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October 30, 2023

RE: Objections to Grand Mesa, Uncompahgre and Gunnison Forest Plan Revision

Dear Objection Reviewing Officer:

Please accept these objections to the Draft Record of Decision (“DROD”) for the Grand Mesa, Uncompahgre and Gunnison Forest Management Plan, as well as the associated Final Environmental Impact Statement (“FEIS”). The Responsible Official is Chad Stewart, Forest Supervisor. These objections are submitted on behalf of BlueRibbon Coalition (BRC), including BRC’s individual and organizational members who have enjoyed, and plan in the future to enjoy, access to the GMUG National Forest.

These objections are submitted in accordance with 36 C.F.R. part 218. BRC filed comments on the GMUG National Forest EIS raising the stated issues or otherwise providing a basis for these objections. The point of contact for this objection is Simone Griffin, please direct all communication regarding these objections to Simone Griffin at PO Box 5449 Pocatello, ID 83202, brmedia@sharetrails.org. We formally request a resolution meeting in accordance with 36 C.F.R. § 218.11. We hereby authorize, indeed encourage, the Reviewing Officer to extend the time for a written response to objections, particularly if it will facilitate a thorough effort to explore opportunities to resolve objections. See, 36 C.F.R. § 218.26(b).

I. Interest of the Objector

BRC has a unique perspective and longstanding interest in motorized vehicle use in the GMUG National Forest. BRC is a nonprofit corporation that champions responsible recreation and encourages individual environmental stewardship. BRC members use various motorized and nonmotorized means to access public lands and waters, specifically including use of

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the GMUG National Forest. BRC has a long-standing interest in the protection of the values and natural resources addressed in this process, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors.

II. Objection Issues

We note at the outset that the agency has conducted a lengthy process, and addressed many of our concerns. We want to express our appreciation for the agency's thoughtful effort, support of stakeholder involvement and collaboration, and patience in this lengthy process. Still, there remain concerns with the current approach, and we raise the following objections, which provide a legal basis for our requested changes to the Draft ROD.

The objection process necessarily anticipates the possibility and potential likelihood of success in subsequent litigation brought by an objector. In such a challenge the Administrative Procedure Act (APA) waives the United States' sovereign immunity for those aggrieved by "final agency action." 5 U.S.C. §§ 702, 704; *Lujan v. National Wildlife Federation*, 497 U.S. 871, 882 (1990). APA section 706(2) provides the relevant standard of review: a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence...." This standard of review is "narrow" but the agency:

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

Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) (citations omitted). This is considered a deferential standard of review. Still, there always exists some level of litigation risk, and we believe the decision can be improved.

A. Special Interest Areas

BRC objects to the proposed Special Interest Area and the 18 recommended Wilderness areas. Special Interest Areas are now referred to as Heritage Program Management according to USFS Handbook 2360. "SIAs may be designated for scenic, geologic, botanic, zoologic, paleontological, archaeological/historic, or recreational values, or combinations of these values. The Forest Service Manual states SIA selection should be based on inventory information, and suggests using the National Forest Recreation Survey as a source for candidate sites" The GMUG Draft ROD suggests the creation of this SIA is for experimental ecological research which is not authorized in USFS Handbook

Acreage of the area is an additional determinant in the authority to designate a special area. Table 1 identifies these limits as outlined in FSM 2372.04. "There is no requirement to make wilderness recommendations" FSM 2372. USFS should remove the special interest area entirely.

The GMUG contains a total of 553,427 acres designated as wilderness, nearly 20 percent of the total acreage of the Forest already. 18 new wilderness areas are proposed encompassing approximately 46,200 acres. Areas within the 18 recommended wilderness areas have historically had OSV use. This would disqualify these areas as recommended wilderness per FSM2372.

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The GMUG manages motorized and non-motorized trails in CRAs. 28% of the GMUG (834,000 acres) will be managed as Wildlife Management Areas, limiting trail and road construction and maintenance

B. Users with Disabilities.

President Biden has issued an *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. Because this information constitutes new information based on *CFR § 218.8 C*, the USFS should update the plan and proposals to be consistent with the President Biden's *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* and the Department of Agriculture's Equity Action Plan. We recommend that the USFS use this planning process to finally begin to reverse its decades-long systematic discrimination against those with mobility impairment-related disabilities. This includes persons with disabilities and limited physical access. The USFS should implement all road maintenance, improvements and analyzing adding temporary roads into the system which would be in stronger compliance with the Executive Order.

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

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

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

Every time motorized routes or areas are closed, people with disabilities that require the use of motorized means to access public lands are barred from those areas forever. There has been little recourse for such people in the past because the Americans With Disabilities Act does not require public land management agencies to consider disproportionate effects on the disabled community, but only requires that they be given access to public lands on equal terms with everyone else. As a result, the USFS has historically failed to give any real consideration to the impacts of motorized route closures on the disabled community when developing travel management plans.

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

Any approach to forest management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the USFS consider the access needs of disabled users in drafting the alternatives for this management plan and ensure that people with disabilities who depend on motorized means do not lose access. BRC requests Backcountry management follows Alternative D with only 299,000 acres as to not discriminate against those with physical limitations.

C. The Agency Has Failed to Sufficiently Document Site-Specific Conclusions.

The Draft ROD fails to sufficiently describe or document the basis for some of the site-specific designation choices presented. Under even “arbitrary and capricious” review the agency must articulate a “rational connection between the facts found and the choice made....” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. NEPA imposes various technical protocols including disclosure of methods, presentation of hard data, and disclosure of any “sources relied upon for conclusions” in an EIS. 40 C.F.R. § 1502.24. NEPA does not envision undocumented narrative exposition, but requires that “[a]gencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements.” *Id.*; *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006) (“NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”). A “bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.” *Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1103 (9th Cir. 2016).

USFS should not be expanding or implementing ROS zones that restrict motorized use. USFS has not provided sufficient evidence that warrants the restrictions or potential restrictions of motorized users in comparison to the benefits that motorized use brings to the area and the GMUG National Forest.

As noted in previous comments, “We oppose any ROS designations that could set the stage for OSV closures of OSV areas that are currently in use when an OSV use map is developed.” Restrictive ROS designations for both over snow and non-snow travel are weaponized against the motorized community in which to close routes and favor wilderness focused groups.

Additional language should be removed about any motorized recreation travel conflicting with Semi-Primitive and Non-Motorized zones.

To allow for robust travel planning that can fully analyze the county trails master plans, the EIS and decision should add language clarifying that the Semi-Primitive Non-Motorized zone has a non-motorized focus but may include motorized use, including new routes. At the very least, the language should avoid implying an expectation that the Semi-Primitive Non-Motorized zone will be exclusively non-motorized. In addition to refining the language, the LMP should refine the

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ROS boundaries by applying motorized ROS zones to all areas where the counties propose motorized routes, particularly if the language continues to imply that the Semi-Primitive Non-Motorized zone is exclusively non-motorized. At the very least, the ROS map should avoid expanding non-motorized zones into areas where the county trails master plans propose motorized recreation.

Refining both the ROS language and the ROS map is critical for at least a couple reasons. First, it avoids prematurely conflicting with county trails master plans, which were developed through a thorough process that included the USFS. Second, it affords managerial flexibility to provide opportunities for the full range of recreation that has emerged and will continue to adapt with technologies, communities, natural resources, and our understanding thereof.

D. Alternative Selected

Closures should not be seen as legitimate almost hardwired responses to issues that can all be managed through other management strategies. NEPA requires analysis of impacts to everything on this list, and managers should have flexibility to find other ways to mitigate impact besides temporary or permanent closure.

USFS should acknowledge that the Categorical Exclusions that apply for construction of new roads and trails should be applicable to these classes. This should be included in the management plan. In many cases these exclusions are for rerouting existing routes because of erosion events, or creating roads to do vegetation treatments that reduce the risk of catastrophic fire. ROS designations should apply only to recreation use and not create unnecessary restrictions on the Forest for adaptive and active management that relates to other uses.

E. The cursory socioeconomic analysis is deficient.

The analysis fails to properly evaluate the substantial adverse impacts to local communities that might be caused by the proposed reductions in motorized recreational opportunity. A valid NEPA analysis must include this consideration and disclosure of socioeconomic effects. NEPA embodies a Congressional desire “to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of future generations of Americans.” 42 U.S.C. § 4331(a). Thus, NEPA’s operative EIS requirement is triggered by federal action which may “significantly affect[] the quality of the human environment....” *Id.* at § 4332(2)(C) (emphasis added). The “human environment” “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14.

The socioeconomic impacts are only discussed and analyzed briefly mainly for timber and livestock, but lacks meaningful data or analysis. The Forest must properly evaluate these interconnected motorized designation decisions on a broader scale, and the consequences of decisions in the Draft ROD must be properly disclosed. A cumulative impact “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....” 40 C.F.R. § 1508.7. Cumulative impacts must be discussed in an EIS in a manner that allows for “meaningful analysis.” *City of Carmel-by-the-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997). It is not enough to describe related projects “with generalities insufficient to permit adequate review of the cumulative impact.” *Id.*; see also, *Humane Soc’y v. Dept. of Commerce*, 432 F.Supp.2d 4, 22 (D.D.C. 2006) (discussion must go beyond “conclusory remarks and statements”). These discussions are inadequate in the Final Forest Plan.

According to the Bureau of Economic Analysis, outdoor recreation had a record breaking year in 2021. Outdoor recreation now accounts for \$821 billion in economic activity. For reference, the oil and gas industry is \$812 billion. Outdoor recreation is popular. It is an economic juggernaut. Yet, public land agencies act as if this nearly \$1 trillion dollar industry is optional or an afterthought. Instead of building new roads, trails, campgrounds, and infrastructure to accommodate the new growth in outdoor recreation, land managers are relentlessly closing public lands for the public to use. It doesn’t make any sense. A deeper dive into the numbers reveals that the engine driving this record-breaking growth is literally the

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millions of engines that find their way into the various forms of motorized recreation. Non-motorized forms of recreation account for \$33 billion in economic value. Gear that is used in all forms of recreation accounts for \$52 billion. Motorized forms of recreation account for a shocking \$78 billion in economic value.

Based on 36 CFR § 219.53 which states, “the **objection** concerns an issue that arose after the opportunities for formal comment.” We have objections that agencies need to act according to statutory authority and “clear congressional authorization” according to WEST VIRGINIA ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL. This ruling seriously calls into question the Roadless Area Conservation Rule. Until the Roadless Area Conservation Rule is codified in statute, we believe it would not withstand judicial scrutiny according to new legal precedent set by WEST VIRGINIA ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL. According to the ruling, “the Government must point to “clear congressional authorization” to regulate in that manner.” 597 U. S. ____ (2022) “Under this body of law, known as the major questions doctrine, given both separation of powers principles and a practical understanding of legislative intent, the agency must point to “clear congressional authorization” for the authority it claims. *Utility Air*, 573 U. S., at 324. Pp. 16–20. The Roadless Area Conservation Rule is not based on “clear congressional authorization. As such, we believe the Forest Service needs to develop alternatives that don’t rely on implementation of the Roadless Area Conservation Rule until that rule is codified by Congress or adjudicated. For Example, any Recreation Opportunity Spectrum designations that designate parts of the forest as non-motorized because those areas are designated as roadless by the Roadless Area Conservation Rule, should be re-analyzed. While a direct challenge to the Roadless Area Conservation Rule is time-barred, any new implementation and enforcement of the rule would make it ripe for a legal challenge.

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Sincerely,



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