by the travel plan itself.
17. Further evidence that the public widely supports multiple-use management of roadless areas was demonstrated by a ballot initiative in Montana. Flathead County voters have once again shown that they want federal roadless areas managed for multiple-uses, with 65 percent saying roadless lands "should be managed for multiple use purposes including motorized recreation and roaded timber production." With most of the votes counted, 7,796 voters supported that option, while 4,321 supported the alternative of managing roadless areas "for non-motorized recreation and roadless timber production." (<http://www.dailyinterlake.com/articles/2006/06/07/news/news06.txt> )
18. Additionally, broad public support for motorized access and recreation is demonstrated by the Flathead County Natural Resources Plan which has objectives of keeping at least 75% of the roads and trails outside of Wildernesses open at least seasonally to motorized access. (<http://www.co.flathead.mt.us/fcpz/Natural%20Resource%20DOC.pdf> See Recreation section on page 43).
19. The Debate section of the April 2008 issue of Costco Connection (<http://www.costcoconnection.com/connection/200901/?u1=texterity> ) asked the question "Are we doing enough to protect our national wilderness?" Results were reported in the May 2008 issue with 75% of the respondents answering Yes and 25% responding No. Clearly this demonstrates that the overall public opinion is that an adequate amount of wilderness is protected under current conditions.
20. Additionally, the decision should consider that non-motorized recreationists have the opportunity to go not only to designated wilderness areas but anywhere while the opportunities for motorized recreationists are limited to designated routes in a small portion of multiple-use areas.
21. The current allotment of recreation resources on all Forest Service lands is way out of balance with 44,919,000 acres out of 192,300,000 acres or 24% in wilderness designation while no more than 2.55% of the visitors are wilderness visitors. Designation as wilderness is further out of touch with the needs of the public because recreation is not a stated purpose of the wilderness act and, therefore, recreation in wilderness area cannot and should not be emphasized. Note that we could oppose any recreation development in wilderness areas in retaliation to non-motorized groups that go after our recreation opportunities, but we have chosen not to do so. Recreation is a stated purpose in the multiple-use laws and, therefore, should be emphasized in the purpose and action.
22. If Roadless acres are included in this total, it becomes even more unbalanced with a total of 103,437,000 acres or 54% in wilderness or roadless designation while only 2.55% of the visitors are wilderness visitors.
23. We recognize the desire for a quiet experience in the forest as a legitimate value. To varying degrees, we all visit the forest to enjoy the natural sounds of streams, trees, and wildlife. Forest visitors who require an absolutely natural acoustic experience in the forest should be encouraged to use the portions of the forest which have been set aside for their exclusive benefit where they

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are guaranteed a quiet experience, i.e., wilderness areas. Given the demonstrated underutilization of existing wilderness areas, it is entirely reasonable to conclude that there is adequate wilderness area. Given that vast areas of our forests have been set aside for the exclusive benefit of this relatively small group of quiet visitors, it is not reasonable to set aside more areas and trails for their needs.

24. It is more reasonable and fairer to allow continued motorized use of existing routes in inventoried roadless and wilderness study areas until such time as congress approves the area as wilderness. The courts have already established this precedent as supported in Judge Molloy's ruling in 2001 on the Montana Wilderness Study Act and the Big Snowy Mountains travel plan which was upheld in 2006.
25. With regard to wilderness areas, roadless areas, national recreation areas, natural landmarks and monuments, and wild, scenic, and recreational rivers, the Bureau of Land Management and Forest Service are only authorized to delineate such areas and report such findings to Congress. Unless and until Congress actually designates such areas under applicable law, such delineations should have no effect on the multiple use and sustained yield mandates for management of public lands.
26. With regard to research and natural areas and scenic by-ways, the BLM and FS can designate such areas; however, such designation should have no effect on the multiple use and sustained yield mandates for management of those public lands. Finally, with regard to critical waterways, geological areas, unroaded areas, botanical areas, and national scenic areas, the BLM and FS have no statutory authority to designate and manage such areas. Any such designations can by law have no effect on the multiple use and sustained yield mandates for management of public lands. Accordingly, these "special designations" should be deleted from the proposed alternative.
27. Current land management trends are applying wilderness standards and criteria to lands intended for multiple-use. For example, total National Forest area equals 191,856,000 acres ([http://roadless.fs.fed.us/documents/feis/data/sheets/acres/appendix\\_forest\\_acres.html](http://roadless.fs.fed.us/documents/feis/data/sheets/acres/appendix_forest_acres.html)). Total designated wilderness/protected areas equal 42,351,000 acres or 28% of the total forest area. Additionally, there are other non-motorized designations that effectively eliminate motorized access and motorized recreation in large areas of the forest.

Other designations that preclude unrestricted multiple-uses include roadless areas which total 54,327,000 acres or 22% of the total forest area. First, the rules governing identified roadless areas clearly allow motorized recreation and roadless areas currently provide many important motorized recreational opportunities. However, in practice roadless areas are managed with restrictions that severely restrict multiple-use and access of those areas by the public. Therefore, the national forest area with severe access and use restrictions totals at least 96,678,000 acres or 50% of the total forest area.

Similar trends have occurred on lands managed by the Department of Interior (DOI) which total 507 million acres which is about one-fifth of the land in the United States. Acreages managed by each Interior agency include: 262 million acres managed by the Bureau of Land Management, 95 million acres managed by the Fish and Wildlife Service, 84 million acres managed by the National Park Service, 8.6 million acres managed by the Bureau of Reclamation, and 56 million acres managed by the Bureau of Indian Affairs. Statistics summarizing acres of multiple-use and restricted-use on DOI lands are not readily available to the public, however, a significant portion of these lands have limited motorized access and limited motorized recreational opportunities. DOI should adequately disclose these land use statistics to the public including motorized recreationists as quickly as possible.

Therefore, the cumulative negative effect of the pre-Columbian scheme, wilderness designations, wilderness study areas, national parks, monument designations, roadless designations, non-motorized area designations, travel management, wildlife management areas and other restrictive management designations over the past 40 years have restricted the public land area (USDA and DOI) available to multiple-use visitors seeking motorized access and/or mechanized recreational experiences (over 95% of the public land visitors) to less than 50% of the total national forest and public land area.



It is not reasonable to close this area to the majority of uses. In order to be responsive to the needs of the public all of the remaining (100%) multiple-use public lands should be managed for multiple-uses including motorized access and motorized recreation. Therefore, all public lands such as those in this project area should remain open as multiple-use lands in order to avoid contributing to the significant cumulative negative effect associated with the trend of converting multiple-use lands to limited-use lands. We request that the document and decision adequately evaluate the needs of multiple-use and motorized recreationists and adequately evaluate the cumulative negative impacts that have resulted from inadequate evaluations in past actions. We also request that an adequate mitigation plan be included as part of this action to compensate for past cumulative negative impacts.

28. Sign-in kiosks are routinely provided at wilderness trailheads to record the use of wilderness areas. We have never seen an equivalent facility or program and this lack of data puts motorized recreation at a disadvantage.
29. The wilderness designation is not good for recreation and an alternative designation is needed. Many U.S. citizens do not trust our federal land managers to manage our natural resources responsibly. Wilderness advocates have taken advantage of this situation to promote the Wilderness designation and now the Roadless designation as a means to protect these areas. Wilderness designation was originally conceived, by the Wilderness advocates involved in the passage of the 1964 Wilderness Act, as appropriate for about ten million acres of administratively designated Primitive Areas. Present day Wilderness advocates have since expanded the concept to a system of over one hundred million acres and they say we need much more.
30. An alternative land designation is needed to resolve the Wilderness and Roadless area debate. Off-highway motorcycles, aircraft, snowmobiles, 4X4s, mountain bikes, ATVs, and personal watercraft are not allowed in designated Wilderness areas. Therefore, these popular recreation pastimes are severely impacted by the Wilderness and Roadless designation. Motorized uses that have been grand fathered into some Wilderness areas, such as use of aircraft and powerboats, are subjected to harassment. Horseback riders, hunters and other non-motorized recreationists are also increasingly under attack from Wilderness advocates who push more restrictive regulations in existing Wilderness areas and those areas proposed for that designation.

The U.S. Congress should act on legislation establishing a federal designation that is less restrictive to recreational use than Wilderness and the Roadless designation. It should be called "Back Country Recreation Area" (<http://www.sharetrails.org/index.cfm?page=39> and <http://www.sharetrails.org/index.cfm?page=40> ). This designation should be designed to protect

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and, if possible, enhance the backcountry recreation opportunities on these lands while still allowing responsible utilization of these areas by the natural resource industries.

This designation should be used for those areas currently identified by the federal land management agencies as "roadless" and thus currently under consideration for Wilderness designation. Areas considered may or may not be recommended for Wilderness designation or classed as Wilderness Study Areas. In addition, the Forest Service (FS) and Bureau of Land Management (BLM) have administratively developed non-Congressionally designated Wilderness-like reserves or buffer zones. The Forest Service's buffers are called natural and near-natural areas. The BLM's reserves are named primitive and semi-primitive. These non-Congressionally approved land classifications should receive the Back Country Recreation Area (BCRA) designation.

Many roadless areas have been under consideration for Wilderness designation for over 40 years. The opposition to Wilderness designation in many of these areas has been largely from recreationists whose preferred form of recreation isn't allowed in Wilderness areas. Recreational resources need not be sacrificed for responsible resource extraction. The BCRA designation will encourage cooperation, not only between diverse recreation interests, but also between recreationists and our resource industries.

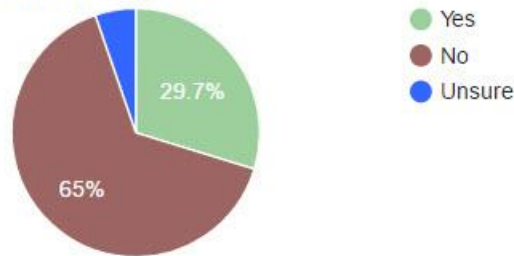
A recent public opinion survey shows majority support for a Backcountry Recreation Area alternative to a proposed 300,000-acre Wilderness Bill in Northern California (<http://www.sharetrails.org/index.cfm?page=42&magazine=50>). In Del Norte County, 66 percent of people surveyed supported a Backcountry alternative instead of a Wilderness designation. Fifty-three percent of respondents in Humboldt County said it was wiser to designate land as a Backcountry Recreation Area. We request that all "roadless" federal lands, not currently designated as Wilderness, be reviewed for their importance to back country recreationists and designated as Back Country Recreation Areas.

31. Page 215 of the Supplement to Big Snowy Mountains EA. *Solitude is a personal, subjective value defined as isolation from the sights, sound and presence of others, and the development of man.* We acknowledge the value of solitude and point out that there are many acres of wilderness/non-motorized/exclusive-use available to provide that solitude. Our concern is in regard to the diminishing amount of multiple-use lands and the unreasonable concept that multiple-use lands should be managed as wilderness/non-motorized/exclusive-use lands. Managing multiple-use lands by wilderness criteria and for perfect solitude does not meet the communal needs of the public and is not a reasonable goal for multiple-use lands.
32. The opportunity for solitude should be reasonably balanced with the multiple-use needs of the public. For example, the Montana Standard in an article on December 14, 2000 reported that hikers on the Continental Divide trail "walked for 300 miles without seeing another human being". This article illustrates a significant long-distance interstate recreational opportunity available to non-motorized visitors and the negligible use that it sees. Additionally, we have been camping in the Telegraph Creek drainage for 40 years and we have met only 2 people using the CDNST in that area. In contrast, a long-distance interstate recreational opportunity similar to the CDNST does not exist for OHV recreationists.
33. It is not equitable to provide recreationists seeking solitude and wilderness experiences exclusive access to tens of millions of acres and thousands of miles of non-motorized trails while restricting the public seeking multiple-use opportunities access to an inadequate road and trail system. In other words, it is not reasonable to allow a very limited group of individuals who do not want to

meet other people to displace thousands of other people. We request an equitable and balanced allocation of motorized access and recreational opportunity.

34. The need for more wilderness is not backed up by facts, site-specific studies, data, and monitoring, and overall public need and should not be used as a ploy to close motorized recreational opportunities.
35. Additionally, the public does not support the use of Presidential orders to create monuments and other non-motorized, defacto wilderness designations as demonstrated by a recent poll in the Helena Independent Record:

Should the president have unilateral authority to create national monuments from federal lands?



36. The acreage set aside for wilderness and wilderness study areas is significantly greater than the needs of 3% of the public. A sense of magnitude for public needs should be used when managing wilderness versus multiple-use land.
- 1) <https://www.blm.gov/programs/national-conservation-lands/wilderness>
  - 2) <https://umontana.maps.arcgis.com/apps/webappviewer/index.html?id=a415bca07f0a4bee9f0e894b0db5c3b6>
  - 3) [https://en.wikipedia.org/wiki/List\\_of\\_wilderness\\_study\\_areas](https://en.wikipedia.org/wiki/List_of_wilderness_study_areas)
  - 4) <https://www.fs.usda.gov/detail/roadless/2001roadlessrule/maps/statemaps/?cid=stelprdb5400185>
37. The agency should adequately consider that areas currently closed to snowmobiles such as Heart Lake and Irish Basin were closed based on assumption and politics, not because of any documented adverse impacts on the character of the areas. These areas need to be reopened to snowmobiling in order to meet the needs of the public for snowmobiling opportunities.
38. The agency should adequately consider that areas currently closed to snowmobiles such as Heart Lake and Irish Basin were closed so that a single group of users could have exclusive use of the areas when multiple-use and sharing should be practiced.
39. The agency should adequately consider that snowmobiling is the least impactful of any back country recreation, including non-motorized.
40. The agency should adequately consider that snowmobiling in the Heart lake area (Hoodoo) and Irish Basin (Surveyor) be re-opened. Those Recommended wilderness areas (RWA) are identified as polygon GB-PW-08 on the wilderness map. There is also a polygon identifier, GB-PW-INT-01, at the top edge of an area NW of Heart Lake.
41. The agency should adequately consider that the GB-PW-08 area was a historic snowmobile area for many years before being closed, snowmobiling is the least impactful form of back country recreation (snow melts, tracks are gone), there is no wildlife stress in the winter months because

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wildlife does not occupy this area during the winter months and there is minimal to no user conflict in the winter.

42. The agency should adequately consider that "connectivity" is an issue that the wilderness advocates are using to exclude motorized recreation from the backcountry. There are no site specific documented cases of snowmobiles adversely affecting any wildlife in the winter months.
43. The agency should adequately consider that the "Yellowstone to the Yukon wildlife corridor" is flawed because there is no documented data and analysis that demonstrates this sort of wildlife migratory pattern.



## 6. Properly Consider Roadless Areas

44. Over 50% of the public land is managed by wilderness, wilderness study area, national park, monument, roadless, non-motorized area, wildlife management, and other restrictive management criteria that eliminates most or all motorized access and motorized recreation. The Final Roadless Rule published on January 5, 2001 ([http://roadless.fs.fed.us/documents/rule/roadless\\_fedreg\\_rule.pdf](http://roadless.fs.fed.us/documents/rule/roadless_fedreg_rule.pdf) ) specifically stated "The proposed rule did not close any roads or off-highway vehicle (OHV) trails". The agency should honor this commitment. This commitment was recently upheld as part of appeal Number 07-05-10-0005 dated January 10, 2008 for the Smith River NRA travel management plan in the Six Rivers National Forest filed by BlueRibbon Coalition (<http://www.sharetrails.org/releases/media/?story=556> and [www.sharetrails.org/files/SmithRiverNraBrcAppealDecisionJan14.pdf](http://www.sharetrails.org/files/SmithRiverNraBrcAppealDecisionJan14.pdf) ). Therefore, all (100%) of the remaining public lands including roadless areas should be managed for multiple-uses in order to avoid further contributing to the excessive allocation of resources and recreation opportunities for exclusive non-motorized use.
45. Jim Angell, the Denver-based Earth Justice attorney, says that's why it's too simplistic to liken roadless protections to those of full-blown wilderness designations - which take an act of Congress. "And it didn't bar things like oil and gas, which often takes place without the building of roads by angling the drilling from elsewhere; it didn't apply to ORV use which can continue without any stop," Angell says. <http://www.publicbroadcasting.net/kunc/news.newsmain/article/1/0/1622248/Regional/Oral.Arguments.Heard.in.Roadless.Appeal>
46. The evaluation and decision-making should take into account that the total area of the National Forest equals 192,300,000 acres and out of that total 44,919,000 acres or 23.36% is already designated wilderness. Current planning actions seek to convert roadless lands to defacto wilderness even though they are designated multiple-use lands. Therefore, this percentage will be even more lopsided toward non-motorized opportunities at 53.79% assuming that 58,518 acres of roadless areas are converted to defacto wilderness areas and managed for non-motorized recreation. We maintain that the management of all of the remaining 147,381,000 congressionally designated multiple-use acres (including roadless) or 76.64% of the forest should be managed for multiple-uses. Every multiple-use acre should remain available for multiple-uses in order to meet the needs of 96.41% of the public who visit our National Forests for multiple-uses. Every reasonable multiple-use acre should remain available for multiple-uses in order to maintain a reasonable balance of opportunities. The proposed plan does not meet the basic needs of the public for multiple-use opportunities, does not provide a proper allocation of multiple-use recreation opportunities and does not meet the laws requiring multiple-use management of these lands.
47. The current allotment of recreation resources on all Forest Service lands is way out of balance with 44,919,000 acres out of 192,300,000 acres or 24% in wilderness designation while no more than 2.55% of the visitors are wilderness visitors. Designation as wilderness is further out of touch with the needs of the public because recreation is not a stated purpose of the wilderness act and, therefore, recreation in wilderness area cannot and should not be emphasized. Note that we could oppose any recreation development in wilderness areas in retaliation to non-motorized groups that go after our recreation opportunities, but we have

chosen not to do so. Recreation is a stated purpose in the multiple-use laws and, therefore, should be emphasized in the purpose and action.

48. If Roadless acres are included in this total, it becomes even more unbalanced with a total of 103,437,000 acres or 54% in wilderness or roadless designation while only 2.55% of the visitors are wilderness visitors.
49. Over 50% of the public land is managed by wilderness, wilderness study area, national park, monument, roadless, non-motorized area, wildlife management, and other restrictive management criteria that eliminates most or all motorized access and motorized recreation. The Final Roadless Rule published on January 5, 2001 ([http://roadless.fs.fed.us/documents/rule/roadless\\_fedreg\\_rule.pdf](http://roadless.fs.fed.us/documents/rule/roadless_fedreg_rule.pdf)) specifically stated "The proposed rule did not close any roads or off-highway vehicle (OHV) trails". The agency should honor this commitment. This commitment was recently upheld as part of appeal Number 07-05-10-0005 dated January 10, 2008 for the Smith River NRA travel management plan in the Six Rivers National Forest filed by Blue Ribbon Coalition (<http://www.sharetrails.org/releases/media/?story=556> and [www.sharetrails.org/files/SmithRiverNraBrcAppealDecisionJan14.pdf](http://www.sharetrails.org/files/SmithRiverNraBrcAppealDecisionJan14.pdf)). Therefore, all (100%) of the remaining public lands including roadless areas should be managed for multiple-uses in order to avoid further contributing to the excessive allocation of resources and recreation opportunities for exclusive non-motorized use.
50. Note that the Final Roadless Rule published on January 5, 2001 ([http://roadless.fs.fed.us/documents/rule/roadless\\_fedreg\\_rule.pdf](http://roadless.fs.fed.us/documents/rule/roadless_fedreg_rule.pdf)) included the following directive "The proposed rule did not close any roads or off-highway vehicle (OHV) trails". The agency should honor this commitment. The Roadless Rule is all about preventing new roads from being constructed; it is not about banning motorized use of existing motorized roads and trails. United Four-Wheel Drive Associations reached a settlement agreement with the Federal Government prohibiting the US Forest Service from categorically closing roads or using the term "unroaded" in establishing roadless areas for Wilderness designation. Under the terms of the settlement agreement the Forest Service is banned from using the Road Moratorium to close a single mile of road". United obtained evidence that many, if not all, of the national forests were using the Temporary Road Moratorium to create de facto wilderness areas as part of forest planning. Carla Boucher of United predicted in early 1998 that this was the plan of the Forest Service all along. "This agreement prevents the creation of de facto wilderness, protecting nearly 347,000 miles of access for motorized recreationists", remarked Boucher. Additionally, the ruling in the State of Wyoming v. USDA by U.S. District Court Judge Clarence Brimmer blocked implementation of the Roadless Area Conservation Rule. This project should include proper interpretation of the Roadless Rule and the roadless rule should not be used to close existing motorized routes in roadless areas.
51. In 1924, the Forest Service established the first de facto wilderness area; by 1964, it had created 88 de facto wilderness areas totaling 15 million acres. In 1964, Congress dealt legislatively with the issue of wilderness: creating wilderness areas, reserving for itself the designation of wilderness areas, and setting a deadline for the study of potential new wilderness areas.

"In 1964, Congress adopted the Wilderness Act, pursuant to which it designated areas of federal land as wilderness; this is the only manner in which such a classification may be attached to federal land," said William Perry Pendley of Mountain States Legal Foundation. "In addition, Congress reasserted its constitutional authority over federal lands and put a clock on when, if ever, federal lands might be designated as wilderness. That clock has run, which

requires that lands not designated by Congress as wilderness be managed as non-wilderness and open to all of the American people.”

In 1973, the Forest Service completed Roadless Area Review and Evaluation I (RARE I) to recommend land for further evaluation as potential wilderness areas. RARE I failed when courts ruled that the Forest Service had failed to comply with environmental study requirements. Later, the same fate befell RARE II when federal courts ruled the process violated the National Environmental Policy Act (NEPA). Nonetheless, in 2001, the Clinton Administration, relying on these flawed studies, issued the Roadless Area Conservation Rule by which nearly 60 million acres of Forest Service lands were closed to access.

The Clinton roadless rule was challenged in nine lawsuits across the country, including in Wyoming where the federal district court held that the rule was an attempt to circumvent the Wilderness Act of 1964. In 2005, the Forest Service published the State Petition Rule for Inventoried Roadless Area Management by which governors may recommend the management scheme for “roadless” areas of Forest Service lands within their States.

Mountain States Legal Foundation, which has made numerous appearances before the U.S. Supreme Court and federal courts of appeals, filed comments with the Colorado Roadless Areas Review Task Force and has advised “The U.S. Forest Service may not manage federal land as wilderness unless Congress has designated that land as wilderness”. This legal opinion should be considered adequately and made part of this proposed project.

A decision by U.S. Magistrate Judge Elizabeth Laporte in the Forest Service Roadless Rule on September 20, 2006 sets aside the 2005 State Petition Rule as unlawful. The decision concludes the State Petition Rule, which provided a redundant opportunity for State Governors to petition the Forest Service on how roadless areas in their state are managed, violated the National Environmental Policy Act and Endangered Species Act by failing to sufficiently analyze the removal of any protections provided by the prior 2001 Roadless Rule.

52. Page 279 of the Supplement to Big Snowy EA. *As previously stated in our response to 3c – Roadless/Wilderness comments, we fail to see how the Roadless Rule has a cumulative effect on multiple-use recreationists. The Roadless Area Conservation Strategy did not prohibit motorized use on roads and trails that already exist within inventoried roadless areas. It also did not prohibit construction of new motorized trails. It did not designate the areas as wilderness. It did not prohibit the Forest Supervisor from making local decisions about motorized travel within roadless areas. Therefore, we consider this comment beyond the scope of the project.*

We disagree with the conclusion that the Roadless Rule will not have a cumulative negative effect on motorized recreationists. The Final Roadless Rule published on January 5, 2001 included the following directive “The proposed rule did not close any roads or off-highway vehicle (OHV) trails”. Even though motorized recreation is allowed by the Roadless Rule, non-motorized groups will contest every inch of motorized trail in roadless areas. The comments submitted by non-motorized use groups as part of this proposed action are representative of their position. All too often, the preferred alternative implements a significant reduction in motorized access and recreation. Every action involving travel management in the region has had significant motorized access and recreation closures associated with it. There is no evidence that future actions will be any different.

Montana has a total of 16,843,000 acres in National Forests. Of that area, 3,372,000 acres or 20% are designated wilderness. Areas subject to the Roadless Rule total 6,397,000 acres or

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38% of our National Forest area. Therefore, 9,769,000 acres or 58% of the National Forest in Montana is either wilderness or subject to the Roadless Rule. This number of acres should be balanced with the fact that wilderness visits account for only 2.55% of the visits to public land (Table 2-7 in the Social Assessment of the Beaverhead-Deer Lodge National Forest dated October 2002). Therefore, nearly all (97.45%) visitors to public lands benefit from land management for multiple-use and benefit from motorized access and mechanized recreational opportunities.

Based on our experience with past actions and current proposed actions, motorized recreationists will lose significant recreational opportunities and suffer cumulative negative impacts from the Roadless Rule. Therefore, we disagree that this issue is out of scope. We request that the cumulative negative impact of the Roadless Rule, past actions and future actions be considered a significant issue and adequately considered in the document and decision-making. Additionally, we request that an adequate mitigation plan be included as part of this action to compensate for past cumulative negative impacts.

53. The need to protect and create more roadless is not backed up by the law, facts, site-specific studies, data, and monitoring, and overall public need and should not be used as a ploy to close motorized recreational opportunities.

## 7. Adequately Consider Cumulative Impact of All Motorized Closures

54. Our pursuit of happiness has been significantly impacted by all of the motorized closures.
55. One of the specific requirements under NEPA is that an agency must consider the effects of the proposed action in the context of all relevant circumstances, such that where "several actions have a cumulative . . . environmental effect, this consequence must be considered in an EIS." *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1378 (9th Cir. 1998) (quoting *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990)). A cumulative effect is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 18 40 C.F.R. § 1508.7. 3. The cumulative effect of all motorized closures has been significant and is growing greater every day, yet they have not been adequately addressed. Ignoring cumulative effects allows the agency to continue to close motorized routes unchecked because the facts are not on the table. CEQ guidance on cumulative effects was developed to prevent just this sort of blatant misuse of NEPA.
56. Because of the cumulative effects on motorized recreationists from all past and reasonably foreseeable closures and the growing need for motorized access and motorized recreational opportunities, there can be no net loss of these opportunities with this action. This can be accomplished by implementing a route designation for all existing routes.
57. This following table is only a partial list that is meant to demonstrate that a significant impact and a significant issue exist. The Agency must prepare their own table and evaluation that is complete with all planning actions that have impacted motorized access and motorized recreation in the project area and region. The last 40 years has been a very aggressive program to take away, take away, take away motorized recreational opportunities from the public. A starting list of actions that should be evaluated in a cumulative effect analysis include:

Table 2  
Partial list of Current and Immediate Past Actions With  
Significant Cumulative Impact on Multiple-Use/Motorized Recreation

Table of Cumulative Effects on Motorized Recreationists									
Action	Acres Affected	Miles before	Miles after	Miles closed	% closed	Mitigation of Motorized Losses	Agency	Year	
Iron Mask, Butte BLM	26,235	19.3	0.6	18.7	96.89%	No	BLM	2015	
Sleeping Giant BLM	7,900	29.0	21.6	7.4	25.52%	No	BLM	2004	
Elkhorn Management plan	300,000			75*	50%*	No	FS	1986	
Clancy-Unionville TP	33,000	136.0	108.0	28.0	20.59%	No	FS	2001	
North Belts TP	250,000	370.4	164.9	205.5	55.48%	No	FS	2005	
South Belts TP	83,000	173.6	140.2	34.0	19.59%	No	FS	2008	
Beaverhead-Deerlodge FP	3,364,000						FS	2009	
Roads		4,157.0	4,053.0	104.0	2.50%	No			
Motorized trails		1,237.0	1,037.0	200.0	16.17%	No			
Gallatin NF TP	1,807,000						FS	2006	
4x4 Roads		417.0	347.0	70.0	16.79%	No			
ATV and motorcycle trails***		680.0	145.0	535.0	78.68%	No			
Little Belt, Castle, and Crazy TP	1,050,000						FS	2007	
Roads		1,546.7	740.3	806.4	52.14%	No			
ATV trails***		226.0	208.0	18.0	7.96%	No			
Motorcycle trails		658.0	443.0	215.0	32.67%	No			
Rocky Mountain Front TP	391,700						FS	2007	
Motorized Trails		209.0	74.0	135.0	64.59%	No			
Badger-Two Medicine TP	130,000	190.6	8.6	180.0	94.44%	No	FS	2009	
Dillon RMP BLM	901,000	2,102.0	1,342.0	760.0	36.16%	No	BLM	2004	
Butte RMP BLM	307,300	629.3	416.9	212.4	33.75%	No	BLM	2009	
Helena area		52.2	9.8	42.5	81.42%	No			
Blackfoot TP	376,000	***	*	*	over 50%	No	FS	2017	
Divide TP	155,000	***	*	*	over 50%	No	FS	2016	
Custer NF Beartooth TP	580,000						FS	2007	
Roads		225.0	210.0	15.0	6.67%	No			
Motorized trails		341.0	267.0	74.0	21.70%	No			
Custer NF Ashland TP and Forest Plan	437,000	**	??	??	??	No	FS	Ongoing	
Custer NF Sioux TP and Forest Plan	436,000	**	??	??	??	No	FS	Ongoing	
Bitterroot NF TP	1,589,000	**	*	*	over 75%	No	FS	2015	
Upper Missouri River Breaks RMP	378,000	592.0	404.0	188.0	31.76%	No	BLM	2008	
Whitetail-Pipestone TP	185,700	679.0	406.0	273.0	40.21%	No	BLM	2007	
Bruce Creek to Napa Point TP	141,990	60.0	40.0	20.0	33.33%	No	FS	2009	
Keep Cool Hills Management Plan	14,500	20.0	0.0	20.0	100.00%	No	FS FWP	2008	
Owyhee Front Travel Plan BLM	484,873	834.0	398.0	436.0	52.28%	No	BLM	2009	
Salmon Challis NF Travel Plan	4,359,000						FS	2009	
Motorized trails		1,110.0	838.0	272.0	24.50%	No			
Tellico OHV area	6,000	39.5	24.0	15.5	39.24%	No	FS	2009	
Moab RMP BLM	1,822,562	6,199.0	3,693.0	2,506.0	40.43%	No	BLM	2007	
Monticello RMP BLM	1,800,000	3,069.0	2,820.0	249.0	8.11%	No	BLM	2007	
Richfield RMP BLM	2,100,000	4,315.0	3,739.0	576.0	13.35%	No	BLM	2007	
Greater Yellowstone Grizzly Bear Plan	5,893,000					25%*	No	FS	2006
Cabinet-Yaak-Selkirk Grizzly Plan	2,918,400	3,008.0	2,811.0	197.0	6.55%	No	FS	2008	
Big Snowy Mountains TP*	150,000			100*	50%*	No	FS	2002	
Targhee NF TP	1,789,000						FS	1997	
Inyo National Forest TP	1,977,000	3,725.0	2,934.0	791.0	21.23%	No	FS	2009	
Kootenai NF Three Rivers RD*****	638,000						FS	2009	
Roads		2,222.0	500.0	1,722.0	77.50%	No			
Trails		161.0	0.0	161.0	100.00%	No			
KIPZ Forest Plan	5,513,000	**	**	**	**	No	FS	Ongoing	
Lolo Forest Plan	2,083,000	**	**	**	**	No	FS	Ongoing	
WMPZ Forest Plan	6,043,000	**	**	**	**	No	FS	Ongoing	
<b>Subtotal</b>	<b>50,494,925</b>	<b>39,413.3</b>	<b>28,343.3</b>	<b>11,068.7</b>	<b>28.08%</b>	<b>No</b>			
<b>Other Significant Measures of Closed Motorized Opportunities</b>									
Yellowstone NP snow machines****		1400	318	1082	77.29%	No	NPS	2009	
National Forest Cross Country opportunity (acres)	192,300,000	192,300,000	0	192,300,000	100%	No	FS	2005	
BLM Cross Country opportunity (acres)	258,000,000	258,000,000	100,000*	257,900,000	99.40%	No	BLM	2006	
All completed, ongoing and reasonably foreseeable FS Travel Plans	192,300,000	192,300,000	??	??	??	No	FS		
All completed, ongoing and reasonably foreseeable BLM RMP and Travel Plans	258,000,000	258,000,000	??	??	??	No	BLM		
<b>Notes:</b>									
*	estimated impact, inadequate public disclosure by a public agency, public does not have access to the overall data								
**	underway with expected significant impact								
***	additional impact associated with significant loss of quality trails and substitution with roads								
****	number of snow machines								
*****	All motorized trails closed								
??	Needs to be identified and tabulated and disclosed by the agencies per NEPA disclosure requirements, actual cumulative effect of all closures is greater than 11,068 miles and 28.08% when full disclosure is made.								

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58. Past actions that have had a significant impact on motorized recreationists in Montana as shown in the table above. Reasonably foreseeable actions including travel plans, forest plans, land management plans, and resource management plans will produce additional significant impacts. These actions have produced or will produce a significant debt in the mitigation bank for motorized recreational opportunities in the project area and surrounding areas and this issue should be adequately addressed.

59. New information from the Montana Environmental Quality Council (EQC) shows that, accounting for roads that have been decommissioned along with roads considered "unauthorized," the mileage of road closures on U.S. Forest Service (USFS) land in Montana balloons to 21,951 miles. A study (<https://leg.mt.gov/content/Committees/Interim/2015-2016/EQC/Committee-Topics/hj-13/hj13-finalreport.pdf>) commissioned by the state legislature in 2015 and reported to the EQC found that 9,784 — or nearly 31 percent — of the nearly 32,000 miles of roads in Montana managed by the USFS were "level 1 roads," meaning they are closed to motorized traffic and only open for "administrative use." However, the 32,000 total miles of roads does not include the 5,796 miles of officially decommissioned roads or the estimated 6,191 miles of "unauthorized" roads. Counting the decommissioned and unauthorized roads in the total, would equal almost 44,000 miles of open and closed roads in Montana and 21,951 miles of those roads on USFS managed land are CLOSED. The report states that there are 22,047 miles of roads open to motorized traffic. By this measure, 50% of the road mileage under the control of the USFS is CLOSED. Based on our observations, a similar percentage of motorized trails have been closed. A similar percentage of roads on BLM managed lands have been closed and the BLM rarely identifies motorized trails. The cumulative effect of all motorized closures is significant and cannot be ignored. The public does not want any more motorized closures and the cumulative effects of all past motorized closures must be adequately considered.

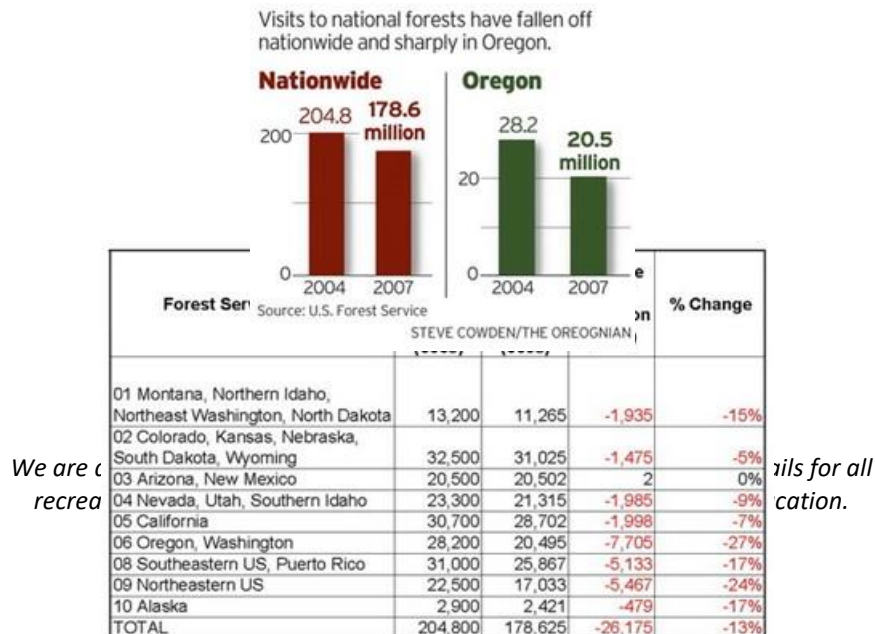
60. All travel plans in the region have included significant motorized closures that have left the public with an inadequate network of OHV routes including Clancy-Unionville, South Belts, Scratch Gravel Hills, Sleeping Giant, Blackfoot and the Butte Resource Management Plan. Helena based OHV recreationists are now forced a significant distance in order to enjoy OHV opportunities at a significant cost in time and money. This significant issue should be adequately addressed and identified including all of the closures that have affected the area going back to the 1960's. This lack of adequate and reasonable OHV opportunities through cumulative impact has become a significant issue that should be addressed and mitigated in the proposed action.

61. Cumulative effects of locked gates that now prevent public motorized access. This is an ever increasing issue that now significantly affects the public.  
[http://helenair.com/news/state-and-regional/locked-gates-prevent-access-to-national-forest/article\\_0428b09d-0fa2-516c-a989-e5738c8aee9a.html?print=true&cid=print](http://helenair.com/news/state-and-regional/locked-gates-prevent-access-to-national-forest/article_0428b09d-0fa2-516c-a989-e5738c8aee9a.html?print=true&cid=print)  
[http://helenair.com/news/local/road-accessing-national-forest-land-gated-locked/article\\_f9d0dbde-4655-11e2-a8d3-0019bb2963f4.html?print=true&cid=print](http://helenair.com/news/local/road-accessing-national-forest-land-gated-locked/article_f9d0dbde-4655-11e2-a8d3-0019bb2963f4.html?print=true&cid=print)

62. Motorized recreationists are being squeezed out of the high-quality places on our public lands including high elevation mountains, high elevation lakes, and other scenic areas. This trend has created significant socio-economic issues including equal access and cumulative effects that should be adequately addressed and mitigated as part of this action.

63. Since 1988, forest fires have eliminated many motorized roads and trails. These losses have occurred due to deadfall, re-growth, and loss of trail tread associated with the forest fire. These losses are occurring with every fire. For example, the motorcycle single-track trail #418 from Snowbank Lake to Stonewall Mountain and road #771 the Snow-Talon fire area in the Lincoln Ranger District of the Helena National Forest has been lost to motorized use. Motorized losses due to forest fires are occurring in every National Forest in our area. The loss of motorized opportunities from fires has become a significant cumulative impact and issue to motorized recreationists. The cumulative loss and negative effect on motorized recreationists due to loss of recreational opportunities due to fires within the project area, forest and region is a significant issue that should be evaluated as part of this travel plan. The evaluation should also address mitigation measures necessary to reduce the significant impact of losses due to fires on motorized recreationists.

64. The current trend of excessive motorized access and motorized recreational closures is having a significant impact on the number of visitors to the forest as shown in the recently released NVUM report ([http://www.fs.fed.us/recreation/programs/nvum/nvum\\_national\\_summary\\_fy2007.pdf](http://www.fs.fed.us/recreation/programs/nvum/nvum_national_summary_fy2007.pdf), <http://billingsgazette.net/articles/2008/12/04/features/outdoors/18-woods.txt> ) and the following graphic based on that data. This trend has created a significant issues in regards to adequate public access and adequate motorized recreation which much be analyzed adequately during the process.



65. Federal actions are systematically eliminating western culture with its ties to the land. The significant negative cumulative impact of actions that reduce the public's access to and use of federal land including travel planning, forest planning, land management and resource management planning, grazing permits, minimal timber harvest activity, reduced mineral, oil, and gas leases, and actions associated with endangered species, should be adequately evaluated and significant cumulative impacts should be mitigated. This analysis and recognition have yet to be done in any action and should be given priority.
66. One of the specific requirements under NEPA is that an agency must consider the effects of the proposed action in the context of all relevant circumstances, such that where "several actions have a cumulative . . . environmental effect, this consequence must be considered in an EIS." *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1378 (9th Cir. 1998) (quoting *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990)). A cumulative effect is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 18 40 C.F.R. § 1508.7. 3. The cumulative effect of all motorized closures has been significant and is growing greater every day, yet they have not been adequately addressed. Ignoring cumulative effects allows the agency to continue to close motorized routes unchecked because the facts are not on the table. CEQ guidance on cumulative effects was developed to prevent just this sort of blatant misuse of NEPA.
67. The cumulative negative impact of multiple-use and motorized recreational closures (in acres of unrestricted area, miles of roads and trails, and recreational opportunities) by all past decisions including plans, and the creation of wildlife areas, wilderness, wilderness study areas, roadless areas, monuments, national parks and non-motorized areas has not been adequately recognized and it is significant. We have not seen the agencies tabulate the amount of motorized recreational opportunity lost during the past 40 years. Additionally, most of the past actions that have involved motorized closures have not included a comprehensive route inventory. Therefore, many motorized closures have occurred because the routes were not identified during the process and the process ended with a closed unless posted open conclusion. We have experienced the significant cumulative loss firsthand. We estimate that today's motorized recreational opportunities are less than 50% of the level available in 1970.
- Now consider the 3-inch document that goes with each action and the involvement required to participate in the scoping process, review of draft EIS and comments, review of final EIS and comments, and review of the record of decision. It is simply impossible to keep up with. The motorized closure movement has the upper hand given the process and volume of actions and is effectively eliminating motorized access and motorized recreation at an astounding rate.
- The projects listed in Table 2 have typically proposed to or have reduced motorized recreation from 20% to 100%. Additionally, each time an action involving travel management is updated it typically closes another 20% to 50% to motorized access and motorized recreation. The cumulative negative effect of past actions has contributed to a reduction in motorized access and motorized recreational opportunities over the past 40 years that is greater than 50%. The magnitude of the cumulative effect of the motorized closure trend should be identified and evaluated as a significant impact on motorized visitors.
68. We request an adequate evaluation of the significant cumulative loss in miles, acres, and quality of motorized recreation and access opportunities within public lands as required under 40 CFR 1508.7 and 1508.25, and guidelines published by the Council on Environmental Quality "Considering Cumulative Effects Under the National Environmental Policy Act". Table 2 is provided as a starting point of the projects that need to be considered as part of that evaluation.
69. Past actions that have had a significant impact on motorized recreationists as shown in the Cumulative Effects Table 2. Reasonably foreseeable actions including travel plans, forest plans, land management plans, and resource management plans will produce additional significant impacts. These actions have produced or will produce a significant debt in the mitigation bank for motorized recreational opportunities in our BLM and National Forest lands and this issue should be adequately addressed.
70. What is the cumulative effect on the public of this motorized access and motorized recreational closure combined with all other motorized access and motorized recreation closures in the state and nation?
71. The action should develop a preferred alternative that mitigates the significant impacts on the public from the loss of motorized access and motorized recreational opportunities from the proposed action and the combined cumulative effect of all other actions in the state.
72. Because of the cumulative negative effects of the motorized closure trend, the recreational opportunities for motorized recreationists are dramatically being reduced to a limited number of motorized routes and the lesser used routes are becoming hard to find and, therefore, they should be considered invaluable to motorized recreationists. The level of use should also be evaluated along the logic that the most valuable motorized routes now days are the ones that are remote and see less use. Therefore, barely visible 2-track roads and single-track trails are invaluable to motorized recreationists and should be evaluated as such. Motorized recreationists are struggling to keep a reasonable spectrum of opportunities available, and one piece of that spectrum are remote and lesser used routes. In a constantly losing scenario, every remaining motorized recreational opportunity is important to motorized recreationists.
73. We were again reminded recently of the cumulative effects of all forms of closures that are impacting motorized recreationists. We recently visited a site in the Flint Creek Range that we have been visiting for years. In the past there has only been 1 other group camping in this area. This past weekend there were over 15 groups (over 100 motorized recreationists) camping in the area and

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most of them were from Missoula (70 miles one-way). When we asked some of them why they chose this area they responded that they did not have anywhere else to go in the immediate Missoula area and that the word was out on this particular area. This is happening in too many places and in the end the current closure trend will concentrate everyone in a few locations. We believe, that in the end, the current motorized closure trend will produce an undesirable experience for the forest visitor and for the environment. We respectfully submit that the current management trend of motorized closures at every opportunity is not in the best interest of the public and the environment in the long-term.

74. Motorized closures are being enacted incrementally and without adequate disclosure and consideration of the cumulative effects. Travel plans are created or revised every 10-15 years. If 25 to 50% of the existing motorized recreational opportunities are closed in each successive travel plan (a typical range), then over the course of 3 travel planning cycles or about 30-45 years in a given area, only 13 to 42% of the original motorized recreational opportunities will remain at the end of the third cycle. This trend is being ignored at all levels including the actions listed in Table 2. The plan for this project area does not recognize and address this trend. The current management trend and management plan does not adequately recognize and address this trend. The national planning policy does not recognize and address this trend. Therefore, this cumulative effect is being effectively ignored and that failure to notice will result in the ultimate loss of any meaningful motorized recreational opportunities and the creation of defacto wilderness from large blocks of multiple-use lands. *Facts do not cease to exist because they are ignored.*--Aldous Huxley. We ask that this significant negative cumulative effect on motorized recreationists be adequately recognized, evaluated and mitigated at all levels starting with this project.
75. The cumulative negative effects of more restrictive travel plan decisions include the concentration of use on fewer miles of road and trail, such that traffic density is increased, and recreation enjoyment is reduced. As shown in Table 2, the magnitude of this impact is significant and yet it is ignored. To experience the cumulative effects of motorized closures firsthand one can visit the Whitetail-Pipestone area on Memorial Day and Copper Creek near west of Phillipsburg on July 4th and see hundreds to thousands of multiple-use recreationists forced into small areas with limited opportunities by the cumulative effects of many motorized closures produced by management plans and travel plans. Travel decisions affecting public lands that restrict motorized recreation in one area may consequently increase motorized use in another where site-specific travel plans are not yet in place. Cumulatively then, this "leapfrog" effect may increase resource damage, create more law enforcement problems, generate discord between motorized and non-motorized recreationists, and make future site-specific travel planning more difficult. This cumulative negative effect should be adequately considered as part of this project.
76. The list of projects in Table 2 demonstrates that motorized routes are all too commonly closed for exclusive non-motorized use. The proposed action continues this massive trend. The BLM and Forest Service look out for the interests and needs of non-motorized interests and is willing to create many miles of new non-motorized trails as demonstrated by a number of projects such as the CDNST. We request the same cooperation between the BLM and Forest Service and a recreation group be extended to motorized recreationists. We request that the BLM and Forest Service provide the same attention to our needs. Now it is time for a route to be closed for exclusive use by motorcycles. We request that trails be closed for exclusive use by OHVs and that 100 miles of new motorized recreational opportunity be created as a demonstration of equal opportunity.
77. There has never been an accounting of the cumulative negative impact of all motorized closures that have occurred over the past 40 years. Actions that have contributed to the significance of the cumulative negative impact on motorized recreation include millions of acres and thousands of miles of roads and trails associated with Endangered Species Act; Continental Divide National Scenic Trail; forest fires; timber harvests, forest plans; viewshed plans; resource plans; watershed plans; roadless plan; creation of wildlife management areas, monuments, non-motorized areas, wilderness areas, and wilderness study areas; area closures, and last but certainly not least, travel plans. This cumulative negative impact has not been quantified and it is significant.
78. In order to evaluate this cumulative negative effect, an accounting of all motorized closures should be done at 5-year increments going back to the creation of the wilderness act. This accounting needs to be done on a local forest or district level in addition to statewide and regional levels. For example, loss of motorized access and motorized recreational opportunities since 1986 in our immediate area (Helena National Forest) include: 18 separate closures in the Big Belts with the loss of over 100 miles; 130 miles in other areas of the forest; closure of 191,000 acres and 75 miles in the Elkhorn Mountains; and closure of 625,447 acres in the remainder of the forest. Both adjoining public lands and public lands further away have experienced similar trends. Therefore, the cumulative negative impact of all motorized access and recreational closures is significant. Simply, there are very few places left where motorized recreationists can recreate and yet the trend continues. This stealthy attack on motorized recreational opportunities should be acknowledged. Please quantify and consider these cumulative negative impacts and develop a preferred alternative that will mitigate the significant impact on motorized recreationists that has occurred.
79. We are concerned that the lack of accounting for the cumulative negative impact of all forms of motorized closures over the past 40 years is an undisclosed strategy to squeeze motorized recreationists into the smallest possible area. Once this is accomplished, then the agencies will take the position that the impacts on that small area left for use is significant and everything will be completely shut down. All of the plans, strategies, actions, and evidence support this concern.
80. One agency cannot ignore the cumulative negative impact that another agency's actions are having on motorized access and motorized recreation. For example, the BLM cannot ignore cumulative negative impact of all of the closures that have occurred in the Helena and Lewis and Clark National Forests during the evaluation of BLM projects in the area and vice versa.
81. If allowed to continue the trend of closure after closure of motorized access and motorized recreational opportunities will result in an extremely limited number of motorized access and motorized recreational opportunities. If allowed to continue to that end as proposed by current management schemes, motorized access and motorized will become so concentrated that the impacts on natural resources will become significantly greater than the alternative of continuing to allow a reasonable level of motorized access and motorized recreation on all multiple-use lands. We believe that it is time that this trend to terminate motorized access and motorized recreation on public be evaluated. We request that the trend of cumulative closures, the cumulative negative impacts associated with that trend and the reasonable alternative of maintaining the existing level of motorized access and

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motorized recreation should be adequately addressed. We also request that the proposed action include an adequate mitigation plan to compensate for the significant impact from the cumulative effect of all past actions that have affected motorized access and motorized recreationists.

82. Motorized visitors are continually losing significant recreational opportunities by conversion of multiple-use areas to non-motorized areas. We are greatly concerned about the cumulative negative impact associated with the reduction of multiple-use and OHV recreation opportunities because it is significant. We do not expect to have the freedom to go anywhere and do anything that we want. However, we are losing the basic opportunity to travel to places and experience outdoor recreation that we have enjoyed for decades. We are losing routes that fathers have taught sons and daughters and even grandchildren to ride on. People are calling us and asking where they can go to ride. What are we supposed to tell them? The continual loss of motorized access and recreational opportunities is seriously degrading the local culture and quality of life. Public land is a cultural resource and access to the project area for many uses is part of the local culture. The decision for this project should consider the impacts that any closures will have on this culture.

83. We are opposed to any proposed action that further contributes to this cumulative negative impact on multiple-use and OHV recreationists because it is already significant. Recreation opportunities for multiple-use and OHV recreationists are being significantly reduced at a time when the need for these categories of recreation is growing. There is no reasonable justification for closing these lands to multiple-uses. Management of public lands for multiple-use is the most equitable and responsive approach available to meet the needs of all citizens including motorized recreationists. We request that the evaluation and proposed action adequately address this condition and not contribute further to this cumulative negative impact because it is already having a major impact on motorized recreationists.

84. The trend of closure after closure after closure after closure of motorized access and motorized recreational opportunities and the associated cumulative negative impacts of that trend is no longer acceptable without adequate mitigation. A reasonable mitigation plan should be developed for each action in order to avoid contributing to significant cumulative impacts on motorized access and motorized recreationists.

85. The cumulative negative effect of management trends over the past 40 years has significantly increased non-motorized recreational opportunities while motorized recreational opportunities have been significantly decreased. Non-motorized recreationists have many choices while motorized recreationists have few choices. We request that the document evaluate the significant cumulative negative effects of this trend and that the decision be based on correcting this trend in order to equitably meet the needs of motorized recreationists.



86. We are greatly concerned about the prevailing management trend for public lands that has significantly reduced or eliminated motorized recreation and access opportunities. Why does the closure of public lands permeate the current management mind set? This mind set is not in line with the best interests of the public. The closure of any existing motorized trail will add to the significant cumulative loss of motorized recreation and access opportunities that has occurred within public lands during the past 40 years. In order to avoid contributing further to the significant cumulative loss of motorized recreation and access, we request, as a reasonable alternative, that the closure of a motorized trail or access should be offset by the creation of a new motorized trail or access of equal value.

87. The elimination of public access to public lands through private property has also contributed to the loss of motorized access and motorized recreation opportunities. We request, as a reasonable alternative, that agencies acquire private land and right-of-ways to provide access to public land that is now blocked off to the public. This action is necessary to reverse the prevailing trend of significantly less public access to public land over the past 40 years and the cumulative negative impact of that trend on multiple-use recreationists.

88. If a private property owner closes a historic motorized access or route to public land through their property, then in order to be fair, to avoid special privileges; the public routes should be closed at the private property line to all motorized use and, where the route has access from the other end on public land, it should remain open so that it can provide an out and back motorized opportunity.

89. Private property owners that border public land should not benefit from public land without providing access to the public. Any private landowner that owns land that borders public land and does not provide public access to that public land should also be denied access to that public land under the principles of fairness and reciprocity. This action is necessary to reverse the prevailing trend of significantly less public access to public land over the past 40 years and the cumulative negative impact of that trend on multiple-use recreationists.

90. Anytime there is a land exchange between private and public entities, a public access easement or right-of-way should be required in order to offset the trend of less public access to public land over the past 40 years and the cumulative negative impact of that trend on multiple-use recreationists.

91. Motorized visitors are extremely concerned over the significant cumulative loss of many historic travel ways. Motorized visitors are unwilling to compromise any further because of the cumulative loss of motorized access and recreation opportunities that has resulted in the lack of equivalent recreation and access opportunities within public lands. Motorized visitors have the need for trail systems and areas equal to those available to non-motorized visitors (areas and trails including inter-forest, interstate routes, Continental Divide Trail, Pacific Crest Trail and National Recreation Trails). There are no new opportunities within public lands to make-up for the closure of roads and motorized trails. Therefore, a substantial need for motorized recreation and access

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opportunities will not be met if a substantial number of roads and trails are closed. We request that the impacts associated with the significant loss of motorized recreation and access opportunities be adequately addressed in the environmental document and decision-making, i.e. Where will displaced motorized visitors go? And, due to the lack of any reasonable motorized access and recreation opportunities, what will they do? Additionally, we request, as a reasonable alternative, that an adequate mitigation plan be included as part of this action to compensate for past cumulative negative impacts.

92. We request, as a reasonable alternative, that the loss of motorized recreation and access opportunities due to millions of acres of area closure (motorized travel restricted to designated routes) be adequately addressed in the document and decision-making. The area closure action without closing of any existing roads and trails is a significant loss of recreation and access opportunities to motorized visitors. The lack of adequate consideration of the negative impact of area closure on access and motorized recreation has produced a cumulative negative impact that is significant. We request, as a reasonable alternative, adequate consideration of area closure impacts on motorized visitors in the project area and the cumulative negative impact of all area closures. Additionally, we request that an adequate mitigation plan be included as part of this action to compensate for past cumulative negative impacts.
93. The environmental document should evaluate how the number of policy proposals over the past several years has overwhelmed the public. There is no way that the public could evaluate and comment on each proposed action (see partial listing of actions in Table 2 Cumulative Effects). The cumulative negative impact of the overwhelming number of proposals has been decision-making that does not provide for the needs of the public and a significant reduction in multiple-use and motorized access and recreation opportunities. We request that this cumulative negative impact be adequately evaluated and factored into the decision-making for this action. Additionally, we request that an adequate mitigation plan be included as part of this action to compensate for past cumulative negative impacts on the public associated with the overwhelming number of NEPA actions.
94. Motorized visitors have had to devote the majority of their available energy and time addressing local and national level travel management actions. The combination of these actions has created a significant cumulative negative effect on motorized visitors by consuming their free time and money, and significantly impacting their quality of life.
95. Additionally, this cumulative negative effect has led to the loss of opportunity for motorized recreationists to further the awareness and education of other motorized visitors in areas such as proper riding ethics, safety, and environmental protection. This cumulative negative effect has also reduced the opportunity for motorized recreationists to improve and maintain existing motorized opportunities. This cumulative negative impact includes reduced maintenance of trailheads and trails and reduced ability to undertake mitigation projects to protect the environment and public safety. We request that these cumulative negative effects be addressed in the analysis, preferred alternative, and decision-making.
96. Over the past 40 years (and it is accelerating in recent years) the overarching public land management trend has been to close access to and use of public lands. This trend of closure upon closure has become epidemic and is out of control as demonstrated by popular public opinion. A sampling of different users and perspectives is provided below to demonstrate this trend and the cumulative negative impacts that it has produced.

<http://www.billingsgazette.com/index.php?display=rednews/2004/04/25/build/local/32-land-use-protest.inc>  
<http://www.mtstandard.com/articles/2004/05/14/newsspecialreports/hijfieiqjcfhb.txt>  
<http://www.billingsgazette.com/index.php?id=1&display=rednews/2003/11/11/build/wyoming/30-blm.inc>  
<http://www.dailyinterlake.com/NewsEngine/SelectStory.tpl?command=search&db=news.db&eqskudata=57-816431-10&search-var=multiple>  
<http://www.dailyinterlake.com/NewsEngine/SelectStory.tpl?command=search&db=news.db&eqskudata=9-816800-3&search-var=multiple>  
<http://espn.go.com/outdoors/hunting/news/2001/1106/1274551.html>  
[http://www.aapg.org/explorer/2003/05may/slc\\_publandside.cfm](http://www.aapg.org/explorer/2003/05may/slc_publandside.cfm)  
<http://www.nanpa.org/docs/PublicLandsAccess.pdf>  
<http://www.washington-state-rockhounding.info/Trespass-index.htm>  
[http://www.sdorc.org/news/tortoise\\_lawsuit.html](http://www.sdorc.org/news/tortoise_lawsuit.html)  
<http://www.amfed.org/sfms/public-lands-access.html>  
<http://www.gamineral.org/land-access.html>  
[http://www.paragonpowerhouse.org/bush\\_promises\\_collaboration\\_on\\_p.htm](http://www.paragonpowerhouse.org/bush_promises_collaboration_on_p.htm)  
<http://www.delalbright.com/landuse.htm>  
<http://www.off-road.com/orland.html>  
[http://www.hcn.org/servlets/hcn.Article?article\\_id=5735](http://www.hcn.org/servlets/hcn.Article?article_id=5735)  
<http://www.sportsmenslink.org/articles/FinalWhitePage-Total.pdf>  
[http://www.4x4wire.com/access/news/united/dea\\_2002.htm](http://www.4x4wire.com/access/news/united/dea_2002.htm)  
<http://responsiblerecreation.policy.net/newsroom/>  
[http://www.helenair.com/articles/2003/06/01/opinions/a04060103\\_02.txt](http://www.helenair.com/articles/2003/06/01/opinions/a04060103_02.txt)  
<http://www.maccusa.com/>  
<http://www.sportsmenslink.org/programs/hunter/Issues.html>  
<http://www.ssfta.com/land/land.htm>

97. Many additional articles can be found by searching the web for keywords "public lands access". By far the loss of access and the trend of motorized closures upon motorized closure on public lands are the most common themes. From the public's perspective the #1 problem is access to adequate multiple-use access and recreational opportunities and the fact that these opportunities are being eliminated at a record pace by federal land use agencies. It is time to recognize that the trend of closure of public land to the public is inequitable. It is also time to undertake adequate correction to reverse the cumulative negative impact of 40 years of closure upon closure. It is also time to implement adequate mitigation to compensate for the cumulative negative impacts caused by the trend of inequitable closures that are now significant.

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98. The overarching trend of the last 40 years has been to remove people from the land. This trend has occurred as a result of many different factors including creation of national parks and monuments; creation of wilderness, non-motorized, and roadless areas; policies of the Forest Service and Bureau of Land Management; influx of dollars for conservation easements and land trusts; decline of farming and ranching; and decline of mining and timber harvests. People still have the same need and desire to work and recreate on the land, but they no longer have the same opportunity. The cumulative negative effect of the different trends that have removed people from the land is so significant now that any additional impacts should be avoided. Additionally, because the cumulative negative effect is so significant, adequate mitigation measures should be included as part of all future actions.
99. Similar to the lack of adequate evaluation of the cumulative effect of all motorized closures, the agency has also inadequately evaluated and given a hard look at the cumulative effect of all public land management actions that have effectively converted public lands from multiple-use to defacto wilderness. Defacto wilderness designations include wilderness designations, monument designations, roadless areas, non-motorized areas and other designations which eliminate motorized and multiple use. Land management actions that have contributed to this significant negative cumulative impact include land management plans, travel management plan, resource management plans, and monument designations. The evaluation and decision should adequately quantify the magnitude of the conversion of multiple use lands to defacto wilderness and the impacts associated with this conversion and adequately disclose that cumulative impact to the public and adequately disclose those impacts to the public with narrative, facts, figures, and tables in the environmental document.
100. The agency has closed an excessive amount of historic motorcycle single-track trails for non-motorized use that they have now created a critical shortage of motorcycle single-track trails.
101. The analysis fails to give a hard look at the cumulative impacts of all motorized access and motorized recreational closures on the human environment.
102. The Idaho Geospatial Office (IGO) works with organizations across the state to encourage and support collaborative geospatial activities. IGO has mapped the transition of trails in Idaho between 1978 and 2017. This story map shows how trails have changed from motorized to non-motorized between the years of 1978 and 2017. The map on Left shows 1978 Opportunities. The map on the Right shows 2017 Opportunities. Use the gray slider bar to show designations in 1978 and 2017. This information is a very effective demonstration of the significant cumulative impacts that motorized recreation has experienced in a 39-year period and should be carefully considered in the analysis. This sort of analysis should be completed for the project area in order to quantify and adequately disclose the significant cumulative impacts.  
<https://idaho.maps.arcgis.com/apps/StorytellingSwipe/index.html?appid=1528e88dda2d4bfc4305d4e78acb6c3#>

## **8. Recognize the Lack of Long-Distance Motorized Trail Systems and Legality of CDNST Closures**

103. The Continental Divide trail between McDonald Pass and Jericho Mountain, and Bison Mountain South was illegally closed to motorized recreationists by a past action. The Helena and Lewis and Clark Forest Plans did not re-evaluate that closure and mitigate for that illegal closure by re-opening this section of CDNST to motorized recreationists as required by the original legislation.
104. If further motorized closures of the CDNST are pursued, then a significant issue to motorized recreationists is the re-opening of all CDNST motorized closures enacted to date including Homestake Pass north and south, Bison Mountain North and South, Sugarloaf Mountain, Black Mountain North, Flesher Pass to Rogers Pass, McDonald Pass to Jericho Creek, Bison Mountain, and Thunderbolt Mountain. These motorized closures were enacted without the correct consideration of the requirements of the CDNST enabling law, and CDNST EIS and ROD. They were illegal motorized closures and corrective action should be taken to resolve these past illegal motorized closure actions as part of this decision.
105. The Continental Divide trail between Stemple Pass and Rogers Pass was illegally closed to motorized recreationists by a past action. The Blackfoot travel plan should re-evaluate that closure and mitigate for that illegal closure by re-opening this section of CDNST to motorized recreationists as required by the original legislation. Further documentation of this illegal closure is provided in the following sections.

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106. Non-motorized reaches of the CDNST receive very little use. Recent inspection of a new non-motorized section of the CDNST near Burnt Mountain in the Beaverhead-Deer Lodge National Forest (photographs available upon request) could not find any sign of use and hikers were actually using the motorized trail. A CTVA member monitored game cameras on a section of the CDNST near Helena for a 3-month period from June to August of 2013. These cameras did not pick up any non-motorized users during this period. At the same time, we have observed that motorized sections of the CDNST see significant motorized use and corresponding benefits. By looking at actual miles traveled, and hours spent recreating the obvious best use of the CDNST is for shared multiple-use. This is also true when considering our limited and valuable public taxes and funds. Single-track reaches should be designated for motorcycle and mountain bike use, 48" width areas should be designated for ATV use and reaches wider than 48" should be designated for UTV and 4x4 use.
107. Motorized recreationists keep trails open for all users including motorcycle single-track trail. This issue is especially important during this period of intense downfall from trees killed by beetle infestations. A once-a-year trail clearing by an agency trail crew is no longer adequate to keep trails open. Past closures have proven that motorized trails that have been closed to motorized use have become impassable within 3 to 5 years. Examples include the Brooklyn Bridge route in the Helena National Forest and the Middle Fork of Rock Creek in the Beaverhead-Deer Lodge National Forest. At the same time motorized recreationists have proven that they are willing to work to keep trails open so that all visitors are able to enjoy them. This ability to keep trails open for use by everyone is a significant advantage to designate all routes within the project area open for motorized use.
108. We are very concerned about the closure of any motorized routes to create CDNST. The closure of any existing motorized route to create a non-motorized segment of the CDNST was not authorized by the National Trail Systems Act and, in the direction given in a policy memorandum by the Deputy Forester in 1997.
109. Specifically, the National Trails System Act (16 U.S.C. 1241) (<http://nplnews.com/toolbox/fedlaws/68natrails.pdf>) was the authorizing law for Continental Divide National Scenic Trail. The general criteria as stated in the National Trail Systems Act, is that "the use of motorized vehicles by the general public along any national scenic trail shall be prohibited". However, in the case of the Continental Divide National Scenic Trail (CDNST), an exception is made for "the use of motorized vehicles on roads which will be designated segments" (Section 5 (5), page 2-6). The law also allows uses (including motorized vehicle use) along the CDNST "which will not substantially interfere with the nature and purposes of the trail" where such uses are permitted at the time of designation (Sec. 7 (c), page 2-21).
110. Specifically, the National Trails System Act (16 U.S.C. 1241) provided for "(6) DIVERSIFIED TRAIL USE.—(A) REQUIREMENT.—To the extent practicable and consistent with other requirements of this section, a State shall expend moneys received under this part in a manner that gives preference to project proposals which—(i) provide for the greatest number of compatible recreational purposes including, but not limited to, those described under the definition of "recreational trail" in subsection (g)(5); or (ii) provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized recreational trail use.

Both sections of proposed trail are outside the wilderness area and would make outstanding shared-use (motorized and non-motorized) trails. Development as shared-use

trails would better meet the guidelines of the National Trail Systems Act for “innovative” solutions.

111. Specifically, the National Trails System Act (16 U.S.C. 1241) defined RECREATIONAL TRAIL.—The term “recreational trail” means a thoroughfare or track across land or snow, used for recreational purposes such as bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, aquatic or water activity and vehicular travel by motorcycle, four-wheel drive or all-terrain off-road vehicles, without regard to whether it is a “National Recreation Trail” designated under section 4 of the National Trails System Act (16 U.S.C. 1243).
112. The language cited above from the National Trails System Act clearly indicates the intent of the original act. The creation of non-motorized sections of the CDNST by converting motorized sections is not within the intent of the original act.
113. The Beaverhead-Deer Lodge National Forest has properly acknowledged the National Trails System Act and has not closed any motorized sections of the CDNST since the CTVA appeal of the Nez Perce trail in 2004. Recent CDNST projects in the BDNF have used the strategy of constructing non-motorized routes parallel to existing motorized CDNST trail sections. We support this strategy to avoid illegal closure of motorized sections of the CDNST.
114. In too many cases a couple of non-motorized users have been able to displace hundreds of motorized users. It is not reasonable or fair to allow a few non-motorized recreationists to convert a motorized trail used by hundreds of motorized recreationists for their exclusive use. Unfortunately, sections of the CDNST have been created with this approach. This approach should not be perpetuated, and past motorized closures should be mitigated.
115. The 1997 Policy Letter by the Deputy Chief of the Forest Service (<http://www.mtvra.com/Docs/CNDST%20July%201997%20Memo.pdf> ) is being used by the Forest Service to justify conversion of motorized, multiple-use sections of the CDNST to non-motorized use only. Our interpretation of that policy memo is completely different. The 1997 directive to Regional Foresters clearly says that conversion of the CDNST to non-motorized applies only to "newly constructed trail segments" and that reaches of the existing CDNST that use existing roads and trails should continue to accommodate motorized use.

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File Code: 2350  
Route To : \*

Date: July 3, 1997

Subject: Continental Divide National Scenic Trail - Motorized Use

To: Regional Foresters

This memorandum is to clarify Forest Service policy concerning whether the Forest Service may open to motorized use newly constructed portions of the Continental Divide National Scenic Trail (CDNST).

The National Trails System Act ("Trails Act") is ambiguous as to motorized use on the CDNST. Section 7(c) of the Trails Act sets a general standard for prohibiting motorized uses on National Scenic Trails. 16 U.S.C. 1246(c). However, there is special language in subsections 5(a)(5) and 7(c) of the Trails Act referring to motorized uses on the CDNST. That special language provides that motorized use may be permitted on segments of the CDNST where such use will not "substantially interfere" with the nature and purpose of the trail and where, at the time of designation, such use was allowed by administrative regulations.

To clarify our policy regarding newly constructed segments of the CDNST, the following additional direction is provided.

When designated by Congress, the route of the CDNST followed some segments of primitive roads on which motorized vehicle use was allowed. The special language of subsections 5(a)(5) and 7(c) was intended to allow continued motorized use of such roads. However, as the CDNST is further developed, it is expected that the trail will eventually be relocated off roads for its entire length.

It is the intent of the Forest Service that the CDNST will be for non-motorized recreation. As new trail segments of the CDNST are constructed to link existing non-motorized trail segments together, and to reroute the CDNST off of primitive roads or other routes where motorized travel is allowed, motorized use should not be allowed nor considered. Allowing motorized use on these newly constructed trail segments would substantially interfere with the nature and purpose of the CDNST. If any newly constructed trail segments of the CDNST are currently allowing motorized use, that motorized use should be stopped as soon as practicable, but not later than January 1, 2000.

This Office of the General Counsel has reviewed and concurs in this policy directive. Questions or comments about the above direction should be directed to Jim Miller at J.B.Miller:w01c or by telephone at 202-205-1313.

/s/ Janice H. McDougale (for)

ROBERT C. JOSLIN  
Deputy Chief, NFS

cc: Glacier National Park, Yellowstone National Park, BLM - MSO, American Hiking Society, Continental Divide Trail Society, Continental Divide Trail Alliance

116. Past NEPA action which addressed continued motorized use of the CDNST is being completely ignored by the Forest Service. The Decision Notice and Finding of No Significant

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Impact for Continental Divide National Scenic Trail Montana-Idaho Section dated April 7, 1989 established that 795 miles would be designated CDNST in Idaho and Montana. This document can be downloaded at

<http://www.mtvra.com/Docs/1989%20CDNST%20Decision%20Notice.PDF> and

<http://www.mtvra.com/Docs/1989%20CDNST%20Decision%20Notice%20Maps.PDF> or

available upon request. The decision also established that 510 miles out of the 795 miles would be open to motorized travel. Out of the remaining 285 miles, approximately 222 miles are in designated wilderness areas and would be non-motorized and the remaining approximately 63 (59 identified in the decision notice) miles would be newly-constructed trail. Therefore, we ask that the 510 miles of motorized CDNST established by the 1989 decision be honored as part of this planning project.

117. Additionally, the Regional Forester in a letter dated February 1, 2006

(<http://mtvra.com/Docs/Kimbell%20Letter%20CDNST%20Feb%201%202006.PDF>) committed that "As the travel management process goes forward it is likely that some portions of the CDT will be certified to remain motorized. If we complete a NEPA document (including public involvement) that results in a decision to remove motorized from the CDT, we will make every effort to develop alternative motorized routes." This commitment to no net loss of motorized recreation along the CDNST is extraordinarily important to motorized recreationists and should be honored by this project.

118. If motorized recreationists had trails of regional and national significance, they would see considerable use. Non-motorized recreationists have considerably more national trail recreation opportunities than motorized recreationists. We request, as a reasonable alternative, that the needs of motorized recreationists for regional and national travel ways be evaluated. We request an evaluation of the cumulative negative impacts and environmental justice issues surrounding the lack of regional and national motorized trails for motorized recreationists. We request, as a reasonable alternative, that regional and national motorized recreational trails be identified and actions be taken to implement those trails.

119. There is a significant equal opportunity issue associated with the CDNST that should be evaluated and resolved in a manner that is fair to motorized recreationists.

120. The thousands of motorized recreationists that use existing motorized sections of the CDNST should not be displaced for a handful of non-motorized recreationists that use the trail. Preferential treatment for non-motorized recreationists should cease and mitigation for past motorized closures should be implemented. Mitigation for past motorized closures should include those motorized routes closed in the past to create a non-motorized section of CDNST trail including McDonald Pass to Telegraph Creek and Flesher Pass to Rogers Pass.

121. We request that the analysis include a benefit-cost analysis of any new CDNST trail construction. This analysis should include the annual cost of the CDNST per actual and documented non-motorized trail user. The economic analysis should also compare the annual benefit-cost per non-motorized user versus the annual benefit-cost per motorized user if the funds were used elsewhere to construct motorized trails. Basically, the funding proposed for non-motorized trail construction under the proposed alternative would see far more use if used for motorized trail construction and maintenance. Additionally, this funding could be part of a mitigation plan required to address the significant cumulative effects of all motorized trail closures on motorized recreationists.

122. Motorized trail users out-number non-motorized trail users at least 25 to 1 (see summary of local observations). Motorized recreationists need approximately 5 times the miles of trail per

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day compared to non-motorized recreationists (CBU analysis). Therefore, motorized recreationists need 125 times (25 x 5) the miles of trails as do non-motorized recreationists. However, the current allocation of resources in the forest is significantly weighted towards non-motorized and is nowhere near this ratio. Additionally, the allocation is moving in the wrong direction towards more non-motorized opportunities with every recent decision. Construction of new CDNST trail for exclusive non-motorized use is not a good use of the taxpayer's money. Additionally, the proposed CDNST project will benefit a very limited number of recreationists who already have more than adequate recreational resources when compared to motorized recreationists. It would be more reasonable for the agency to focus on multiple-use trail projects and invest our limited financial resources in those types of projects. We request that the viable alternative of putting the project money into multiple-use trails be adequately evaluated.

123. The benefit-cost analysis should also recognize the significant economic benefit associated with motorized recreation. Motorized economic benefit would far exceed the economic benefit from the limited number of non-motorized recreationists that use the CDNST. Economic benefits to the local economy associated with motorized recreation include sale of OHVs, parts and service; sale of tow vehicles, parts and service; sale of camping units, parts and service; fuel; meals; motels, etc.

124. It is our understanding that some interests are pushing the wildlife corridor concept and trying to associate it with the CDNST as a reason to close areas to motorized use. We have not seen adequate documentation or reasoning to justify this position and suspect that it is being used inappropriately as a reason to justify defacto wilderness (in practice but not ordained by law) by non-motorized interests. Significant issues should be answered before this concept can be given any credibility. Issues include:

- a. Why would wildlife follow physically challenging basin divides where food and water is scarce versus other corridors? They don't. This is easily verified by open areas such as McDonald Pass or the jagged areas of the continental divide where we have never observed any significant number of wildlife crossings versus great numbers of wildlife crossings that we have observed in other areas that are more favored by wildlife.
- b. Where is the documentation that the continental divide or other basin divides are favored for wildlife migration? Especially theories that purport that wildlife will migrate from Mexico to Canada. This is counter-intuitive to the types of habitat that different species require in order to survive. There is a significant lack of credible evidence to support these claims.
- c. The lack of authorization or mandate from congress.
- d. The socio-economic issues associated with the attempt to use the wildlife corridor concept to convert multiple-use lands to defacto wilderness (in practice but not ordained by law).

125. Any closure of the CDNST to motorized recreationists represents yet another significant loss of recreational opportunity for multiple-use and motorized recreation interests. The uncontrolled, unmeasured, undisclosed, and immensely significant cumulative effect on multiple-use and motorized recreationists should be considered as part of this action. Therefore, the Continental Divide National Scenic Trail act should be re-considered based on the current state of significant negative cumulative impacts on motorized recreationists.

126. The requirement for non-motorized sections in the original CDNST in the National Trails System Act was precipitated by un-restricted noise levels that were prevalent at that time. The motorized recreational industry and motorized recreationists have addressed this issue by

implementing mechanical mitigation measures that have significantly reduced sounds levels and effectively addressed and eliminated this concern. Additionally, the State of Montana has passed a sound testing and enforcement law (MCA 61-9-418, 61-9-435, and 61-9-518) which further diminishes this issue. Therefore, the requirement for non-motorized sections of the CDNST should be re-considered.

127. It is our understanding that at the time of creation of the CDNST that there were about 719 miles of CDNST trail in Montana and 596 miles were motorized, multiple-use. The 1997 Policy Letter by the Deputy Chief of the Forest Service to Regional Foresters clearly says that conversion of the CDNST to non-motorized applies only to "newly constructed trail segments" and that reaches of the existing CDNST that use existing roads and trails should continue to accommodate that motorized use.

128. We are concerned that any conversion of the CDNST in Montana will have a significant negative impact on motorized access and motorized recreation. We are very concerned that adequate NEPA compliance including an adequate mitigation plan is not be carried with any conversion of the CDNST from motorized to non-motorized. Conversion of sections of the CDNST from motorized to non-motorized is a very significant federal action and is subject to NEPA compliance. However, NEPA compliance for this decision has not been addressed. Also, a policy that is this different from the authorizing legislation is not legal. We respectfully ask that the agency address this lack of authorization, and NEPA compliance surrounding the conversion of the CDNST from motorized to non-motorized.

129. We request an adequate evaluation of the cumulative negative impact on motorized recreation and access opportunities that occurs when motorized routes are converted to non-motorized routes to establish the CDNST because we believe that they are significant. We request, as a reasonable alternative, a network of national recreation trails for motorized recreationists equivalent to the Continental Divide Trail (CDT), Pacific Crest Trail, National Recreation Trail and other national non-motorized trails that travel a long distance and interconnect with other forests such as the Michigan Cross Country Motorcycle Trail 1200 miles ([http://www.fs.fed.us/r9/hmnmf/pages/Recreation/Baldwin/bwc\\_Oo\\_atvmoto\\_txtonly.pdf](http://www.fs.fed.us/r9/hmnmf/pages/Recreation/Baldwin/bwc_Oo_atvmoto_txtonly.pdf)), Pacific Crest Quest (<http://www.advrider.com/forums/showthread.php?t=111885>), Lassen Backcountry Discovery Trail (<http://www.backcountrydiscoverytrail.com/index.html> and [http://www.intergate.com/~sue/4wd\\_Trails/cbdt\\_lassen/lassen\\_cbdt.htm](http://www.intergate.com/~sue/4wd_Trails/cbdt_lassen/lassen_cbdt.htm)), the Modoc Backcountry Discovery Trail (<http://www.fs.fed.us/r5/modoc/recreation/ohv/mcbcdt.shtml> and [http://www.intergate.com/~sue/4wd\\_Trails/cbdt\\_modoc/modoc\\_cbdt.htm](http://www.intergate.com/~sue/4wd_Trails/cbdt_modoc/modoc_cbdt.htm)), and the Arizona Peace Trail (<http://arizonapeacetrail.org/>). The interest and adventure of long-distance cross-country trips is captured in trip reports including <http://www.quadtrek.net/> (click English) and <http://www.advrider.com/forums/showthread.php?t=147232>.

130. If motorized recreationists had trails of regional and national significance, they would see considerable use. Non-motorized recreationists have considerably more national trail recreation opportunities than motorized recreationists. There is a significant fairness issue involved with this decision. We request, as a reasonable alternative, that the needs of motorized recreationists for regional and national travel ways be evaluated. We request an evaluation of the cumulative negative impacts and environmental justice issues surrounding the lack of regional and national motorized trails for motorized recreationists. We request, as a reasonable alternative, that regional and national motorized recreational trails be identified, and actions be taken to implement those trails.

131. The opportunity for solitude should be reasonably balanced with the multiple-use needs of the public. For example, the Montana Standard in an article on December 14, 2000 reported that

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hikers on the Continental Divide trail “walked for 300 miles without seeing another human being”. This article illustrates a significant long-distance interstate recreational opportunity available to non-motorized visitors and the negligible use that it sees. Additionally, we have been camping in the Telegraph Creek drainage for 40 years and we have met only 2 people using the CDNST in that area.

132. It is not equitable to provide recreationists seeking solitude and wilderness experiences exclusive access to tens of millions of acres and thousands of miles of non-motorized trails while restricting the public seeking multiple-use opportunities access to an inadequate road and trail system. In other words, it is not reasonable to allow a very limited group of individuals who do not want to meet other people to displace thousands of motorized recreationists. We request, as a reasonable alternative, an equitable and balanced allocation of motorized access and recreational opportunity.
133. In contrast, a long-distance interstate recreational opportunity similar to the CDNST does not exist for OHV recreationists. It is not equitable to provide recreationists seeking solitude and wilderness experiences exclusive access to tens of millions of acres and thousands of miles of non-motorized trails while restricting the public seeking multiple-use opportunities access to an inadequate road and trail system. We request, as a reasonable alternative, an equitable and balanced allocation of motorized access and recreational opportunity.
134. We have seen a low level of use used as a factor to close motorized routes. This criterion should also be applied equally to non-motorized routes. For example, a low level of use by motorcycles was used as a reason to close the Nez Perce and Mormon Gulch trails in the Beaverhead-Deer Lodge National Forest. This same reason should be used to open up non-motorized trails such as the CDNST that experience a low level of use to more public use by allowing motorized use.
135. Given the evidence in support of continued use of existing motorized routes and the need for additional motorized routes, any proposed CDNST alternative that would close motorized routes is clear evidence that the agency is predisposed to motorized closures despite the needs of the public and the facts. We strongly support the position that no existing motorized routes should be closed as part of the CDNST based on the evidence submitted.
136. The agency is illegally closing motorized sections of the CDNST to thousands of motorized visitors so that 200 hikers can use it each year. [https://helenair.com/news/state-and-regional/kalispell-woman-hikes-continental-divide-trail-in-5-months/article\\_f26a0e9f-25e5-53ae-8a06-31dd7ce9e64b.html#tracking-source=home-the-latest](https://helenair.com/news/state-and-regional/kalispell-woman-hikes-continental-divide-trail-in-5-months/article_f26a0e9f-25e5-53ae-8a06-31dd7ce9e64b.html#tracking-source=home-the-latest)

## 9. Adequately Identify and Address the Imbalance of Trail Opportunity in the Project Area

137. Basically, as shown in the table below, there is too little motorized access and too few motorized trails in the project area. Therefore, every mile of existing road and motorized trail is very, very important. The evaluation should adequately consider and address the fact that motorized access to the Project area is relatively limited as shown by the miles of roads versus the number of acres in the following table. The miles of motorized trails are exceptionally inadequate for the thousands of OHV recreationists looking for those opportunities. Additionally, the miles of motorized trails and especially single-track is way out of balance with the needs of thousands of motorized recreationists in the region surrounding the Helena National Forest. At the same time, the miles and percentage of non-motorized trails is excessive compared to the use that they receive, and this does not consider the endless cross-country opportunities that available. The total route opportunity available to non-motorized recreationists is 2836 miles and the total miles of exclusive non-motorized trails are 541 (78.52%) and the cross-country miles are infinite. The total miles of roads open to motorized recreationists are 1410 and the total miles of trails open to motorized recreationists is 148 (21.48%) and the miles of cross-country opportunity is zero. Existing motorized single-track trails total about 38 miles or 5.52%.

Given the number of motorized recreationists and the miles of routes available, it should be very obvious that motorized recreationists are already squeezed into an inadequate system of routes.

Under the existing condition, 12.00% of the Helena National Forest is set-aside for segregated exclusive non-motorized use for 3,000 or 0.59% of the visitors to the forest. The remaining 505,000 or 99.41% of the visits are associated with multiple-use. Multiple-use lands are public places. Segregation in public places has not been acceptable since the Civil Rights Act of 1964. In order to reasonably meet the requirements of integration a reasonable management goal for the remaining 88.00% of the forest would be for shared multiple-use that would produce a forest-wide 50/50 sharing of non-motorized/motorized trail opportunities and correct the current imbalance as shown in the table below.

The overall allocation of existing non-motorized versus motorized access and trail riding opportunities in the project area does not reasonably meet the needs of the public for motorized access and the recreational needs of motorized recreationists. We request that this data be used to guide the decision-making to a preferred alternative that adequately meets the needs of the public by increasing motorized recreational opportunities in the project area.

Region	Forest	District	NFS Acres	Current Status	Projected Date for Designation	Existing NFS Roads	Existing NFS Roads Open to Motor Vehicle Use	Existing NFS Trails	Existing NFS Trails Open to Motor Vehicle Use (Single-Track)	Existing NFS Trails Open to Motor Vehicle Use (Country Motor Vehicle Use)	Acres Currently Open to Cross-Country Motor Vehicle Use
1	Helena	Townsend	274,000	Existing	9/7/2006	719	414	228	45	13	0
1	Helena	Lincoln	376,000	Existing	9/8/2006	563	437	229	71	22	0
1	Helena	Helena	325,000	Existing	9/8/2006	865	559	232	32	3	0
<b>Totals</b>			<b>975,000</b>			<b>2,147</b>	<b>1,410</b>	<b>689</b>	<b>148</b>	<b>38</b>	<b>0</b>
Miles of Open Road per Square Mile =							0.66				
Total Roads and Trails Open to Non-Motorized Use, Miles							<b>2,836</b>				
Non-Motorized Trails, Miles =							<b>541</b>				
Non-Motorized Trails, % =							<b>78.52%</b>				
Motorized Trails, miles =							<b>148</b>		<b>38</b>		
Motorized Trails, % =							<b>21.48%</b>				
Trails Open to Motorcycles %									<b>5.52%</b>		

<http://www.fs.fed.us/recreation/programs/ohv/>

<http://www.fs.fed.us/recreation/programs/ohv/travel/mgmt/schedule.pdf>

**NOTE: This data is out of date by at least 16 years and does not reflect significant motorized closures that have occurred since the data used to produce this table was put together by the Forest Service. This data should be updated to disclose the true balance of recreation opportunities.**

138. While we do not support segregation, if segregation is to be implemented on multiple-use lands (which should be considered public places), then a corresponding goal would be to demonstrate an absolutely perfect 50/50 sharing of non-motorized and motorized trails as part of that segregation. Therefore, if the proposed plan further promotes segregation on multiple-use lands, then it should include a corresponding 50/50 sharing and it should not tip the balance further in favor of non-motorized trails and at the expense of motorized routes.

139. It is not reasonable to reward recreationists who create and promote a culture of non-sharing on public lands.

140. In order to bring equality to the allocation of non-motorized to motorized trails in the Helena National Forest should either convert 197 miles ((689/2)-148) of non-motorized trails to motorized trails or 393 miles (541-148) of new motorized trail should be constructed. The Helena Forest Plan should adequately address this imbalance and it was a step in the wrong direction by creating an even greater imbalance.

141. Collaboration is defined by Merriam-Webster as "to cooperate with or willingly assist an enemy of one's country and especially an occupying force". It is not reasonable to use a collaboration process to award non-motorized interests with more non-motorized opportunities for their participation in a "collaboration process" when they already have a significant unjustified advantage in non-motorized trail opportunities when compared to motor trail opportunities (541 miles and 78.52% non-motorized trails versus 148 miles and 21.48% motorized trails). Moreover, it is not equitable to use a process that is pre-determined to provide one group or selected group's additional advantage with the outcome of the process when that group or groups has a significant advantage at the initiation of the process. Therefore, in order to address this inequality any collaboration efforts used in the process should be directed to address creating more motorized trails and the outcome of any collaboration efforts should be an increase in motorized trails.

142. The agency should recognize that the silent majority has little time left after their contribution to the economy, their families and other obligations that benefit society and are extremely important to our culture and quality of life. The silent majority needs agencies to reasonably consider and provide for their necessities and especially when it involves motorized recreation

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on public lands. Because of the significant and important commitments that the silent majority undertakes they are seldom able to participate in an extended agency or collaboration process and especially when considering how many land management actions are ongoing. The agency should adequately recognize the motorized recreational needs of the silent majority and at the same time recognize that the majority of participants in the agency driven process are agency staff or groups who have adequate free time and/or are paid to participate and represent a small fraction of the visitors to our public lands.

143. Significant issues involving the fair and equal treatment of motorized recreationists is the creation of “collaboration” groups whose purpose is to create a forum to promote their special interests, influence the agency, and gain more privileges than those of the common citizen. By design collaboration groups seldom involve motorized recreationists. A recent example of this strategy is the Montana Forest Collaboration Network. The agency should be vigilante about undue influence from these groups and giving special status or privileges different than those of a common citizen including motorized recreationists to these special interest “collaboration” groups.

144. The 20 miles of proposed motorized trail is not adequate to meet the needs of the public. The comments and information that we have provided in this submittal and others provide adequate justification to support this statement. Certainly, a motorized trail system equal to the miles of non-motorized trail system in the Helena National Forest is justified for motorized trail users. Moreover, there are over 200 miles of non-motorized trail in the immediate area just outside the project area so several hundred miles of motorized trail can easily be justified. Therefore, a reasonable alternative would be to at least provide a motorized trail system in the project area equal to the non-motorized trail system in the immediate area of the project. This objective can be accomplished by eliminating the conversion of motorized trails to non-motorized trails, re-opening the illegal closures of the CDNST, and incorporating old logging roads with the construction of new connector segments to create loops. We request that this reasonable alternative be developed and promoted as the preferred alternative.

145. The proposed action does not adequately consider that there are hundreds of miles of non-motorized trails available to the public in the immediate area. The balance of recreational opportunity should recognize the availability of the non-motorized trails in the adjacent wilderness area. Because the adjacent non-motorized trails were not adequately factored in to the analysis, the proposed balance of recreational opportunities does not adequately address the needs of motorized recreationists. Because of the vast wilderness area adjacent to the project area, all multiple-use land within the Project area should be managed for multiple-use.

146. In addition to a tabulation of non-motorized versus motorized trails, a visual representation of non-motorized versus motorized trails in the project area and Project area similar to the mapping tool developed for the Idaho trail system should be evaluated. The Idaho mapping tool can be viewed at <https://idaho.maps.arcgis.com/apps/webappviewer/index.html?id=2252207eb95b49f99b2c05228831dfbb>. Zoom in once to observe the extents of non-motorized routes in red and motorized routes in yellow. This information shows the relatively equal balance of non-motorized versus motorized trails that exists in Idaho. A similar analysis for the Project area and Montana would demonstrate the unequal allocation of non-motorized versus motorized trails and the need to perpetuate and develop more motorized trails.

## 10. Provide for a Reasonable Level of Multiple Use

147. Motorized recreation represents and supports many different interests of forest visitors. Supporting motorized recreation is the best way to support diversity of uses and multiple-use. This over-arching purpose and need should be adequately considered in the analysis and decision.

148. Under the existing conditions with a typical width of no more than 12 feet, the 1410 miles of roads in the Helena National Forest would cover about 2051 acres ( $1410 \times 5280 \times 12 / 43560$ ). At a typical width of no more than 48 inches, the 110 miles of ATV trails cover about 53 acres. At a typical width of no more than 24 inches the 38 miles of motorized single-track trails cover about 9.2 acres. The total Helena National Forest is covers 977,000 acres. The percentage of the total forest used by roads, ATV trails, and single-track motorcycle trails under existing conditions is respectively, 0.3760%, 0.0109%, and 0.0000%.

The total area of roads and trails under Existing Conditions far less than 1% of the project area. The total area used by motorized routes under Existing Conditions is 602 acres or 0.3869% of the 155,500 acre area. These values demonstrate that the area occupied by motorized roads and trails under Existing Conditions is relatively insignificant and is an entirely reasonable level of use on multiple-use lands. The reduction under the draft ROD produces a significant impact on the public's ability to access and recreate and is not a reasonable level of use for lands designated for multiple-use by congress. Furthermore, a Pro-Recreation Alternative that increases motorized access and motorized recreational opportunities in the project area is an entirely reasonable alternative for these multiple-use lands.

<b>Acres and % of Forest for Existing Motorized Routes</b>				
Total Project Area (acres) =			155,500	
	Miles	Feet width	Acres	% of Forest
Miles of road	402.0	12	584.73	0.3760%
Miles of ATV	35.0	4	16.97	0.0109%
Miles of Motorcycle	0.0	2	0.00	0.0000%
		<b>Total</b>	<b>601.70</b>	<b>0.3869%</b>

149. In a recent article ([http://www.helenair.com/articles/2008/08/01/national/80na\\_080801\\_drill.prt](http://www.helenair.com/articles/2008/08/01/national/80na_080801_drill.prt)) about a lawsuit regarding drilling in New Mexico on the Otera Mesa, the BLM manager stated "While up to 90 percent of BLM lands are open to drilling under the plan, Childress said only 800 to 900 acres of Otero Mesa's 1.2 million would be permanently disturbed by roads, footpads and other drilling related activities. "I think that's a pretty reasonable percentage," he said." We agree and find that this is a relatively insignificant percentage of the total area and quite acceptable management for multiple-use lands.

150. We have been keeping observations of the types of visitors in multiple-use areas since 1999 and have found that 98% of the visitors are motorized recreationists. The public comments and

votes by how they use the forest, and more motorized access and recreation is what they are asking for with every visit.

151. The travel management plan for the area should reflect that use and the needs of the public for motorized recreational opportunities in the area. Again, these are multiple-use lands, and we ask that they remain viable multiple-use lands by not closing existing motorized routes.
152. Sharing of multiple-use lands is a reasonable expectation for all visitors to lands designated by congress for multiple-use. Coexistence with all visitors is a reasonable expectation for everyone visiting multiple-use lands. A reasonable alternative should be developed around sharing and coexistence of visitors to the project lands designated by congress for multiple-use.
153. The proposed action renders the motorized access and motorized recreation currently enjoyed by 97% of the public who now visit the project area an illegal activity. Making a popular and much needed recreational pursuit an illegal activity is not a reasonable proposal for lands designated by congress for multiple-use. The proposed action is ignoring the laws of congress. The proposed action should adequately address these laws. The proposed action should develop a reasonable multiple-use alternative for evaluation.
154. Motorized recreationists are concerned that the agency is not meeting the requirements of the Multiple-Use Act and Sustained Yield Act. We request documentation in the EIS on how the agency feels they are meeting the requirements of the Multiple-Use Act and Sustained Yield Act.
155. The Multiple Use Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.) and National Forest Management Act of 1976 are congressional laws which state “*The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people...*”. Outdoor recreation is the first stated purpose of the act. Furthermore, NEPA states *avoid or minimize adverse impacts or enhance the quality of the human environment*. NEPA was very clear that the total complement of the environment was to be considered in the impact analyses and decision-making including the guiding purpose statement “*achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities*” (Public Law 91-190, Title I, Section 101 (b) (5)). Giving wildlife priority over the human environment as has been done in the draft EIS violates NEPA, MUSYA and NFMA. This serious violation should be adequately corrected.
156. The most equitable management of public lands is for multiple-uses. Congress recognized this need with many laws including the Multiple Use Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.) and National Forest Management Act of 1976. Multiple-Use was defined as “*The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people...*”. **Outdoor recreation is the first stated purpose of the act.** Note that the pre-Columbian management scheme has not been enacted by Congress. Therefore, the agency has a responsibility to provide recreational opportunities that meet the needs of the public just as government entities provide road, water and wastewater systems that meet the needs of the public.

Public Law 88-657 states that “*the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary*

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*of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.”*

The Federal Land Policy and Management Act of 1976 (FLPMA) states that “(7) *goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law; and, (c) In the development and revision of land use plans, the Secretary shall -- (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;”*.

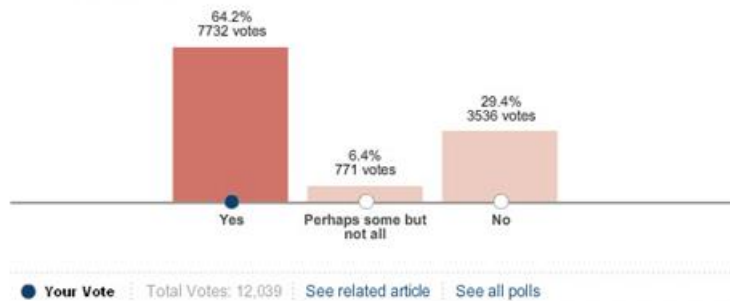
Multiple-use management goals are the only goals that will “best meet the needs” of the public and provide for equal program delivery to all citizens including motorized visitors. All of visitors have a responsibility to accept and promote diversity of recreation on public lands. Diversity of recreation opportunities can only be accomplished through management for multiple-uses and reasonable coexistence among visitors. Multiple-use lands should be managed for shared-use versus segregated-use or exclusive-use. Multiple-use lands are public places. Segregation in public places has not been acceptable since the Civil Rights Act of 1964.



157. A significant closing of roads and motorized trails in the project area is not consistent with meeting the needs of the public and the goals of Multiple-Use Management as directed under Federal Land Policy and Management Act of 1976 (FLPMA), Multiple Use Sustained Yield Act of 1960 and P.L. 88-657. Legally designated multiple-use lands should not be managed for limited-use instead of multiple-use. We request full compliance with multiple-use policies and laws and the development of a Pro-Recreation preferred alternative that will support these policies and laws and the needs of the public.

158. A poll in the Wall Street Journal demonstrates the overwhelming support for multiple-use of our public lands.

Should 40 million acres of land be removed from federal protection and opened to mining, logging and other uses?



<http://online.wsj.com/community/groups/question-day-229/topics/should-40-million-acres-land>

159. We would all rather not have to share with anyone else BUT rewarding those users who cannot share with other multiple-use visitors on multiple-use lands is WRONG.

160. The majority of visitors to the project area are associated with multiple-use opportunities including motorized access and motorized recreation opportunities.

161. These are multiple-use lands as designated by congress and should be managed as such. Recreation is a stated purpose for multiple-use lands.

162. Wilderness is closed to motorized vehicles and equipment. Therefore, multiple-use lands should be open to motorized vehicles and equipment. Wilderness criteria and standards should not be applied to multiple-use lands.

163. There are no compelling reasons to close as many motorized access and motorized recreational opportunities as has been enacted by the agency. It is simply contrary to the public need and the way that the public has historically used all multiple-use areas in our public lands.

164. Governor Schweitzer spoke to more than 80 members of the Public Lands/Water Access Association at a rally at the Copper King Hotel ([http://www.mtstandard.com/articles/2007/04/01/state\\_top/20070401\\_state\\_top.prt](http://www.mtstandard.com/articles/2007/04/01/state_top/20070401_state_top.prt)). "These bright young families are choosing Montana because we can still access our public lands," he said. Schweitzer urged policy makers not to shut the state's economy down. "Make sure the gates are open to our public lands."

165. Access to and use of public land should be the highest of priorities for multiple-use lands. However, current decision-making is out of touch with these priorities. The minority interests (non-motorized recreationists) are recipients of new recreational opportunities with each decision while the majority interests (motorized recreationists) lose opportunities with each decision. The evaluation and decision-making should consider that the total area of the National Forest equals 192,300,000 acres and out of that total 44,919,000 acres or 23.36% is already designated wilderness. Current planning actions seek to convert roadless lands to defacto wilderness (in practice but not ordained by law) even though they are designated multiple-use lands. Therefore, this percentage will be even more lopsided toward non-motorized opportunities at 53.79% assuming that 58,518 acres of roadless areas are converted to defacto wilderness areas and managed for non-motorized recreation. We maintain that the management of all of the remaining 147,381,000 congressionally designated multiple-use acres (including roadless) or 76.64% of the forest should be managed for multiple-uses. Every multiple-use acre should remain available for multiple-uses in order to meet the needs of 96.41% of the public who visit our public lands looking for multiple-uses. Every reasonable multiple-use acre should remain available for multiple-uses in order to maintain a reasonable

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balance of opportunities. The proposed plan should meet the basic needs of the public for multiple-use opportunities, does not provide a proper allocation of multiple-use recreation opportunities and does not meet the laws requiring multiple-use management of these lands.

166. We are very concerned that the proposed plan does not manage the project area as a national park. The project area should be managed for multiple-use opportunities are sought in order to adequately meet the needs of the public. There is no mandate from Congress or the public to manage the project area as national park. We request, as a reasonable alternative, that the project area including the semi-private areas, continue to be managed for multiple-use including motorized recreation.

167. The prevailing trend of the past 40 years has been to convert large areas of federally managed lands in the project area and region from multiple-use lands to wilderness/non-motorized/exclusive-use lands which is direct contradiction to the number of visitors and their needs. How many "land of many uses" signs do you see anymore? The remaining multiple-use areas are the only areas where most of the public can access and experience our public lands. Therefore, the remaining multiple-use lands should remain open for multiple-use, motorized access and motorized recreation in order to adequately and reasonably meet the needs of 97.45% of the public.

168. The greatest communal need for public lands is for multiple-use opportunities. We promote management for multiple-use because it allows everybody to enjoy the resources and it also promotes sharing and non-polarization of visitors. Other management schemes promote non-sharing and polarization of visitors. We can solve more problems by resisting non-sharing and polarization and working together. Non-sharing of multiple-use lands is not an acceptable concept and motorized recreationists have never considered non-sharing as a reasonable alternative to pursue. Additionally, it is not reasonable to reward recreationists who create and promote a culture of non-sharing on public lands.

169. The most equitable management of public lands is for multiple-uses. Congress recognized this need with many laws including the Multiple Use Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.) and National Forest Management Act of 1976. Multiple-Use was defined as "*The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people...*". **Outdoor recreation is the first stated purpose of the act.** Note that the pre-Columbian management scheme has not been enacted by Congress. Therefore, the Bureau of Land Management and Forest Service have a responsibility to provide recreational opportunities that meet the needs of the public just as government entities provide road, water and wastewater systems that meet the needs of the public.

Public Law 88-657 states that "*the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services.*"

The Federal Land Policy and Management Act of 1976 (FLPMA) states that "*(7) goals and objectives be established by law as guidelines for public land use planning, and that*

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*management be on the basis of multiple use and sustained yield unless otherwise specified by law; and, (c) In the development and revision of land use plans, the Secretary shall -- (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;”.*

The BLM Strategic Plan FY 2000 to 2005 states that: “*To achieve this mission, the Bureau of Land Management follows these principles: Manage natural resources for multiple use and long-term value, recognizing that the mix of permitted and allowable uses will vary from area to area and over time.*”

Multiple-use management goals are the only goals that will “best meet the needs” of the public and provide for equal program delivery to all citizens including motorized visitors. All of visitors have a responsibility to accept and promote diversity of recreation on public lands. Diversity of recreation opportunities can only be accomplished through management for multiple-uses and reasonable coexistence among visitors. Multiple-use lands should be managed for shared-use versus segregated-use or exclusive-use. Multiple-use lands are public places. Segregation in **public** places has not been acceptable since the Civil Rights Act of 1964.



A significant closing of roads and motorized trails in the project area is not consistent with meeting the needs of the public and the goals of Multiple-Use Management as directed under Federal Land Policy and Management Act of 1976 (FLPMA), Multiple Use Sustained Yield Act of 1960 and P.L. 88-657. Why are legally designated multiple-use lands being managed for limited-use instead of multiple-use? The cumulative negative effects of other proposed and enacted federal land management policies have resulted in a significant reduction of multiple-use and OHV recreation opportunities. The result has been a significant conversion of multiple-use areas to exclusive non-motorized areas. We request, as a reasonable alternative, compliance with multiple-use policies and laws and a preferred alternative that will support these policies and laws and the needs of the public.

170. Beginning in the early 1970's, Congress and the American people began a debate on whether or not to change national policy for vast areas of the west known as "public lands". Congress wanted to change the policy from "disposal" to "retention". This policy shift meant the Federal government would stop holding lands until they were sold (or otherwise transferred to the states) and would retain and manage the lands for the benefit of the general public. Many citizens and especially those in western states were concerned. Entire communities relied upon access to resources existing on adjacent public lands. Indeed, western custom and culture grew from a tradition of open access and use of public lands. Many felt the "retention" policy would unduly influence the lives and livelihoods of citizens in the west. In 1976, Congress struck an agreement with the western states. The basic agreement was that the western states would not oppose the retention of these lands if the Federal Government would manage them under multiple use/sustained yield principles, protect valid existing rights, limit wilderness review and consider the needs and concerns of adjacent communities when formulating land use plans. Thus, the FLPMA (Federal Land Policy and Management Act) was adopted.

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There are 4 important elements within FLPMA:

First, and very important, was the mandate to manage lands under the principles of Multiple Use. The Section 202, subsection (c)(1), specifically requires development and revision of land use plans on the basis of "principles of multiple use and sustained yield." FLPMA section 102(a)(7) also specifically requires that goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law.

Second was the preservation of valid existing rights, including grazing rights, mining claims, oil and gas leases, water rights and rights of access granted pursuant to R.S. 2477. Therefore, the R.S. 2477 law is a very important and germane issue for this project.

The third element was specific instructions to the Secretary of the Interior to formulate land use plans that are consistent with State and local plans "...to the maximum extent he finds consistent with Federal law and the purposes of this Act." This element includes provisions to coordinate land use inventory, planning and management activities not only with other federal agencies, but specifically with agencies of the State and local government.

The fourth element of FLPMA consists of very specific instructions regarding Wilderness. Those instructions are contained in Section 603 of FLPMA, wherein Congress instructed the agency to inventory all of their lands, identify which were definitely not of wilderness quality, and then begin an intensive inventory and analysis to determine which of the remaining lands would be recommended for inclusion into the National Wilderness Preservation System. Congress even set a deadline for the completion of this task. A critical part of the agreement was that FLPMA sets no mandates and no process requirements for engaging in an ongoing, never ending wilderness inventory and review. Once the "603 Process" was completed, the agency would be finished with wilderness inventory and review. Congress and the American People would then decide which lands to include in the National Wilderness Preservation System.

We simply ask that all of the instructions and requirements of the law as agreed to under the Federal Land Policy and Management Act be honored and applied to this project.

171. Any language in existing management plans for multiple-use areas that does not support multiple-use is inconsistent with directives from Congress, the needs of the public and should be struck. Any proposed language for the management plans for multiple-use areas that does not fully support multiple-use is inconsistent with directives from Congress, the needs of the public and should be dropped.

172. Under the Organic Act of 1897, 16 U.S.C. § 475, ("Organic Act"), National forests were expressly reserved for two purposes: to maintain favorable conditions for water flows and to ensure a continuous supply of timber. With passage of the Multiple Use and Sustained Yield Act, 16 U.S.C. § 528 et. seq. ("MUSYA"), Congress allowed the agency to manage "renewable surface resources of the national forest for multiple use and sustained yield of the several products and services obtained therefrom." However, while the "multiple use" mandate of MUSYA broadened the purposes for which National forests may be managed, the Act did not further reserve National forests for multiple use purposes. See *United States v. New Mexico*, 438 U.S. §§ 696, 706-18 (1978). MUSYA defines "sustained yield of the several products and services" as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of various renewable resources of the national forests without impairment of the productivity of the land." 16 U.S.C. § 531(b). Nowhere does MUSYA mention ecological sustainability or authorize it as a dominant use.

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Although the National Forest Management Act ("NFMA") does not define sustained yield or sustainability, NFMA requires forest planning to be consistent with the MUSYA. 16 U.S.C. §§ 1602,1604. Like the MUSYA, NFMA requires the agency to consider environmental and ecological factors in land use planning. However, also, like MUSYA, NFMA does not elevate ecological factors above any other multiple-use nor does it require that National forest land use plans be contingent only upon ecological sustainability considerations. The proposed alternative effectively elevates "ecological sustainability" above all other uses is based upon several faulty assumptions.

First, the proposed alternative wrongly assumes that the "sustained yield" mandates of MUSYA and NFMA require "sustainability." Thus, the proposed alternative expands the concept of sustained yield significantly beyond what is allowed by the MUSYA and NFMA. As stated above, "sustained yield" under the MUSYA simply means the maintenance of a regular output of several renewable resources.

Second, the proposed alternative wrongly assumes that all sustainability should be predicated upon ecological sustainability. The proposed alternative assumes that sustainability (or sustained yield) of any sort cannot be achieved without first achieving ecological sustainability. However, this assumption is false. While biological diversity undisputedly affects certain legitimate uses of National forests, it is not essential to multiple use and sustained yield, as defined by the MUSYA. For example, timber harvest and water flows can be managed on a sustainable yield basis (as required by statute) with little species diversity. On the other hand, some uses, such as recreation, may require a high degree of species diversity (fishing, research, wildlife watching), while recreational uses of the forest require little or no species diversity (rock climbing, skiing). Still others, such as mining, require no species diversity whatsoever. Certainly, ecological sustainability and species diversity are important considerations in forest land use planning and are often essential to maintaining certain legitimate uses on a sustained basis. However, the assertion that species diversity is absolutely necessary to maintain the sustained yield of multiple goods and services is unsupported and cannot justify elevating the primary focus of land use planning to species diversity. In sum, the proposed alternative should report and reflect the true nature and role of ecology in multiple use and sustained yield management does not elevate it over the Congressional mandates.

Third, the proposed alternative wrongly assume that ecological sustainability as the primary focus of planning best meets the needs of the American people. The MUSYA defines "multiple use" as the management of various renewable resources in a combination which best meets the needs of the American people. 16 U.S.C. § 531(a). Elevation of biological diversity and ecological sustainability to the chief planning factor assumes a priori that such values, in all cases, best meet the needs of the American people; this presumption is in error and should be established on a case-by-case basis.

Fourth, in addition to not following the mandates of the Organic Act, MUSYA, and NFMA, the document states that the enactment of various other laws, including the National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA") "reinforce ecological sustainability as the first priority of National Forest system management." *Id.* Again, this is incorrect; none of these statutes in any way change the mandates for the management of National forests. See e.g., *Platte River Whooping Crane Trust v. Federal Energy Regulatory Commission*, 962 F.2d 27, 34 9D.C. Cir. 1992) (holding that the ESA does not mandate that federal agencies violate their statutory authority in protecting listed species). For example, the document cites a policy statement set forth in the preamble to NEPA as a mandate to manage for ecological sustainability. However, as the

courts have made clear, the NEPA is a procedural act only, designed to promote consideration of environmental impacts in federal decision-making, and cannot mandate any substantive result. See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

In summary, the proposed alternative is built upon a tenuous foundation which assumes that: (1) various statutes require that ecological sustainability be the dominant consideration for all management of National forests; (2) sustained yield of various goods and services derived from the forests cannot be achieved without first achieving ecological sustainability; and (3) that ecological sustainability in all cases is the highest and best use of the forests for the American people. To be supportable, these assumptions would require significant legal, scientific, and economic data. As it is, such data has not been provided and these assumptions are false, therefore, the proposed alternative is flawed and should not be adopted.

173. In order to achieve ecological sustainability as the proposed alternative defines it, the ecological condition of the project area must be within the range of those found prior to European Settlement.

1. This standard is illegal and inappropriate under applicable law. First, legitimate multiple use activities such as timber harvest and mining rarely occurred on a large scale prior to European settlement. Thus, to achieve ecological sustainability, such activities should be excluded. This is a violation of the Organic Act, MUSYA, and NFMA.
2. Second, no statutory authority exists which mandates that ecological conditions of any kind should reflect pre-European settlement conditions.
3. Third, the assumption that ecological conditions prior to European settlement are better than conditions at any time since then is a purely subjective value judgment and is not appropriate to consider during the planning process.
4. Finally, the scientific evidence which suggests what ecological conditions were like prior to European settlement is highly speculative. Basing all planning and management around a range of variability which can never be definitively determined is illusory, arbitrary and capricious and violates the Organic Act, MUSYA, and NFMA.

174. Identification of "high social, cultural, or economic value" and "desired" levels are subjective and requires an assessment and balancing of public values. For example, a particular species may have a high social value to a particular segment of the population, but a low social value to another. Similarly, a species may have significant economic value for a particular use (trees cut for timber) but have high social value in the context of an entirely different use (trees observed by hikers). Furthermore, these conflicting values may require entirely different "desired" levels. Despite these extremely complex and subjective determinations, the proposed alternative provides virtually no explanation or guidance regarding how these levels and values were established. This extreme discretion is not allowed by the Organic Act, MUSYA, and NFMA, which require that forests be managed for a variety of uses.

175. Under applicable law, economic and social considerations are just as important ecological analyses and should be given equal consideration. This is especially true for the social and economic concerns at the state and local level. Consider the following:

- a. The Organic Act has long been interpreted as requiring that National forest lands be managed to promote the local economic and social stability of the dependant communities. The first Chief of the Forest Service, Gifford Pinchot wrote: "*In the management of each reserve, local questions will be decided upon local grounds . . . . sudden changes in industrial conditions will be avoided by gradual adjustment after due notice . . . .*" Forest Service, United States Department of Agriculture, *The Use Book* (1906 ed.) at 17. The first congressional concerns for the stability of communities dependent on the resources of the National forests arose during debates surrounding

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passage of the Organic Act. The National Academy of Sciences had criticized past land management practices that allowed companies and individuals to cut excessive quantities of timber without monetary charge. Nevertheless, the debates surrounding the Organic Act centered on protecting the forests from fire and insect damage, ensuring that the forests serve to conserve water resources for the arid West, and managing the forests for economic purposes. S. Rept. No. 105, 10, 19. In fact, after describing the depredations of fire, livestock, and illegal timber cutting, one Senate report concluded: *A study of the forest reserves in relation to the general development of the welfare of the country, shows that the segregations of these great bodies of reserved lands cannot be withdrawn from all occupation and use and that they must be made to perform their part for the economy of the nation. According to a strict interpretation of the rulings of the Department of the Interior, no one has the right to enter a forest reserve, to cut a single tree from its forests, or to examine its rocks in search of valuable minerals. Forty million acres of land are then theoretically shut out from all human occupation or enjoyment. Such a condition of things should not continue, for unless the reserved lands of the public domain are made to contribute to the welfare and prosperity of the country, they should be thrown open to settlement and the whole system of reserved forests be abandoned.* S. Rep. No. 105, 22.

- b. The notion of community stability grew out of Congress' concern for the impacts on local communities. During the passage of the Organic Act, Congressman Saffroth echoed this concern: *The forestry question is not a matter of great concern from a national stand point, because the purposes for which these reservations are set aside are merely local. It is a matter of interest to people in the West only as to whether these reservations are properly established. It is on account of the waters which are to irrigate our agricultural lands that we are interested in forest reservations. . . . The timber reserves of that region can never be a subject of national concern although they may be of great interest to the people of that particular locality -- the people of Colorado, Utah and other Western communities.* 30 Cong. Rec. 984 (1897).
- c. Congress has never changed its concern for local communities. Eleven years following the passage of the Organic Act, Congress passed the Twenty-Five Percent Fund Act, under which 25 percent of the revenues from the national forests are returned to the states. 16 U.S.C. § 500. In 1913, Congress directed that another 10 percent of the National forest revenues be spent on road construction and local road maintenance. 16 U.S.C. § 501. In 1976, Congress amended the Twenty-Five Percent Fund Act to provide that the disbursement to state and local governments would be calculated from gross revenues, rather than stumpage prices. 16 U.S.C. § 500, National Forest Management Act of 1976, Report of Senate Committee of Agriculture and Forestry, S. Rep. 94-893 (May 1976) 1, 22-3.

176. The information above clearly illustrates that Congress intends BLM and national forest lands to be a driving force in promoting and sustaining state and local communities and governments, both economically and socially. The multiple use and sustained yield of several goods and services mandate of MUSYA and NFMA reinforce this concept. Accordingly, the proposed alternative should give more weight to these concerns. Economic and social impact analysis should be mandatory at all levels of land management planning.

177. The over-arching management goals for all multiple-use public lands should be to:

- (1) Manage multiple-use lands for the greatest benefit to the public.
- (2) Manage multiple-use lands in an environmentally sound and reasonable manner.

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- (3) Manage multiple-use lands in a way that avoids the pursuit of environmental extremism; and
- (4) Multiple-use lands are public places. Segregation in public places has not been acceptable since the Civil Rights Act of 1964. Manage multiple-use lands in a way that promotes the shared-use that they were intended for versus segregated-use or exclusive-use.

178. National Forests and BLM lands should not be managed as “National Forest Park” or “limited-use” or “exclusive-use” areas because of the volume of lawsuits filed by environmental groups. This is contrary to the needs of the public who enjoy or depend on lands managed for multiple-uses including motorized access and motorized recreation. The concepts of “Multiple-Use” and the “Land of Many Uses” need to be restored as envisioned by the first Forest Service Chief, Gifford Pinchot who directed that “... National Forest lands are managed for the greatest good for the greatest number of people...”. This is no longer the case and, consequently, the agency no longer has any credibility with the public. We request, as a reasonable alternative, that the document address restoration of these concepts and steps be taken to restore reasonable multiple-use management and decision-making to public lands.

179. A CNN poll (available upon request) asked the question “Do you think off-road vehicles (ORVs) should be banned from unpaved areas of natural forest land?” and found about 15% said yes and 85% did not think ORVs should be banned. A poll taken by Backpacker magazine (<http://www.backpacker.com/poll/0,3189,,00.html>) found that out of 21,000+ responses 96% of the respondents answered “yes” to the question “Should off-road vehicles be allowed in national parks?” Therefore, elimination of motorized access and recreation on public lands is not widely supported. We request, as a reasonable alternative, that the document and decision-making reflect citizens’ support for motorized access and recreation.

180. It is obvious from aerial observation of the project area that under the existing conditions so much of the area is inaccessible to motor vehicles and that the existing level of motorized access and motorized recreation is entirely reasonable. Reduced motorized road and trail density is often used as a desired management goal but is not reasonable. The trend of reduced motorized access and motorized recreational opportunities is not necessary and is not consistent with multiple-use management of the area.

181. Each and every travel management plan has significantly reduced motorized access and motorized recreation. Therefore, non-motorized recreationists gain more opportunities with each and every travel plan compromise that closes motorized roads and trails and areas to motorized recreation. This trend is effectively converting significant areas of multiple-use public land to defacto wilderness/non-motorized/exclusive-use land. This conversion is being repeated over and over and the cumulative negative impact of this trend on motorized access and motorized recreation is significant and should be evaluated as part of this action.

182. Management of public lands to maximize wild game populations at the expense of other uses is not reasonable and does not meet the requirements of multiple-use laws and policies. We support hunting but we question why non-lethal viewing by motorized visitors is not acceptable. We are concerned that public lands that were designated for multiple-use management are not being managed for multiple-use as required under:

- d. The Multiple Use Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.) defined Multiple-Use as “*The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people...*”. Outdoor recreation is the first stated purpose of the act.

- e. Public Law 88-657 states that *“the Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services”.*
- f. The Federal Land Policy and Management Act of 1976 (FLPMA) states that *“(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law; and (c) In the development and revision of land use plans, the Secretary shall -- (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;”.*
- g. The BLM Strategic Plan FY 2000 to 2005 states that: *“To achieve this mission, the Bureau of Land Management follows these principles: Manage natural resources for multiple use and long-term value, recognizing that the mix of permitted and allowable uses will vary from area to area and over time.”*

We request, as a reasonable alternative, careful and adequate consideration of the multiple-use needs of the public and implementation of the objectives of multiple-use laws and policies as part of the proposed action.

183. The Elkhorn Wildlife Management Area in the Helena National Forest is an example of management of an area for a relatively narrow range of public needs that could be reasonably expanded without significantly impacting the original purpose. The underlying management criterion in the Elkhorn area is for ideal wildlife conditions and not for the diverse needs of the public. The diverse need of the public can only be met by management for multiple-use. While there are designated routes within the area, they are mostly roads with no challenge and limited access to interesting areas and features. There are few OHV loops or destinations. Roads and trails such as those in Section 1 and 11, T6N, R2W; Sections 13 and 4, T6N, R3W; Sections 31 and 31 in T7N, R2W; Section 36, T7N, R3W; Sections 25, 35, and 36, T8N, R1W and others could have been kept open for summer season recreation use and closed during calving and hunting seasons where necessary for wildlife management. Instead, they were closed. The alternative of seasonal closures would benefit far more people and still maintain reasonable wildlife habitat.

184. In order to be in compliance with multiple-use laws, lands designated by congress for multiple-use should not be used to create wilderness areas, defacto wilderness areas, non-motorized areas, roadless areas, and wilderness buffer zones.

185. The analysis and proposed action should reasonably recognize that motorized recreation including OHV recreation is an acceptable use of multiple-use lands.

## **12. Provide Adequate Coordination with Local and State Government**

186. The desired conditions for the project should adequately address the requirement of coordinating they plan with local and state government. County governments have the ability to coordinate with the agency by using their Growth Policies.
187. The federal government is required to complete a consistency review by making sure their new plan meets the needs of the counties. The agency should coordinate with local county commissioners and ask them to formally submit their County Growth Policy to the agency for the required consistency review.
188. The agency's planning rules require the agency to implement the coordination requirements found in law. The new rule seeks to foster a more collaborative approach to land management planning. The agency is required to; actively seek to engage state, local and tribal governments, including encouraging them to seek cooperating agency status where appropriate, coordinate with related planning efforts, review the relevant planning and land use policies of other government entities and consider the relationship of those policies to the unit and the planning process.
189. The regulations pertaining to the U.S. Department of Agriculture's Forest Service's primary responsibilities to coordinate with counties can be found in the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA).
190. The coordination requirement in FLPMA (43 U.S. Code 1721(c)(9)) applies to the Secretary of the Interior and BLM.

### **13. Adequately Recognize and Address RS2477 Route Standing**

191. While Revised Statute 2477 was repealed by the 1976 National Forest Management Act, the revision clearly stated in the Act was to insure that no new roads from the effective date of the Act would be considered for RS 2477 consideration. It further clarified the historical highways would be honored. That is all that the Act modified or repealed.

192. Utah Counties were challenged in court for their actions similar to the challenge at Jarbidge Road in Nevada. The foundation in both cases is the fact that the Counties even without a charter form of government have the authority to exercise rights afforded to them by the federal government. Until the federal government completely repeals the 1866 Act, (Revised by the 1872 Act) in its entirety the citizens of the United States still have the right to access lands for the benefit of the people of the United States. The recent decision rendered by the 10th circuit re-affirms this (<http://www.kscourts.org/ca10/datefile/datefile.htm> look under 9-8-2005, and then 04-4071 – Southern Utah Wilderness Alliance v. Bureau of Land Management).

193. The court has ruled that the rights exercised by the counties would be valid if the routes in question were indeed 2477 classified. The county has records that show that the routes were there prior to the establishment of the 1976 NFMA and FLPMA and, are therefore, valid RS 2477 routes. Additionally, it is the responsibility of the agency proposing a closure action to adequately research those records and establish which routes meet RS 2477 classification and then consult and coordinate with the County with respect to that classification. Note that the project area includes many important RS 2477 routes. We request that this planning project include adequate research of the county records and adequate formal consultation and coordination with the county to get their input on RS 2477 routes.

194. While Revised Statute 2477 was repealed by the 1976 National Forest Management Act, the revision clearly stated in the Act was to insure that no new roads from the effective date of the Act would be considered for RS 2477 consideration. It further clarified the historical highways would be honored. That is all that the 1976 Act modified or repealed. Until the federal government completely repeals the 1866 Act, (Revised by the 1872 Act) in its entirety the citizens of the United States still have the right to access lands for the benefit of the people of the United States. The decision rendered by the 10th circuit re-affirms this (<http://www.kscourts.org/ca10/datefile/datefile.htm> look under 9-8-2005, and then 04-4071 - Southern Utah Wilderness Alliance v. Bureau of Land Management). The court has ruled that the rights exercised by the counties would be valid if the routes in question were indeed 2477 classified. The county has records that show that the routes were there prior to the establishment of the 1976 NFMA and FLPMA and, are therefore, valid RS 2477 routes. Additionally, it is the responsibility of the agency proposing a closure action to adequately research those records and establish which routes meet RS 2477 classification and then consult and coordinate with the County with respect to that classification. The project area includes many important RS 2477 routes that were established by miners, loggers, and early settlers. We request that this project include adequate research of the county records and adequate formal consultation and coordination with the county to identify RS 2477 routes and include them as historic motorized routes.

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198. On August 16, 2006, a federal judge in Salt Lake City dismissed a decade old lawsuit designed to diminish or eliminate those public access rights. The lawsuit was filed in 1996 against the Bureau of Land Management in Utah by the Southern Utah Wilderness Alliance and the Sierra Club. In his ruling, the Utah District Court cited a 10th Circuit Court of Appeals decision. For info on that key decision please read: R.S. 2477: The Legal Battle Continues <http://www.sharetrails.org/magazine.cfm?story=705>. Joe Baird of the Salt Lake Tribune reports the news: Environmentalists: Court rules issue is settled, suit is moot [http://www.sltrib.com/utah/ci\\_4194188](http://www.sltrib.com/utah/ci_4194188)

199. The Agency has chosen to use an unreasonable view of roads and trails that they refer to as “user-created” or “unauthorized” or “illegal”. The Agency is creating an issue that does not exist by suggesting that we are asking for illegally created routes. We are not. The terms “user-created trails”, “unauthorized trails” and “illegal trails” are being used inappropriately. These terms are referring to historic routes that have not been properly included in an inventory or have been dropped from the inventory at some point in time. Many of the routes on public lands were created legally as part of mining and grazing activities and before the 3-State OHV ROD in June 2003. Many of these routes have RS 2477 status. Therefore, these types of routes were created by users at a point in time when it was acceptable and legal, and it is inappropriate to represent these routes otherwise. We are asking for continued use of routes that are legitimately defined by the 3-State OHV FEIS and ROD, USFS and BLM route definitions, RS-2477 access laws, all agency mapping including past and current travel plan mapping and historic and current visitor mapping. It is not fair nor reasonable to represent routes as “user-created” or “unauthorized” or “illegal” when they were created in times when it was appropriate and legal. The travel plan evaluation and decision should adequately consider this reasonable view of all existing routes.

200. Most of the motorized roads and trails in the project area have served as important public access routes since the turn of the century. This is demonstrated by the number of historic mines and structures that are located along these routes. We have observed that these travel ways are currently significant recreation resources for motorized visitors in the area including

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ATV, motorcycle, and four-wheel drive enthusiasts. Many of these travel ways have right-of-ways as provided for under the provisions of Revised Statute 2477. These roads are shown on older mapping sources including aerial photographs, 15-minute USGS quadrangle sheets, and older county maps. The cut and fill sections and obvious roadbed indicate that these roads were constructed and used by the citizens for access to the forest. RS 2477 was created to provide adequate access to public lands. Now this public access is being eliminated. We request, as a reasonable alternative, that these travel ways remain open based on; (1) their history of community access, (2) the access that they provide to interesting historical sites, and (3) their importance to community access. We request that the document evaluate all of the issues surrounding RS 2477 including the cumulative negative impact of all past closures of RS 2477 routes which has become a significant impact on motorized recreationists.

201. On July 26, 1866, as part of a move to grant access to western lands, the United States Congress enacted the 1866 Mining Act, section 8 of which granted a right-of-way to all persons over unreserved federal lands when it stated, “the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted”. In 1873, the 1866 grant was re-codified into section 2477, Revised Statutes of the United States, and rights-of-way granted by that section have since become known as the “RS 2477 rights-of-way”.

202. Throughout the latter half of the 19th century and the first three-quarters of the 20th century, the use of “RS 2477 rights-of-way” over federal land in the western United States became a standard method of legal access across federal lands for commercial, industrial, and recreation pursuits to such an extent that the use of the RS 2477 rights-of-way has become an inherent part of western heritage and a capital asset for the public that should be preserved for future generations.

203. The use of RS 2477 rights-of-way over nearly a century has resulted in an extensive body of case law in the state and federal courts, in which owners of various types of rights-of-way have competed with holders of RS 2477 rights-of-way and in which the availability of those various rights-of-way has been decided by the courts, including the modern State Supreme Court as well as the federal 9th Circuit Court of Appeals, in such cases as Robertson v. Smith, Supreme Court Montana Ten., 1871; Butte v. Mikosowitz, 39 Mont. 350, 102 P. 593, (1909); Moulton v. Irish, 67 Mont. 504, 218 P. 1053 (1923); and Shultz v. Dept. of Army, 10 F.3d 649 (9th Cir. 1993).

204. RS 2477 rights-of-way have been given a liberal interpretation by state and federal courts in those judicial decisions interpreting what constitutes a “highway” within the meaning of RS 2477, those judicial opinions holding that even the barest foot trail could qualify as a “highway” and that no particular way across federal lands has even been identified, it being sufficient that travelers used an area of federal land as a method of access between two geographic points. After 110 years of public use of RS 2477 rights-of-way, the U.S. Congress repealed the most recent version of RS 2477, 43 U.S.C. 932, but that repeal was, by 43 U.S.C. 1701, specifically made subject to valid rights-of-way existing as of the date of repeal which was 1976.

205. Schiller, chairman of the High Desert Multiple-Use Coalition, told the Kern County Board of Supervisors at a meeting held on February 19, 2002 to address RS 2477 issues that “the roads represent our custom, our culture, our economy and our family traditions. I know it's been argued that this is about OHV uses and off-highway vehicles,” said Schiller. “It is really about access”. We request, as a reasonable alternative, that any routes proposed for closure and in existence before 1976 be considered as having RS 2477 rights-of-way in order to provide citizens with access to public lands.