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Ben Burr, Executive Director

May 6, 2024

BlueRibbon Coalition

P.O. Box 5449

Pocatello, ID 83202

Anthony Botello, Forest Supervisor

Flathead National Forest

650 Wolfpack Way

Kalispell, MT 59901

Dear Mr. Botello,

BlueRibbon Coalition (BRC) is writing to provide feedback for the Flathead Forest Winter Travel Management and Recommended Wilderness. BRC is a national non-profit organization that champions responsible recreation and encourages a strong conservation ethic and individual stewardship. We champion responsible use of public lands and waters for the benefit of all recreationists by educating and empowering our members to secure, protect, and expand shared outdoor recreation access and use by working collaboratively with natural resource managers and other recreationists. Our members use motorized and non-motorized means of recreation, including OHVs, horses, mountain bikes, snowmobiles, and hiking to enjoy federally managed lands throughout the United States, including those of the Forest Service. Many of our members and supporters live in Montana or travel across the country to visit Montana and use motorized vehicles to access USFS managed lands throughout Montana. BRC members visit the Flathead National Forest for motorized recreation, snowmobiling, sightseeing, photography, rockhounding, hunting, wildlife and nature study, camping, observing cultural resources, and other similar pursuits. We would like to add our support to any comment submitted by any other individuals or organizations that advocate for motorized use. BRC members and supporters have concrete, definite, and immediate plans to continue such activities in the future.

## Designated Areas

BRC strongly opposes recommending anymore wilderness as Montana already has large areas of Wilderness and public lands with the most restrictive management practices. We have concerns with the following:

"Specifically, within the 190,403 acres of recommended wilderness areas, about 96 miles of trail currently allow mechanized transport and about 383 acres currently allow over-snow motorized use."

The plan does not address the loss of access and opening more trails elsewhere therefore the USFS should not be recommending wilderness in these areas because motorized use is already allowed and there is a purpose and need for continued use. Roads leading to or near recommended wilderness or designated Wilderness should remain open. These designations should not be creating buffer zones and the existence of a road disqualifies that area from being managed as wilderness.

## OSV Use

BRC supports closing the least amount of acres open to OSV use possible. Although we would like to see no increase in areas closed to OSV use, we believe that the Forest Service should use best available science and only close the minimum amount of acres possible.

Snowmobiling brings in \$26 billion annually in the United States. The USFS needs to strongly consider the economic benefits of allowing the maximum amount of area open to OSV possible. Local communities should be able to benefit from OSV use within Flathead Forest and the agency should not hinder that income with restrictions.

Statistics show only 10-15% of snowmobile accidents occur on well maintained, groomed trails. BRC supports proactive management of the maximum number of routes possible in order to keep the forest and recreation as safe as possible. These routes also benefit other users. During non winter months other recreation users will use these trails. Snowmobile registrations, gas and taxes are used to create these routes and then benefit other trail users as well.

All identified 12,848 acres as suitable for OSV use should in fact be open for OSV use. BRC understands that many of these acres identified as suitable naturally will not allow OSV use. Rather than closing areas in order to prevent avalanches, this area should remain open as the terrain simply won't allow OSV use regardless. BRC would like to see it remain open because oftentimes when an area is officially closed to OSV use, over time the Forest Service will create buffer zones and expand the closed area into areas that currently allow safe usage of over-snow vehicles.

The 383 acres that has historically allowed OSV use that is within recommended wilderness needs to stay open to OSV use. The USFS is required to identify recommended wilderness and manage those areas to keep those current conditions. The current conditions allow OSV use and should continue to do so. The fact that motorized and human impact has historically occurred in this area really disqualifies it from being wilderness in the first place.

## Wildlife and Habitat

According to the Winter Use Monitoring: Summary of Findings 2014-2020 from the National Park Service in Yellowstone (Footnote 1) regarding the effects on OSV use on wildlife, there is not a significant impact. NPS states, "83% of the observed responses by all groups of wildlife were categorized as no apparent response, 11% look/resume, 3% travel, 1% attention/alarm, and 1% for flight and defense/charge combined." Therefore, there should not be other areas closed to OSV use and proper management techniques should be utilized instead. In addition to this study, we recommend that the USFS include the findings found in the Snowmobile Fact Book published by the International Snowmobile Association (Footnote 2).

Sound can be produced by motorized vehicles but also by a barking dog that is with a hiker or other wildlife. Many studies, like the Yellowstone Winter Use Monitoring show that noise produced by OSV users has no significant impact. Snowmobiles made after 1976 are significantly quieter than previous models.

BRC supports managing the forest to prevent wildfires. Wildfire is the greatest threat to wildlife and habitat. BRC supports the additional language of, "except for accomplishing administrative purposes such as restoration activities (for example, management of ignited fires or using chainsaws to reduce stand densities around whitebark pine trees) and trail maintenance." This additional language is a step in the right direction for proper management to avoid wildfires.

#### Roads and Trails

The 2012 Planning Rule requires, "strong emphasis on protecting and enhancing water resources, restoring land and water ecosystems, and providing ecological conditions to support the diversity of plant and animal communities, while providing for ecosystem services and multiple uses." 77 Fed. Reg. at 21163. BRC believes the Forest Service can only achieve these goals through management, and not management through closures. Closures would not support multiple uses.

BRC does not support closures and decommissioning of roads. We believe proper management strategies should be used to provide the maximum number of routes as possible. Road Maintenance and vegetation projects could lead to short term road closures as the plan states. If these temporary closures are made, dates and specific timelines need to be addressed beforehand to ensure the reopening of the roads.

Many of our members hold organized events that include organized rides in this area. A significant portion of the education mission of organizations like ours and the fundraising that supports organizations like ours comes from these organized events, and we see the continuation of these events as an integral expression of protected rights including freedom of speech and freedom of assembly.

In 2022 the Bureau of Economic Analysis showed outdoor recreation contributed over \$1 trillion. The desire and need for outdoor recreation and meaningful experiences with nature has only increased since then and will continue to increase. Local economies should be able to benefit from this trend as long as the USFS uses proper management techniques.

We are especially concerned that vaguely defined "resource impacts" are used to justify denial of use. A "scheme" of prior restraint is one which gives "public officials the power to deny use of a forum in advance of actual expression" and "comes to the Court bearing a heavy presumption against its constitutional validity." *Am. Target Advert., Inc. v. Giani*, 199 F.3d 1241, 1250 (10th Cir. 2000) (quotation and citation omitted). The Supreme Court of the United States and the Tenth Circuit have long held that "there are 'two evils' that will not be tolerated" in prior restraint schemes; first, "a prior restraint that fails to place limits on the time within which the decision maker must issue the license is impermissible[.]" and second, "no system of prior restraint may place 'unbridled discretion in the hands of a government official or other agency.'" *Id.* (quoting *FW/PBS, Inc. v. Dallas*,

493 U.S. 215, 225, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990)). The plan should recognize that public demand should be balanced with desired conditions for ecological resources and Constitutionally protected rights. All efforts to mitigate resource impacts should be done through the least restrictive means possible.

We support any additional comments that encourage the USFS to designate the maximum number of routes in this area as open. Many of our members are organizations with extensive on-the-ground experience. We support any comments made by our members.

#### Users with Disabilities

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.

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.

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 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.

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 in the Flathead management plan would disproportionately harm disabled users' ability to access public lands.

Any approach to travel 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 travel plan and ensure that people with disabilities who depend on motorized means do not lose access.

## Conclusion

We would like to close by saying we support "shared use". As long as overall visitation numbers are appropriate for the affected resources, motorized and non-motorized users can be compatible with one another so long as individual users understand designations and plan their activities accordingly. Indeed, motorized and nonmotorized recreation use often overlap as OHV's often increase accessibility to non-motorized recreational activities such as hiking, camping, equestrian use, etc. We also hold that responsible recreational use of public lands can exist in harmony with ecosystem needs.

BRC would like to be considered an interested public for this project. Information can be sent to the following address and email address:

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Sincerely,

Ben Burr

Executive Director

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Footnotes:

1 <https://www.nps.gov/yell/learn/news/21030.htm>

2 <https://snowmobile.org/docs/isma-snowmobiling-fact-book.pdf>