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Comments: See attachment.

I. Introduction

I am a Jeep and off-road vehicle enthusiast from Highlands Ranch, Colorado, and a non-practicing Colorado licensed attorney currently working as a software developer. I serve as the Vice President of Colorado Offroad Trail Defenders (COTD), a non-profit organization dedicated to keeping offroad trails open to full-size four wheel drive vehicles and maximizing opportunities for offroad motorized recreation. I am also an Advisory Board member of Colorado Offroad Enterprise, a related organization based in Buena Vista, CO which focuses on trail adoptions and community outreach to preserve high quality opportunities for motorized recreation in the central Colorado mountains.

These comments are submitted on behalf of both myself and Colorado Offroad Trail Defenders as an organization. Though COTD is primarily focused on protecting off-road trails in Colorado against closure, we are also interested in preserving off-road recreation opportunities in surrounding states such as Utah. Colorado off-road enthusiasts frequently travel to Utah, and the greater Moab region in particular, in order to experience the spectacular off-road trails the region has to offer.

Accordingly, we submit these comments to request that the Manti-La Sal revised Forest Plan plan preserve the maximum number of opportunities for motorized recreation, particularly for full-size four-wheel-drive vehicles. We also support the comments by the Blue Ribbon Coalition, San Juan County, and other pro-motorized interest groups.

II. Peavine / Dark Canyon Corridor

Among the most important motorized routes in the Manti-La Sal National Forest are the Peavine Corridor (NFSR 50089) and Dark Canyon Corridor (NFSR 55378) roads cherry-stemmed into the Dark Canyon Wilderness (collectively referred to as the Peavine Corridor). These two roads were specifically excluded from the Dark Canyon Wilderness as a compromise in the Utah Wilderness Act of 1984.

In so doing, Congress specifically rejected the Forest Service's recommendation at the time that these roads be closed, instead mandating that they remain open to continued motorized use. We believe this legislation constituted a clear recognition by Congress of the extraordinarily high value opportunities these two roads provide for motorized recreation, as well as the important motorized access they provide to hiking trailheads deep within Dark Canyon.

This congressional intent was clearly expressed in a 1988 letter from Senator Jake Garn to George Morris, Forest Supervisor of the Manti-La Sal National Forest, in response to a proposal to close these roads under consideration at that time:

Simply stated, in 1984, the five member Utah Congressional delegation together with then Utah Governor Scott Matheson, specifically drew the boundary of the Dark Canyon Wilderness area to leave the Peavine Corridor open. The delegation rejected then, and I continue to reject now, any attempt to close access to this area.

When a decision of this nature is made by elected representatives of the people, I believe it is the duty and obligation of the resource managers to comply. Frankly, I question why the issue is being raised at all since it has

already been decided by the Congress.

I have no objection to the Forest Service monitoring the use of the road, but again, I will oppose any attempt to restrict access or close the Peavine Corridor in Dark Canyon.¹

We are concerned that in the latest Draft Forest Plan, the Forest Service is again attempting to mandate the closure of these extremely important motorized routes in direct contradiction of the clear Congressional intent that the roads in the Peavine Corridor remain open to motorized use in perpetuity. Our specific concerns with the proposed management of the Peavine Corridor are laid out below.

The ROS zones appear to mandate the closure of the Peavine Corridor, contrary to its specific management direction. In the ROS zone maps for the Draft Forest Plan (pictured right), the entirety of the Peavine Corridor is shown inside a green "Primitive" ROS class. Unlike other nearby motorized routes, there is no cherry-stemmed orange "Semi-primitive Motorized" zone around it. This is highly concerning as the Forest Plan direction for "Primitive" ROS classes appears to recommend, if not outright direct, that existing motorized routes within this class be closed. The description in the Draft Forest Plan for the Semi-primitive Nonmotorized and Primitive ROS classes states, "This setting emphasizes nonmotorized use, but it may have some motorized inclusions."² However it also states, " Sounds of motorized use are generally not heard in the core of these areas...", and, "These classes include the Dark Canyon Wilderness...."³

SEE LETTER SUBMISSION: ROS Zone Maps for Draft Forest Plan

The desired conditions and standards for Primitive ROS areas are also unclear and possibly contradictory. FW-ROS-DC-06 states, "Dead-end roads extending into Semi-Primitive Nonmotorized areas are consistent with this desired recreation opportunity spectrum setting."⁴ However FW-ROS-OB-01 states, "Existing roads and motorized trails in these classes shall be considered for closure in Travel Planning."⁵

We are simply unable to reconcile the seemingly contradictory direction regarding existing motorized routes in Semi-primitive Nonmotorized and Primitive ROS zones, particularly as they relate to the Peavine Corridor. Are motorized routes in Primitive ROS zones required to be closed or not?

We are concerned that as long as the Peavine Corridor is fully within a Primitive ROS zone, the plan guidance for that ROS class will be interpreted to mandate its closure to motorized use in the next travel management process. Such closure would not only contradict the clear intent of Congress that this corridor remain open to motorized recreation, but it would also contradict the specific plan direction (discussed below) regarding the Peavine Corridor which allows for continued motorized use.

ROS zones in the Forest Plan should be largely descriptive of existing conditions and should not pre-determine the outcome of future travel planning. If (despite the clear intent of Congress to the contrary) the Peavine Corridor is to be closed to motorized use, that decision should be made with proper public involvement and after full consideration of all alternatives through the travel management process, without a specific outcome being mandated by the Forest Plan. Accordingly, we request that the ROS maps in the Revised Forest Plan be modified to locate the Peavine / Dark Canyon Corridor roads within a cherry-stemmed semi-primitive motorized ROS zone (similar to nearby motorized routes), which would alleviate all of the concerns expressed above.

B. The management direction for the Peavine Corridor appears skewed toward eventual closure while relying on factors Congress has not intended the agency to consider.

We are also highly concerned with the management direction in the Draft Forest Plan which specifically addresses the Peavine Corridor. These include the following three provisions:

DA-WILD-DC-10: "Use within the Peavine Corridor in Dark Canyon Wilderness has a minimal effect on adjacent wilderness resources."⁶

DA-WILD-GD-02: "Management actions along the motorized Peavine Corridor should minimize user conflict and reduce impacts on soil, watershed, vegetation, and other resources."⁷

Management Approaches (p. 89): "Routinely monitor the Peavine Corridor in Dark Canyon Wilderness to determine if use is affecting adjacent wilderness character, causing user conflicts, or affecting resources within the corridor. When unacceptable impacts are occurring, and cannot be addressed, consider closing or restricting use."⁸

By mandating that the motorized routes in the Peavine Corridor must have "minimal effect on adjacent wilderness resources", and by requiring future management decisions to consider whether motorized use "is affecting adjacent wilderness character", the Draft Forest Plan directly contradicts the express language of the Utah Wilderness Act of 1984, which stated:

SEC. 303. Congress does not intend that designation of wilderness areas in the State of Utah lead to the creation of protective perimeters or buffer zones around any wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.⁹

This legislation also provided that lands "not designated wilderness upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Multiple-Use and Sustained-Yield Act of 1960. Forest Management Act of 1976...."¹⁰

It is a well-established principle of administrative law that "an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider...." *Motor Vehicle Manufacturers Assoc. of the United States, Inc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Insofar as the management direction above requires the agency to consider sight or sound impacts from motorized use within the Peavine Corridor on the adjacent Wilderness area, the Draft Forest Plan is directly mandating that future management decisions rely on factors which Congress has expressly forbidden the agency to consider. It would also violate clear congressional direction that areas released from Wilderness consideration in the 1984 law be managed for multiple use and not wilderness character.

While we acknowledge that the Forest Plan will not directly close these roads itself, if the roads in the Peavine Corridor are closed in a future travel management decision based on the consideration of impacts on adjacent wilderness character as required by these provisions in the Forest Plan, that decision would inevitably fail to withstand legal challenge. A judge would almost certainly hold that such a decision is arbitrary and capricious because it relies on factors Congress has expressly not intended the agency to consider.

We note that the San Juan County Commission raised these same concerns in a letter to the Forest Service dated February 16, 2021, stating:

p. 87 3.1.1 Wilderness Areas DC-10

"Use within the Peavine Corridor in Dark Canyon Wilderness has a minimal effect on adjacent wilderness resources." This statement is inconsistent with the legislation establishing the wilderness area and Peavine Corridor. Nowhere in the legislation is there a requirement that use in the Corridor have minimal effect on adjacent wilderness resources. In fact, Section 303 Prohibition on Buffer Zones in the legislation states

"Congress does not intend that designation of wilderness areas in the State of Utah lead to the creation of protective perimeters or buffer zones around any wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area." This Desired Condition should be removed from the Plan.

p. 89 3.1.1 Wilderness Areas

Management Approach - the 2nd bullet statement includes actions that are inconsistent with the legislation designating the wilderness. These include monitoring the Peavine Corridor to determine if use is affecting adjacent wilderness character and considering closing or restricting use if unacceptable impacts cannot be addressed. As noted in the above comment, effects of Corridor uses on adjacent wilderness values are not to be used to preclude such Corridor uses. And consideration of closing motorized use of the Corridor would be totally inconsistent with the legislation establishing the Corridor for motorized uses. This bullet statement, if retained in the Plan, should be modified to read "Routinely monitor the Peavine Corridor to determine if use is causing user conflicts or affecting resources within the corridor. Unacceptable impacts would be addressed as practical and appropriate."¹¹

It appears that the Commission's concerns were not acted upon as these problematic provisions remain in the latest draft of the Revised Forest Plan. Accordingly, we request that the Forest make the same changes to the Final Forest Plan that San Juan County previously requested.

Specifically, we ask that DA-WILD-DC-10 be removed from the plan entirely, and that the management approaches section on p. 89 be modified to remove the phrase, "if use is affecting adjacent wilderness character."

Given the clear Congressional intent that the Peavine Corridor remain open to motorized use, we believe the Forest Plan should also include clear direction to the effect that, "The Peavine Corridor shall remain open to motorized use in perpetuity." As Senator Garn said in 1988, "When a decision of this nature is made by elected representatives of the people, I believe it is the duty and obligation of the resource managers to comply."

The Revised Forest Plan should therefore not make any provision for the closure of these valuable motorized routes, but should instead require that they remain open to motorized use in perpetuity while managing them to minimize negative impacts. These two things are not mutually exclusive. The Forest Plan must recognize and abide by the clear intent of Congress that motorized use of the Peavine Corridor be allowed to continue, while also managing them to minimize impacts through means other than closure.

III. User Conflict

In addition to the changes requested above, we also ask that the management approaches section on p. 89 (as well as all other places in the Forest Plan which reference the concept of "user conflict") be modified to provide greater clarity on what constitutes unacceptable "user conflict."

This term is extremely vague and has been used many times in past management decisions by the Forest Service and the BLM to include simple ideological opposition to motorized recreation by anti-motorized activists. This in turn categorically delegitimizes motorized recreation as a valid activity on public lands, in direct contradiction to the express language of the Travel Management Rule.

We believe that all references to "user conflict" in the Forest Plan should be clarified to only refer to demonstrable cases of interpersonal conflict, and should not refer to social values or ideological conflict. Greater discussion of this issue is provided below.

A. The Forest Service must clearly distinguish between interpersonal and social values conflict

It is critical that the agency clearly define what is considered "user conflict" for purposes of Forest Plan guidance. "User conflict" has proven to be a very slippery term when it comes to travel management processes, with a wide variety of meanings that are frequently conflated -- most often to the detriment of motorized recreationists.

While conducting any form of environmental analysis under NEPA, the Forest Service is obligated to use the best available science. This applies to user conflict analysis as well. Researchers have found that properly determining the basis and type of user conflict is critical to determining the proper method of managing this conflict. In particular, any analysis of user conflict must distinguish between interpersonal conflicts and social values conflicts, which studies have identified as two distinct categories of recreational user conflict on public lands.

Simply put, interpersonal conflict involves actual on-the-ground conflicts between user groups sharing the same trails, while social values conflict consists of ideological opposition by one group to allowing another user group's activity to take place on public lands. Scientific analysis defines these two forms of conflict as follows:

For interpersonal conflict to occur, the physical presence or behavior of an individual or a group of recreationists must interfere with the goals of another individual or group[hellip]. Social values conflict, on the other hand, can occur between groups who do not share the same norms (Ruddell & Gramann, 1994) and/or values (Saremba & Gill, 1991), independent of the physical presence or actual contact between the groups[hellip]. When the conflict stems from interpersonal conflict, zoning incompatible users into different locations of the resource is an effective strategy. When the source of conflict is differences in values, however, zoning is not likely to be very effective. In the Mt. Evans study (Vaske et al., 1995), for example, physically separating hunters from nonhunters did not resolve the conflict in social values expressed by the nonhunting group. Just knowing that people hunt in the area resulted in the perception of conflict. For these types of situations, efforts designed to educate and inform the different visiting publics about the reasons underlying management actions may be more effective in reducing conflict.¹²

Other researchers have distinguished types of user conflicts based on a goal's interference distinction, described as follows:

The travel management planning process did not directly assess the prevalence of on-site conflict between non-motorized groups accessing and using the yurts and adjacent motorized users[hellip]. The common definition of recreation conflict for an individual assumes that people recreate in order to achieve certain goals, and defines conflict as "goal interference attributed to another's behavior" (Jacob & Schreyer, 1980, p. 369). Therefore, conflict as goal interference is not an objective state, but is an individual's appraisal of past and future social contacts that influences either direct or indirect conflict. It is important to note that the absence of recreational goal attainment alone is insufficient to denote the presence of conflict. The perceived source of this goal interference must be identified as other individuals.¹³

It is significant to note that Mr. Norling's study was specifically created to determine why travel management closures had not resolved user conflicts for winter users of a group of yurts on the Wasache-Cache National Forest. As noted in Mr. Norling's study, the travel management decisions addressing the areas surrounding the yurts failed to distinguish why the conflict was occurring and this failure prevented the land managers from effectively resolving the conflict.

Properly defining which category of user conflict is occurring in a particular area is critical to resolving that conflict. Interpersonal conflicts involve specific situations that can be resolved with practical solutions. For example, where motorized recreationists and hikers share the same route and experience conflicts such as hikers feeling

endangered by vehicles approaching them at high speeds, such interpersonal conflict could be addressed by measures designed to control motorists' speed. Separating users can also be an effective solution, such as by relocating a hiking trail onto a separate path.

With social values / ideological conflict however, there often is no practical solution, as one group is so ideologically opposed to the other group's activity that its mere presence on public lands in any capacity is offensive. As the Carothers study described in reference to managing hunting on Mount Evans in Colorado, "Even though nearly all of the nonhunters did not physically observe any hunting-associated events (e.g., seeing hunters, seeing an animal being shot), many expressed a conflict in social values. Simply knowing that hunting occurred on the mountain was apparently sufficient to activate perceptions of conflict."¹⁴

In the case of social values conflict, the root problem is the ideologically-driven intolerance of one user group toward another. No amount of on-the-ground management can mitigate this form of user conflict. As long as the disfavored user group is allowed to have any presence on public lands at all, the intolerant group will still perceive conflict.

We submit that when it comes to motorized recreation in the Manti-La Sal National Forest, the vast majority of alleged user conflict consists of social values conflict rather than interpersonal conflict. On the whole, motorized and non-motorized recreation in the Forest are already well-separated, and there are relatively few instances of non-motorized and motorized users sharing the same routes in any significant numbers.

While interpersonal conflict between motorized and non-motorized recreationists is rare, social values conflict is endemic in the area, as evidenced by the decades long battles over Wilderness designations and endless litigation over motorized travel management plans throughout southern Utah. SUWA and other anti-motorized groups have made it quite clear that they are ideologically opposed to virtually all motorized recreation in southern Utah, which they advocate to be managed almost entirely as Wilderness.

SUWA has been abundantly clear in their legal filings related to nearby BLM travel management plans that they consider any amount of motorized recreation in the region to be offensive, wholly apart from any interpersonal conflicts occurring on specific routes. As SUWA stated in its appeal of the recent San Rafael Desert Travel Plan affecting the neighboring region on the west side of the Green River, "The San Rafael Desert travel plan adversely affects Appellants' members' health, recreational spiritual, educational aesthetic and other interests in the San Rafael Desert."¹⁵

From SUWA's language concerning spiritual and aesthetic harm, it is evident that their opposition to motorized recreation in the greater Moab region is a classic case of social values conflict which cannot be resolved by any amount of individual route closures or other mitigation actions. SUWA et. all will not be satisfied with anything less than the complete eradication of motorized recreation from the area, and any route closures they manage to obtain in the name of mitigating "user conflict" will only feed their appetite for more. This type of conflict will never be resolved, because the root problem is the fundamental intolerance of SUWA's members towards other users of public lands who enjoy forms of recreation which they disdain.

We maintain that social value conflict is a wholly inappropriate basis for the Forest Service to close motorized routes, and that any analysis or actions taken based on user conflict must be based solely on specific documented instances of interpersonal conflict. The Forest Service has a responsibility to manage American public lands for the benefit of all Americans, rather than catering to a few narrow-minded anti-motorized bigots.

B. Subjective preferences are an improper basis for route closures

Even where interpersonal conflicts are alleged regarding specific routes, the Forest Service must closely examine whether such allegations of conflict concern genuine conflicts of uses or are simply subjective

preferences regarding the preferred use of a given route. NEPA analysis must be based on facts, rather than subjective preferences and beliefs. Subjective preferences of users, individually or collectively, cannot justify elimination of access to the less popular or less conflicted users.

The BLM's obligation to consider user conflicts in travel management is derived from the Executive Orders issued by Presidents Nixon and Carter. See, E.O. 11644, 11989; 42 Fed. Reg. 26959. The present-day interpretation by some special interests and land managers does not rationally interpret this language. The actual wording refers to conflicts between "uses" not "users." The historical context is relevant, as in the early 1970's off-highway vehicles were relatively new and largely unregulated. The EO's reflect a crude first step at the anticipated need to balance a new and developing use with the conservation efforts of the era reflected in contemporaneously adopted statutes like NEPA and FLPMA. In any event, it was not intended then, nor does it make sense now, to allow some quantum of subjective complaining by some class of "user" to exclude other users from public lands.

Nor is subjective "user conflict" an "environmental" impact under NEPA. A recent Ninth Circuit decision correctly notes that "controversy" as a NEPA intensity factor "refers to disputes over the size or effect of the action itself, not whether or how passionately people oppose it." *Wild Wilderness v. Allen*, 871 F.3d 719, 728 (9th Cir. 2017). The panel further indicated it "need not address the question of whether on-snow user conflicts are outside the scope of the agency's required NEPA analysis entirely because they are 'citizens' subjective experiences,' not the 'physical environment.'" *Id.* at 729 n.2 (citations omitted).

In a largely forgotten effort, the U.S. Supreme Court emphasized that NEPA focuses on impacts to the physical environment. "It would be extraordinarily difficult for agencies to differentiate between 'genuine' claims of psychological health damage and claims that are grounded solely in disagreement with a democratically adopted policy. Until Congress provides a more explicit statutory instruction than NEPA now contains, we do not think agencies are obliged to undertake the inquiry." *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 778 (1983).

The governing law only authorizes the Forest Service to analyze and minimize conflicts between uses, not the subjective preferences of users. Proposing to designate a motorized route inside a Wilderness Area would be a conflicting use, since the nature of Wilderness legally precludes motorized use. Likewise proposing a public motorized route through an active mining or logging site could also be a conflicting use, since it would not be safe for members of the public to travel through such a hazardous area.

Proposing to allow motorized use on a route that some members of the public would prefer was reserved exclusively for hikers, however, has no such inherent conflict of uses. Hikers and motorized users share the same routes all the time, and every route on Forest Service land that is open to motorized vehicles is also open to hikers. That some people who choose to hike on a motorized route find motorized use of that route annoying and would prefer that motorized use be disallowed is merely a subjective preference. Those who choose to hike on or near motorized routes have no one but themselves to blame if they are disturbed by motorized traffic. Someone who chooses to hike on a road open to motor vehicles has no right to complain that motor vehicles are using that road and demand that road be closed to improve their "quiet use experience."

Allegations of user conflict based on general subjective management preferences are therefore really just social value conflicts, even when disguised in the language of interpersonal conflicts. These conflicts largely exist solely in the minds of intolerant non-motorized users who refuse to peacefully coexist with other users of public lands, but demand that they be given exclusive access to trails that have historically been managed for multiple use.

It would be highly unfair to exclude motorized users based solely on the attitudes and opinions of non-motorized users, punishing them for the intolerance of others. These kinds of manufactured user conflicts and claimed harm to quiet use recreation in areas that are designated for motorized use should not be used as a basis to close motorized routes. When the Forest Service closes a motorized route because of alleged "user conflicts", what it

is really doing is depriving motorized users of recreational opportunities in order to give exclusive access to non-motorized users. This is antithetical to the Travel Management Rule, which recognizes that, "Motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests," and again, "Motor vehicles remain a legitimate recreational use of NFS lands." Travel Management; Designated Routes and Areas for Motor Vehicle Use, 70 Fed. Reg. 68264, 68272 (November 9, 2005).

Motorized recreation is a legitimate, co-equal form of recreational activity that is by no means inferior to hiking, biking, horseback riding, or other so-called "quiet uses." The Forest Service's travel management regulations which require it to minimize user conflicts were never intended as a mandate to disfavor motorized recreation and to favor other forms of recreation by depriving motorized users of routes in order to award them to others. Yet that is precisely what the Forest Service would be doing if it considers assertions of user conflict by non-motorized users sufficient justification to close motorized routes.

That approach inherently presumes the superiority of non-motorized recreation and the inferiority of motorized recreation. It presumes that the subjective desires and qualitative recreational experiences of non-motorized users are more important than the desires and recreational experiences of motorized users, so that when in conflict, the desires of non-motorized users must prevail.

This view is directly contrary to the Travel Management Rule. It inherently treats motorized recreation as an illegitimate, inappropriate, and disfavored activity that is to be allowed only when it does not inconvenience other more favored user groups. It allows motorized users to be excluded from public lands simply because other people don't like them.

If the Travel Management Rule's mandate that motorized travel is to be considered a legitimate recreational use of Forest Service lands has any meaning, it demands that the Forest treat motorized and non-motorized users as equals. Rather than allocating routes based on a presumed hierarchy of users with non-motorized users at the top and motorized users at the bottom, the Forest Service should treat the recreational experiences of both groups as equally valuable.

That does not mean that motorized use must be allowed on every route in the Forest. But it does mean that where motorized use has historically been allowed, the presumption should weigh in favor of allowing that use to continue, with all user groups sharing the route under the principle of multiple use.

Wherever possible, the Forest Service should allow for a wide variety of uses in keeping with its multiple use mandate, rather than playing favorites between user groups and robbing one in order to give to another. Where user conflicts are occurring, the Forest Service must endeavor to follow an approach which balances the interests of both competing user groups, rather than automatically presuming that one must be sacrificed to favor the other.

C. Conclusion

For these reasons, we are highly suspicious of any language in the proposed Forest Plan that would require future management decisions to consider closing motorized routes based on unacceptable user conflicts. While we would prefer for such language to be removed entirely, if it is to remain, we ask that clarifying language be added to explain that this term includes only documented cases of interpersonal conflict and not ideological or social values conflicts.

This is especially important in the case of management language regarding the Peavine Corridor. Social values conflict is inherent in its nature as a cherry-stemmed motorized route surrounded by a Wilderness area. Such cherry-stemmed motorized routes will always be offensive to activists who prioritize "wilderness values" over all competing uses of public lands, and they will always seek to obtain the closure of such routes by dubious

assertions of "user conflict."

The Forest Service must be careful to ensure any references to "user conflict" in the Draft Forest Plan do not simply enshrine these groups' exclusionary views in official management guidance, but instead reflect the findings of the best available science that it is only possible to effectively manage for interpersonal conflict and not social values conflict.

IV. Equity, Environmental Justice, and People With Disabilities

It is crucial that the Manti-La Sal Forest Plan recognizes the importance of motorized recreation in contributing to equitable access to public lands for people with disabilities. On his first day in office, President Joe Biden issued an "Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government."¹⁶ This executive order established "an ambitious whole-of-government equity agenda" which focuses on addressing "entrenched disparities in our laws and public policies," and mandates a "comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."

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

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

Every time motorized routes 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 Forest Service has historically failed to give any real consideration to the impacts of motorized route closures on the disabled community when developing travel management plans.

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

Any approach to ROS zoning or management zones that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized routes on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities.

Any large scale closures of existing motorized 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 Forest Service consider the access needs of disabled users when selecting the alternative chosen for the final Forest Plan and ensure that people with disabilities who depend on motorized means do not lose access.

We believe this particularly applies to the motorized corridor within the Dark Canyon Wilderness discussed above. If that corridor is closed to motorized use, it will forever bar people with disabilities from accessing this spectacular canyon. Accordingly, the current administration's guidance on equity demands that this corridor be kept open to motorized use.

V. Elk Ridge Geographic Area

While I have submitted a separate comment expressing my concerns with the proposed restrictions on drones in the Elk Ridge Geographic Area, we have significant concerns with the proposed restrictions on motorized recreation in this area as well. Specifically, we concur and endorse the prior comments on the San Juan County Commission on this area, quoted below:

p. 109 3.4.1 Elk Ridge Geographic Area

ST-06 "Road density shall be maintained or decreased." This standard is inconsistent with ST-17 which allows for new motorized roads or trails under certain conditions. New motorized roads or trails should be an option under certain resource conditions without having to eliminate other roads or trails to maintain a certain road/trail density. We suggest eliminating ST-06 altogether or eliminating it from Standards and including it as a Guideline.

p. 110 3.4.1 Elk Ridge Geographic Area

ST-17 "New roads or motorized trails shall only be designated if they do not create direct or indirect impacts on cultural resources." This standard is overly restrictive and precludes the option of mitigation of road or trail impacts to cultural resources. We recommend adding "that cannot be mitigated or minimized" to the end of the standard.¹⁷

Both of these standards are far too restrictive and should allow for new motorized routes to be designated in the Elk Ridge Geographic Area without automatically forcing the closure of other routes to maintain an arbitrary route density level. These standards should also allow for mitigation of impacts rather than requiring there to be no impacts whatsoever. We also concur with the prior comments of the Blue Ribbon Coalition regarding the Elk Ridge Geographic Area:

In consideration of the already low road density, previously established restrictions on road development due to wilderness classification, non-roaded ROS class or other restrictions, and the benefits of erosion prevention and the prevention of damage to cultural sites and wildlife habitats which may be brought about by rerouting (and thereby lengthening) roads to avoid sensitive areas, we recommend in concurrence with Ride with Respect and Sage Riders, that the statement, "Road density shall be maintained or decreased," made in GA-ELK-ST-06, be removed from the draft. We also request that the statement made in GA-ELK-GD-09, "Recreational opportunities and developments should be designed to meet the Primitive or Semi-primitive Nonmotorized recreation opportunity class," be removed from the draft as this appears to override ROS zoning to the effect of making the entire Elk Ridge Geographic Area non-motorized.¹⁸

Given the presence of many popular motorized routes in the Elk Ridge Area, it is inappropriate to mandate that all new recreational developments cater solely to non-motorized interests, while mandating the gradual decrease of motorized opportunities over time. The Elk Ridge Area should be managed to balance both motorized and

non-motorized recreational opportunities, rather than expressly favoring non-motorized users in the Forest Plan.

VI. Conclusion

To conclude, we reiterate the importance of providing continued high quality opportunities for motorized recreation in the Manti-La Sal National Forest, particularly on routes like the Peavine Corridor that were deliberately excluded from Wilderness designation by Congress with the intent that these routes remain open to motorized recreation.

We hope that the Forest will make the changes to the management direction we have requested above, and reserve our right to object on these grounds if the requested changes are not made. Thank you for your consideration.

1 <https://webcache.googleusercontent.com/search?q=cache:LRsUFdUsI5YJ:https://sanjuancounty.org/sjc-content/archives/Commission%2520Minutes%2520-%2520html/27December1988.htm+&cd=32&hl=en&ct=clnk&gl=us>.

2 Draft Forest Plan, p. 60.

3 Id.

4 Id.

5 Id. at p. 61.

6 Id. at p. 87.

7 Id. at p. 88.

8 Id. at p. 89.

9 PUBLIC LAW 98-428[mdash]SEPT. 28, 1984. 98 STAT. 1661 Sec. 303. Available at <https://www.congress.gov/bill/98th-congress/senate-bill/2155/text>.

10 Id. at Sec. 201(b)(3).

11

<https://mccmeetingspublic.blob.core.usgovcloudapi.net/sanjuancut-meet-96980d096b474df089e6cdf110e36a7f/ITEM-Attachment-001-560be9fa61f8412b830772736ad50169.pdf>

12 See, Carothers, P., Vaske, J. J., & Donnelly, M. P. (2001). Social Values versus Interpersonal Conflict among Hikers and Mountain Bikers; *Journal of Leisure Sciences*, 23(1) at p. 58.

13 See, Norling et al; Conflict Attributed To Snowmobiles In A Sample Of Backcountry, Non-motorized Yurt Users In The Wasatch-cache National Forest, Logan Ranger District; Utah State University; 2009 at p. 3.

14 Carothers, p. 48.

15 Notice of Appeal and Petition For Stay, *SUWA v. BLM, Re: San Rafael Desert Travel Management Plan*, Interior Board of Land Appeals, Sept. 21, 2020, p. 3.

16 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

17 <https://mccmeetingspublic.blob.core.usgovcloudapi.net/sanjuancut-meet-96980d096b474df089e6cdf110e36a7f/ITEM-Attachment-001-560be9fa61f8412b830772736ad50169.pdf>.

18 https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_5662900.