

# **Route Designation Guidebook**

**National Forests in California  
USDA Forest Service**

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# Introduction

This guidebook presents procedures for designating motor vehicle routes and areas for the National Forests in California, based upon existing laws, regulations including the new Travel Management rule, and policies. This procedure is fully compatible with the national Travel Management designation process even though the order of certain activities or how they are accomplished may not be exactly alike. It was developed by an interdisciplinary team consisting of Regional and Forest level specialists in recreation, engineering, environmental analysis, law enforcement, heritage resources, and wildlife, as well as representatives from the Office of the General Counsel (see Appendix A for a list of preparers).

The purpose of route designation is to prevent resource damage and recreational use conflicts from indiscriminate, cross-country travel by motor vehicles. Use will be redirected to existing sustainable roads, trails, and areas.

Designation of routes and areas has been broken down into 5 steps, starting with Global Positioning System (GPS) mapping of existing routes and areas currently used by OHVs and finishing with the designation of NFS roads, trails and areas for motor vehicle use as shown on a Motor Vehicle Use Map (MVUM). A key requirement throughout the procedures is collaboration with the public. Completion dates are indicated for all steps.

To aid guidebook users, interpretations of motor vehicle use policies and assumptions used in preparation of the guidebook are included, along with a glossary. These are followed by a list of the 5 steps with a Regional timeline. Detailed descriptions of all five steps make up the main portion of the guidebook. The appendices contain forms for motor vehicle management direction and use evaluation, examples of how to record information, a template for Temporary Forest Orders, and reference information.

## Background

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Increasing attention is being focused on uncontrolled use of motor vehicles on National Forest System (NFS) lands and on the impacts from this use. The Chief of the Forest Service recently listed four key threats facing the National Forests. One of these is "unmanaged recreation" with OHV use off established roads and trails cited as the primary threat. In 2003, the Regional Foresters for Regions 4 and 5 signed a Memorandum of Intent (MOI) (Appendix B) with the State of California aimed at prohibiting motor vehicle use off roads, designated trails, and areas on NFS lands in California. The MOI describes the strategy, tasks, and timeline to complete designations of motor vehicle routes and areas by September 2008. The Chief of the Forest Service is monitoring compliance with this schedule. On November 9, 2005, the Forest Service published the Final Rule for Travel Management in the Federal Register with an effective date of December 9, 2005. This rule revised the regulations regarding travel management on National Forest System lands to clarify policy related to public motor vehicle use, including the use of off-highway vehicles. The rule requires

designation of those roads, trails, and areas that are open to public motor vehicle use. Designations will be made by class of vehicle and, if appropriate, by time of year.

**Executive Orders 11644 and 11989:** All current direction and authority that allow, restrict, and prohibit vehicle use off roads on NFS lands are tiered from Executive Order (E.O.) 11644, signed by President Nixon in 1972, and modified by E.O. 11989 in 1977 (Appendix C). Executive Order 11644 states:

It is the purpose of this order to establish policies and provide procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

Section 3 of the E.O. further states that:

Each agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas and trails in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed.

Initial designations of NFS lands for OHV use in Region 5 were completed by 1977, prior to completion of Forest Land and Resource Management Plans (FLRMPs). Several Forests designated large areas as “Open.” Subsequent to this 1977 designation, many FLRMPs changed their open designations to Restricted.” Of the 19 National Forests in California (including portions of the Humboldt-Toiyabe), 17 of the current FLRMPs contain management direction indicating that all or most of the Forest lands are “Restricted”. The Sierra Nevada Forest Plan Amendment affects 11 FLRMPs; Standard and Guide #69 “Wheeled Vehicles” prohibits wheeled vehicles off designated routes, trails, and limited OHV use areas. However, in the years following completion of these FLRMPs, designation of OHV routes has generally not been completed. The two remaining units with “open” designation are the Klamath National Forest and portions of the Shasta-Trinity National Forest.

## **Goals and Objectives**

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The goal of this guidebook is to help Forest staffs and the public understand how to designate roads, trails, and areas for motor vehicle use on National Forests in California. A secondary goal is to assure compliance with relevant laws, regulations, policies, and existing direction in FLRMPs related to motor vehicles.

The planning of the best possible trail and road networks, the **designation** of routes for use by snowmobiles, bicycles, off-road skateboards, inline skates, etc., and decisions to permanently close and restore roads and trails to the pre-existing terrain are outside the

scope of this guidebook. However, mountain bike use can be included in steps 1 and 2 of this 5 step procedure to stop resource damage from this use, including damage from OHVs on trails and downhill runs (hillclimbs to OHVs) created by mountain bikes.

The guidebook has the following objectives:

1. Provide step-by-step procedures that comply with laws, regulations, and policies for designating roads, trails and areas for public motor vehicle use.
2. Help the National Forests in California fulfill the terms and agreements in the MOI between the Forest Service, California Off-Highway Motor Vehicle Recreation (OHMVR) Commission, and California Parks and Recreation Department, OHMVR Division (Appendix B).
3. Implement the designation of NFS roads, trails and areas In accordance with the Travel Management Rule (Appendix D)
4. Develop Regional consistency in designating roads, trails and areas for public motor vehicle use by specific vehicle types (e.g., motorcycles, all terrain vehicles (ATVs) and full size vehicles.)
5. Provide a “one-stop” location for information on road, trail and area designation.
6. Define terms used in this Guidebook for designating roads, trails, and areas that allow public motor vehicle use.
7. Provide flexibility in the guidelines to allow for varying circumstances on local units.

### **How to use this Guidebook**

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This guidebook is just that, a guide. All units must evaluate their situations and local issues and apply the procedures as appropriate to their needs. The guidebook suggests tasks to be completed at various stages of the designation procedures. In some cases, existing levels of information may be sufficient; in others, new data may be required. This guidebook is meant to supplement national direction regarding designation of routes and areas for motor vehicle use. If there is a conflict between this guidebook and national direction, national direction takes precedence.

# Interpretations of Policies and Assumptions

The guidebook team found a number of areas where additional guidance is needed as a foundation for route and area designation. Twelve items are listed below. Most are interpretations of laws, regulations, and Forest Service policies. Where issues were not specifically addressed in laws, regulations, or policies, the team reached agreement about assumptions to be used. Interpretations that come from laws, regulations, or policies have original sources cited. Original source documents that are not normally available at Ranger Districts can be found in the Appendices of this guidebook. In addition, key references are in the appendices including: 36 CFR 212 "Travel Management" (Appendix D), and relevant laws, regulations, and policies (Appendix G). Forest Service Manual (FSM) and Forest Service Handbook (FSH) references are available on the Forest Service intranet. In addition, draft copies of FSM 2350, 7700 and 7710 as well as FSH 7709.55 chapter 10 are available in the appendix of the binder containing the National Travel Management training module (<http://fsweb.wo.fs.fed.us/rhwr/ohv/route/training/index.shtml>). While not yet official direction, they are an indication of forthcoming direction on implementation of the Travel Management Rule. References from the Code of Federal Regulations are also available on the internet at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html). Click on "e-CFR" under Related Resources for the most current information.

## **1. Over-snow vehicles are exempt from the designation of roads, trails and areas for public motor vehicle use. (36 CFR Part 212 Sec. 51 (a)(3))**

Over-snow vehicles are exempt from the mandatory designation process and from the prohibition in 36 CFR Part 261 Sec.13. Management of over-snow vehicles is covered in 36 CF Part 212, subpart C. In general, this subpart preserves the existing authorities for management of over-snow vehicle use that were found in 36 CFR Part 295. The new travel management rule maintains the status quo for over-snow vehicles. Units that are open to cross-country travel by over-snow vehicles may remain open.

## **2. Forest Service policy applies the minimum restrictions required to protect resources and provide for user safety while continuing to provide recreation opportunities**

The Forest Service has a long history of balancing stewardship of the National Forests with providing goods and services to the people of the United States. The slogan "Caring for the Land and Serving People" represents the agency's goal to maintain balance. This principle is codified into law in the Multiple Use Sustained Yield Act of 1960. Forest Service policy regarding recreational use is: "Regulate users only to the extent necessary to provide for user safety; to protect the natural, cultural and historical resources; and to achieve the recreation experience objectives (FSM 2350.3 (5))."



**3. All roads, trails, and areas that are managed for public motor vehicle use must be: 1) NFS roads, NFS trails, or areas, (2) included in the Forest Transportation Atlas, and (3) identified on a Motor Vehicle Use Map.**

The new travel management rule at 36 CFR 212 consolidates regulations for motor vehicle use on National Forest System lands. Future FS Manual and Handbooks will consolidate much of the direction on route designation, in 7700, although the Trails Management Handbook (FSH 2309.18) will continue to contain much of the trails management information.

While direction exists for roads and trails to be included in the Forest Transportation Atlas (36 CFR Part 212 Sec. 2 (b)), areas open to public motor vehicle use are not included. Information on areas is included on the Motor Vehicle Use Map which, along with the Forest Transportation Atlas makes up the Travel Management Atlas.

**4. The Travel Management rule requires designation of those roads, trails and areas that are open to public motor vehicle use.**

The Travel Management rule is not an OHV rule, but rather applies to all public motor vehicle use on National Forest System (NFS) lands. Roads, trails and areas that are open to public motor vehicle use must be designated for the class or classes of vehicles allowed and, if appropriate, the time of year they may be operated. The rule provides for previous administrative decisions regarding travel management made under other authorities, including designation and prohibitions on motor vehicle use, to be incorporated into this required designation.

An example of previous administrative decisions would be the NFS roads and NFS trails. Maintenance level 2 through 5 roads are generally open to travel by highway legal vehicles. In addition, maintenance level 2 roads, because they are not subject to the Highway Safety Act and because our maintenance description (not recommended for passenger vehicles, high clearance vehicles only) generally equates with the California Vehicle Code exception of “roughly graded roads” not being highways, would also generally be open to non-highway legal vehicles. However, any road, regardless of maintenance level, that is proposed for motorized mixed use will be analyzed following the national guidelines in EM-7700-30 prior to designation. Use on the NFS roads can be restricted by Forest Orders by specifying types of vehicles prohibited or seasons of the year when use is restricted. NFS trails which are currently designated for motor vehicle use could be incorporated into the required designation. However, routes that are not NFS roads or NFS trails would require analysis and decision before being designated, even if they have a history of being used by motor vehicles. A change in the type of vehicle permitted or in the season of use would also require a new decision.

NFS roads and NFS trails may also be closed or restricted by Forest Order using 36 CFR Part 261 Sec. 54 for roads and Sec. 55 for trails. Additional prohibitions on the operation of vehicles can be found at 36 CFR Part 261.12 and 261.15.

**5. Public motor vehicle use will be allowed only on NFS roads, NFS trails and areas on NFS lands after the Motor Vehicle Use Map is published.**

If non-NFS routes are desirable as NFS roads, trails or areas, they should be analyzed and a decision made regarding designation. Site-specific analyses should be completed, pursuant to 36 CFR Part 212 Sec. 55. Once designation is completed and the MVUM is published, motor vehicle use on routes not designated as NFS roads, NFS trails or as part of an area is prohibited. Such routes may be considered for non-motorized use or decommissioned in future analyses. (36 CFR Part 212 Sec. 50).

**6. 4-wheel drive routes may be managed as either NFS roads or NFS trails.**

The definitions of “road” and “trail” at 36 CFR Pat 212 Sec. 1 clearly indicate that a route wider than 50 inches can be managed as either a road or a trail. The decision on how to manage 4-wheel drive routes is a local decision on how to best meet local management concerns.

**7. If non-NFS routes are to be managed as NFS roads, NFS trails or areas, decisions to designate them must address the criteria at 36 CFR part 212 Sec.55. Site-specific project decisions must be consistent with the FLRMP.**

The criteria at 36 CFR Part 212 Sec. 55 (a) and (b) must be addressed for the designation of trails and areas for public motor vehicle use. Designation of roads for public motor vehicle use must address the criteria found at 36 CFR part 212 Sec. 55 (a) and (c). In addition, decisions to designate roads, trails and areas must be informed by Travel Analysis (Draft FSM 7712). Responsible Officials have the discretion to determine whether travel analysis at a lower scale than a Ranger District or an administrative unit is needed and the amount of detail that is appropriate and practicable for travel analysis (Draft FSM 7712.1).

**8. All decisions regarding public motor vehicle use on roads, trails and areas must be consistent with the Forest Plans, relevant laws, regulations, and policies.**

Some Forests made motor vehicle use designations in FLRMPs in the past. However, current direction for land management planning is to provide only general direction in FLRMPs and leave motor vehicle use designations to site-specific project-level decisions. NFS lands available to be considered for motor vehicle use are identified in Management Area direction and Standards and Guidelines in FLRMPs. Roads, trails and areas are then designated in site-specific project-level analyses consistent with the FLRMP, relevant laws, regulations and policies.

**9. The baseline condition for designation is the current designations and prohibitions for public motor vehicle use on NFS roads, trails and areas. Changes to these designations require NEPA analysis and decision.**

36 CFR Part 212 Sec. 50 (b) authorizes the responsible official to incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use. These previous designations and prohibitions are the existing baseline condition and can be designated without a new decision if no changes are proposed. Public notice is still required under 36 CFR part 212.52 (a). Proposed changes to this baseline condition require environmental analysis and a decision signed by the responsible official. The level of environmental documentation required (environmental assessment or environmental impact statement) will depend on the scale, scope, and nature of the proposed changes to travel management decisions and the site-specific issues involved.

**10. NFS roads, trails and areas shall be designated by the responsible official on an administrative unit or a Ranger District.**

The regulations at 36 CFR Part 212 Sec. 51(a) identify the responsible official on administrative units (Forest Supervisors) or Ranger Districts (District Rangers) of the National Forest System as authorized to designate NFS roads, NFS trails and areas on National Forest System lands for motor vehicle use.

**11. The collective information in FLRMPs and project-level decisions constitutes Forest travel management direction.**

Forest Service planning direction provides for two levels of planning on Forests: programmatic (FLRMP) and site-specific (project). Forest travel management direction consists of the FLRMP and applicable project-level decisions.

**12. Draft FSM and FSH direction is cited in this document.**

While the draft manual and handbook revisions are not yet direction, they provide the best information on how the new Travel Management regulation will be implemented. The current manual and handbooks now contain inaccuracies due to additions and changes to 36 CFR Parts 212, 251 and 261 and the removal of 36 CFR 295. Be aware that when the manual and handbook revisions are finalized, there may be changes to information provided in this guidebook.

**13. Temporary Forest Orders make prohibitions on cross-country motor vehicle and bicycle use enforceable (Step 2) until motor vehicle use designation is completed.**

Once inventories of roads, trails and areas being used by motor vehicles is completed (Step 1), Temporary Forest Orders prohibiting travel off the inventoried roads, trails and areas can prevent further resource damage. This is not designation, it only prohibits cross-country motor vehicle and bicycle use while proposed designations are being evaluated. To make prohibitions enforceable, Temporary Forest Orders must be issued pursuant to 36 CFR Part 261 Sec. 50. An Example Forest Order is included in Appendix K. Temporary Forest Orders must be signed by Forest Supervisors. Deputy or Acting Forest Supervisors can only sign Temporary Forest Orders if they have Delegations of Authority specifically allowing the signing of Temporary Forest Orders on the dates the orders are signed.

Once NFS roads, trails and areas are designated for motor vehicle use for an entire Ranger District or administrative unit and a MVUM is published, Temporary Forest Orders are no longer necessary and should be rescinded as the prohibition at 36 CFR Part 261 Sec. 13 becomes effective.

# Glossary

The following definitions are listed for the purpose of understanding the Route Designation Guidebook. Their use outside of this context is **not** intended. Where definitions have been used from other sources, the source documents are cited. This Guidebook has incorporated previously created documents such as “*Motorized Trails: Data Collection Standards with Global Positioning Systems (GPS) and Geographic Information System (GIS) Integration*” (June 2003). Although the incorporated documents may also include definitions, those definitions should only be used in the context of the incorporated documents and **not** applied to this Guidebook. Note that, for the purposes of this Guidebook, OHV (off-highway vehicle) and ORV (off-road vehicle) are used interchangeably.

*Administrative unit* A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System. (36 CFR 212.1)

*All-terrain vehicle (ATV)* A motor vehicle subject to subdivision (a) of Section 38010 of the California Vehicle Code, which is all of the following:

- a. Designed for operation off of the highway by an operator with no more than one passenger;
- b. Fifty inches or less in width;
- c. Nine hundred pounds or less unladen weight;
- d. Suspended on three or more low-pressure tires;
- e. Has a single seat designed to be straddled by the operator, or a single seat designed to be straddled by the operator and a seat for no more than one passenger;
- f. Has handlebars for steering control

(California Vehicle Code Section 111).

*Area* A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District. (36 CFR Part 212 Sec.1).

<i>Closed zone of use</i>	Areas and trails on which all motor vehicle use is prohibited, except by permit, under authority of 36 CFR Part 261 or by law (FSM 2355.13).
<i>Designated road, trail or area</i>	A National Forest System road, a National Forest System trail or an area on National Forest System lands that is designated for motor vehicle use pursuant to 212.51 on a motor vehicle use map (36 CFR Part 212 Sec.1).
<i>Forest road or trail</i>	A road or trail wholly or partially within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources (36 CFR Part 212 Sec. 1).
<i>Forest Transportation Atlas</i>	A display of the system of roads, trails, and airfields of an administrative unit (36 CFR Part 212 Sec. 1).
<i>Forest transportation facility</i>	A road or trail or an airfield that is displayed in the Forest Transportation Atlas, including bridges, culverts, parking lots, marine access facilities, safety devices and other improvements appurtenant to the Forest transportation system (36 CFR Part 212 Sec. 1).
<i>Forest transportation system</i>	The system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands (36 CFR Part 212 Sec. 1).
<i>Highway</i>	A highway is a way or a place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel (CA Vehicle Code Section 360). However, the 38000 Division of the California Vehicle Code (the Off Highway Motor Vehicle section) states that for purposes of this division (38000) the term “highway” does not include fire trails, logging roads, service roads regardless of surface composition, or other roughly graded trails and roads upon which vehicular travel by the public is permitted (CA Vehicle Code 38001).
<i>Motorized mixed use</i>	Designation of a NFS road for use by both highway-legal and non-highway-legal motor vehicles.

<i>Motor vehicle</i>	Any vehicle which is self-propelled, other than: (1) a vehicle operated on rails; and (2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area (36 CFR Part 212 Sec.1).
	<b>For the purposes of this guidebook, when the words “motor vehicle” or “motor vehicles” are used, they do not include over-snow vehicles.</b>
<i>Motor Vehicle Use Map</i>	A map reflecting designated roads, trails, and areas on an administrative unit or a Ranger District of the NFS (36 CFR Part 212 Sec.1)
<i>Motor vehicle use system</i>	The NFS roads, NFS trails and areas of NFS lands open to public motor vehicle travel on a Forest or district.
<i>National Forest System road</i>	A Forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority (36 CFR Part 212 Sec. 1).
<i>National Forest System trail (NFS trail)</i>	A Forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority (36 CFR Part 212 Sec. 1).
<i>NFS roads, trails and areas</i>	The NFS roads, NFS trails and areas on NFS lands designated for public motor vehicle use
<i>Non-system trail</i>	Any route 50 inches or less in width which is not a NFS trail.
<i>Non-highway legal vehicle</i>	Any motor vehicle that is not licensed or certified for general operation on public roads within the State.

*Off-highway vehicle (OHV)* Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract (E.O. 11644, Sec. 2). The terms off-highway vehicle (OHV) and off-road vehicle (ORV) are nearly synonymous. ORV implies use only off roads and OHV does not. Since OHV is a broader term and is generally accepted among States and user groups, this term is preferred to better describe the situation on the National Forests.

**For the purposes of this guidebook, when the words “off-highway vehicle” or “OHV” or “off-road vehicles” or “ORV” are used, they do not include over-snow vehicles.**

*Off-highway vehicle system* The roads, trails and areas that make up the authorized OHV use opportunities on a Forest

*Off-road vehicle (ORV)* See “Off-highway Vehicle” above.

*Off-road vehicle plan or Off-highway vehicle plan* Information regarding OHV management and designation in the current FLRMP and any other current supplemental documents, including existing ORV/OHV plans are collectively to be considered the off-road vehicle management plan.

*Off-road vehicle use* Vehicle use that occurs off of roads, (i.e., on areas and trails) on National Forest lands (FSM 2355).

*Open zone of use* Areas and trails on which all types of motorized vehicles may be operated off of roads without restriction (FSM 2355.13).

*Over-snow vehicle* A motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow. (36 CFR Part 212 Sec. 1)



<i>Restricted zone of use</i>	Areas and trails on which motorized vehicle use is restricted by times or season of use, types of vehicles, vehicle equipment, designated areas or trails, or types of activity.
<i>Road</i>	A motor vehicle route over 50 inches wide, unless identified and managed as a trail (36 CFR Part 212 Sec. 1).
<i>Route</i>	A generic term for roads, trails, travelways and corridors, regardless of their classification or designation.
<i>Temporary road or trail</i>	A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a Forest road or trail and that is not included in a Forest Transportation Atlas (36 CFR Part 212 Sec. 1).
<i>Traffic service level</i>	Describes the significant characteristics and operating conditions of a road (FSM 7705).
<i>Trail</i>	A route 50 inches or less in width or a route over 50 inches wide that is managed as a trail (36 CFR Part 212 Sec. 1).
<i>Travel Analysis</i>	Travel analysis assesses current transportation conditions and identifies issues, needs, and opportunities for travel management. Travel analysis is not a decision-making process. Rather, travel analysis helps to identify proposals for changes in travel management direction and supports the environmental analysis associated with those proposed actions (Draft FSM 7712).
<i>Travel Management Atlas</i>	An atlas that consists of a Forest Transportation Atlas and a motor vehicle use map or maps (36 CFR Part 212 Sec. 1)

*Travel management decision*

Decisions to:

- a. Add a road or trail to or remove them from the Forest transportation system.
- b. Establish an area for motor vehicle use.
- c. Construct an NFS road or trail.
- d. Change authorized motor vehicle uses on an NFS road, NFS trail, or area on NFS lands.
- e. Add or change a restriction on motor vehicle use (Draft FSM 7710.5).

*Unauthorized road or trail*

A road or trail that is not a Forest road or trail or a temporary road or trail and that is not included in a Forest Transportation Atlas (36 CFR Part 212 Sec 1).

# Five Steps to Route Designation

The following is a summary of the 5 steps that are designed to implement the Forest Service – State of California Memorandum of Intent (Appendix B), implement the regulations at 36 CFR Part 212 Subpart B (Appendix D) and designate roads, trails and areas for public motor vehicle use on the National Forest Lands in California (including some of R-4). The steps are described in more detail in the following pages.

**Public involvement throughout this process is crucial to the success of route designation**

1. Map (GPS) existing non-NFS roads, OHV trails (both NFS and non-system), and off-route use areas, and enter the data in GIS (Geographic Information System) and INFRA (Infrastructure database). Designate team leaders, compile Forest motor vehicle management direction, assemble needed information, identify gaps in data, prioritize, develop action plans, and begin field surveys. Share maps with the public **by December 2005** (earlier if possible). Collect comments **by March 2006**.
2. Issue temporary Temporary Forest Orders prohibiting motor vehicle (and bicycle if necessary) use off mapped roads, trails, and off-route use areas for temporary resource protection. Involve the public. Complete no later than **June 2006**.
3. Use travel analysis and collaborate with the public in developing site-specific proposals for changes to the NFS roads, trails, and areas currently available for public motor vehicle use including OHVs. Complete surveys of information to fill data gaps. Involve the public. Publish maps of proposals **by September 2006**. Collect public comments no later than **February 2007**.
4. Complete analyses and prepare NEPA documents designating roads, trails and areas open for public motor vehicle use. Include restrictions by season or vehicle type as appropriate. Involve the public. Complete no later than **December 2007**.
5. Prepare and issue a Motor Vehicle Use Map showing NFS roads, trails, and areas authorized for public motor vehicle use. Include seasons of use and designations by vehicle type as appropriate. Involve the public. Install appropriate signing, publish visitor maps with approved motor vehicle use systems for public distribution, and implement any mitigation measures **by September 2008**. Continue to monitor and identify proposals to change designations as necessary.

The Klamath and Shasta-Trinity National Forests have one additional year from the dates above to complete the tasks. This additional time is allowed to review FLRMPs and provide direction to prohibit motor vehicles off roads, designated trails, and areas.

## **R-5 Route Designation vs. National Travel Planning and Travel Analysis**

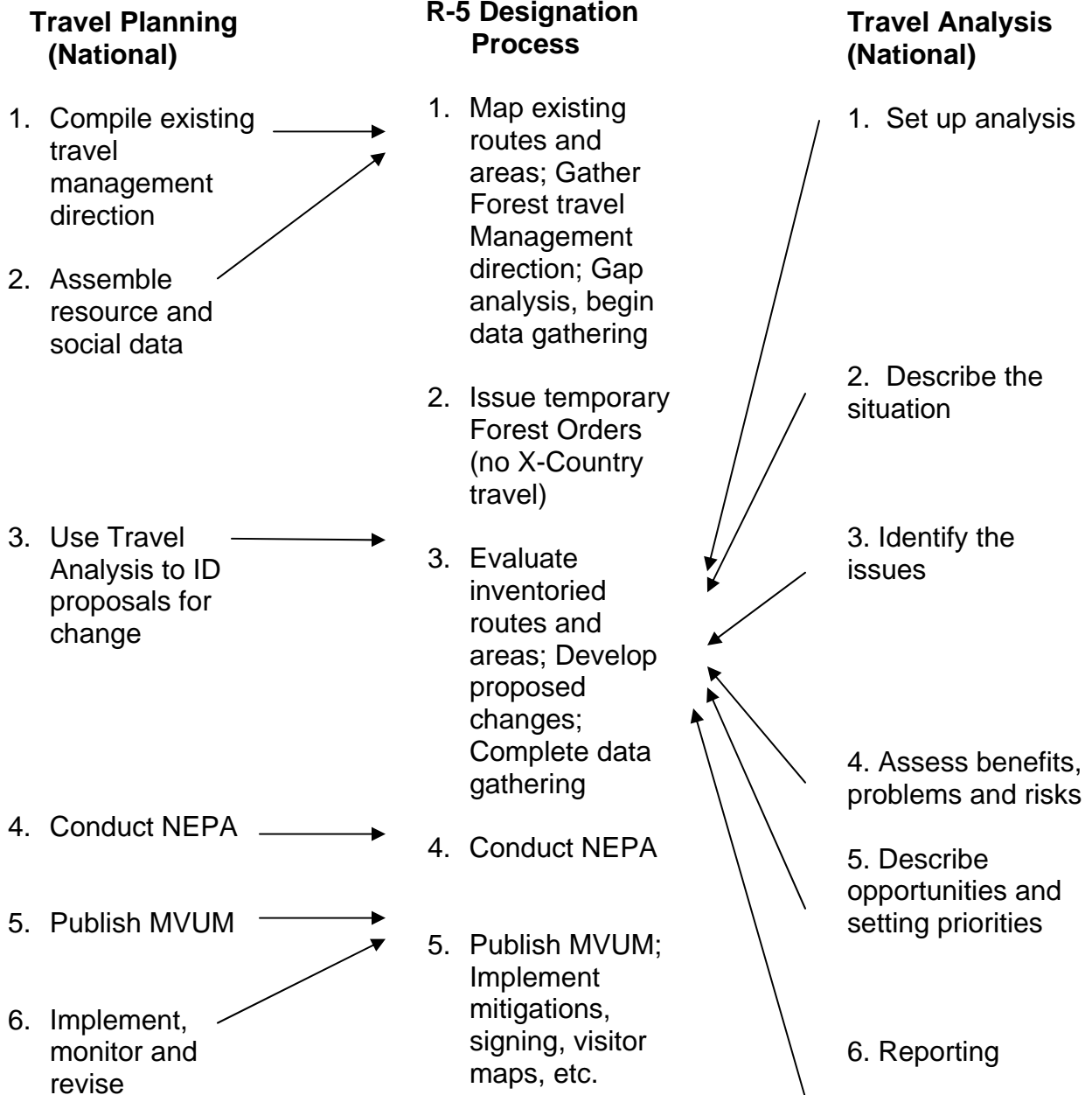
The Region 5 Route Designation process was published in June 2004, prior to national direction on route designation. Because a national Travel Management Rule 36 CFR 212 went into effect December 9, 2005, there is a need to update the R-5 process, which was based on 36 CFR 295 regulations. However, the 5 step process that R-5 has been using is still appropriate to follow. The Travel Management Rule made two basic changes. First, the new rule requires the designation of roads as well as trails and areas for all public motor vehicle use. The process is no longer only about off-road vehicle use. Second, the new rule established that National Forest System (NFS) roads, NFS trails, and areas currently managed for motor vehicle use are the base-line condition. It requires the evaluation of changes or additions to that base-line that are in compliance with the new rule.

To implement the new rule, the national office has created two new 6 step processes called Travel Planning and Travel Analysis. The Travel Planning process is another name for Route Designation. The way the steps are broken out differs, but the tasks to complete the processes are the same. The exception to this is Step 2 in the R-5 process (issuing Temporary Forest Orders to prohibit cross-country motor vehicle travel for temporary resource protection during the analysis process). This step is not required by the national Travel Planning process. The R-5 Route Designation process is also part of the MOI with the State of California, which has provided funding to help accomplish route designation.

Travel Analysis is a pre-NEPA process to identify proposals for changes or additions to the travel management system. Travel Analysis integrates management of motor vehicle use into the roads analysis process used by the Forest Service to evaluate NFS roads. Forest Service Manual's and Handbooks have been drafted to include a streamlined roads analysis process to provide a comprehensive evaluation of motor vehicle use. Travel Analysis will be the process which must be used to inform decisions related to administration of the Forest transportation system and travel management decisions. Travel Analysis is a 6 step process. All 6 steps occur in Step 3 of the R-5 Route Designation process. See the Diagram on the following page for how these 3 processes relate.

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## Diagram of R-5 Route Designation vs. National Process



# Step 1

## Processes:

- Map existing non-NFS roads, NFS and non-system motorized trails, and off-route use areas currently receiving wheeled vehicle use.
- Compile existing Forest motor vehicle management direction.
- Designate team leaders, assemble needed information, identify gaps in data, prioritize, develop action plans, and begin field surveys.
- Involve the public.

## Decision:

- None.

## Products:

- Maps of roads, trails, and off-route use areas and data in GIS & INFRA.
- Current Forest motor vehicle management direction.
- Action Plans for collection of priority data.
- Public Involvement and Communications Plans & Tribal Consultation.

## Due Dates:

- Share maps with the public no later than December 2005.
- Collect public comments on maps by March 2006.

### Map existing non-NFS roads, NFS and non-system motor vehicle trails, and off-route use areas currently receiving wheeled vehicle use

Use GPS to map non-NFS roads, trails (both NFS and non-system), and off-route use areas receiving motor vehicle and bicycle use. Enter the GPS data into GIS and INFRA, and produce route and area inventory maps. Follow the direction and protocols identified in the Pacific Southwest Region unnumbered publication *Motorized Trails: Data Collection Standards with Global Positioning Systems (GPS) and Geographic Information System (GIS) Integration* - June 2003.

(<http://www.fs.fed.us/r5/routedesignation/data-collection-motorized-trails/index.html>)

Ideally, interested members of the public should be involved early in the inventory process to help identify where motor vehicle and bicycle use is occurring and assist inventory teams in finding little known or remote roads, trails, and off-route use areas. This will allow GPS crews to remap areas if roads and trails are missed before they leave Forests.

### Compile existing Forest Motor Vehicle Management Direction

Identify and consolidate all existing direction on management of motor vehicles on the Forest. This should not create new information. Use the following guidance:

1. Review and identify any requirements from current Forest Land and Resource Management Plans (FLRMPs), including all maps, Forest-wide management direction, management area prescriptions, monitoring requirements, appendices and tables related to motor vehicle designations, opportunities and restrictions, and Regional and National direction applicable to Forests. Be sure to review the resource sections as well as recreation and transportation direction. See Appendix L for types of Forest motor vehicle management direction possibly found in FLRMPs and Appendix M for a format for recording the information.
2. Review and identify any requirements from stand-alone OHV plans, recreation or special management area plans, or species-specific plans that were incorporated into FLRMPs. Include any project-level NEPA decisions or regional plans (e.g., Sierra Nevada Forest Plan Amendment) that amended FLRMPs. Prepare a NEPA “tracking log” to list all relevant project level NEPA decisions.
3. Identify any requirements from laws, regulations, and policies that could influence proposed designations. Summaries of the relevant aspects of these laws, regulations, and policies can be found in Appendix G.

Information compiled from the above three sources comprises the Forest motor vehicle management direction". This provides the current direction on managing motor vehicles on the Forest. “White papers” and “strategy documents” that have not been incorporated into FLRMPs or included in applicable project NEPA decisions should **not** be included as part of the Forest motor vehicle management direction.

<b>Designate team leader, assemble needed information, identify gaps in data, prioritize, develop action plans, and begin field surveys</b>
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Designate a team leader to be responsible for coordinating the unit’s 5-step process from beginning to end. Collect and review existing resource issue and use conflict information for the evaluation of mapped roads, trails, and off-route use areas. Refer to the OHV Use Evaluation Forms in Appendix I to document the required information in 36 CFR Part 212 Sec. 55. This information will be used, along with user desires and motor vehicle system design principles, to create proposed actions for environmental analyses.

Avoid collecting new field information except for that which is critical. Collected information will: (1) provide key information for assessing roads, trails, and specifically defined motor vehicle use areas in the Travel Analysis process; (2) provide the basis for environmental analysis and NEPA documentation in Step 4; and (3) facilitate public involvement, review, and communication.

Gaps in information should be identified and prioritized during this step, and should be scheduled for data gathering in Action Plans to meet timelines for environmental analyses (Step 4). Action Plans should list the tasks, dates for completion, responsible staff persons, and costs. Collection of new information would ideally be conducted only on the roads, trails, and areas likely to be in proposed actions (refer to Step 4).

The length of time or timing required for some field and data gathering protocols and consultation can delay the environmental analysis processes if these field surveys are not started until after proposed actions are defined. Such surveys may include **archaeology**; threatened, endangered, and sensitive **plant** and animal **species**; **watershed**; user needs and conflict assessments; and ethnography. Therefore, Forests should assess information gaps during Step 1, prioritize them and begin data gathering to collect missing information. Balance the timing needed for the protocols with the likelihood of particular trails, roads, and areas being included in proposed actions.

**Prioritize resource surveys of data gaps for routes and areas in the following order:**

High priority for resource surveys:

- a. Non-NFS routes or areas needed to connect desirable routes or open areas to existing, approved motor vehicle trails and roads.
- b. Non-NFS routes or areas identified by the Forest as high priority for possible inclusion within the motor vehicle use system.
- c. Non-NFS routes or areas with **heavy or high use** and high resource sensitivity being considered for inclusion in the motor vehicle use system.

Medium priority for resource surveys:

- a. Non-NFS routes or areas with few or no resource conflicts.
- b. Non-NFS routes or areas identified as system needs (i.e., connectors that make the system work).
- c. Non-NFS routes or areas having no connection to existing system roads and trails but being considered for inclusion in the motor vehicle use system.

Low priority for resource surveys:

- a. Routes with low or light use.
- b. Routes with critical resource or other management conflicts that are not likely to be included as part of the motor vehicle use system.
- c. Routes not likely to be considered for motor vehicle use.

**Motor vehicle use definitions:**

- Heavy: 1501 or more motor vehicles per week;
- High: 501 - 1500 motor vehicles per week;
- Medium: 101 - 500 motor vehicles per week;
- Low: 25 - 100 OHV motor vehicles per week;
- Light: fewer than 25 motor vehicles per week.

High priority surveys should be started in **2004**. They have to be completed in time to allow for all necessary consultation with the public and governmental agencies prior to making NEPA decisions about road, trail or area designations.



## **Involve the public**

Public participation and collaboration at the beginning, during, and at the end of the inventory of roads, trails, and areas to build understanding, confidence, accuracy and completeness of final maps. It is critical to involve the public, including motorized and mountain bike recreationists, the environmental community, other forest users, and local and tribal government representatives. The public should be engaged early in the mapping stage to learn the overall route designation process and how and when they can be involved. The public needs to 1) understand the 5-step route designation process, and 2) see examples and validate maps of roads, trails, and areas used by motor vehicles and bicycles, and 3) understand that non-NFS routes and areas that are **not** on GPS maps will be closed by Temporary Forest Orders in Step 2 to prevent resource damage. Notify the public of the final date for review and comment on the inventory.

For units which have designated motor vehicle routes and current prohibitions on cross country travel, non-NFS routes within the restricted zone will not be shown as open to motor vehicle use even if they were included in the inventory of motor vehicle routes in Step 1. These non-NFS routes may be considered for designation during Steps 3 and 4. Collect public comments no later than March 2006.

### **Public Involvement and Communication Objectives:**

1. Prepare Public Involvement and Communications **Plans**.
2. Increase awareness of the 5-step route designation process with recreational user communities including OHV, mountain bike, environmental, hunting and fishing enthusiasts as well as Native Americans, local and tribal governments, and other key contacts, and internal audiences. Clearly establish expectations and roles for the public, and set the stage for public involvement in subsequent steps of the process.
3. Initiate government-to-government consultation with federally recognized tribes.
4. Encourage collaboration in the process to ensure that all non-NFS routes, OHV trails, and off-route use areas used by motor vehicles and bicycles, are identified on the inventory maps.
5. Provide opportunities for interested parties to review and validate the completed Forest inventory maps.
6. Determine which roads and trails are important or are of concern to the public and why.

### Possible Public Involvement activities:

- a. Field trips to look at trails and roads with potential for inclusion in the motor vehicle use system. Field trips or field meetings have been very productive in the past.
- b. Workshops to review existing Forest/District inventory maps, correct inventory information, and add additional routes and areas.

- c. Meetings to brief interested parties on final outcomes of inventories and the next steps in the process.
- d. Volunteers working with inventory teams to assist in locating routes and areas.
- e. Blank Motor Vehicle Use Evaluation Forms (Appendix I) made available to the public for submitting information on roads, trails and off-route use areas.

Possible Communication Activities:

- a. Provide special briefings to visitor information and field-going staffs so they are prepared to answer questions when making public contacts.
- b. Send letters to users and other interested parties advising them of the processes and upcoming public information opportunities.
- c. Send follow-up letters with motor vehicle and bicycle inventory maps to key audiences after inventories are complete.
- d. Create media releases at key points in the inventory process. Publish inexpensive maps in local papers and on Forest websites with thanks for help.
- e. Post information on Forest websites – post initial (before public information meetings) and final (after public information meeting) inventories.
- f. Make personal contacts to key opinion leaders from OHV, mountain biking, environmental, Native American, hunting, fishing and other communities encouraging them to provide information they have.
- g. Make information contacts with motor vehicle users in the field, using simple informational brochures or other one-page information tools.
- h. Make presentations at group/organization meetings, and other community meetings.
- i. **Brief key elected officials** (County Supervisor, Sheriff, etc.), individually at first, and then at public meetings (e.g., board of supervisor meetings).
- j. Brief tribes at agreed upon formats (e.g., tribal council meetings).
- k. Provide information at popular gathering places for Forest users (e.g., local equipment dealers, etc.).
- l. Establish SO/District office displays with comment card opportunities. Include inventory map that visitors can draw on to indicate missing trails/areas.

## Step 2

### Processes:

- Prepare Temporary Forest Order maps.
- Issue Temporary Forest Orders.
- Involve the public.

### Decision:

- Prohibit cross country travel of motor vehicles and bicycles off roads, trails, and areas.

### Products:

- Temporary Forest Orders.
- Temporary Forest Orders posted at District and Forest Supervisor Offices, major trailheads, and on Forest websites.

### Due Date:

- No later than June 2006.

The goal of Step 2 is to stop cross-country travel and associated resource damage by motor vehicles (and bicycles where resource damage has occurred -- see Note 2, page 24) until designations are completed. This will be done through the issuance of Temporary Forest Orders prohibiting motor vehicle use off existing roads, trails, and off-route use areas. These Forest Orders will be effective for one year, but may be renewed for a year or two subject to concurrence by the Office of General Council and Regional Office approval until the completion of Step 5 (September 2008). Forests that have already have Orders in place that accomplish this objective may proceed to Step 3.

Step 2 does **not** designate roads, trails, or areas for motor vehicle use, **nor does it close** existing trails, roads, and off-route use areas. Closure of existing roads and trails should be done with separate Forest Orders as per direction from the Regional Forester – see Appendix J. Step 2 Temporary Forest Orders prohibit new cross-country motor vehicle travel and do not affect whether specific routes or areas will become NFS roads, NFS trails and areas open for motor vehicle use. It is critical that the public be involved in this process to understand and hopefully support the temporary action to protect resources from impacts from cross-country travel while the designation procedures, including environmental analyses, proceed.

### Prepare Temporary Forest Order maps

Compare existing motor vehicle and bicycle closures and restrictions against the inventory maps that were prepared in Step 1. Use this comparison to identify roads, trails, or off-route use areas that are currently closed to motor vehicle or bicycle travel by Forest Order or regulation. Do not include these roads, trails and areas on the Step

2 Temporary Forest Order map. Not being on the Step 2 Temporary Forest Order map does not prohibit these roads, trails and areas from being considered for designation in Step 3. If the Forest Plan has restrictions or prohibitions on motor vehicle or bicycle travel that have not been implemented by Forest Order or regulation, they need to be implemented by a separate Forest Order prior to the Step 2 Forest Order as per direction from the Regional Forester (Appendix J).

The administrative record to support Step 2 Orders must show that a temporary closure will help stop or prevent off-route resource damage and is needed until road, trail, and area designation decisions under the new travel management regulation 36 CFR 212 are made and implemented. The administrative record must have photographs of resource damage off and on non-NFS roads and non-NFS trails and brief specialist statements explaining why the Forest Order is needed and why now. Data should be available from sources such as OHV monitoring, OHV or watershed restoration projects, or other interdisciplinary team work. This information should demonstrate that resource damage from motor vehicles and bicycles off system roads and trails is occurring or will occur.

A Categorical Exclusion (CE), Category 1 (FSH 1909.19, Ch. 30, section 31.12) may be used to satisfy the NEPA requirement to prohibit cross country travel off existing roads and trails. The CE should be documented in a Decision Memo. Proposed Forest Orders, maps, CEs, specialist reports, photographs, and the supporting administrative record should be sent to the Regional Office Recreation Staff for review and coordination with the Office of the General Council to determine whether legal and procedural requirements have been met before beginning the public notification process.

If the decision is made to issue a Step 2 Temporary Forest Order, the public should be notified 30-60 days in advance of signing the Order and the Decision Memo by legal notice in the newspaper of record, by letter, by news release, and by a notice posted on the Forest website.

**Note 1:** Non-highway legal OHVs may use NFS roads where the use is not prohibited by State law (i.e., roads not classified as highways – see glossary) or Forest Orders as provided in 36 CFR Part 261 Sec. 54. In the case of State highways or county roads within National Forests, State laws and regulations or county ordinances apply.

**Note 2:** Bicycles can use all routes and areas open to motor vehicles, all NFS trails outside Wilderness, except the PCT and where the use is not otherwise prohibited, and all NFS roads where the use is not otherwise prohibited.

Issue maps with Temporary Forest Orders.

### **Issue Temporary Forest Orders**

A sample Temporary Forest Order that prohibits motor vehicle use (including mountain bikes if justified) off mapped roads, trails, and areas is in Appendix K. Prohibitions may

be contained in a single Temporary Forest Order or in several orders covering multiple geographic areas of Forests. The goal is to write simple orders that are easy for the public to understand and follow. If bicycles are to be included in the orders, photographs of bicycle damage and statements from specialists are required to support the proposed Order.

Existing orders that restrict or prohibit vehicle types or use on roads, trails, and areas may remain in effect unless there are conflicts with new orders. Existing orders should be noted on the maps for the new orders that prohibit use off roads, trails, and areas. Issuing new orders is better than trying to supplement existing orders. If old Forest Orders are superseded by or are in conflict with new Temporary Forest Orders, the old orders need to be rescinded. Rescinded orders should be listed by number and date of issue at the end of the new orders. Temporary Forest Orders must be signed by Forest Supervisors. Deputy or Acting Forest Supervisors can only sign Forest Orders if they have current Delegations of Authority specifically allowing the signing of Forest Orders on the dates the orders are signed.

Motor vehicle and bicycle use off roads, trails, and off-route use areas can be prohibited under 36 CFR Part 261 Sec. 56, referencing 36 CFR Part 212 Sec. 52(b).

### **Involve the public**

1. The regulations at 36 CFR Part 212 Sec. 52 require that the public shall be provided opportunities to participate in the designation of NFS roads, NFS trails and areas on NFS lands and revising those designations. Advanced notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act. Allow 30 to 60 days for public comment.
2. Make clear to all interested parties that Temporary Forest Orders prohibiting cross-country travel are steps in moving from "Open" zones of use (cross-country use okay) to "Restricted" zones of use (motor vehicle use only on roads, trails, and areas). These orders do not affect whether specific routes or areas will become parts of designated motor vehicle use systems.
3. Continue government-to-government consultation with local governments and federally recognized tribes; focus on preparation of route and use area maps and issuance of Temporary Forest Orders.
4. Once the maps for Temporary Forest Orders are validated, begin collaboration with the public to develop citizen's proposals for motor vehicle use systems, identifying the most important to least important trails and roads. These can be helpful in guiding resource surveys.
5. In addition to contacting OHV, mountain bike, environmental, and other recreation interests, communications should include contacts with the Private Organizations listed in the National MOU for Sportsmen's Access to Federal Public Lands (Appendix N).

Possible Communication Activities:

- a. Use methods similar to those described under Step 1.
- b. Publish tabloid (i.e., inexpensive newsprint type) version maps of open routes and areas and make them available at local off-route use areas and to local user groups.
- c. Post Temporary Forest Orders and associated maps at Forest offices, public contact stations, major trailheads, and on Forest websites.
- d. Provide maps and information packets to Forest Service law enforcement and other public contact field staffs.

## Step 3

### Processes:

- Identify Recreation Niche (vision) and recreation demands.
- Use Travel Analysis to identify proposed changes to the Forest transportation system and areas.
- Fill out Motor Vehicle Use Evaluation Forms (Appendix I) for proposed trails and roads.
- Complete Motorized Mixed Use Analysis
- Determine management of full size vehicle routes (trails vs. roads.)
- Complete surveys of information and data gaps.
- Involve the public including Tribal Consultation.

### Decision:

- None

### Products:

- Maps of proposed changes to the forest transportation system and areas on NFS lands
- Description of Forest Recreation Niche (vision) on motor vehicle use.
- Completed Motor Vehicle Use Evaluation Forms.
- Completed Motorized Mixed Use Analyses.
- Completed surveys of data gaps.

### Due Dates:

- Complete surveys by September 2006.
- Complete maps of proposed OHV system by September 2006.
- Collect public comments on maps by February 2007.

The purpose of Step 3 is to make “plan to project” (pre-NEPA) evaluations of changes needed to the Forest transportation system and areas on NFS lands open to public motor vehicle use through the travel analysis process. Involve the public in travel analysis. Collaborate with the public in developing proposed changes to the Forest transportation system and areas on NFS lands for public motor vehicle use. These are the best opportunities to resolve conflicts that often bog down NEPA analysis.

### Identify Recreational Niche (vision) and recreation demands

Roads, and to a lesser extent motor vehicle trails, provide access to destinations and other recreational activities such as camping, hunting, fishing and hiking. They also, along with areas, provide the recreational opportunity of driving or riding through the Forest. It may be as simple as viewing scenery while driving, riding ATV's with your family and friends or enjoying the challenge of a difficult 4WD or motorcycle trail. Recreational niche is a function of two things, public demand for an activity or

opportunity and the capacity of the forest resources to provide and sustain the activity. In addition, the availability of similar opportunities on adjacent National Forests and non-NFS lands should be considered.

Methods to identify recreation opportunities that various routes provide can include user needs assessments, satisfaction surveys, or comparisons to OHV system guidelines, such as providing long distance touring routes, loop routes, routes of varying difficulty, and routes that access desirable destinations such as scenic or historical locations. However, since motor vehicle user desires range widely, it is often desirable to conduct user workshops designed to allow users to describe the types of motor vehicle experiences they enjoy or would enjoy if the opportunities were available.

See the national Motor Vehicle Route and Area Designation Guide (<http://fswweb.wo.fs.fed.us/rhwr/ohv/index.shtml>), pages 13 – 16 and the national User Needs Assessment Guide (<http://fswweb.wo.fs.fed.us/rhwr/ohv/hd/ohv-users.shtml>) for additional information and tools to help identify the Forest's niche.

### **Use Travel Analysis to Identify Proposals for Change**

The Travel Management Rule (36 CFR Part 212 Sec. 50 (b)) provides for the incorporation of previous travel management decisions made under other authorities. The Travel Management Rule does not require reconsideration of past travel management decisions. So rather than starting from scratch, the baseline for travel analysis is the existing NFS roads, NFS trails, and areas on NFS lands where public motor vehicle use is allowed. It would include the current classes of vehicles and the time of year they are authorized to operate on a particular road, trail or area. Travel analysis is a pre-NEPA analysis that helps to identify proposals for changes in travel management direction and supports the environmental analysis associated with those proposed actions. The Travel Analysis process is described in the Motor Vehicle Route and Area Designation Guide produced by the National OHV Implementation Team. Travel analysis should rely primarily on existing data. Travel analysis will incorporate and replace the existing roads analysis process. However, roads analysis that has been completed in the past several years is probably still accurate and may need only minor review to address transportation access issues. The main issues for travel analysis are probably: 1) recreational use of motor vehicles on NFS roads, NFS trails and areas of NFS lands, 2) the addition of non-NFS roads and trails to the NFS transportation system, 3) motorized mixed use, 4) reduction of road maintenance levels, and 5) elimination of un-needed NFS roads and trails. On many units, non-NFS roads and trails are present due to past "Open" motor vehicle designations. Analysis of these non-NFS roads and trails may result in proposals for changes to the Forest transportation system and areas to better meet the Forest niche for public motor vehicle use.

Weigh the benefits of providing high quality sustainable access and recreation opportunities against resource and use conflicts, as well as unit budgets and costs of maintaining systems. Ideally, motor vehicle use systems should consist primarily of roads, trails, and areas with little or no need for mitigation of conflicts or resource



impacts. However, they may include some segments that require higher levels of mitigation or conflict resolution. Loops and features that enhance and provide high quality road and trail experiences are important elements of good recreational motor vehicle use systems, and are needed to help keep people and their vehicles on roads and trails. The Forest Service Trails Handbook (FSH 2309.18) and Joe Wernex's *Off-Highway Motorcycle & ATV Trails Guidelines for Design, Construction, Maintenance and User Satisfaction* (available online at [www.ama-cycle.org](http://www.ama-cycle.org)) are good references.

Put priority for designation in this 5-step procedure on existing motor vehicle routes and areas rather than new ones. Minor route relocation or new construction may be necessary to make desirable systems or reduce resource impacts. Consider new routes with major resource issues or use conflicts in separate analyses unless they are integral to motor vehicle use system proposals.

**Remember, the intent of designation is to stop resource damage from cross-country motor vehicle use and redirect that use to existing, sustainable roads, trails, and areas.** Proposals that require changes in FLRMP direction should be deferred for consideration in future planning activities. Remember to document information for future analyses.

**Fill out the Motor Vehicle Use Evaluation Forms (Appendix I) for trails and roads that are potential additions or changes to the NF transportation system**

Changes or additions to the NFS roads, NFS trails and areas of NFS lands currently authorized for public motor vehicle use must be evaluated using the criteria in 36 CFR Part 212 Sec. 55. The Motor Vehicle Use Evaluation Forms in Appendix I provide a format to guide and document the results of these evaluations. Road designation criteria differs from the criteria for trails or areas, so two separate forms are proposed. The criteria involve review of resource issues, use conflicts, recreation, and resources available to manage roads, trails, or areas that are potential additions to the motor vehicle use system.

There will be two results from the completed evaluation forms. The first is groups of roads, trails, and areas ranging from little or no resource impacts or use conflicts, to high resource impacts or use conflicts, and all the necessary combinations in between. The second is ratings of recreation opportunities provided by the roads, trails and areas ranging from low to high. The differences among various types of motor vehicles should be recognized and the different impacts they may have on various resources, public safety, and use conflicts should be considered when designating roads, trails and areas.

**Answering the questions on the Motor Vehicle Use Evaluation Forms (Appendix I):**

If the answer to the first question on the evaluation form regarding Management Area Direction is [**no**], amendment of the FLRMP would probably be required to be able to consider those roads, trails, or areas any further. Only those portions of roads, trails, or

areas that are in compliance with current direction would normally be considered at this time, since this designation process should be limited to implementing existing direction in order to meet the Regional timeline.

Units may have additional “go/no go” direction in their FLRMPs that should also be considered here. The OHV Management Direction prepared in Step 1 is unique to each National Forest. Evaluation teams will need to recommend what constitutes “go/no go” direction and what will be considered in the resource portions of the evaluations.

The other questions on the evaluation form are more open-ended. They require judgment as to the magnitude of impacts and the difficulty of implementing possible mitigations. The forms should be filled out in an interdisciplinary setting. Evaluators should be familiar with the information available for the functional areas they represent.

After answering questions resource impacts and use conflicts on the evaluation forms, rank the levels as minimal, moderate, high, very high, or unacceptable. For each of the issues, identify possible mitigations. Also, identify probable success of mitigation measures and relative costs and difficulties to implement them.

### **Recreation Opportunities**

Answer the recreational opportunity questions on the Motor Vehicle Use Evaluation Forms to determine how the routes provide access to Forest locations or facilities, promote user enjoyment, provide ranges of opportunities consistent with Forest settings, National recreation policy, and Forest maintenance capabilities. After answering these questions, rank motor vehicle recreation opportunity as high, moderate, or low on the form.

### **Complete Motorized Mixed Use Analysis**

Motorized mixed use analysis should be completed on all NFS roads proposed for use by non-highway legal vehicles prior to environmental analysis. This can be fairly simple or complex depending on the issues involved. Follow the guidelines in EM-7700-30 “Guidelines for Engineering Analysis of Motorized Mixed Use on National Forest System Roads”

(<http://fswweb.sdtcd.wa.fs.fed.us/programs/eng/Motorized%20Mixed%20Use/index.shtml>)

### **Determine 4-wheel drive trails vs. roads**

Address whether 4-wheel drive routes will be managed as roads or trails in proposed actions. These routes are defined as roads, since they are over 50 inches wide, unless they are identified and managed as trails. Roads are expected to accommodate full-sized vehicles such as 4-wheel drives. However, 4-wheel drive routes can be managed as either roads or trails. When deciding whether to manage 4-wheel drive routes as roads or trails, consider:

1. Will routes be used, either now or in the foreseeable future, by full-sized vehicles for resource management activities (e.g., access to wildlife water improvements, access for range or timber management activities, and/or access for controlled burning or other fire pre-suppression activity) or to achieve other Forest objectives (e.g., recreation access or gathering Forest products)? If so, managing routes as roads may be most appropriate.
2. What are the planned difficulty levels of the routes? If routes are planned as “More Difficult” or “Most Difficult”, then desired OHV experiences are unlikely to be maintained while also accommodating other full-sized vehicle access, so designation as trails may be appropriate.
3. Will routes provide special use or administrative access for full-sized vehicles, but recreational access is planned to be limited to ATVs and/or motorcycles? In this case, designation as roads with access by the public restricted to ATVs and/or motorcycles is probably most appropriate.

### **Complete surveys of information and data gaps**

Assessments of currently available resource information and data gaps needed to conduct Travel Analysis (Step 3) and eventually environmental analyses (Step 4) should have begun in Step 1 and be completed by the end of Step 3. Once Non-NFS roads, trails, and areas that are likely to be proposed as additions to the public motor vehicle system are identified, surveys for resource effects should be completed. Resource surveys should also include existing designated routes and areas that have not previously been surveyed for the effects of motor vehicle use.

The primary focus of resource surveys should be on cultural resources; threatened, endangered, and sensitive plant and animal species; and watershed. These surveys must be started as early as possible. They should be completed several months prior to September 2006 to comply with the MOI signed by the Regional Forester. They have to be completed in time to allow for all necessary consultation with interested parties, including tribes and other governmental agencies, prior to making NEPA decisions about NFS road, trail or area designations in Step 4.

### **Involve the public**

**Public Participation:** It is extremely important to have public participation in this identification process. This is an opportunity to identify, clarify, and validate use conflicts as well as to identify and prioritize roads, trails, and areas that are important to motor vehicle users. Encourage a broad spectrum of the public (OHV, sportsmen, Native American, environmental, and non-motorized interests) to participate in workshops to identify issues, prioritize evaluation criteria, and recommend proposed additions or changes to the motor vehicle use system. These opportunities will increase public understanding and support for proposed actions. Set the sideboards and try to position the Forest Service as a coach in the public process. Provide opportunities for the public to identify roads, trails and areas to be included in and excluded from proposed actions. Trade-offs may be necessary. Field trips/meetings provide a forum for good

communications and are recommended to aid this process. While the Forest Service is ultimately responsible for formulating proposed actions for analyses, the public should play meaningful parts in their development.

The regulation at 36 CFR Part 212 Sec. 52 requires that the public shall be provided opportunities to participate in the designation of NFS roads, NFS trails and areas on NFS lands. Advanced notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions (36 CFR Part 212 Sec. 52). Having resource and use conflict issues identified should help to keep public discussions focused on where opportunities for motor vehicle use exist, and what possible mitigations may be necessary, particularly if the public has been involved with the earlier steps of the process and understands the constraints.

1. Provide interested parties the opportunity to:
  - help frame the motor vehicle use evaluation criteria that will be used to select proposed designated routes;
  - participate in applying the motor vehicle use evaluation criteria;
  - recommend and comment on proposed designations.
  - comment on draft Road Management Objectives (RMO's) (see Appendix P, and refer to FSH 7709.55 ch. 33) and draft Trail Management Objectives (TMOs) (see Appendix O, and refer to <http://www.fs.fed.us/r3/measures/Inventory/trails%20files/TRACS/TMO/>).
  - share concerns and thoughts with other interested parties.
2. Clearly communicate Forest Service expectations of the public's role in the process.
3. Increase awareness of factors considered in managing motor vehicle routes/areas.
4. Provide information on proposed designations.
5. Insure interested parties are aware of the next steps in the procedure.

#### Possible Public Involvement Activities:

- a. Provide public workshops either in the field or in the office (or combinations of both) focused on validating criteria used to evaluate routes/areas for selection.
- b. Hold field trips to look at trails, roads, and off-route use areas. These have been very productive in the past.
- c. Provide public workshops where interested members of the public can apply information compiled during resource/use conflict evaluations and route inventories to help develop possible alternatives for proposed routes/areas.
- d. Provide a series of public workshops where small groups work together to provide comments.
- e. During public workshops, whenever possible, use groups with mixed interests to generate the widest possible discussions of alternatives.
- f. Provide a series of more traditional public meetings to gather comments on proposals and analyses.

- g. Provide information on Forest websites and, if practical, provide opportunities to comment electronically through websites or e-mail.

Possible Communications Activities:

- a. Continue ongoing communications strategies. Provide information on factors that will influence selection of designated routes/areas, and on proposed designations. When providing information on proposed designations, include rationales for not selecting routes/areas (i.e., areas not being proposed for designation). Be sure to include information on how the R-5 designation process is linked and integrated to the national designation process.
- b. Develop one-page handouts outlining where Forests are in the designation procedures, what criteria will be used in shaping proposals (or were used to shape proposals), and summaries of next steps. Make handouts available at audience contact points.
- c. Provide a series of public field trips to discuss factors influencing selection of designated routes/areas and how they would be applied in determining whether or not existing routes/areas would be proposed for designation.
- d. Continue government-to-government consultation with federally recognized tribes; focus on criteria and factors influencing proposed designation.

## Step 4

### **Processes:**

- Scoping & Issue Identification.
- Develop and Analyze Alternatives.
- Public and Tribal Consultation.
- Prepare NEPA documentation; goal is for EA level.

### **Decision:**

- Additions and changes to the motor vehicle use system.
- Designation of public motor vehicle use routes and areas.

### **Products:**

- NEPA documents.
- Decisions by Responsible Officials.

### **Due Date:**

- Signed NEPA Decisions no later than December 2007.

The purpose of this step is to conduct the environmental analyses and prepare NEPA (hopefully EAs) documents to determine what changes and which additional roads, trails, and areas will be included in the public motor vehicle use system. Interdisciplinary teams should conduct the analyses.

### **Complete analyses and prepare NEPA documents**

Proposed actions will include only proposed additions or changes to the public motor vehicle use system. Existing NFS roads, NFS trails, and areas on NFS lands do not need to be included unless there is a change in the type of motor vehicle use or the time when use is permitted. It is important that clear purpose and need statements be articulated with proposed actions. A sample statement of purpose and need can be found in Appendix Q.

Although proposed actions are not required to include existing NFS roads, NFS trails and motorized areas on NFS lands, cumulative effects analyses need to consider all motor vehicle use in the analysis area. If there are resource impacts or use conflicts on existing NFS roads or NFS trails, changes to resolve those impacts or conflicts may be included as parts of proposed actions.

The mandatory direction in 36 CFR Part 212 Sec. 55 provides the criteria that must be considered when designating motor vehicle use. Note that there are general criteria that apply to all motor vehicle use (36 CFR Part 212 Sec. 55(a)) and specific criteria for trails and areas (36 CFR Part 212 Sec. 55(b)) and for roads (36 CFR Part 212 Sec. 55(c)). The Motor vehicle Use Evaluation Forms in Appendix I are designed to address this direction.

The numbers of routes and the sizes of areas in proposed actions need to be carefully considered. Factors to consider include:

- complexity of issues;
- numbers of issues;
- use conflicts;
- ability to do site-specific analyses;
- large enough areas to make trade-offs where trail or road closures are needed.

Care should be taken to analyze logical parts of the motor vehicle use system (such as contiguous geographic areas). Be careful not to split decisions involving connected actions. Consult with Forest environmental coordinators before determining the scope of the analysis.

Information gathered in previous steps and evaluations of current and potential impacts from motor vehicle use should provide the basis for any additional needed route/area analyses. Consider FLRMP direction, relevant laws, regulations, and policies, and significant issues identified during scoping in environmental analyses.

Non-NFS routes proposed for inclusion in public motor vehicle use system should be evaluated for the effects of becoming NFS roads or NFS trails with motor vehicle designations. All Forests are required to have (and should have previously completed) Forest-Scale Roads Analyses. The responsible official has the discretion to determine whether additional analysis at a lower scale than a Ranger District or an administrative unit is needed and the amount of detail that is appropriate and practicable for travel analysis.

Step 4 of the national Motor Vehicle Route and Area Designation Guide (<http://fswb.wo.fs.fed.us/rhwr/ohv/index.shtml>) provides additional insight into managing the environmental analysis process during route and area designation. Some questions and answers regarding OHV designations and NEPA are presented in Appendix R. The Sierra Nevada Forest Plan Amendment and mountain bikes are also discussed.

#### **Involve the public**

1. The regulation at 36 CFR Part 212 Sec. 52 requires that the public shall be provided opportunities to participate in the designation of NFS roads, NFS trails and areas on NFS lands. Advanced notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions (36 CFR Part 212 Sec. 52). Posting **legal notices** announcing the **start** of scoping in newspapers of record is highly recommended. Public notification and comment are also required prior to closures of system roads (Annual FS Appropriation Direction, e.g., Public Law 108-108).

2. **Thirty day** comment periods, required under the new appeal rule (36 CFR 215), should be provided for **draft** Environmental Assessments that designate OHV routes.
3. Solicit comments on proposed actions during required scoping periods (36 CFR 215.3).
4. Inform interested parties of route and area designation decisions, rationales for them, and appeal opportunities (36 CFR 215.7).
5. Continue government-to-government consultation with federally recognized tribes.

Possible Communications Activities:

- a. Continue ongoing communications activities. Focus these activities on providing notifications to interested parties of NEPA decisions and the analyses that support them.
- b. Initiate normal communications associated with environmental analysis processes.



## Step 5

**Processes:**

- Publish Motor Vehicle Use Map(s)
- Issue a Forest Order if necessary.
- Implement decisions in NEPA.
- Monitor and propose revisions as necessary
- Involve the public.

**Decision:**

None.

**Products:**

- Motor Vehicle Use Map(s)
- Forest Orders (if necessary).
- User maps of designated OHV system.
- Installed signs and kiosks at trailheads and Forest road and trail entry points.
- Implemented mitigation/design measures.

**Due Date:**

- September 2008.

### Publish Motor Vehicle Use Map(s)

Under the new travel management rule, a Motor Vehicle Use Map (MVUM) is the principle enforcement tool for motor vehicle regulations. A Motor Vehicle Use Map must be consistent with national standards governing content, presentation, and data and must be available both on paper and electronically. When designation is complete, users and other interested parties should be able to retrieve the Motor Vehicle Use Map for each administrative unit or Ranger District from agency websites.

Motor Vehicle Use Maps cannot be published for a unit smaller than a Ranger District. Rescind existing Temporary Forest Orders issued under Step 2, and if a MVUM is not published, issue new Forest Orders pursuant to the authority at 36 CFR Part 261 Sec. 50 that reflect current motor vehicle prohibitions until roads, trails and areas are designated for the entire unit and a MVUM can be published. Forest Orders should list common names and Forest Service numbers of all designated routes and areas. Orders should also contain any restrictions on types of vehicles, seasons of use, or other restrictions, and the routes and areas they affect. Old Forest Orders that are superseded by or in conflict with new orders need to be rescinded. These rescinded orders should be listed by numbers and dates of issue at the end of the new Forest Orders. Forest Supervisors must sign Forest Orders. Deputy or Acting Forest Supervisors can only sign Forest Orders if they have current Delegations of Authority specifically allowing signing of Forest Orders on the dates the orders are signed. Once

the MVUM is published, the prohibition at 36 CFR Part 261 Sec 13 becomes effective and Forest Orders are no longer required to make designations enforceable.

### **Implement decisions in NEPA**

Prepare new or revised Road Management Objectives (RMOs) and Trail Management Objectives (TMOs). Refer to Appendix O for TMOs and <http://www.fs.fed.us/r3/measures/Inventory/trails%20files/TRACS/TMO/> and to Appendix P for RMOs.. Add newly designated NFS roads and NFS trails to the Forest Transportation Atlas and record as transportation facilities. Assign NFS road and NFS trail numbers and enter them into the INFRA database. Areas open motor vehicle use should be named, have boundary descriptions, and be entered into the INFRA database. Areas are not entered into the Forest Transportation Atlas. They are documented on the Motor Vehicle Use Map which is a part of the Forest Travel Management Atlas. Although not required, Area Management Objectives are recommended to be documented and kept on file.

Display public motor vehicle systems on Forest recreation and OHV maps. Install signing and kiosks that are appropriate for allowed uses at trailheads and road and trail entry points into the Forest. Implement any required mitigation or design measures identified in decision documents. Take actions, including user education, facility engineering, and law enforcement, to prevent motor vehicle use off designated roads, trails, and areas.

### **Monitor and propose revisions**

Travel planning is an iterative process. Once route and area designation is implemented, the effects of use on the public motor vehicle system should be monitored to address new and changing conditions that might prompt future proposals for additions or changes to the system. Monitoring should be consistent with the applicable FLRMP, as appropriate and feasible (36 CFR Part 212 Sec. 57). Designations of NFS roads, trails and areas may be revised as needed to meet changing conditions (36 CFR Part 212 Sec. 54).

### **Involve the public**

Insure users are aware that motor vehicle route designation is now accomplished by the Motor Vehicle Use Map and that signing is not required for enforcement. Similar to Fish and Game regulations, the responsibility to know which routes and areas are designated and any restrictions, becomes the user's responsibility.

#### Possible Public Involvement Activities:

- a. Seek partnership opportunities to maintain routes.
- b. Organize volunteer OHV Host Patrols to provide user-to-user contact regarding designated OHV Systems.

Possible Communications Activities:

- a. Provide high-quality maps of designated OHV routes/areas to interested parties.
- b. Post motor vehicle use maps at Forest offices, public contact stations, major trailheads, and Forest websites.
- c. Make motor vehicle use maps available for display at local businesses.
- d. Provide maps and information packets for law enforcement and other public contact field staffs.
- e. Install signs and kiosks at trailheads and Forest road and trail entry points.

# Appendix A

## List of Preparers

OHV Route Designation Guidebook Team:

- Rich Farrington, Regional Route Designation Program Leader
- Don Trammell, Trails Unlimited Enterprise
- Lester Lubetkin, Recreation Officer, Eldorado NF
- Kathy Mick, Regional Trails Specialist
- Bill Fodge, Regional Roads Operations and Maintenance Engineer
- Colleen O'Brien, Forest Recreation Planner, Inyo NF
- Diana Craig, Regional Ecologist
- Rose Miksovsky, Office of General Counsel
- Craig Snider, Regional Environmental Coordinator

Contributors:

- Gary Barnett, Patrol Captain, LTBMU and Tahoe NF
- Judy Rose, Regional Heritage Program Leader
- Jeff Moulton, Office of General Counsel
- Doug Farris, TEAMS Enterprise

# Appendix B

## MEMORANDUM OF INTENT between

### USDA Forest Service and The Off-Highway Motor Vehicle Recreation Commission, and The Division of Off-Highway Motor Vehicle Recreation of the Department of Parks and Recreation

This MEMORANDUM OF INTENT is hereby entered into by and between the USDA Forest Service, The California Off-Highway Motor Vehicle Recreation Commission, and the Off-Highway Motor Vehicle Recreation (OHMVR) Division of the California Department of Parks and Recreation (Department).

### RECITALS

WHEREAS, the Forest Service, the Commission, and the Department want to provide responsible and consistent management of off-highway vehicle (OHV) use, high quality recreation opportunities, protect the environment, and minimize conflicts in recreational uses; and

WHEREAS, Forest Service regulation and policy direct agency managers to designate legal OHV roads, trails and areas; and

WHEREAS, California Code of Regulations, title 14, section 4970.01 provides that the OHV grants and cooperative agreements program was established to:

. . . [P]rovide financial assistance to cities, counties, appropriate districts, and agencies of the United States to develop and maintain high quality OHV recreation areas, protect the environment, and provide adequate public safety services; and

WHEREAS, California Public Resources Code section 5090.02 provides in part:

- (a) The Legislature finds that off-highway motor vehicles are enjoying an ever-increasing popularity in California and that the indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on the environment, wildlife habitats, native wildlife, and native flora.
- (b) The Legislature hereby declares that effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement are essential for ecologically balanced recreation; and

WHEREAS, the common goal of the Forest Service, the Commission, and the Department is to improve management of OHV use on National Forest System lands in California by accomplishing the following:

- Inventory and map classified and unclassified OHV trails and unclassified roads;
- Inventory and map off-route impact areas;
- Designate trails, roads, and specifically defined open areas for OHV use;
- Develop Forest Orders to protect natural resources and aid law enforcement; and
- Establish consistent standards for OHV signs and user maps; and

WHEREAS, the activities contemplated by this Memorandum of Intent are necessary for the conservation of natural resources and the proper enforcement of OHV laws and policies; and

WHEREAS, the Commission has provided \$2,000,000 to the Forest Service for an OHV route inventory in August 2001, and \$1,800,000 in February 2003 from the OHV Grants and Agreements program as the first step toward designating OHV routes; and

WHEREAS, the Forest Service, the Commission, and the Department recognize that future funding is necessary and will need to be available in order for the Forest Service to complete the inventory process; and

WHEREAS, funding for the route designation process is subject to future appropriations by the California Legislature and allocation of funds for grants by future Commissions; and

WHEREAS, the Commission establishes policy for the direction of the OHMVR Division of the Department of Parks and Recreation and the program and desires to provide such policy direction to reflect its intent with regard to the future applications of funding for the improvement of management of OHV use on National Forest System lands; and

WHEREAS, the Forest Service acknowledges the need to maintain trails to provide OHV opportunities and to protect the environment;

NOW THEREFORE BE IT RESOLVED THAT subject to the recitations above, the Forest Service, the Commission and the Department agree as follows:

### **FOREST SERVICE GOALS AND RESPONSIBILITIES**

A. Dependent on future funding, the Forest Service hereby sets the following goals:

1. The Regional Forester will:
  - a. Provide leadership and assistance to Forest Supervisors on inventory, designation, Forest Orders, public involvement, signs, and user maps of OHV recreation opportunities; and
  - b. Provide criteria for environmental analysis and route designation to Forest Supervisors.
2. Forest Supervisors will:
  - a. Follow the 5-step OHV Route Designation Strategy Pyramid (Attachment 1) for OHV route designations;
  - b. Designate OHV roads, trails, and specifically defined open areas for motorized wheeled vehicles on maps of the 19 National Forests in California according to the timetable in Attachment 1 except that the Klamath and Shasta-Trinity National Forests will have one year added to each due date in Attachment 1 and B.2;
  - c. Involve the public in identifying, reviewing, inventorying, and designating OHV routes, and in identifying and restoring off-route impact areas; and
  - d. Continue to maintain trails to provide OHV opportunities and to protect the environment.

B. Dependent on future funding, the Forest Service shall commit to the following deliverables:

1. The Regional Forester will:
  - a. Develop a ("How To") Guidebook on identification, mapping, inventory, designation, Forest Orders, and public involvement by December 2003;
  - b. Develop a Regional Regulation to enforce restrictions on OHV travel under 36 Code of Federal Regulations section 261, Subpart C, and propose a national Regulation under 36 Code of Federal Regulations section 261, Subpart A;
  - c. Review and respond to Forest Supervisors' requests for adjustments in deliverables needed due to emergencies and unforeseen circumstances; and
  - d. Provide written semi-annual accomplishment reports with maps and details on these deliverables to the Commission and the California Department of Parks and Recreation.

2. The Forest Supervisors will:
  - a. Enter data on unclassified OHV roads and trails, classified OHV trails, and specifically defined open areas in the 19 National Forests in California from GPS data or maps into the Forest Service Geographic Information System (GIS) and INFRA database by December 2005;
  - b. Identify, map, and enter data on off-route impact areas into GIS by December 2005;
  - c. Conclude public comments on the completeness of OHV route inventories by March 2006;
  - d. Complete issuing Forest Orders prohibiting wheeled vehicles off of mapped roads, trails, and any specifically defined open areas by June 2006;
  - e. Propose designated OHV routes and any specifically defined areas for motorized wheeled vehicles by September 2006;
  - f. Conclude public comment on proposed OHV route designations by February 2007;
  - g. Conduct analysis of roads and trails as required by Forest Service policy;
  - h. Designate OHV roads, trails, and any specifically defined open areas for motorized wheeled vehicles on maps of the 19 National Forests in California by December 2007; and
  - i. Issue Forest Orders, signs, and user maps to enforce designations by September 2008.

## **COMMISSION AND DEPARTMENT RESPONSIBILITIES**

A. Subject to future appropriations by the California Legislature and allocation of funds by future Commissions, the Commission and the Department intend as follows:

1. The Commission intent shall be to:

Provide \$2,000,000.00 each year for 4 years starting in 2003-2004 and ending in 2006-2007, to assist the Forest Service in completing the mapping, designation, Forest Orders, signs, and maps of OHV routes on the 19 National Forests in California as outlined above.



2. The OHMVR Division of the Department of Parks and Recreation will:  
Provide necessary support to implement Commission decisions.

### **MUTUAL UNDERSTANDING**

The Forest Service, the Commission, and the Department mutually agree and understand as follows:

1. Type of Work. The work described herein does not involve any ground disturbing work and does not require compliance with State Soil Conservation Guidelines/Standards or State Wildlife Habitat Protection Plans.
2. Sufficient Funding. The parties to this agreement understand that full funding each year is contingent on appropriation of sufficient funding by the California Legislature and the decision of future Commissions to allocate funds. If sufficient funding is not provided or is substantially reduced, this agreement may be renegotiated.
3. Freedom of Information Act. Any information furnished to the Forest Service under this Memorandum of Intent is subject to the Freedom of Information Act (5 U.S.C. § 552).
4. Participation in Similar Activities. This Memorandum of Intent in no way restricts the Forest Service, the Commission, and/or the Department from participating in similar activities with other public or private agencies, organizations, or individuals.
5. Commencement/Expiration/Termination. This Memorandum of Intent takes effect upon the signature of an authorized representative of the Forest Service, the Commission, and the Department and shall remain in effect for 5 years from the date of execution. This Memorandum of Intent may be extended or amended upon the written request of either the Forest Service, the Commission, or the Department and the subsequent written concurrence of the others. The Forest Service, the Commission, and/or the Department may terminate this Memorandum of Intent by providing the other parties with 60-day written notice.
6. Responsibilities of the Parties. The Forest Service, the Commission, and the Department and their respective agencies and offices will be responsible for coordination and implementation of their own activities in pursuing the objectives identified in this Memorandum of Intent. By signing this document, each party represents that it will carry out its separate activities in good faith and in a coordinated and mutually beneficial manner.

7. Contact Information.

Off Highway Motor Vehicle Recreation Commission – Chairman  
Off Highway Motor Vehicle Recreation Division – Deputy Director  
US Forest Service – Regional OHV Coordinator,

8. No Obligation of Funds. Nothing in this Memorandum of Intent shall obligate the Forest Service, the Commission, or the Department to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service, the Commission, and the Department will require the execution of separate agreements and will be contingent upon the yearly appropriation of funding by the California Legislature and approval by future Commissions. Such activities must be independently authorized by the appropriate statutory authority. This Memorandum of Intent does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

9. No Establishment of Responsibility. This Memorandum of Intent is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any other person or entity.

10. Authority to Execute. Each party to this Memorandum of Intent represents and warrants that the person who has signed this Memorandum of Intent on its behalf is duly authorized to do so, and to bind that party to the terms and conditions of this Memorandum of Intent.

IT IS SO AGREED.

CALIFORNIA OFF-HIGHWAY MOTOR  
VEHICLE RECREATION COMMISSION

By: /s/ Paul Spitler  
Paul J. Spitler, Chairman

CALIFORNIA DEPARTMENT OF  
PARKS AND RECREATION

By: /s/ Ruth Coleman  
Ruth Coleman, Acting Director

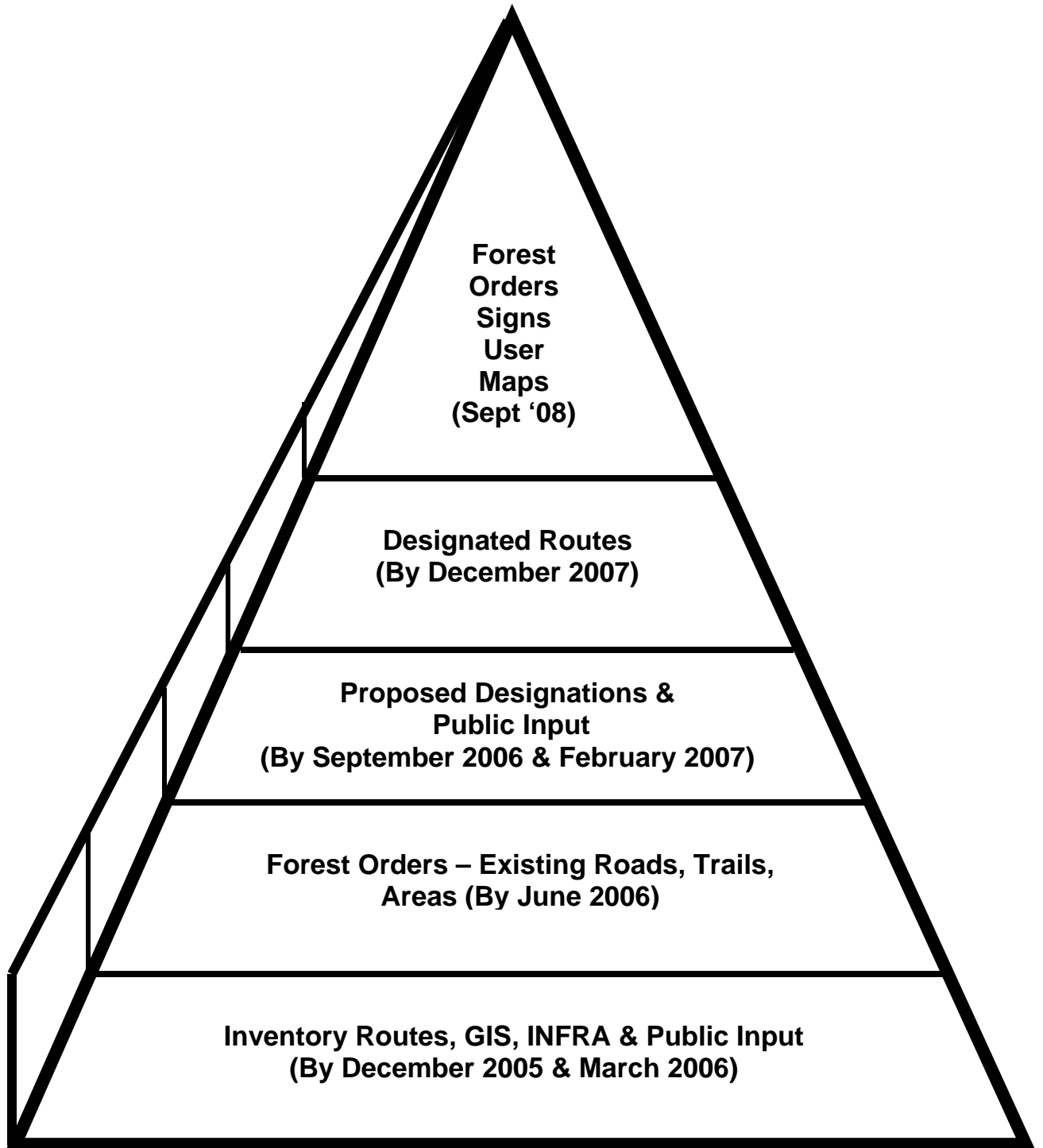
**USDA FOREST SERVICE**

By: /s/ Jack A. Blackwell  
Jack A. Blackwell, Regional Forester, R5

By: /s/ Bert Kulesza  
for Jack G. Troyer, Regional Forester, R4

August 11, 2003  
Date

# OHV Route Designation Strategy



# Appendix C

## Executive Order 11644--Use of off-road vehicles on the public lands

**Source:** The provisions of Executive Order 11644 of Feb. 8, 1972, appear at 37 FR 2877, 3 CFR, 1971-1975 Comp., p. 666, unless otherwise noted.

An estimated 5 million off-road recreational vehicles--motorcycles, minibikes, trial bikes, snowmobiles, dune-buggies, all-terrain vehicles, and others--are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands--often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity--has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), it is hereby ordered as follows:

**Section 1. Purpose.** It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

**Sec. 2. Definitions.** As used in this order, the term:

- (1) "public lands" means (A) all lands under the custody and control of the Secretary of the Interior and the Secretary of Agriculture, except Indian lands, (B) lands under the custody and control of the Tennessee Valley Authority that are situated in western Kentucky and Tennessee and are designated as "Land Between the Lakes," and (C) lands under the custody and control of the Secretary of Defense;
- (2) "respective agency head" means the Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, and the Board of Directors of the Tennessee Valley Authority, with respect to public lands under the custody and control of each;
- (3) "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and
- (4) "official use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

[Sec. 2 amended by Executive Order 11989 of May 24, 1977, 42 FR 26959, 3 CFR, 1977 Comp., p. 120]

**Sec. 3. Zones of Use.** (a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following--

- (1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.
- (2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.
- (3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.
- (4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

(b) The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.

(c) The limitations on off-road vehicle use imposed under this section shall not apply to official use.

**Sec. 4. *Operating Conditions.*** Each respective agency head shall develop and publish, within one year of the date of this order, regulations prescribing operating conditions for off-road vehicles on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

**Sec. 5. *Public Information.*** The respective agency head shall ensure that areas and trails where off-road vehicle use is permitted are well marked and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use. He shall seek cooperation of relevant State agencies in the dissemination of this information.

**Sec. 6. *Enforcement.*** The respective agency head shall, where authorized by law, prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations. To the extent permitted by law, he may enter into agreements with State or local governmental agencies for cooperative enforcement of laws and regulations relating to off-road vehicle use.

**Sec. 7. *Consultation.*** Before issuing the regulations or administrative instructions required by this order or designating areas or trails as required by this order and those regulations and administrative instructions, the Secretary of the Interior shall, as appropriate, consult with the Secretary of Energy and the Nuclear Regulatory Commission.

[Sec. 7 amended by Executive Order 12608 of Sept. 9, 1987, 52 FR 34617, 3 CFR, 1987 Comp., p. 245]

**Sec. 8. *Monitoring of Effects and Review.*** (a) The respective agency head shall monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designations of areas or other actions taken pursuant to this order as necessary to further the policy of this order. (b) The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.

**Sec. 9. *Special Protection of the Public Lands.*** (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence. (b) Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order.

[Sec. 9 added by Executive Order 11989 of May 24, 1977, 42 FR 26959, 3 CFR, 1977 Comp., p. 120]

# Appendix D

## **PART 212—TRAVEL MANAGEMENT**

### **Section Contents**

#### **Subpart A—Administration of the Forest Transportation System**

- [§ 212.1 Definitions.](#)
- [§ 212.2 Forest transportation program.](#)
- [§ 212.3 Cooperative work.](#)
- [§ 212.4 Construction and maintenance.](#)
- [§ 212.5 Road system management.](#)
- [§ 212.6 Ingress and egress.](#)
- [§ 212.7 Access procurement by the United States.](#)
- [§ 212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.](#)
- [§ 212.9 Principles for sharing use of roads.](#)
- [§ 212.10 Maximum economy National Forest System roads.](#)
- [§§ 212.11-212.19 \[Reserved\]](#)
- [§ 212.20 \[Reserved\]](#)
- [§ 212.21 Pacific Crest National Scenic Trail.](#)

#### **Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use**

- [§ 212.50 Purpose, scope, and definitions.](#)
- [§ 212.51 Designation of roads, trails, and areas.](#)
- [§ 212.52 Public involvement.](#)
- [§ 212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.](#)
- [§ 212.54 Revision of designations.](#)
- [§ 212.55 Criteria for designation of roads, trails, and areas.](#)
- [§ 212.56 Identification of designated roads, trails, and areas.](#)
- [§ 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.](#)

#### **Subpart C—Use by Over-Snow Vehicles**

- [§ 212.80 Purpose, scope, and definitions.](#)
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### **Subpart A—Administration of the Forest Transportation System**

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**Authority:** 16 U.S.C. 551, 23 U.S.C. 205.

#### **§ 212.1 Definitions.**

For the purpose of this part the following terms, respectively, shall mean:

*Administrative unit.* A National Forest, a National Grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System.

*Area.* A discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.

*Chief.* The Chief, Forest Service, Department of Agriculture.

*Construction engineering.* All work and expense of setting out, controlling, inspecting, and measuring the construction or reconstruction of a forest transportation facility including:

- (1) Construction surveys to establish line and grade for the work, to control the work, and to measure quantities;
- (2) Redesigning, adjusting, and changing the plans, specifications, and materials to meet conditions;
- (3) Inspecting, directing, and controlling operations for compliance with plans and specifications;
- (4) Inspecting, testing, and accepting materials and equipment to be installed in the work; and
- (5) Inspecting, measuring, and accepting completed work.

*Designated road, trail, or area.* A National Forest System road, a National Forest System trail, or an area on National Forest System lands that is designated for motor vehicle use pursuant to §212.51 on a motor vehicle use map.

*Federal airport funds.* Discretionary funds available for airfields in National Forests under section 6(b)(3) of the Act of May 13, 1946 (60 Stat. 173), as amended; 49 U.S.C. 1105(b)(3).

*Forest road and trail funds.* Funds authorized or appropriated for the purpose of carrying out the provisions of section 205 of the Act of August 27, 1958 (72 Stat. 907), as amended; 23 U.S.C. 205.

*Forest road or trail.* A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

*Forest transportation atlas.* A display of the system of roads, trails, and airfields of an administrative unit.

*Forest transportation facility.* A forest road or trail or an airfield that is displayed in a forest transportation atlas, including bridges, culverts, parking lots, marine access facilities, safety devices, and other improvements appurtenant to the forest transportation system.

*Forest transportation system.* The system of National Forest System roads, National Forest System trails, and airfields on National Forest System lands.

*Maintenance.* The upkeep of the entire forest transportation facility including surface and shoulders, parking and side areas, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

*Motor vehicle.* Any vehicle which is self-propelled, other than:

- (1) A vehicle operated on rails; and
- (2) Any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

*Motor vehicle use map.* A map reflecting designated roads, trails, and areas on an administrative unit or a Ranger District of the National Forest System.

*National Forest System.* As defined in the Forest Rangeland Renewable Resources Planning Act, the "National Forest System" includes all National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tennant Act (50 Stat. 525, 7 U.S.C. 1010–1012), and other lands, waters or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system.

*National Forest System road.* A forest road other than a road which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

*National Forest System trail.* A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

*Off-highway vehicle.* Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

*Over-snow vehicle.* A motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow.

*Preconstruction engineering.* All work and expense of preparing for construction or reconstruction of a forest transportation facility including:

- (1) Engineering and economic investigations, studies, and reports;
- (2) Reconnaissance surveys;
- (3) Preliminary surveys;
- (4) Preliminary location surveys;
- (5) Soils, foundations, and materials investigations, surveys, and tests;
- (6) Preliminary and final designs;
- (7) Preliminary and final plans, drawings, specifications, and estimates of quantities and cost;
- (8) Final location surveys staked on the ground; and
- (9) Rights-of-way surveys, plans, and descriptions.

*Regional forester.* A regional forester of the Forest Service.



*Road.* A motor vehicle route over 50 inches wide, unless identified and managed as a trail.

*Road and trail 10 percent funds.* Funds available from the permanent appropriation "Roads and Trails for States" under the Act of March 4, 1913 (37 Stat. 843), as amended; 16 U.S.C. 501.

*Road construction or reconstruction.* Supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.

*Road Decommissioning.* Activities that result in the stabilization and restoration of unneeded roads to a more natural state.

*Temporary road or trail.* A road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization that is not a forest road or trail and that is not included in a forest transportation atlas.

*Trail.* A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.

*Travel management atlas.* An atlas that consists of a forest transportation atlas and a motor vehicle use map or maps.

*Unauthorized road or trail.* A road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528, 531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a, et seq., 42 Atty. Gen. Op. No. 7, Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 66 FR 3216, 3217, Jan. 12, 2001; 70 FR 68287, Nov. 9, 2005]

## **§ 212.2 Forest transportation program.**

(a) *Travel management atlas.* For each administrative unit of the National Forest System, the responsible official must develop and maintain a travel management atlas, which is to be available to the public at the headquarters of that administrative unit.

(b) *Forest transportation atlas.* A forest transportation atlas may be updated to reflect new information on the existence and condition of roads, trails, and airfields of the administrative unit. A forest transportation atlas does not contain inventories of temporary roads, which are tracked by the project or activity authorizing the temporary road. The content and maintenance requirements for a forest transportation atlas are identified in the Forest Service directives system.

(c) *Program of work for the forest transportation system.* A program of work for the forest transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

(d) A program of work for the forest transportation system shall be developed each fiscal year in accordance with procedures prescribed by the Chief.

[62 FR 58654, Oct. 30, 1997, as amended at 66 FR 3216, 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

## **§ 212.3 Cooperative work.**

(a) Cooperative agreements for all projects which involve financial contributions from cooperators shall be negotiated, approved, and executed in accordance with procedures prescribed by the Chief.

(b) Cooperative funds contributed in advance shall be deposited in the United States Treasury to the credit of the Forest Service Cooperative Fund authorized by the Act of June 30, 1914 (38 Stat. 430), as amended; 16 U.S.C. 498, or the Act of March 3, 1925 (43 Stat. 1132), as amended; 16 U.S.C. 572, which deposits will be made available for expenditure from the appropriation "Cooperative Work, Forest Service." If a State, county or other governmental agency is unable to contribute funds under the Act of March 3, 1925, as amended, in advance but is able to pay its share subsequent to performance of the work, the subsequent payment of such funds will be deposited to the credit of the Forest Service appropriation from which the expenditures were made or to appropriations for similar purposes currently available at the time of deposit.

[25 FR 6360, July 7, 1960. Redesignated at 62 FR 58654, Oct. 30, 1997]

## **§ 212.4 Construction and maintenance.**

(a) Construction and maintenance work on forest transportation facilities with appropriated funds shall be directed to what is necessary and economically justified for protection, administration, development, and multiple-use management of the federally owned lands and resources served.

(b) Preliminary engineering and the construction and maintenance of forest transportation facilities shall be performed by force account or let to contract, unless otherwise approved by the Chief. The contract method shall be employed for roads and trails in accordance with section 205(c) of the Act of August 27, 1958 (72 Stat. 907); 23 U.S.C. 205, and for all other facilities when it is advantageous and in the interest of the Government.

(c) No construction work shall be started by force account or let to contract until all necessary rights of way have been secured, and approved by the Attorney General, if required, and cooperative agreements, if any, approved and executed.

## **§ 212.5 Road system management.**

(a) *Traffic rules.* Rules set forth under 36 CFR part 261 and this section shall apply to all National Forest System roads under the jurisdiction of the Forest Service except when in conflict with written agreement.

(1) *General.* Traffic on roads is subject to State traffic laws where applicable except when in conflict with designations established under subpart B of this part or with the rules at 36 CFR part 261.

(2) *Specific.* The following specific traffic rules shall apply unless different rules are established in 36 CFR part 261.

(i) The load, weight, length, height, and width limitations of vehicles shall be in accordance with the laws of the States wherein the road is located. Greater or lesser limits may be imposed and these greater or lesser limits shall be established as provided in 36 CFR part 261.

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR part 261. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, all-terrain vehicles, 4-wheel drive vehicles, off-highway vehicles, and trailers. Types of traffic may include but are not limited to groupings such as commercial hauling, recreation, and administrative.

(iii) Roads, or segments thereof, may be closed to all vehicle use as provided in 36 CFR part 261.

(iv) Additional rules may be imposed as provided in 36 CFR part 261.

(b) Road system—(1) *Identification of road system.* For each national forest, national grassland, experimental forest, and any other units of the National Forest System (§212.1), the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

(2) *Identification of unneeded roads.* Responsible officials must review the road system on each National Forest and Grassland and identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails. Decommissioning roads involves restoring roads to a more natural state. Activities used to decommission a road include, but are not limited to, the following: reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to the road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders, scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes, or other methods designed to meet the specific conditions associated with the unneeded road. Forest officials should give priority to decommissioning those unneeded roads that pose the greatest risk to public safety or to environmental degradation.

(c) *Cost recovery on National Forest System roads.* The Chief may determine that a share of the cost of acquisition, construction, reconstruction, improvement, or maintenance of a road, or segment thereof, used or to be used for commercial hauling of non-Federal forests products and other non-Federal products, commodities and materials, should be borne by the owners or haulers thereof. The Chief may condition the permission to use a road, or segment thereof, upon payment to the United States of the proportionate share of the cost and bearing proportionate maintenance as determined to be attributable to the owner's or hauler's use in accordance with §212.9. This condition to use roads would apply where the owners or haulers:

(1) Have not shared in the cost of acquisition, construction, reconstruction, or improvements, and

(2) Have not made contributions to pay their proportionate share of the costs.

(d) *Maintenance and reconstruction of National Forest System roads by users—*(1) *Maintenance.* The Chief may require, but not in conflict with an existing permit, easement, contract, or other agreement, the user or users of a road, including purchasers of Government timber and other products, to maintain the roads in a satisfactory condition commensurate with the particular use requirements of each. The maintenance to be borne by each user shall be proportionate to total use and no individual user shall be required to perform or bear the costs of maintenance other than that commensurate with his use.

(2) *Reconstruction.* The Chief may require, but not in conflict with an existing permit, easement, contract, or other agreement, the user or users of a road to reconstruct it when, at the time the use is requested, reconstruction is determined to be necessary to accommodate his use.

(3) *Deposits in lieu of performance.* If the maintenance or reconstruction cannot be so provided or if the Chief determines that maintenance or reconstruction by a user would not be practical, the Chief may require that sufficient funds be deposited by the user to provide his portion of the total maintenance or reconstruction costs. Deposits made to cover maintenance or reconstruction of roads shall be used for the purposes deposited, except that:

- (i) Deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates, and
  - (ii) Unexpended balances upon accomplishment of the purposes for which deposited shall be transferred to miscellaneous receipts or refunded.
- (e) *Deposits for making delayed payments to cooperator.* Any fees or other collections received by the Chief under the terms of an agreement or other document providing for delayed payments to the Government's cooperator for use of a road shall be placed in a fund available for making these payments.  
 [39 FR 27649, July 31, 1974, as amended at 42 FR 2957, Jan. 14, 1977; 43 FR 20007, May 10, 1978; 62 FR 58654, Oct. 30, 1997. Redesignated and amended at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

## **§ 212.6 Ingress and egress.**

- (a) *Policy in acquiring and granting access.* To assure effective protection, management, and utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent, the Chief shall as promptly as is feasible obtain needed access thereto and shall grant appropriate access across National Forest and other lands and easements administered by the Forest Service to intermingled or adjacent landowners. Construction, reconstruction or maintenance of a road or highway requires written authorization.
- (b) *Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service.* Actual settlers and other persons residing within the National Forests and other areas administered by the Forest Service shall be permitted ingress and egress over the same and use of existing National Forest System roads and trails in order to reach their homes and to utilize their property: Provided, such ingress and egress or use shall conform to rules and regulations governing the protection and administration of the lands and the roads or trails to be used.
- (c) *Others.* Entering upon the National Forests and other lands administered by the Forest Service and use of existing National Forest System roads and trails shall be permitted for all proper and lawful purposes subject to compliance with rules and regulations governing the lands and the roads or trails to be used.  
 (25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885; as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)  
 [40 FR 52611, Nov. 11, 1975, as amended at 42 FR 2957, Jan. 14, 1977. Redesignated at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001]

## **§ 212.7 Access procurement by the United States.**

- (a) *Existing or proposed forest roads that are or will be part of a transportation system of a State, county, or other local public road authority.* Forest roads that are or will be part of a transportation system of a State, county, or other local public road authority and are on rights-of-way held by a State, county, or other local public road authority may be constructed, reconstructed, improved, or maintained by the Forest Service when there is an appropriate agreement with the State, county, or other local public road authority under 23 U.S.C. 205 and the construction, reconstruction, improvement, or maintenance is essential to provide safe and economical access to National Forest System lands.
- (b) *Acquisition of easements and rights of use.* Except as otherwise provided in the regulations of this part, easements for road and trail construction across non-Federal lands and easements or rights of use over non-Federal roads and trails will be acquired in the name of the United States of America and its assigns. The easements or rights of use may be acquired by purchase, condemnation, donation, or as a reciprocal for permits or easements for roads or trails to be constructed or for easements over or permits to use existing roads or trails.
- (c) *Methods of compensation for easements and rights of use acquired by the United States.* Compensation in negotiated acquisitions may be:
- (1) By payment from appropriated funds;
  - (2) Pursuant to reservation in the grant of easement to the United States whereby the grantor reserves the right to require haulers of Federal timber or other Federal products over the road conveyed or thereafter constructed by the grantor to make payments to the grantor in accordance with the terms of the reservation;
  - (3) By granting reciprocal rights; or
  - (4) By a combination of these methods.
- (d) *Cooperative construction and use agreements.* Where areas, partly lands administered by the Forest Service and partly private or other ownership are undeveloped or inadequately developed by roads, the Chief will, to the extent feasible and advantageous to the United States, join in planning, constructing, reconstructing, improving, maintaining, and using an adequate road system on the basis of each party bearing the proportion of the cost attributable to the anticipated benefits as set forth in §212.9.

(e) *Condemnation.* Where access across non-Federal land or over a non-Federal road or trail cannot be obtained through negotiations with reasonable promptness, condemnation will be undertaken.

(f) *Access over non-Federal land and use of non-Federal roads or trails on a temporary basis.* The Chief may negotiate a temporary agreement for access over non-Federal land and for use of an existing non-Federal road or trail where there is immediate need for temporary access for limited purposes that can be economically met by such procedure, or where the foreseeable need does not justify the expenditures necessary to provide a permanent road or trail.

(g) *Use and control of interests in roads, trails, and easements acquired by the United States.* Interests in roads, trails, and easements acquired by the United States shall be under the control of the United States, subject to approved reservations, limitations and other provisions set forth in the easement, permit, or other indenture. This control by the United States may include restricting or conditioning the use of the interest owned by the United States in the road, trail, or easement where necessary.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974; 62 FR 58654, Oct. 30, 1997. Redesignated and amended at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

## **§ 212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.**

(a) *Permission to construct or use roads across lands and assignable easements owned by the United States and administered by the Forest Service.* If a reciprocal benefit is needed by the United States, permission to construct or use a road across lands and across assignable easements owned by the United States and administered by the Forest Service will be conditioned, except as provided in this section, for any applicant who seeks a permit to construct or use a road across the same, upon the grant to the United States of a reciprocal benefit. Such benefit shall bear:

(1) A reasonable relation to the management of lands administered by the Forest Service; and

(2) A value substantially similar to the value of the estate or interest in lands or easements applied for. In those instances where the values of the interests needed by the United States exceed those applied for by the applicant, the additional interests required by the United States will be acquired as provided in §212.7(b) and (c). Where values needed by the applicant exceed those needed by the United States, the difference in values will be determined under principles set forth below and in §§212.5(c) and 212.9. If a reciprocal benefit is not needed by the United States, or the applicant shows good cause why the reciprocal benefit needed by the United States cannot or should not be granted by him, or the applicant declines to grant the reciprocal benefit requested by the United States or if a bona fide emergency exists, permission to construct or use a road across lands owned by the United States may be conditioned for any applicant upon reasonable charges and all other terms and conditions required by the Chief to protect the interests of the United States. Permits for such road construction or use will be non-exclusive and will be conditioned upon compliance with their terms and conditions and with the rules and regulations governing the protection and administration of the lands and those applicable to such roads.

(b) [Reserved]

(c) *Replacement of prior grants.* (1) Upon application to the Chief, an easement under the Act of March 3, 1899 (30 Stat. 1233, 16 U.S.C. 525), shall be replaced by an easement under paragraph (d) of this section.

(2) Upon application to the Chief, an easement shall be granted under paragraph (d) of this section as a replacement for any stipulations for ingress and egress issued under the Act of June 4, 1897 or permit or other document evidencing the applicant's right to use a road: *Provided*, The applicant has met the requirements for obtaining such easement as set forth in paragraph (d) of this section.

(d) *Easements for roads crossing lands or easements administered by the Forest Service.* (1) Applications for permanent or temporary easements for specified periods or otherwise to be granted under the Act of October 13, 1964 (78 Stat. 1039, 16 U.S.C. 533), over lands or easements administered by the Forest Service, or over roads thereon will be approved by the Chief for those applicants who have conveyed or provided appropriate easements over roads, assignable easements and lands owned or controlled by them to the United States of America and its assigns and who have already constructed, or will, as scheduled by agreement, construct their proportionate share of the road or road system of which the segments described in the application are parts. The Chief, after approval of the application and the grant of the easement, will cause the same to be entered in the records of the Forest Service, and delivered to the applicant.

(2) Notwithstanding paragraph (d)(1) of this section, the Chief may grant to the applicant a permanent or temporary easement for specified periods or otherwise upon such exchange of easements or share-cost arrangement or other reasonable consideration as he may deem appropriate.

(3) The Chief may grant to a State or local subdivision thereof; easements for roads over lands or easements administered by the Forest Service and over roads thereon, when the roads thereon or roads to be constructed

thereon will serve said lands and are, or will become a part of the road system maintained by such State or local subdivision for general public use: *Provided*, That easements shall not be granted under authority of this act (78 Stat. 1089), 16 U.S.C. 533 which may be granted under the Highway Act (72 Stat. 916, 23 U.S.C. 317), as amended. The easements shall contain such provisions, terms, and conditions as the Chief may determine are necessary to retain and protect the interests needed by the United States.

(4) All instruments affecting permanent interests in land executed pursuant to this paragraph (d) of this section shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from public domain shall be furnished by the Chief to the Secretary of the Interior.

(5) The Chief may terminate any easement granted under the provisions of the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 534),

(i) By consent of the owner of the easement,

(ii) By condemnation, or

(iii) Upon abandonment after nonuse by the owner of the easement for a period of 5 years. Before any easement is terminated for nonuse or abandonment, the owner of the easement must be given notice and, upon his request made within 60 days after receipt of the notice, a hearing in accordance with the provisions of 36 CFR part 211, subpart B. (25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)

[30 FR 5476, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974; 48 FR 28638, June 23, 1983. Redesignated and amended at 62 FR 58654, Oct. 30, 1997]

## **§ 212.9 Principles for sharing use of roads.**

The use of roads under arrangements for sharing costs or performance shall be in accordance with the following:

(a) *Road improvement.* Use of a road for commercial hauling, except occasional or minor amounts, will be conditioned upon improvement or supplemental construction of the road to safety and economically serve the contemplated use, unless the Chief determines that the safety and economy of the established and foreseeable use by the United States, its users and cooperators will not be impaired by the use for which application is being made. With the consent of the Chief the applicant may deposit funds in the estimated amount required for the improvements or supplemental construction in lieu of performance. Such funds will be used by the Forest Service to do the planned work. The cost of the improvements or supplemental construction will be taken into account in determining any otherwise required contribution to cover the proportionate share of the cost of road acquisition, construction, reconstruction or improvement attributable to the use.

(b) *Corresponding benefits.* Corresponding benefits which may be accepted by the Chief for sharing road use will be those which bear a reasonable relation to the management of lands administered by the Forest Service. They may be in the form of:

(1) Deposit of funds with the Forest Service for use in paying the cost of road construction, reconstruction, or improvement to be borne by the user;

(2) The grant of a reciprocal right of substantially similar value to the road use sought;

(3) Construction, reconstruction, or improvement by applicant of a road needed for access to and use of lands administered by the Forest Service; or (4) any combination of these.

(c) *Cost determinations for roads cooperatively constructed under agreements.* When roads are constructed under cooperative agreements to meet mutual needs of the United States and others for access, determinations of the shares of costs to be borne by the United States and the cooperating parties will include consideration of:

(1) The standard of road required for the planned hauling;

(2) The share of planned use;

(3) The location and volume of tributary timber owned by each party and expected to be hauled over the road or roads;

(4) The tributary areas owned or controlled by each party;

(5) Expected use by the public; and

(6) Other appropriate considerations.

(d) *Cost recovery by the United States from others.* When roads are used under permit for commercial hauling instead of under cooperative agreement, any cost to be recovered by the United States will be calculated in proportion to the planned use of the road. The road cost used in such calculation will be the amount or estimated amount expended in the acquisition, construction, reconstruction, and improvement of that capacity of the road required to serve the use needs of all parties that are or reasonably can be expected to use the road. The road costs shall not exceed the replacement value of the road. Such road share-cost payments will be through deposits in advance of use unless the user provides a payment bond satisfactory to the Chief guaranteeing that payments will be made promptly upon billing by the Forest Service.

(e) *Cost sharing with a cooperator.* The costs to achieve the agreed upon road or road system may be met by:

(1) Use of appropriated funds;

- (2) Construction, reconstruction, or improvement of roads or segments of roads by purchasers of products from lands administered by the Forest Service or other users;
- (3) Use of deposits made by cooperator with the Forest Service to cover cooperator's agreed share;
- (4) Agreement with cooperator pursuant to which cooperator does more than his agreed share of constructing, reconstructing, or improving a road and recovers costs incurred in excess of his agreed share by charging purchasers of products from lands administered by the Forest Service an equitable amount within the limits and to the total amount specified in the agreement; or
- (5) A combination of the aforementioned methods.
- (f) *Road maintenance and resurfacing.* Cooperators will share the road maintenance and resurfacing costs under suitable agreements to perform, arrange for performance by others, or by making deposits with the Forest Service which will be used to pay the cost of work necessary to keep such roads in satisfactory condition commensurate with use requirements of each cooperator. No cooperator shall be required to perform or bear such costs other than those occasioned by its individual use. Other users will bear costs in accordance with §212.5(d).
- (g) *Interests to be acquired by the United States in roads or easements therefor.* Where the United States is to bear or share the cost of constructing or improving, or acquiring a road system, a road, or a segment thereof, or acquires an easement therefor, the interest acquired will:
- (1) Be for perpetual use unless the road use falls within the limited classes where temporary roads or roads for limited periods are acceptable;
  - (2) Provide adequately for foreseeable management, protection, and utilization needs of lands administered by the Forest Service and intermingled and adjacent private and public lands and for the use and development of the resources upon which communities within or adjacent to the National Forest are dependent; and
  - (3) not be subject to conditions, reservations, or covenants unrelated to the road use, or which seek or might tend to direct or limit policies and procedures for management of lands administered by the Forest Service.
- (25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)  
 [30 FR 5478, Apr. 16, 1965, as amended at 39 FR 27650, July 31, 1974. Redesignated and amended at 62 FR 58654, Oct. 30, 1997]

### **§ 212.10 Maximum economy National Forest System roads.**

The Chief may acquire, construct, reconstruct, improve, and maintain National Forest System roads within and near the National Forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof and for utilization of the other resources thereof. Financing of such roads may be accomplished—

- (a) By the Chief utilizing appropriated funds,
- (b) By requirements on purchasers of National Forest timber and other products, including provisions for amortization of road costs in contracts,
- (c) By cooperative financing with other public agencies and with private agencies or persons, or
- (d) By a combination of these methods, provided that where roads are to be constructed at a higher standard than the standard—consistent with applicable environmental laws and regulations—that is sufficient for harvesting and removal of National Forest timber and other products covered by a particular sale, the purchaser of the timber and other products shall not be required to bear the part of the cost necessary to meet the higher standard, and the Chief may make such arrangements to achieve this end as may be appropriate.

(25 Stat. 357, 26 Stat. 1103, 30 Stat. 35–36, 1233, 38 Stat. 430, 46 Stat. 1421, 64 Stat. 82, 72 Stat. 885, as amended, 74 Stat. 215, 78 Stat. 1089; 16 U.S.C. 471, 478, 498, 525, 528–531, 532, 538, 551, 572, 23 U.S.C. 101, 205, 40 U.S.C. 257, 258a et seq.; 42 Atty. Gen. Op. No. 7; Comp. Gen. B–65972, May 19, 1947; 40 Comp. Gen. 372; 41 Comp. Gen. 1; 41 Comp. Gen. 576, and 42 Comp. Gen. 590)  
 [30 FR 5479, Apr. 16, 1965. Redesignated at 62 FR 58654, Oct. 30, 1997; 66 FR 3217, Jan. 12, 2001; 70 FR 68288, Nov. 9, 2005]

### **§§ 212.11-212.19 [Reserved]**

### **§ 212.20 [Reserved]**

### **§ 212.21 Pacific Crest National Scenic Trail.**

The Pacific Crest National Scenic Trail as defined by the National Trails Systems Act, 82 Stat. 919, shall be administered primarily as a footpath and horseback riding trail by the Forest Service in consultation with the Secretary of the Interior. The use of motorized vehicles may be authorized by the Federal Agency administering the segment of

trail involved when use of such vehicles is necessary to meet emergencies or to enable landowners or land users to have reasonable access to their lands or timber rights.  
(82 Stat. 919 (16 U.S.C. 1241 *et seq.*))  
[43 FR 20007, May 10, 1978]

## **Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use**

**Authority:** 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

**Source:** 70 FR 68288, Nov. 9, 2005, unless otherwise noted.

### **§ 212.50 Purpose, scope, and definitions.**

(a) *Purpose.* This subpart provides for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36 CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

(b) *Scope.* The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

(c) For definitions of terms used in this subpart, refer to §212.1 in subpart A of this part.

### **§ 212.51 Designation of roads, trails, and areas.**

(a) *General.* Motor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

- (1) Aircraft;
- (2) Watercraft;
- (3) Over-snow vehicles (see §212.81);
- (4) Limited administrative use by the Forest Service;
- (5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (6) Authorized use of any combat or combat support vehicle for national defense purposes;
- (7) Law enforcement response to violations of law, including pursuit; and
- (8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

(b) *Motor vehicle use for dispersed camping or big game retrieval.* In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

### **§ 212.52 Public involvement.**

(a) *General.* The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.

(b) *Absence of public involvement in temporary, emergency closures—*(1) *General.* Nothing in this section shall alter or limit the authority to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B, without advance public notice to provide short-term resource protection or to protect public health and safety.

(2) *Temporary, emergency closures based on a determination of considerable adverse effects.* If the responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area, the responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence. The responsible official shall provide public notice of the closure pursuant to 36 CFR 261.51,

including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

### **§ 212.53 Coordination with Federal, State, county, and other local governmental entities and tribal governments.**

The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart.

### **§ 212.54 Revision of designations.**

Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to §212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in §212.52, the requirements for coordination with governmental entities in §212.53, and the criteria in §212.55, and shall be reflected on a motor vehicle use map pursuant to §212.56.

### **§ 212.55 Criteria for designation of roads, trails, and areas.**

(a) *General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.* In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.

(b) *Specific criteria for designation of trails and areas.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing:

- (1) Damage to soil, watershed, vegetation, and other forest resources;
- (2) Harassment of wildlife and significant disruption of wildlife habitats;
- (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and
- (4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

In addition, the responsible official shall consider:

(5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.

(c) *Specific criteria for designation of roads.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall consider:

- (1) Speed, volume, composition, and distribution of traffic on roads; and
- (2) Compatibility of vehicle class with road geometry and road surfacing.

(d) *Rights of access.* In making designations pursuant to this subpart, the responsible official shall recognize:

- (1) Valid existing rights; and
- (2) The rights of use of National Forest System roads and National Forest System trails under §212.6(b).

(e) *Wilderness areas and primitive areas.* National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

### **§ 212.56 Identification of designated roads, trails, and areas.**

Designated roads, trails, and areas shall be identified on a motor vehicle use map. Motor vehicle use maps shall be made available to the public at the headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as soon as practicable, on the website of corresponding administrative units and Ranger Districts. The motor vehicle use maps shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.



## **§ 212.57 Monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.**

For each administrative unit of the National Forest System, the responsible official shall monitor the effects of motor vehicle use on designated roads and trails and in designated areas under the jurisdiction of that responsible official, consistent with the applicable land management plan, as appropriate and feasible.

### **Subpart C—Use by Over-Snow Vehicles**

**Authority:** 7 U.S.C. 1011(f), 16 U.S.C. 551, E.O. 11644, 11989 (42 FR 26959).

**Source:** 70 FR 68290, Nov. 9, 2005, unless otherwise noted.

## **§ 212.80 Purpose, scope, and definitions.**

The purpose of this subpart is to provide for regulation of use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands. For definitions of terms used in this subpart, refer to §212.1 in subpart A of this part.

## **§ 212.81 Use by over-snow vehicles.**

(a) *General.* Use by over-snow vehicles on National Forest System roads and National Forest System trails and in areas on National Forest System lands may be allowed, restricted, or prohibited.

(b) *Exemptions from restrictions and prohibitions.* The following uses are exempted from restrictions and prohibitions on use by over-snow vehicles:

- (1) Limited administrative use by the Forest Service;
- (2) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (3) Authorized use of any combat or combat support vehicle for national defense purposes;
- (4) Law enforcement response to violations of law, including pursuit; and
- (5) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations.

(c) *Establishment of restrictions and prohibitions.* If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands in §§212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions. In establishing restrictions or prohibitions on use by over-snow vehicles, the responsible official shall recognize the provisions concerning rights of access in sections 811(b) and 1110(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3121(b) and 3170(a), respectively).

## **PART 261—Prohibitions**

### **§ 261.13 Motor vehicle use.**

After National Forest System roads, National Forest System trails, and areas on National Forest System lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District of the National Forest System, and these designations have been identified on a motor vehicle use map, it is prohibited to possess or operate a motor vehicle on National Forest System lands in that administrative unit or Ranger District other than in accordance with those designations, provided that the following vehicles and uses are exempted from this prohibition:

- (a) Aircraft;
- (b) Watercraft;
- (c) Over-snow vehicles;
- (d) Limited administrative use by the Forest Service;
- (e) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (f) Authorized use of any combat or combat support vehicle for national defense purposes;
- (g) Law enforcement response to violations of law, including pursuit;
- (h) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; and
- (i) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

### **261.14 Use by over-snow vehicles.**

It is prohibited to possess or operate an over-snow vehicle on National Forest System lands in violation of a restriction or prohibition established pursuant to 36 CFR part 212, subpart C, provided that the following uses are exempted from this section:

- (a) Limited administrative use by the Forest Service;
- (b) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (c) Authorized use of any combat or combat support vehicle for national defense purposes;
- (d) Law enforcement response to violations of law, including pursuit;

- (e) Use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations; and
- (f) Use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

### **261.15 Use of vehicles off roads.**

It is prohibited to operate any vehicle off National Forest System, State or County roads:

- (a) Without a valid license as required by State law.
- (b) Without an operable braking system.
- (c) From one-half hour after sunset to one-half hour before sunrise unless equipped with working head and tail lights.
- (d) In violation of any applicable noise emission standard established by any Federal or State agency.
- (e) While under the influence of alcohol or other drug;
- (f) Creating excessive or unusual smoke;
- (g) Carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person or property.
- (h) In a manner which damages or unreasonably disturbs the land, wildlife, or vegetative resources.
- (i) In violation of State law established for vehicles used off roads.

### **PART 251—Land Uses**

The Travel Management Rule made changes to definitions for “Forest road or trail” and “National Forest System road” only in this Part.

### **PART 295—Use of Motor Vehicles Off National Forest System Roads**

This Part was Removed by the Travel Management Rule.

# Appendix E

## 36 CFR Parts 212, 251, 261, and 295 Summary, Background and Public Comments

Wednesday,  
November 9, 2005

### Part IV Department of Agriculture

Forest Service  
36 CFR Parts 212, 251, 261,  
and 295  
Travel Management;  
Designated Routes and  
Areas for Motor Vehicle  
Use; Final Rule

68264 Federal Register / Vol. 70,  
No. 216 / Wednesday, November 9,  
2005 / Rules and Regulations  
DEPARTMENT OF AGRICULTURE  
Forest Service  
36 CFR Parts 212, 251, 261, and  
295  
RIN 0596-AC11  
Travel Management; Designated  
Routes and Areas for Motor  
Vehicle  
Use

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is revising regulations regarding travel management on National Forest System lands to clarify policy related to motor vehicle use, including the use of off-highway vehicles. This final rule requires designation of those roads, trails, and areas that are open to motor vehicle use.

**Appendix E**  
**Route Designation Guidebook**

Designations will be made by class of vehicle and, if appropriate, by time of year. The final rule will prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations. The clear identification of roads, trails, and areas for motor vehicle use on each National Forest will enhance management of National Forest System lands; sustain natural resource values through more effective management of motor vehicle use; enhance opportunities for motorized recreation experiences on National Forest System lands; address needs for access to National Forest System lands; and preserve areas of opportunity on each National Forest for nonmotorized travel and experiences. The final rule is consistent with provisions of Executive Order 11644 and Executive Order 11989

regarding off-road use of motor vehicles on Federal lands.

**EFFECTIVE DATE:** This rule is effective December 9, 2005.

**ADDRESSES:** The rulemaking record for this final rule contains all the documents pertinent to this rulemaking. These documents are available for inspection and copying at the office of the Director, Recreation and Heritage Resources Staff, USDA, Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, except holidays. Those wishing to inspect or copy these documents are encouraged to call Jerry Ingersoll, Recreation and Heritage Resources staff, at (202) 205-0931 beforehand to facilitate access to the building.

#### FOR FURTHER INFORMATION

**CONTACT:** Jerry Ingersoll, Recreation and Heritage Resources Staff, (202) 205-0931.

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#### 1. Background

##### Travel Management Program

Forest Service regulations at 36 CFR part 212 governing administration of the forest transportation system and regulations at 36 CFR part 295 governing use of motor vehicles off National Forest System (NFS) roads are combined and clarified in this final rule as part 212, Travel Management, covering the use of motor vehicles on NFS lands. These regulations implement Executive Order (E.O.) 11644

(February 8, 1972), "Use of Off-Road Vehicles on the Public Lands," as amended by E.O. 11989 (May 24, 1977).

These Executive orders direct Federal agencies to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

Nationally, the Forest Service manages approximately 300,000 miles of NFS roads open to motor vehicle use, and about 133,000 miles of NFS trails.

Only a portion of the trails are open to motor vehicles. This transportation system ranges from paved roads designed for passenger cars to single-track trails used by dirt bikes. Many roads designed for high-clearance vehicles (such as log trucks and sport utility vehicles) also allow use by all-terrain vehicles (ATVs) and other off-highway vehicles (OHVs) not normally found on city streets. Almost all NFS trails serve nonmotorized users, including hikers, bicyclists, and equestrians, alone or in combination with motorized users. NFS roads often accept nonmotorized use as well. In addition to this managed system of roads and trails, many National Forests contain user-created roads and trails. These routes are concentrated in areas where cross-country travel by motor vehicles has been allowed, and sometimes include dense, braided networks of criss-crossing trail. There has been no comprehensive national inventory of user-created routes (and continuing proliferation of such routes has made a definitive inventory difficult), but they are estimated to number in the tens of thousands of miles. Wilderness areas are closed to motor vehicles by statute. On some National Forests, and portions of others, motor vehicles are restricted by order to the established system of roads and trails. On other Forests, cross-country travel is not currently restricted.

*Need for Revised Rule*

Most National Forest visitors use motor vehicles to access the National Forests, whether for recreational sightseeing; camping and hiking; hunting and fishing; commercial purposes such as logging, mining, and grazing; administration of utilities and other land uses; outfitting and guiding; or the many other multiple uses of NFS lands. For many visitors, motor vehicles also represent an integral part of their recreational experience. People come to National Forests to ride on roads and trails in pickup trucks, ATVs, motorcycles, and a variety of other conveyances. Motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests—in the right places, and with proper management. Current regulations at 36 CFR part 295, which provide for allowing, restricting, or prohibiting motor vehicle

travel, were developed when OHVs were less widely available, less powerful, and less capable of cross-country travel than today's models. The growing popularity and capabilities of OHVs demand new regulations, so that

**68265 Federal Register** / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations the Forest Service can continue to provide these opportunities while sustaining the health of NFS lands and resources.

From 1982 to 2000, the number of people driving motor vehicles off road in the United States increased over 109 percent (“Outdoor Recreation for 21st Century America: A Report to the Nation, The National Survey on Recreation and the Environment,” p. 37 (H. Cordell, 2004)). Recent decades have seen like advances in the power, range, and capabilities of OHVs. Whole new classes of vehicles have been introduced by manufacturers and are growing in popularity. From 1997 to 2001, the number of ATVs in use increased by almost 40 percent (statement by Dr. Edward J. Heiden at Consumer Products Safety Commission Field Hearing, June 5, 2003). These advances expand opportunities for Americans to enjoy Federal lands. However, the magnitude and intensity of motor vehicle use have increased to the point that the intent of E.O. 11644 and E.O. 11989 cannot be met while still allowing unrestricted cross-country travel. Soil erosion, water quality, and wildlife habitat are affected. Some National Forest visitors report that their ability to enjoy quiet recreational experiences is affected by visitors using motor vehicles. A designated and managed system of roads, trails, and areas for motor vehicle use is needed. Current regulations prohibit trail construction (§ 261.10(a)) and operation of vehicles in a manner damaging to the land, wildlife, or vegetation (§ 261.13(h)). However, these regulations have not proven sufficient to control proliferation of routes or environmental damage. This insufficiency is due in part to the nature of OHV travel. The first vehicle driving across a particular meadow may not harm the land. However, by the time 50

vehicles have crossed the same path, there may be a user-created trail and lasting environmental impacts. Determining which particular vehicle caused the damage can sometimes represent a challenge to law enforcement officers.

In addition, the line between highway vehicles and OHVs has blurred. Vehicles created for specialized off-road use, such as military vehicles, are now marketed and purchased as family cars. Some States have recently enacted statutes governing OHV use, including vehicle registration requirements, limits on operator age, training and licensing requirements, equipment requirements, sound restrictions, and safety requirements.

Current agency policy varies from State to State and National Forest to National Forest. Sometimes one National Forest restricts motor vehicles to roads and trails, while an adjoining National Forest allows unrestricted cross-country travel. One State may prohibit ATVs on public roads, while an adjoining State generally allows such use. Revised regulations are needed to provide national consistency and clarity on motor vehicle use within the NFS. At the same time, the Department believes that designations of roads, trails, and areas for motor vehicle use should be made locally. The final rule provides a national framework under which designations are made at the local level. Americans cherish the National Forests and National Grasslands for the values they provide: opportunities for healthy recreation and exercise, natural scenic beauty, important natural resources, protection of rare species, wilderness, a connection with their history, and opportunities for unparalleled outdoor adventure. The agency must strike an appropriate balance in managing all types of recreational activities. To this end, a designated system of roads, trails, and areas for motor vehicle use, established with public involvement, will enhance public enjoyment of the National Forests while maintaining other important values and uses on NFS lands.

## **2. Public Comments on Proposed Rule and Department Responses**

### *Overview*

On July 15, 2004, the Forest Service

published a proposed rule in the **Federal Register** (69 FR 135) seeking public comment in amending regulations at 36 CFR parts 212, 251, 261, and 295 to clarify policy related to motor vehicle use on NFS lands, including the use of OHVs. The proposed regulation would require designation of those roads, trails, and areas that are open to motor vehicle use. Designations would be made by class of vehicle and, if appropriate, by time of year. The proposed rule would prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles that is not consistent with the designations.

During the 60-day comment period that ended on September 13, 2004, the agency received six requests for an extension of the comment period. Five of these were mailed during the last two business days of the comment period, and were received after the comment period closed. Respondents indicated that, due to the complexity of the proposed regulations, additional time was needed. The Forest Service did not extend the comment period because the agency does not agree that the proposed regulation was complex and because of the strong interest expressed in many other comments to expedite the rulemaking.

The proposed rule was posted electronically on the World Wide Web at the **Federal Register** site at <http://www.gpoaccess.gov> and at the FirstGov e-rulemaking site at <http://www.regulations.gov>. The agency also posted the proposed rule on its World Wide Web site for OHVs at <http://www.fs.fed.us/recreation/programs/ohv>. The Forest Service received 81,563 letters or electronic messages in response to the proposed rule, of which 9,638 contained original text (the remainder were form submissions). More than 80 percent of the comments were submitted electronically.

Responses submitting original text represent the following categories:

Academic .....	2
Business Association .....	11
Civic Group .....	1
Consultants/Legal Representatives ...	3
County Agency/Elected Official .....	16
Domestic Livestock Industry/Permit Holders .....	5
Federal Agency/Elected Official .....	2
Individual (unaffiliated or unidentifiable) .....	9,310
Mechanized Recreation Group (bicycling) .....	2

.....	2
Mining Industry Association .....	2
Motorized Recreation Group .....	71
Multiple Use/Land Rights Organization .....	1
Nonmechanized Recreation Group ...	24
Oil, Natural Gas, Coal Industry (leasable) .....	2
Other or Unidentified Organization	1
Place-Based Group (homeowners association) .....	2
Preservation/Conservation Organization .....	98
Private Landowner .....	2
Recreational/Conservation Organization .....	14
Recreation Organization (non-specific) .....	5
Special Use Permit Holder .....	2
State Agency/Elected Official .....	21
Timber/Wood Products Industry .....	3
Town/City Agency/Elected Official	2
Tribal Agency/Elected Official .....	3
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The respondents represented all 50 States, the District of Columbia, Puerto Rico, seven foreign countries, and two international U.S. Armed Forces bases. The largest number of responses containing original text came from California (1,308), Washington (565), and Oregon (392). A summary report and searchable database of comments are available by	

**68266 Federal Register** / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations contacting the Forest Service (see: **ADDRESSES**). The comments also are available for review in hard copy, but arrangements for viewing them should be made in advance as they are warehoused off site. Many comments came from organizations and individuals concerned about impacts of OHVs on the environment and on nonmotorized uses. These comments included form letters and standard letters with additional specific information added by the commenter. Many comments also came from organizations and individuals concerned about potential restrictions on OHV use. These comments included form letters and standard letters with additional information added. Federal, tribal, State, and local agencies and elected officials also

submitted comments. The Forest Service received comments from 2 Federal agencies, 21 State governments, 3 Federally recognized tribal governments, and 18 county, municipal, and local governments, representing a variety of points of view.

Many respondents offered general comments either supporting or not supporting the proposed rule, or supporting or opposing OHV use in general. Most also offered specific comments about sections of the proposed rule that they would like to see revised. Many respondents offered suggestions for implementation, funding, and enforcement of the rule at the local level. A few respondents submitted comments on other rulemaking efforts or existing Forest Service policy beyond the scope of this rulemaking.

#### *General Comments*

*Comment.* Many respondents supported multiple uses of NFS lands and recreational access for OHVs. These respondents believed that closures harm the public, private landowners, economic interests, and the environment by limiting and concentrating use. These respondents suggested that the agency support the public interest, rather than letting environmental and anti-access groups drive agency policy. These respondents were concerned that nonmotorized interests have an unfair advantage in public involvement due to better funding, organization, and access to decisionmaking.

Many other respondents supported environmental protection and nonmotorized recreational uses of NFS lands and suggested confining OHVs to small, geographically isolated areas separated from nonmotorized users. These respondents believed that OHVs harm the environment, as well as people looking for quiet, peaceful recreation experiences. They suggested that the agency support the public interest, rather than letting manufacturers and user groups drive agency policy. These respondents were concerned that motorized interests have an unfair advantage in public involvement due to better funding, organization, and access to decisionmaking.

*Response.* The Department believes that National Forests should provide access for both motorized and

nonmotorized users in a manner that is environmentally sustainable over the long term. The NFS is not reserved for the exclusive use of any one group, nor must every use be accommodated on every acre. It is entirely appropriate for different areas of the National Forests to provide different opportunities for recreation. The Department believes such choices and evaluations are best made at the local level, with full involvement of Federal, tribal, State, and local governments, motorized and nonmotorized users, and other interested parties, as provided for in this final rule.

*Comment.* Some respondents stated that OHVs should not be allowed on National Forests at all. These respondents suggested that National Forests should be managed primarily for preservation of natural values, water quality, wildlife habitat, endangered species, biological diversity, quiet, and spiritual renewal.

*Response.* The Department disagrees. National Forests are managed by law for multiple use. They are managed not only for the purposes stated in these comments, but for timber, grazing, mining, and outdoor recreation. These uses must be balanced, rather than one given preference over another.

*Comment.* Some respondents stated that Americans have an unrestricted right to unlimited access to National Forests with motor vehicles and insisted that the Forest Service restore this right.

*Response.* The Department disagrees with this assertion. National Forests belong to all Americans, but Americans do not have a right to unrestricted use of National Forests. Congress established the Forest Service to provide reasonable regulation of the National Forests so that future generations can continue to enjoy them.

*Comment.* Some respondents requested improved Forest Service accountability, communications, and consistency in implementing rules governing motor vehicle use.

*Response.* The final rule is intended to provide a consistent framework and consistent terminology for travel management decisions made at the local level. For greater clarity in terminology, the final rule adds a definition for “off-highway vehicle” and changes the term “use map” to “motor vehicle use map.”

*Comment.* Many respondents asked that decisions on motor vehicle use be based on high-quality scientific information, including review by independent scientists, and not on biased data. Some respondents suggested that motor vehicle use should be allowed only when it can be clearly proven to be harmless to the environment. Others suggested that motor vehicle use should be restricted only when it can be clearly proven to be harmful to the environment.

*Response.* Designations of roads, trails, and areas for motor vehicle use should be based on accurate, pertinent, unbiased information. The Department does not believe that it is necessary to have independent scientists review proposed designation decisions. The Department disagrees that motor vehicle use should be allowed only when it can be clearly proven to be harmless to the environment, and that motor vehicle use should be restricted only when it can be clearly proven to be harmful to the environment. Rather, designation decisions will be made in accordance with the criteria in § 212.55 of the final rule.

*Comment.* Some respondents stated that access to private inholdings must not be restricted by this rule, and that reciprocal rights-of-way between the Forest Service and private landowners should be allowed.

*Response.* The final rule requires responsible officials to recognize rights of access in designating roads, trails, and areas (§ 212.55(d)). Rights of access include valid existing rights and rights of use of NFS roads and NFS trails under § 212.6(b). This final rule does not affect reciprocal rights-of-way between the Forest Service and private landowners.

*Comment.* Some respondents asked the Forest Service to encourage private landowners to open OHV trails and accommodate use on private lands.

*Response.* Many private landowners allow recreational use of their lands, including use by OHVs. Some private landowners provide managed facilities for OHV enthusiasts. In some cases, trails on private land are part of a network including NFS lands. The Forest Service often works with private landowners to secure public rights-of-way for trails providing access to the National Forests. However, the

Department believes that private

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landowners are the best judges of the proper uses for their land.

*Comment.* Some respondents asked the Forest Service to set aside nonmotorized “quiet use areas” across the NFS.

*Response.* The final rule requires local agency officials, working with the public, to designate which roads, trails, and areas are available for motor vehicle use. The final rule prohibits use off the designated system. In designating roads, trails, and areas, local agency officials must consider minimization of conflicts among uses of NFS lands (§ 212.55(a)). In designating trails and areas, local agency officials must consider compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors (§ 212.55(b)(5)). A system of quiet use areas established outside the designation process is unnecessary.

*Comment.* Some respondents suggested that all routes closed to motor vehicles should also be closed to horses, bicycles, and all nonpedestrian access.

*Response.* The Department disagrees. Some poorly located, unauthorized routes causing considerable environmental damage may have to be closed to all uses. However, other routes are better suited to some uses than others. In some areas of high concentrations of use, maintaining separate trail networks for different uses may reduce conflict and enhance public safety and the recreational experience. In other areas, multiple-use trails work well. The Department believes these decisions are best made at the local level, with public participation.

*Comment.* Some respondents asked the Forest Service to provide access to groups that maintain and improve roads and trails.

*Response.* The Department is grateful to the many groups who provide volunteer assistance in constructing, improving, and maintaining roads and trails. Without the support of these groups, public access and recreational opportunities would be more limited.

Most of these groups help maintain trails not to get special privileges, but to provide better access for everyone. The Department supports the general principle of equal public access to Federal lands.

*Comment.* Some respondents suggested limits on timber harvesting and grazing, and on road construction related to timber harvesting. Other respondents requested increased fuel treatment to protect communities from wildfire and construction of additional roads for fuel reduction, fire suppression, and timber management needs.

*Response.* These comments are beyond the scope of this rule. Road construction for timber harvesting, fuel treatment, or other purposes must be subjected to site-specific environmental analysis, which establishes road management objectives. Roads constructed as part of these projects could be added to the system of designated roads, trails, and areas open to motor vehicles, depending on the results of these local decisions.

*Comment.* Some respondents suggested that the Forest Service retain a right-of-way for public access in all land exchanges, and deny access to private landowners who block public access to Federal lands.

*Response.* This comment is beyond the scope of this final rule. The Forest Service seeks, wherever possible, to secure or retain public access to Federal lands by purchasing or exchanging rights-of-way and reserving rights-of-way in land exchanges.

*Comment.* Some respondents requested additional scientific studies of the environmental impacts of motor vehicle use, the social and economic impacts of restrictions on motor vehicle use, the impacts of road closures on firefighting and fuel reduction, the numbers of visitors using motor vehicles, and other related topics.

*Response.* In addition to the studies mentioned in the preamble to the proposed rule, ongoing studies by Forest Service researchers and monitoring by National Forest managers address several of these topics. The Department believes that these studies support the need for this final rule. As stated in the preamble to the proposed rule, the results of monitoring pursuant to §212.57 of the final rule could provide

the basis for revision or rescission of designations made pursuant to §212.51, or for a determination of considerable adverse effects for purposes of implementing a temporary, emergency closure pursuant to §212.52(b)(2).

*Comment.* One respondent asserted that the Forest Service must formally consult with the U.S. Fish and Wildlife Service on the effects of this rule on threatened and endangered species, as required by the Endangered Species Act (ESA).

*Response.* The Department has determined that this final rule will have no effect on threatened or endangered species. The final rule establishes a procedural framework for local decisionmaking and will not have any effect until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement and coordination with Federal, State, local, and tribal governments. Designation decisions at the local level will be accompanied by appropriate consideration of potential impacts to threatened and endangered species. If such decisions may affect threatened or endangered species, the Forest Service will consult with the U.S. Fish and Wildlife Service, as appropriate, under Section 7 of the ESA.

#### *Forest Service Directives*

*Comment.* Some respondents asked the Forest Service to issue proposed directives on implementation of the final travel management rule and requested that the agency seek public comment on these directives. One respondent stated that the final rule must be consistent with Forest Service Manual and Forest Service Handbook direction.

*Response.* The Forest Service provides internal direction to field units through its directives system, consisting of the Forest Service Manual (FSM) and Forest Service Handbooks (FSH). The FSM and FSH assist field units in implementing programs established by statutes and regulations. The Forest Service plans to develop proposed directives implementing this final rule and to publish them in the **Federal Register** for public notice and comment.

*Comment.* Some respondents requested that officials responsible for implementation of this rule be properly

identified, qualified, and free of conflict of interest. Others asked the agency to ensure that Forest Service officials do not play an active role in State or local legislation affecting OHVs.

*Response.* Section 212.51 of the final rule provides that designations shall be made by the responsible official on administrative units or Ranger Districts of the NFS. Delegations of authority for designation decisions will be included in directives issued for purposes of implementing this final rule. The Department expects that designation decisions will generally be made by Forest Supervisors and District Rangers. Forest Supervisors and District Rangers are selected for their positions based on Federal civil service rules. Federal ethics and conduct rules protect the public and agency personnel from conflicts of interest and limit the roles agency personnel may play in their official capacities in the State or local legislative process.

*Comment.* Some respondents requested standardized, easily available use maps and interagency signage to ensure consistent communication and enforcement of route designations.

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*Response.* The Forest Service plans to develop a standard national format for motor vehicle use maps issued under this final rule. In the final rule, the Department is changing the term “use map” to “motor vehicle use map.” Motor vehicle use maps will be available at local Forest Service offices and, as soon as practicable, on Forest Service web sites. The Forest Service plans to issue additional travel management guidance in its sign handbook to ensure consistent messages and use of standard interagency symbols.

*Comment.* Many respondents submitted suggestions on compliance with the National Environmental Policy Act (NEPA) in connection with designation of routes and areas for motor vehicle use. Some suggested including provisions on this topic in the rule itself. Others suggested specific direction related to the range of alternatives subject to consideration, the scope of analysis, the starting point for

analysis, and the various environmental effects to be considered.

*Response.* Regulations implementing NEPA are issued by the Council on Environmental Quality and are found at 40 CFR part 1500. Agency direction on NEPA compliance is found in FSH 1909.15. The Department believes that the scope, content, and documentation of NEPA analysis associated with designating routes and areas for motor vehicle use will ultimately depend on site-specific factors, including the local history of travel planning, public input, and environmental impacts at the local level. Therefore, the Department is not addressing NEPA compliance in this final rule.

*Comment.* Many respondents addressed the status of user-created routes in areas currently managed as open to cross-country motor vehicle use, especially with regard to NEPA compliance (FSH 1909.15). Some respondents asked the Forest Service to acknowledge all such routes as legal, legitimate travel ways, and to require specific documentation and analysis to close them. Other respondents asked the Forest Service to treat all such routes as illicit and subject to immediate closure.

*Response.* The Department rejects both of these approaches. User-created routes were developed without agency authorization, environmental analysis, or public involvement and do not have the same status as NFS roads and trails included in the forest transportation system.

Some user-created routes are well-sited, provide excellent opportunities for outdoor recreation by motorized and nonmotorized users alike, involve less environmental impact than unrestricted cross-country motor vehicle use, and would enhance the system of designated routes and areas. Other user-created routes are poorly located and cause unacceptable environmental impacts. The Department believes that evaluation of user-created routes is best handled at the local level by officials with first-hand knowledge of the particular circumstances, uses, and environmental impacts involved, working closely with local governments, users, and other members of the public.

*Comment.* Some respondents suggested reviewing and inventorying all roads, trails, and areas, without

regard to prior travel management decisions and travel plans. Other respondents observed that land management plans, travel plans, and other recent agency documents already include a variety of decisions related to motor vehicle use and route designation. These respondents asked the agency to recognize existing plans and decisions in designating roads, trails, and areas for motor vehicle use.

*Response.* The Department believes that reviewing and inventorying all roads, trails, and areas without regard to prior travel management decisions and travel plans would be unproductive, inefficient, counter to the purposes of this final rule, and disrespectful of public involvement in past decisionmaking. Local responsible officials can and should take into account past travel management decisions.

Some National Forests have long restricted motor vehicles to designated routes under E.O. 11644, 36 CFR part 295, and FSM 2355. Other National Forests have recently issued comprehensive travel management decisions that restrict motor vehicle use to designated routes and issued orders that prohibit cross-country motor vehicle use. All National Forests have a system of NFS roads open to motor vehicle use, and many also have a system of NFS trails managed for motor vehicle use.

Nothing in this final rule requires reconsideration of any previous administrative decisions that allow, restrict, or prohibit motor vehicle use on NFS roads and NFS trails or in areas on NFS lands and that were made under other authorities, including decisions made in land management plans and travel plans. The final rule adds a new paragraph (b) to §212.50 to clarify that these decisions may be incorporated into designations made pursuant to this final rule.

Some National Forests or Ranger Districts have previous administrative decisions, made under other authorities with public involvement, which restrict motor vehicle use over an entire Forest or District to designated routes and areas. In these cases, the responsible official may, with public notice but no further analysis or decisionmaking, establish that decision or those decisions as the designation pursuant to this rule for the National Forest or

Ranger District, effective upon publication of a motor vehicle use map. In that situation, the only substantive change effected by this final rule would be enforcement of the restrictions pursuant to the prohibition in §261.13, rather than pursuant to an order issued under part 261, subpart B. The final rule includes additional language in §212.52(a) to clarify that no further public involvement is required in this special case.

Alternatively, responsible officials may choose to reconsider past decisions, with public involvement, as necessary to achieve the purposes of the final rule.

The final rule recognizes that designations of roads, trails, and areas for motor vehicle use are not permanent. Unforeseen environmental impacts, changes in public demand, route construction, and monitoring conducted under §212.57 of the final rule may lead responsible officials to consider revising designations under §212.54 of the final rule.

Designations must be consistent with the applicable land management plan. If a responsible official proposes a designation that would be inconsistent with the applicable land management plan, a proposed amendment to the plan must be included with the proposed designation so that the designation decision will conform with the land management plan.

*Comment.* Some respondents observed that NFS roads that are open to motor vehicle use are already in effect designated and need not be re-evaluated. Other respondents asked the agency to ensure that proposed changes to allowed uses, reconstruction, and changes in maintenance levels resulting in changes in type or level of use receive

appropriate site-specific consideration.

*Response.* As recognized in the preamble to the proposed rule, to a certain degree, NFS roads are in effect already designated for some classes of motor vehicle use. These roads are included in a forest transportation atlas, and road management objectives may establish the appropriate vehicle classes and uses for each road segment. In recent years, the roads analysis process established under 36 CFR 212.5 and FSM 7712 has been used to evaluate the



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long-term management objectives for the

passenger car road system in each National Forest.

This final rule does not require responsible officials to reconsider decisions authorizing motor vehicle use on NFS roads and NFS trails. After consulting with the public, responsible officials may choose to reconsider past decisions as necessary to achieve the purposes of this final rule. In addition, responsible officials may revise designations under § 212.54 of the final rule. Revisions of designations, including revisions in the class of vehicle designated for use, must be made in accordance with the requirements for public involvement in § 212.52 and the criteria in § 212.55. Road reconstruction is beyond the scope of the designation provisions in subpart B of this rule.

#### *Implementation*

*Comment.* Many respondents requested a specific, enforceable deadline (most suggested two years) for completing route and area designation and ending cross-country motor vehicle use. Many other respondents asked the Forest Service not to establish a specific time frame for completing designations, and to allow enough time to complete a full and fair evaluation of all potential routes.

*Response.* The Department shares an interest in completing route and area designation as quickly as possible. The problems associated with unmanaged motor vehicle use are important and deserve immediate attention. The Forest Service will make every effort, within its available resources, to complete route and area designation as quickly as possible. However, the Department disagrees with establishing an enforceable deadline for completion of the process. Imposing an enforceable deadline for completing designations would subject the Forest Service to legal challenge if, despite its best efforts (perhaps due to the controversy involved in the process), the agency is unable to meet the deadline. The Department believes that cooperative

work by responsible officials with State, tribal, county, and municipal governments, user groups, and other interested parties offers the best hope for long-term resolution of issues involving recreational use, including use of motor vehicles. An inflexible deadline can make collaborative solutions more difficult.

*Comment.* Some respondents requested that the Forest Service complete a full inventory of all existing motor vehicle routes, regardless of origin, prior to making a designation decision. Many of these respondents asked the Forest Service to cooperate with user groups in conducting this inventory, but some also insisted that the agency take ultimate responsibility for including all user-created routes.

*Response.* The Department disagrees that a complete inventory of user-created routes is required in order to complete the designation process. As a practical matter, such an inventory may never be fully complete, as new routes will continue to be created during the inventory process. A complete inventory would be very time-consuming and expensive, delaying completion of route designation. Advance planning based on public involvement, careful design, and site-specific environmental analysis provide the best hope for a sustainable, managed system of motor vehicle routes and areas

addressing user needs and safety with a minimum of environmental impacts. As stated above, some user-created routes would make excellent additions to the system of designated routes and areas. The Forest Service is committed to working with user groups and others to identify such routes and consider them on a site-specific basis.

*Comment.* Some respondents asked the Forest Service to include potential future routes in the inventory and designation process, and to make provision for including additional user-created routes discovered after designation is complete.

*Response.* Long-term planning may identify potential corridors suitable for consideration for future construction. However, the agency does not intend to designate routes on a motor vehicle use map until such routes actually exist, have been analyzed and evaluated, and are available for public use. Section 212.54 of the final rule provides for

revision of designations as needed to meet changing conditions. New routes may be constructed and added to the system following public involvement and site-specific environmental analysis. Such revisions may also include closures or changes in designations.

*Comment.* Many respondents supported public involvement in the route designation process. Some requested that local residents and private landowners receive a greater voice in decisions affecting their use. Other respondents requested that county governments, State tourism offices, or other agencies receive formal recognition as participants in agency decisionmaking. One respondent asked that OHV access be subject to a public vote.

*Response.* The proposed and final rules require public involvement in the designation process (§ 212.52), and coordination with appropriate Federal, State, county, local, and tribal governments in designating roads, trails, and areas for motor vehicle use (§ 212.53). Designation of a system of motor vehicle routes and areas will be made with public involvement and coordination with Federal, State, local, and tribal governments. Most NFS roads

are intertwined with networks of State and county roads (often crossing NFS lands), and cooperative planning among affected agencies is essential. Nothing in the final rule, however, can relieve the Forest Service of the ultimate responsibility for decisions regarding management of NFS lands.

*Comment.* Many respondents requested that the Forest Service allocate sufficient funds for management of motor vehicle use on National Forests, particularly for the process of route and area designation envisioned in the proposed rule. Many asked the agency to pursue all available sources of funding, including the Recreational Trails Program and gasoline tax revenues. Some respondents insisted that inadequate funding not be used as an excuse to close routes and restrict motor vehicle access. Others stated that the rule was pointless without adequate funding.

*Response.* The issue regarding funding is beyond the scope of this final rule. Forest Service appropriations are

authorized by Congress. The Forest Service is committed to using whatever funds it has available to accomplish the purposes of this final rule in a targeted, efficient manner. The agency makes appropriate use of all other sources of available funding, and has a number of successful cooperative relationships with State governments. Volunteer agreements with user groups and others have proven successful in extending agency resources for trail construction, maintenance, monitoring, and mitigation. Regardless of the level of funding available, the Department believes that the final rule provides a better framework for management of motor vehicle use on National Forests and National Grasslands. While availability of resources for maintenance and administration must be considered in designating routes for motor vehicle use (§ 212.55), cooperative relationships and volunteer agreements may be included in this consideration.

*Comment.* Some respondents offered specific suggestions for consideration during route and area designation, including conversion of low-standard roads to motorized trails, provision of

**68270 Federal Register / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations** parking and trailhead facilities, reopening of closed roads, design of loop and long-distance trail systems to meet user needs, and integration of designated routes with roads and trails managed by local governments, States, and other Federal agencies. Some respondents suggested consideration of specific environmental impacts during route and area designation, including introduction of invasive species, impacts to cultural activities of American Indians, quality of the user experience, and Recreation Opportunity Spectrum (ROS) designations in land management plans. Other respondents suggested specific areas to avoid in route and area designation, including high alpine areas, wetlands, riparian areas, and roadless areas.

*Response.* The Department agrees that many of these considerations may be important in designating routes and

areas at the local level. Section 212.55 of the final rule enumerates the criteria for designating roads, trails, and areas pursuant to the final rule. Specific considerations (such as geography, user demands, and environmental impacts) will vary from place to place, and even route to route, across the NFS. Responsible officials, working closely with the public, should consider local circumstances in applying the criteria for designating roads, trails, and areas pursuant to the final rule.

*Comment.* Some respondents suggested a no-net-loss policy for motor vehicle routes (every route closed must be replaced by a new route of the same length and character), a specific goal for available routes (such as four miles of motor vehicle trail per square mile), or a general policy to develop all access opportunities close to urban areas.

*Response.* The Department disagrees with establishing any of these principles as national policy. Designation decisions are best left to local managers, working closely with State, tribal, and local governments, users, and other members of the public and informed by site-specific evaluation of environmental impacts.

*Comment.* Some respondents stated that regulations are effective only if they are enforced, and questioned whether the agency was capable of enforcing motor vehicle restrictions due to limited numbers of law enforcement officers.

*Response.* Forest Service law enforcement personnel play a critical role in ensuring compliance with laws and regulations, protecting public safety, and protecting National Forest resources. The Forest Service also maintains cooperative relationships with many State and local law enforcement agencies that provide mutual support across jurisdictional boundaries. Education and cooperative relationships with users support enforcement efforts by promoting voluntary compliance. The final rule will not increase the agency's budget or the number of law enforcement officers. However, the final rule will enhance enforcement by substituting a regulatory prohibition for closure orders and providing for a motor vehicle use map supplemented by signage.

*Comment.* Some respondents questioned the use of contractors and volunteers to map and maintain trails,

and to report violations of motor vehicle regulations.

*Response.* The Forest Service utilizes a mix of agency personnel, contractors, volunteers, and cooperators to accomplish many elements of its mission. Without the support of cooperators and volunteers and the services of contractors, the agency would be unable to provide the same level of service to the public or care for the lands entrusted to it within its current budget. Like all law enforcement

agencies, the Forest Service depends on citizen reports of violations as a critical component of its enforcement program.

*Comment.* Some respondents asked the Forest Service to ensure representation of OHV enthusiasts and riders among agency staff responsible for OHV management.

*Response.* The Forest Service uses competitive civil service procedures to select the best qualified applicant for each position, based on the knowledge, skills, and abilities necessary to perform the job. While ability to use government equipment may be a selective factor for some positions, the agency does not hire personnel based on their outside recreational interests. Nevertheless, there are Forest Service employees who are OHV riders.

*Comment.* Some respondents asked the Forest Service to ensure adequate maintenance for motor vehicle trails, rather than closing them.

*Response.* The Forest Service maintains NFS roads and NFS trails in accordance with their management objectives and the availability of funds. Volunteers and cooperators maintain many trails. The agency collects fees for use of some developed recreational facilities, most of which are retained and spent at the site where they are collected. Unfortunately, resources are still limited, and the Forest Service has a substantial backlog of maintenance needs, even before adding many user-created routes to the system. In some cases, an extended lack of maintenance can lead to deterioration of a road or trail to the point that it must be closed to address user safety or to prevent severe environmental damage. The Forest Service actively tries to avoid closures by encouraging volunteer agreements and cooperative relationships with user groups.

*Comment.* Some respondents

requested clarification of the rules applicable to motor vehicle use while designation is pending. Some asked that current rules remain in effect. Others requested immediate closure of all user-created routes. Some respondents sought to continue using and maintaining existing trails while designation is pending.

*Response.* The final rule's prohibition on motor vehicle use off the designated system (§ 261.13) goes into effect on an administrative unit or Ranger District once that unit or District has designated those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use and published a motor vehicle use map identifying those roads, trails, and areas (§ 212.56). Until designations for a unit or District are complete and a motor vehicle use map identifying those designations is published, existing travel management policies, restrictions, and orders remain in effect. Forest Supervisors may continue to issue travel management orders pursuant to part 261, subpart B, and impose temporary, emergency closures based on a determination of considerable adverse effects pursuant to § 212.52(b)(2) of the final rule. The Department does not believe that immediate closure of all user-created routes, without local evaluation and public input, is necessary or appropriate. Use and maintenance of NFS roads and NFS trails consistent with current travel management policies and management objectives may continue. Construction and maintenance of roads or trails without a permit are prohibited by existing regulations (§ 261.10(a)).

The Department expects that some administrative units or Ranger Districts will complete route and area designation before others and that the prohibition on cross-country motor vehicle use in § 261.13 will go into effect on different units and Ranger Districts at different times. This variation in travel management mirrors the existing situation, in which some units are open to cross-country motor vehicle use, while others restrict motor vehicles to designated routes and areas. Over the next few years, all administrative units and Ranger Districts will institute a system of designated routes and areas.

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*Comment.* Some respondents suggested that the Forest Service require vehicle registration, license plates, noise abatement, and safety equipment for all motor vehicles using NFS lands. Others suggested requiring licensing and safety training for all riders.

*Response.* State traffic laws apply on NFS roads as provided for in 36 CFR 212.5(a)(1). State governments have long taken the lead in establishing registration, safety, and licensing requirements for motor vehicles and motor vehicle operators, providing a consistent framework for users within State boundaries. The Department wholeheartedly supports this framework. The Department believes a separate registration or licensing process

for operators for the NFS would be confusing, inefficient, and intrusive. The Department notes that some States have no requirements regarding minimum age, safety equipment, and noise levels for OHVs. Some National Forests have experienced serious injuries and fatal accidents involving OHVs, some of which involve young children. The Forest Service will continue to regulate OHV riders to a certain degree in existing regulations at § 261.13, recodified as § 261.15 in the final rule (for example, by requiring a headlight and taillight when riding after dark and by providing for incorporation of State law pertaining to use of motor vehicles off roads). At this time, however, the Department is not prepared to issue or enforce new national standards for operators or equipment on NFS lands. As designations are completed and management of designated roads, trails, and areas continues, the Department may consider developing some national safety standards for OHVs at a later date.

Noise is a particularly important issue affecting OHV use nationally. The Forest Service anticipates developing a national standard for OHV noise levels in a future rulemaking.

*Comment.* Some respondents suggested that the Forest Service charge a fee for OHV use on NFS lands and retain the funds for route maintenance and enforcement. Other respondents

objected to any fees for public access to Federal land. One respondent suggested a surcharge on OHV manufacturers.

*Response.* These comments are beyond the scope of this final rule, which governs designation of roads, trails, and areas for motor vehicle use. Forest Service authority to charge and retain fees for use of recreational facilities and services is contained in the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814). The agency has no authority to tax manufacturers.

*Proposed Rule Preamble*

*Comment.* Some respondents disagreed with the Forest Service's rationale for the proposed rule and urged the agency not to adopt a final rule. These respondents stated that a prohibition on cross-country motor vehicle use will harm small businesses, recreation users, the tourism industry, local governments, local economies, low-income residents, families with children, and people with disabilities, and reduce public access to Federal lands. Some respondents stated that any environmental impacts and other problems associated with cross-country motor vehicle use result from poor Forest Service management and should be addressed by better implementation and enforcement of existing rules, rather than additional regulation. Others contended that natural forces, such as fire and flood, have far greater environmental impact than OHVs and that the motor vehicle regulation is not needed.

*Response.* The Department disagrees with these assertions. Unregulated cross-country motor vehicle use may have been appropriate on some National Forests when these vehicles were less numerous, less powerful, and less capable of cross-country travel. Today, however, the proliferation of user-created routes is a major challenge on many National Forests and examples of significant environmental damage, safety issues, and user conflicts are well established. The Department believes that a well-planned, well-designed system of designated roads, trails, and areas, developed in coordination with Federal, State, local, and tribal governments and with public involvement, offers better opportunities for sustainable long-term recreational motor vehicle use and better economic opportunities for local residents and

communities.

*Comment.* Some respondents stated that the proposed rule will harm the nonmotorized recreation industry by encouraging OHV use. Other respondents stated that the proposed rule does not do enough to address the threat of OHVs, unauthorized routes, and continuing damage to the environment, and should be strengthened. Some asked the Forest Service to explain how its maintenance backlog can be reconciled with the stated goal of enhancing opportunities for motorized recreation.

*Response.* This final rule does not encourage or discourage motor vehicle use, but rather requires designation of roads, trails, and areas for motor vehicle use. The Department believes that a well-designed system of routes and areas designated for motor vehicle use can reduce maintenance needs and environmental damage, while enhancing the recreational experience for all users, both motorized and nonmotorized.

*Comment.* Some respondents called for clear and consistent national standards for motor vehicle use and route and area designation. They stated that the proposed rule allows too much discretion for local Forest Service managers to make designation decisions, which may result in inconsistent and ineffective decisionmaking. Other respondents stated that the final rule should retain flexibility in local decisionmaking, rather than establishing a one-size-fits-all national policy.

*Response.* The final rule provides a national framework for local decisionmaking. The rule includes definitions, procedures, and criteria for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, and a prohibition on motor vehicle use that occurs off the designated system or that is inconsistent with motor vehicle designations. The Department expects the roughly 300,000

miles of NFS roads currently open to highway-legal motor vehicle use to be designated for that purpose. However, the rule retains flexibility at the local level to determine, with public involvement, appropriate motor vehicle use on local NFS roads, on NFS trails, and in areas on NFS lands. The Department believes that decisions

about specific routes and areas are best made by local officials with knowledge of those routes and areas, the local environment, and site-specific tradeoffs, with public involvement and in coordination with appropriate Federal, State, local, and tribal governments.

*Comment.* Some respondents asked the Forest Service to commit to designating enough OHV routes to accommodate current and future demand.

*Response.* Provision of recreational opportunities and access needs are two of several criteria the responsible official must consider under § 212.55 of the final rule in designating routes for motor vehicle use. National Forests are popular with many Americans for many uses. It is not possible to accommodate all user demands on all National Forests while also protecting water quality, wildlife habitat, and other natural resources that people come to enjoy. Forest Service managers must balance user interests against the other criteria

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*Comment.* Some respondents stated that local government, not the Forest Service, should decide where roads and vehicle access are needed to serve local communities and protect public health and safety.

*Response.* The Department believes that coordination with local governments is essential in designating a system of motor vehicle routes and areas on NFS lands. The final rule requires coordination with appropriate local governmental entities when designating routes and areas for motor vehicle use and provides for designation decisions to be made by Forest Service officers at the local level to ensure that they take local needs into account. However, the Forest Service retains ultimate responsibility, as provided by Congress, for management of uses on the NFS.

Forest Service policy (FSM 7703.3) is to seek to transfer jurisdiction of NFS roads to public road authorities when (1) more than half of the use is likely to be non-Forest Service-generated traffic;

(2) the road is necessary and used for mail, school, or other local government purposes, or (3) the road serves year-long residents within or adjacent to the National Forests.

*Comment.* Some respondents stated that the language of the preamble to the proposed rule, particularly the shift of regulations governing OHV use from part 295 (Use of Motor Vehicles Off National Forest System Roads) to part 212 (Administration of the Forest Transportation System), reflects a change in the agency's perception of motor vehicle use on NFS lands. These respondents asked the Forest Service to recognize motor vehicle use as a legitimate recreational pursuit, not just as a transportation issue.

*Response.* The Department recognizes this concern. Motor vehicles serve a variety of functions on National Forests. Motor vehicles are used in commercial and natural resource management activities, including maintaining utility corridors, mining, and timber sales. Motor vehicles on NFS lands provide access to private land, recreation destinations, and destinations off NFS lands. Motor vehicles are used in support of other recreational activities, such as hunting and camping. Motor vehicles are also used as a recreational experience in their own right, such as for trail riding and driving for pleasure. These uses overlap and are not always clearly distinguishable. To create a comprehensive system of travel management, the final rule consolidates regulations governing motor vehicle use in one part, 212, entitled "Travel Management." Motor vehicles remain a legitimate recreational use of NFS lands.

*Comment.* Some respondents objected to the preamble's use of the term "off-road vehicle" in reference to E.O.

11644

and E.O. 11989, and asked the agency to

use "off-highway vehicle." Other respondents objected to the latter term and preferred "off-road vehicle." Some respondents requested that specific classes of vehicles, such as side-by-sides, sport utility vehicles, and motorcycles, be included or excluded from the definition of OHV.

*Response.* The final rule addresses all motor vehicle use on NFS roads, on NFS trails, and in areas on NFS lands, from

passenger cars to ATVs to motorcycles. The final rule is not limited to OHVs, in part because OHVs are not always clearly distinguishable from passenger vehicles (today the family car may be quite capable of off-highway travel). Local units are responsible for designating routes and areas for motor vehicle use, including which routes and areas are designated for which vehicle classes. In response to comments, and because the agency has used the term extensively in communications, the final rule has added a definition of “off-highway vehicle.” This definition is consistent with the definition of “off-road vehicle” used in E.O. 11644.

*Comment.* Some respondents asked the Forest Service to include bicycles and horses within the definition of “off-highway vehicle” and regulate these uses like motor vehicles.

*Response.* OHVs are motor vehicles. Since bicycles and horses are not motor vehicles, they are not included in the definition of “off-highway vehicle.” Similarly, this rule governs designation of routes and areas for motor vehicle use

and does not apply to nonmotorized uses, such as bicycles and horses. At this time, the Department does not see the need for regulations requiring establishment of a system of routes and areas designated for nonmotorized uses. Local Forest Service officials may choose to designate routes and areas for nonmotorized uses and enforce those designations with an order issued under 36 CFR part 261, subpart B. On some National Forests, and portions of others, bicycles and/or equestrians are restricted to designated routes, or even prohibited altogether. On other National Forests, cross-country use of bicycles and horses is permitted.

*Comment.* Some respondents suggested that E.O. 11644 and E.O. 11989 conflict with the Federal Land Policy and Management Act (FLPMA) and the Multiple Use-Sustained Yield Act (MUSY), are outdated, and do not reflect changes in use and technology of motor vehicles. These respondents asked the Forest Service not to rely on the E.O.s in promulgating regulations governing designation of routes and areas for motor vehicle use.

*Response.* The Department disagrees that the E.O.s conflict with FLPMA and MUSY. Both statutes give the Forest Service broad authority to manage NFS

lands for multiple uses. MUSY defines “multiple use” in part as “management of all the various \* \* \* resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people \* \* \*.” MUSY specifically provides “that some land will be used for less than all of the resources” (16 U.S.C. 531(a)). Neither Act directs that all NFS lands be open to all uses.

E.O. 11644 and E.O. 11989 broadly direct Federal land management agencies to regulate OHVs in conformance with certain criteria. As discussed in the preamble, the environmental concerns that prompted the E.O.s are more, not less, pressing with changes in OHV use and technology.

Executive orders issued by the President of the United States provide policy direction to all Federal agencies. The Department conforms its policy to executive orders and believes that it is appropriate to take applicable executive orders, such as E.O. 11644 and E.O. 11989, into account in promulgating regulations and issuing directives.

*Comment.* Some respondents stated that the proposed rule is not consistent with the letter and spirit of E.O. 11644 and E.O. 11989, and must not convert their mandatory language to discretionary language.

*Response.* The Department disagrees with this assertion. Section 3(a) of E.O. 11644 directs the Forest Service to develop and issue regulations “to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted \* \* \*.” Section 9(b) of E.O. 11644 specifically authorizes the Forest Service to adopt the policy to designate those areas or trails that are suitable for motor vehicle use and to close all other areas and trails to that use. Consistent with these provisions, the final rule requires establishment of a system of routes and areas designated for motor vehicle use and prohibits motor vehicle use off the designated system. The provisions in the final rule governing exemptions from designations, public involvement, criteria for designations, designations in

**68273 Federal Register** / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations wilderness areas, identification of designated routes and areas, monitoring, and over-snow use track E.O. 11644 and

E.O. 11989. See the response to comments on §§ 212.52 and 212.55 for the relationship between specific sections of the rule and the Executive orders.

*Comment.* Some respondents interpreted the preamble to the proposed rule to imply that every National Forest must designate areas for motor vehicle use. Some respondents supported this idea. Others asked the agency to clarify that there is no such requirement.

*Response.* The proposed rule was never intended to require each National Forest to have areas designated for motor vehicle use. To clarify this point, the summary for the final rule states that it requires designation of those roads, trails, and areas that are open to motor vehicle use. Some National Forests do not allow motor vehicle use off NFS roads. This final rule does not require them to change their policy.

*Comment.* Several respondents addressed the preamble’s discussion of use of OHVs on NFS roads managed at various maintenance levels. Some respondents asked the Forest Service to allow and some asked the agency to prohibit non-highway-legal vehicles on NFS roads at maintenance levels 3, 4, and 5.

*Response.* Road designation decisions will determine road management objectives and maintenance levels, rather than vice versa. However, in many cases, existing road management objectives and maintenance levels, established through travel planning and roads analysis in consultation with State and local governments, already establish appropriate motor vehicle use. The Department anticipates the need to mix highway-legal and non-highway-legal traffic on some NFS roads at maintenance levels 3, 4, and 5. Such designation decisions will be advised by professional engineering judgment, and will include design features deemed appropriate by engineering studies.

*Comment.* Some respondents objected to the agency’s rationale for exempting snowmobiles from designations made under § 212.51 of the proposed rule, on

the grounds that snowmobiles have documented impacts on wildlife, skiers, and other resource values. Some respondents asked the agency to include a noise level limit for snowmobiles and other provisions specific to snowmobiles. Other respondents asked the Forest Service to remove provisions governing snowmobiles from the rule and exclude snowmobiles from the definition of “off-highway vehicle.”

*Response.* Snowmobiles are “off-road vehicles” under E.O. 11644 and subject to the direction “to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted” (E.O. 11644, Sec. 3(a)). Moreover, snowmobiles are “motor vehicles” under this final rule. Since this rule regulates motor vehicle use, the rule must address snowmobiles. However, the Department believes that cross-country use of snowmobiles presents a different set of management issues and environmental impacts than cross-country use of other types of motor vehicles. Therefore, the final rule exempts snowmobiles from the mandatory designation scheme provided for under § 212.51, but retains a manager’s ability to allow, restrict, or prohibit snowmobile travel, as appropriate, on a case-by-case basis (§ 212.81). Restrictions and prohibitions on snowmobile use will be enforced under § 261.14, rather than through issuance of an order under part 261, subpart B. The definition of “snowmobile” in the proposed rule encompassed large vehicles not commonly referred to as “snowmobiles,” but excluded over-snow vehicles also capable of summer travel. In order to improve clarity and ensure equitable treatment of over-snow vehicle use, the final rule replaces the exemption for snowmobiles with an exemption for “over-snow vehicles,” a broader term that includes snowmobiles, as well as other vehicles designed for over-snow travel. The final rule adds language to § 212.81(c) to clarify that the designation process applies to over-snow vehicles only where the local responsible official proposes to establish restrictions or prohibitions on use of over-snow vehicles under this subpart.

The Department expects that management of winter recreational use will continue to be an important issue on many National Forests. Nothing in this final rule limits the ability of Forest Service managers to take appropriate action to regulate snowmobile use, or other winter uses, or precludes the Department from promulgating regulations on snowmobile use at some point in the future.

#### **Specific Sections by Part**

*Part 212—Travel Management*  
 Subpart A—Administration of the Forest Transportation System  
 Section 212.1. This section of the rule includes the definitions for part 212, which governs administration of the forest transportation system, designation of roads, trails, and areas for motor vehicle use, and use by over-snow vehicles.

*Definition for “administrative unit.”*  
*Comment.* Respondents suggested clarifying that this definition embraces all NFS lands, including National Recreation Areas and other Congressionally designated areas.  
*Response.* National Forests and National Grasslands include many classifications, including National Recreation Areas and Congressionally Designated Areas. The purpose of including a definition for administrative unit was not to delineate the types of areas within the NFS, but rather to refer to a discrete management unit within the NFS for purposes of triggering designation of motor vehicle use under the final rule. To ensure that the definition for “administrative unit” encompasses all NFS lands, the final rule adds purchase units, land utilization projects, and the Columbia River Gorge National Scenic Area to the list of administrative units. The final rule also adds “or other comparable units of the National Forest System” to the definition so that if Congress establishes new administrative units of the NFS, they will be included within this definition.

*Definition for “all-terrain vehicle,” “considerable adverse effects,” “motorcycle,” and “off-highway vehicle.”*

*Comment.* Although not included in the proposed rule, respondents suggested including these definitions in the final rule.

*Response.* The Department agrees that

it would be helpful to add a definition for “off-highway vehicle,” since cross-country travel by OHVs is a major concern of this final rule. Therefore, the Department is adding a definition for “off-highway vehicle” to the final rule. The Department is not adding a definition for “all-terrain vehicle” and “motorcycle” because they are only two

of many different types of OHVs and because the final rule does not distinguish among types of OHVs. The Department also is not adding a definition for “considerable adverse effects” because a determination of considerable adverse effects caused by motor vehicle use for purposes of effecting a temporary, emergency closure under § 212.52(b)(2) of the final rule depends on specific factual circumstances in certain contexts. Specific circumstances may include public safety or soil, vegetation, wildlife, wildlife habitat, or cultural

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 resources associated with a particular road, trail, or area.

*Definition for “area.”*

*Comment.* Some respondents stated that the final rule should allow large areas to be designated for motor vehicle use and should provide for consideration of all NFS lands as designated areas.

Other respondents stated that the final rule should not allow designation of areas for motor vehicle use. If such designation is allowed, these respondents believed that only areas much smaller than a Ranger District should be designated, after site-specific analysis demonstrating no environmental impacts, and no Forest should be required to have a designated area.

*Response.* Areas designated for motor vehicle use are not intended to be large or numerous. The Department agrees that the definition in the proposed rule, “a discrete, specifically delineated space that is smaller than a Ranger District,” is too broad to effectuate this intent. Therefore, the Department has revised the definition of “area” in the final rule to read, “a discrete, specifically delineated space that is

smaller, and in most cases much smaller, than a Ranger District.” Only a few areas currently designated for motor vehicle use, such as the Oregon Dunes National Recreation Area on the Siuslaw

National Forest, encompass a significant portion of a Ranger District. Other designated areas are expected to be much smaller.

While areas are not intended to be large or numerous, the Department believes that it is appropriate to designate some areas for motor vehicle use. These areas would have natural resource characteristics that are suitable for motor vehicle use, or would be so significantly altered by past actions that motor vehicle use might be appropriate. Routes and areas under the final rule will be designated at the local level, based upon appropriate environmental analysis. Federal law does not require the Forest Service to demonstrate that there are no environmental impacts from designation of areas.

Under the final rule, no administrative unit or Ranger District will be required to designate an area.

*Comment.* Some respondents stated that the final rule should not include a presumption for designation of previously disturbed sites. Instead, these respondents believed the rule should provide examples of sites that would not be appropriate.

*Response.* Neither the proposed nor the final rule establishes a presumption for designation of previously disturbed sites. Rather, the preamble to the proposed rule generally discussed possible characteristics of an area. The characteristics of an area are not enumerated in the definition of an area to give the agency the flexibility to designate areas for motor vehicle use as appropriate, given the variety of natural features, resources, and uses on NFS lands.

*Comment.* Some respondents stated that the final rule should expand the definition of area to encompass specific uses, such as grazing, hunting, firewood gathering, camping, and religious, customary, and cultural practices. Other respondents asked the agency to encourage designation of areas wherever there is a high density of existing routes, to save time in conducting an inventory of existing routes.

*Response.* It is not necessary to

expand the definition of area to encompass specific uses, such as grazing. The final rule provides for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, and prohibits motor vehicle use other than in accordance with those designations. Motor vehicle use that is specifically authorized pursuant to a written authorization issued under Federal law (§ 261.13(h) of the final rule) is exempted from this prohibition. In addition, in making these designations, the responsible official must recognize valid existing rights (§ 212.55(d) of the final rule).

To address specific local needs for limited cross-country motor vehicle use for big game retrieval or dispersed camping, the Department is adding a paragraph to § 212.51 of the final rule. This new paragraph provides that in designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of big game retrieval or dispersed camping.

Some areas of high route density may be appropriate for designation as areas. Others will not. The Department believes that designation decisions should be made at the local level, based on site-specific evaluation of local conditions and public involvement. Definition for “designated road, trail, or area.”

*Comment.* Some respondents stated that the final rule should not make a use map a part of the travel management atlas due to confusion that may result if the atlas is not updated. Respondents further commented that this requirement is redundant, since the definition of “use map” already states that it is part of a travel management atlas.

*Response.* The Department disagrees that including a use map in a travel management atlas will lead to confusion if the atlas is not updated because in the final rule revisions to designations will be reflected on a motor vehicle use map (§ 251.56).

The Department agrees that it is unnecessary to state in the definition for designated road, trail, or area that a motor vehicle use map is contained in a travel management atlas because the definition for travel management atlas

states that it includes the motor vehicle use map or maps. Therefore, the Department is removing the phrase, “contained in a travel management atlas” from the definition for designated road, trail, or area. For the same reason, the Department is removing the phrase “that is part of a travel management atlas” from the definition for “motor vehicle use map.” Similarly, the Department is removing the phrase “that is [or ‘are’] included in a forest transportation atlas” from the definitions for “forest road or trail” and “forest transportation system” because the definition for “forest transportation atlas” states that it displays the system of roads, trails, and airfields of an administrative unit.

*Comment.* Some respondents requested that the final rule address designation of routes for nonmotorized as well as motorized uses and stated that the proposed rule text contradicts the preamble in this regard.

*Response.* The purpose of this rule is to provide better and more consistent management of motor vehicle use on National Forests and National Grasslands. Regulation of nonmotorized use is beyond the scope of this rulemaking. The Department agrees that discussion of nonmotorized use in the preamble may have led to some confusion in this regard. For management and enforcement purposes, it would be better for the use map to be dedicated to motor vehicle uses. As stated above, in the final rule, the Department is changing the term “use map” to “motor vehicle use map.” Only motor vehicle uses will be reflected on this map.

The Department wishes to clarify that designation of a road, trail, or area for motor vehicle use does not establish that use as dominant or exclusive of other uses of that road, trail, or area.

*Comment.* Some respondents asked the final rule to clarify whether OHV use on designated roads is permissible.

*Response.* In the final rule, designation decisions, including

**68275 Federal Register** / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations designations by vehicle class, will be made at the local level. The Department

anticipates the need to mix highway-legal and non-highway-legal traffic on some NFS roads. These designation decisions will be advised by engineering judgment or an engineering study, as appropriate.

Definition for “forest transportation atlas.”

*Comment.* Some respondents stated that a forest transportation atlas should include all open roads and trails, closed roads and trails, user-created roads and trails, rights-of-way, and public and private roads.

*Response.* The final rule is not substantively changing the definition of a forest transportation atlas. However, the final rule simplifies the definition by deleting the list of possible forms (such as geospatial and tabular) the data might take and the reference to the data’s purpose. In the final rule, a forest transportation atlas is defined as a display of the system of roads, trails, and airfields of an administrative unit.

Forest roads and forest trails are included in a forest transportation atlas. Forest roads and forest trails are wholly or partly within or adjacent to and serving the NFS that the Forest Service determines are necessary for the protection, administration, and utilization of the NFS and the use and development of its resources.

Roads, trails, and areas designated for motor vehicle use under the final rule will be reflected on a motor vehicle use map. Under the final rule, motor vehicle use off designated routes and outside designated areas will be prohibited by § 261.13.

A travel management atlas will contain a forest transportation atlas and a motor vehicle use map or maps.

Definition for “motor vehicle.”

*Comment.* Some respondents stated that the final rule should clarify that both tracked and wheeled vehicles are included in this definition.

*Response.* The definition for motor vehicle is broad enough to include both tracked and wheeled vehicles. The definition excludes only vehicles operated on rails and wheelchairs and mobility devices that meet certain criteria.

Definitions for “new road construction,” “road reconstruction,” and “forest transportation facility.”

Definitions for “new road construction” and “road reconstruction” were not included in

the proposed rule. However, the Department is making a technical change to conform these definitions in § 212.1 to the definition for “construction” in the Federal Highway Act, 23 U.S.C. 101(a)(3). Consistent with

that statute, “road construction or reconstruction” will be defined in § 212.1 as “supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road.” This change is consistent with other technical changes made to definitions in part 212 to make them conform to 23 U.S.C. 101.

The Department is also making a technical change to conform the definition for “forest transportation facility” to the other definitions in this final rule by replacing the reference to “classified roads” with “forest roads.” In addition, the Department is changing the term “log transfer facilities” to “marine access facilities” in this definition because these facilities, which connect roads to the Pacific Ocean, are used for more than transferring logs. These facilities are used for marine access generally, including access for recreational purposes.

Definition for “road.”

*Comment.* Some respondents stated that the final rule should include in the definition for a road the phrase, “constructed, receiving regular mechanical maintenance, and suitable for use by a standard passenger car.” Other respondents expressed support for the flexibility to identify and manage a road as a trail.

*Response.* The definition for a road in part 212 applies to subpart A, Administration of the Forest Transportation System, subpart B, Designation of Roads, Trails, and Areas for Motor Vehicle Use, and subpart C, Use by Over-Snow Vehicles. Given the broad application of the definition, the Department believes it would be unduly restrictive and inaccurate to add the phrase, “constructed, receiving regular mechanical maintenance, and suitable for use by a standard passenger car,” to the definition for a road. Not all roads on NFS lands are constructed. Not all roads on NFS lands need regular mechanical maintenance, and not all roads on NFS lands are suitable for use

by a passenger car.

The definitions for roads and trails give the agency the flexibility to identify and manage as a trail routes that are wider than 50 inches. Some trails on NFS lands are wider than 50 inches and may have the physical characteristics of a road. Some trails are open to some full-sized vehicles. Four-wheel-drive travel ways and trails originally constructed as roads or railroad grades are all part of the Forest Service trail system. The current definitions for a road and trail, which embrace the diverse array of trail opportunities, are retained in the final rule.

Definition for “road or trail under Forest Service jurisdiction.”

*Comment.* Some respondents expressed concern that this definition would unnecessarily limit Forest Service authority to enforce traffic laws and regulate use on valid rights-of-way and State and county roads. Other respondents observed that the Forest Service has the authority and a duty to protect NFS lands underlying these routes.

*Response.* The final rule provides for designation of NFS roads, NFS trails, and areas on NFS lands for motor vehicle use. The Department wishes to clarify that this final rule does not in any way affect the Forest Service’s jurisdiction to enforce traffic laws, to protect NFS lands underlying routes, or to regulate use, including use on valid rights-of-way. To simplify the definitions in the final rule, the Department has moved the phrase “other than a road or trail that has been authorized by a legally documented right-of-way held by a State, county, or local public road authority” from the definition for “road or trail under Forest Service jurisdiction” to the definitions for “National Forest System road” and “National Forest System trail,” and deleted the definition for “road or trail under Forest Service jurisdiction.” Motor vehicle use on State, county, or municipal roads and trails authorized by a legally documented right-of-way is subject to the control of that State, county, or local public road authority. These roads and trails are not subject to designations made under the final rule, or to the prohibition on motor vehicle use off designated routes and outside designated areas.

*Comment.* Some respondents stated



that private rights-of-way should be excluded from the definition of a road or trail under Forest Service jurisdiction.

*Response.* Section 212.55(d) of the final rule requires responsible officials in making designations to recognize valid existing rights, including valid outstanding or reserved rights-of-way for a road or trail. The Forest Service may not regulate uses within the scope of these rights-of-way if the agency has not acquired the right to do so. However, the agency may regulate use on these rights-of-way if it has obtained the right to do so. Some private rights-of-way may be forest roads. Others may not be “necessary for the protection, administration, and utilization of the National Forest System,” and are not forest roads. Because there are many different local permutations involving

**68276 Federal Register / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations** different rights, some of which include Forest Service regulation of some uses, the Department does not believe it would be appropriate to exclude these rights-of-way from the definition of a NFS road or NFS trail.

In the definition of “road” in the final rule, the Department is removing the sentence, “A road may be a forest road, a temporary road, or an unauthorized or unclassified road,” and is making a corresponding change in the definition of “trail.” Some private roads are not forest roads, temporary roads, or unauthorized roads. These roads may be included in a forest transportation atlas, but are not NFS roads and will not be subject to designation under this final rule.

*Comment.* Some respondents objected to proposed language regarding roads or trails “which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477.” These respondents asserted that this language would violate the Congressional moratorium on rulemaking concerning recognition of these rights-of-way.

Other respondents requested clear delegation of authority for applying this exclusion,

and clarification of the process and criteria to be used in ascertaining whether such a right-of-way exists. Some respondents suggested that the final rule establish that all routes in existence before 1976 are R.S. 2477 rights-of-way.

*Response.* The exemption for a road or trail “which an authorized officer has ascertained, for administrative purposes and based on available evidence, is within a public right-of-way for a highway, such as a right-of-way for a highway pursuant to R.S. 2477” has been removed from the definition for a road or trail under Forest Service jurisdiction in the final rule. As stated above, the remaining text in that definition has been moved to the definitions for “National Forest System road” and “National Forest System trail” in the final rule. The exemption for legally documented rights-of-way held by State, county, or other local public road authorities covers rights-of-way under R.S. 2477 that have been adjudicated through the Federal court system or otherwise formally established. The Department does not want to give the appearance of establishing the validity of unresolved R.S. 2477 right-of-way claims in determining the applicability of this final rule.

*Comment.* Some respondents stated that the final rule should address routes that cross private property or otherwise change jurisdiction. These respondents expressed concern that popular, user-created routes on NFS lands could be closed under the final rule if they are accessible only from private land.

*Response.* Many roads and trails on NFS lands originate on or cross private property. Where the United States holds a right-of-way across private property providing access to the National Forest, these routes are NFS roads and NFS trails, and subject to possible designation under the final rule. Some user-created roads and trails on NFS lands cross private property. The agency generally will not consider a road or trail on NFS lands for designation unless there is legal public access to that road or trail. Where access

to NFS lands from private property is needed, the Forest Service will seek rights-of-way from willing sellers. If public access cannot be secured, these routes generally will be closed to motor

vehicles under the final rule.

The Department supports public access to Federal land and supports the rights of private landowners to control access to their land. A designated system of motor vehicle routes should be based on legal public access.

Definition for “snowmobile.”

*Comment.* Some respondents suggested that the definition for snowmobile in the proposed rule be broadened to include other over-snow vehicles, such as tracked ATVs and grooming machines.

*Response.* The proposed rule defined snowmobile as “A motor vehicle that is designed exclusively for use over snow and that runs on a track or track and/or a ski or skis.” This definition encompassed large vehicles, such as snow cats, not commonly referred to as snowmobiles. However, the proposed definition excluded vehicles capable of conversion to over-snow use, such as ATVs with tracks. Since the proposed definition refers only to the vehicle itself, and not to its use, the proposed rule could be read to allow use of snowmobiles in the absence of snow off routes and outside areas designated for motor vehicle use. The Department believes that over-snow use by tracked vehicles has similar environmental effects, regardless of whether the vehicle is designed exclusively for use over snow.

Consequently, the final rule replaces the exemption and definition for snowmobiles with an exemption and definition for over-snow vehicles (which would include snowmobiles). The final rule also removes the word “exclusively” from the definition, while adding “while in use over snow,” so that the final definition for over-snow vehicle includes motor vehicles that are designed for use over snow and that run on a track or track and/or a ski or skis, while in use over snow. Use by over-snow vehicles may be allowed, restricted, or prohibited under part 212, subpart C.

Definition for “temporary road or trail.”

*Comment.* Some respondents stated that roads and trails in this category must be managed as temporary and removed as soon as their purpose is served. Otherwise, these respondents believed that they should be included in

the forest transportation atlas. Other respondents stated that the final rule should clarify use and designation of temporary routes and explicitly prohibit unauthorized motor vehicle use.

*Response.* The Department agrees that temporary roads and trails must be managed as temporary. In the rule, a temporary road or trail is defined as a road or trail necessary for emergency operations or authorized by contract, permit, lease, or other written authorization. The Forest Service requires that temporary roads and trails be decommissioned once the emergency that justified them or their written authorization is no longer in effect. NFS roads and NFS trails are the only types of routes that will be designated for motor vehicle use under this final rule. Temporary roads and trails by definition are not forest roads or trails and therefore cannot be NFS roads or NFS trails. Therefore, temporary roads and trails will not be designated under the final rule.

Some motor vehicle use on temporary roads may be exempted from designations and the corresponding prohibition under the rule, since § 212.51(a)(5) and (a)(8) and § 261.13(e) and (h) of the final rule exempt emergency motor vehicle use and motor vehicle use allowed under a written authorization.

After designations are complete on an administrative unit or a Ranger District, motor vehicle use on that unit or District that is inconsistent with the designations will be prohibited under § 261.13 of the final rule.

Definition for “trail.”

*Comment.* Some respondents requested that the final rule define trails as nonmotorized, or at least clarify whether motor vehicle use is permitted on trails. Other respondents asked that the definition of trails not exclude use by full-sized vehicles.

Some respondents stated that the final rule should clearly distinguish between roads and trails and suggested a variety of criteria for that purpose, including

vehicles on trails, or defining trails as having only a single track. Other respondents stated that the distinction between roads and trails should not be based on width.

Respondents suggested several new terms to identify designated routes that are open to motor vehicles, but narrower than a road. These terms included “routes,” “ways,” and “two-track trails” (as opposed to single-track trails). Some respondents suggested that the final rule adopt definitions for categories of trails from the FSM and FSH.

*Response.* The Department has retained the proposed definitions of road and trail in the final rule. Section 212.51 of the rule explicitly authorizes responsible officials to designate NFS trails for motor vehicle use. No clarification on this point is needed. The agency has long managed some trails as nonmotorized and others as open to a variety of motor vehicles. The definitions for part 212 distinguish roads from trails based on width and management. The Department believes that this distinction is clear and objective and makes sense in terms of the way the agency manages roads and trails. There is no need to change the definition of a trail because the rule already provides the responsible official discretion to designate roads and trails for appropriate classes of motor vehicles, depending on the circumstances. Some roads may be designated for use by non-highway-legal vehicles. Some routes over 50 inches wide are identified and managed as trails and can accommodate wider vehicles.

The definitions for trails in the rule are keyed to management of the forest transportation system, designation of routes and areas for motor vehicle use, and management of use by over-snow vehicles. The definitions for trails in the FSM and FSH are appropriate for trail management in the field and are not needed for the broader purposes of part 212. Definitions based on the types of use on trails, such as single versus double track or motorized versus nonmotorized, are not necessary in the rule, since designations based on vehicle class will be made through implementation of the rule at the local level.

Definition for “travel management atlas.”

*Comment.* Some respondents suggested expanding the definition for travel management atlas to encompass nonmotorized routes in order to serve a wider number of public and administrative needs.

*Response.* Under the final rule, the travel management atlas consists of the forest transportation atlas and the motor vehicle use map or maps. The forest transportation atlas includes the entire system of roads, trails, and airfields of an administrative unit. Therefore, the travel management atlas encompasses all NFS roads and NFS trails, regardless of whether they are designated for motor

vehicle use. However, only NFS roads and NFS trails designated for motor vehicle use will appear on the motor vehicle use map. Since motor vehicle use maps may be developed at the Ranger District level, the final rule recognizes that the travel management atlas for a National Forest may include one or more motor vehicle use maps. Definition for “unauthorized or unclassified road or trail.”

*Comment.* Some respondents suggested that these roads and trails be called “unauthorized motorized routes” to ensure they are not given official status as roads or trails without site-specific analysis. Respondents also recommended that the reference in the definition to a forest transportation atlas be removed or explained to eliminate the implication that a route can be authorized simply by including it in the atlas. Other respondents stated that the definition should include penalties for creation and use of unauthorized or unclassified routes.

*Response.* The Department believes that the term “unauthorized or unclassified road or trail” is cumbersome and that “unauthorized” more accurately captures the nature of these routes than “unclassified.” Accordingly, in the final rule, the Department is changing “unauthorized or unclassified road or trail” to “unauthorized road or trail.”

The definition for unauthorized road or trail (a road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas) makes clear that unauthorized roads and trails are not part of the forest transportation system and are not officially recognized by the Forest Service.

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Stating that an unauthorized road or trail is not included in a forest transportation atlas does not imply that it can be authorized simply by including it in the atlas. As stated in the preamble to the proposed rule, user-created roads and trails may be identified through public involvement and considered in the designation process. After public consideration and appropriate site-specific environmental analysis, some user-created routes may be designated for motor vehicle use pursuant to § 212.51 of the final rule. These routes would become NFS roads or NFS trails and would be included in a forest transportation atlas and reflected on a motor vehicle use map.

The final rule contains a prohibition at 36 CFR 261.13 pertaining to motor vehicle use. Under this provision, after NFS roads, NFS trails, and areas on NFS lands have been designated pursuant to 36 CFR 212.51 on an administrative unit

or a Ranger District, it is prohibited to possess or operate a motor vehicle on NFS lands in that unit or District other than in accordance with those designations. At that point, motor vehicle use off designated routes and outside designated areas will be prohibited under § 261.13.

Section 212.2(a). This section of the rule governs the travel management atlas.

*Comment.* Some respondents suggested that the travel management atlas be available at Ranger Districts and on the internet.

*Response.* The current rule provides that the forest transportation atlas is to be available to the public at the headquarters of each administrative unit of the Forest Service. Likewise, the final

rule provides that the travel management atlas, consisting of the forest transportation atlas and the motor vehicle use map or maps, is to be available to the public at the headquarters of each administrative unit of the Forest Service. The Department believes it is unnecessary to require each Ranger District to maintain a complete travel management atlas (which encompasses all forest roads and trails for the entire National Forest). The motor vehicle use map will be available at the corresponding Ranger District.

The Forest Service also intends to post motor vehicle use maps on the internet and gradually to post travel management atlases (a more complicated job) on the internet. The Department is adding language in § 212.56 to require that motor vehicle use maps be made available on appropriate Web sites as soon as practicable.

Section 212.2(b). This section of the rule governs the forest transportation atlas.

*Comment.* Some respondents commented that updating the forest transportation atlas to reflect new information should be mandatory, rather than discretionary. Respondents also stated that all long-standing roads should be shown on a forest transportation atlas. Other respondents stated that temporary roads should be shown on a forest transportation atlas while they exist.

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Some respondents stated that the final rule should require National Forests to create a forest transportation atlas, so that they cannot close all routes by failing to create the atlas.

*Response.* Section 212.2(b) of the final rule allows a forest transportation atlas to be updated, rather than requiring it to be updated. Under the final rule, forest roads and trails are included in a forest transportation atlas. Temporary roads and trails are not forest roads and trails and therefore are not included in a forest transportation atlas and are not designated for motor vehicle use. It would be cumbersome to add temporary roads and trails to the atlas and remove them once they are no longer authorized.

The current rule at § 212.2(a) requires the responsible official for every administrative unit of the Forest Service to develop and maintain a forest transportation atlas. Likewise, § 212.2(a)

of the final rule requires the responsible official for every administrative unit of the Forest Service to develop and maintain a travel management atlas, which consists of a forest transportation atlas and a motor vehicle use map or maps.

The Department has removed the citation to § 200.1 after the reference to the Forest Service's directive system in § 212.2(b) of the final rule.

Section 212.5(a)(1). This section of the rule governs traffic rules in general. *Comment.* Some respondents stated that the final rule should not allow preemption of State traffic laws and that the Forest Service should not allow uses that are illegal on public, State, or county roads. One respondent maintained that the proposed rule would revoke water rights for miners. Other respondents asked the Forest Service to retain the authority to preempt State law.

*Response.* Under the current rule, traffic on roads is subject to State traffic laws where applicable, except when in conflict with the Forest Service's prohibitions at 36 CFR part 261. If there is a conflict, the agency's prohibitions preempt State traffic laws. To ensure that the agency's intent with respect to designation of roads, trails, and areas is fully effectuated, the proposed and final rules also provide for preemption of State traffic laws when they conflict with those designations. No other preemption of State laws is authorized. The final rule does not revoke water rights for miners.

Section 212.5(a)(2)(ii). This section of the rule contains specific traffic rules.

*Comment.* Some respondents suggested that the final rule include and distinguish among varieties of OHVs, including ATVs, motorcycles, and buggies, and recognize different needs of users of different vehicles.

Respondents also suggested providing national definitions of vehicle classes. Respondents recommended recognizing ATVs as a specific class of OHV.

*Response.* This section of the rule in part 212, subpart A, which authorizes restricting use of roads by certain classes of vehicles or types of traffic as provided in 36 CFR part 261, is separate from the provisions for designation of roads, trails, and areas for motor vehicle use in part 212, subpart B. Part 212, subpart B, provides for designation of roads, trails, and areas for motor vehicle use by vehicle class. Since new classes of vehicles are introduced on a regular basis and designations will be made at the local level, the rule does not need to define different types of OHVs at a national level.

The vehicle classes enumerated in

§ 212.5(a)(2)(ii) are illustrative, rather than exhaustive. The Department agrees that ATVs are a common type of OHV and has added “all-terrain vehicles” to the list of vehicle classes in § 212.5(a)(2)(ii). The Department has removed “automobiles” from the list, since “passenger cars” are already included.

Section 212.7. This section of the rule governs access procurement by the United States.

There were no comments received on this section of the proposed rule.

However, the Department is changing the heading and text of § 212.7(a) to conform to terminology used elsewhere in part 212 and in the definitions for “forest road,” “National Forest System road,” and “National Forest System trail” in the final rule.

Section 212.10. This section of the rule governs maximum economy NFS roads.

No comments were received on this section of the proposed rule. The Department has not made any changes to this section.

Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use Section 212.50. This section governs the purpose and scope of part 212, subpart B.

*Comment.* Some respondents stated that the final rule should specify whether current land management plans, closures, and open areas remain in effect while designation decisions are pending.

Respondents suggested that the purpose and scope section summarize available information on monitoring and other aspects of management of motor vehicle use in National Forests.

Some respondents requested clarification that State law governs motor vehicle use on legally documented rights-of-way held by States, counties, or local public road authorities.

*Response.* The prohibition pertaining to motor vehicle use in the final rule at § 261.13 explicitly states that it is not triggered until NFS roads, NFS trails, and areas on NFS lands have been designated pursuant to 36 CFR 212.51 on an administrative unit or a Ranger District and those designations are identified on a motor vehicle use map. Until those designations are complete for the entire administrative unit or Ranger District and identified on a

motor vehicle use map, existing authorities and orders regarding motor vehicle use remain in effect.

The purpose and scope section of subpart B provides for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use and a prohibition to enforce those designations. Available information on monitoring and other aspects of management of motor vehicle use in National Forests is more appropriately addressed in the preamble to the proposed and final rules.

Designations and prohibitions under this rule do not apply to legally documented rights-of-way held by States, counties, or other local public road authorities. Only NFS roads and NFS trails may be designated for motor vehicle use under the final rule. The definitions of “National Forest System road” and “National Forest System trail” exclude legally documented rights-of-way held by States, counties, or other local public road authorities. In addition, the prohibition pertaining to motor vehicle use specifically exempts use of a road or trail that is authorized by a legally documented right-of-way held by a State, county, or other local public road authority.

As previously described, the final rule includes a new paragraph (b) in § 212.50

to clarify that previous travel management decisions may be incorporated in designations.

Section 212.51. This section of the rule governs designation of roads, trails, and areas for motor vehicle use.

*Comment.* Some respondents commented that the final rule should require a designation decision to be consistent with the applicable land management plan. Other respondents stated that the final rule should provide for reconsideration of decisions made in land management plans.

*Response.* Under the National Forest Management Act, project-level decisions, including designation of

land management plan, the responsible official must either change the proposed designation or propose an amendment to the plan.

Since under some land management plans, large areas of NFS lands are open to cross-country motor vehicle travel, the Department expects that some land management plan amendments will be proposed and considered during implementation of the final rule. However, the Department does not believe that the final rule should provide for reconsideration of all travel management decisions made in land management plans. Reconsideration of all these decisions would waste public resources, disrespect public participation in development of the plans, and expand the scope of this travel management rule beyond its purposes.

*Comment.* Some respondents stated that the final rule should encourage designation decisions to be made case by case at the Ranger District level. Other respondents stated that the final rule should not allow designation at the Ranger District level to avoid inconsistency, to promote enforceability, and to ensure that cumulative effects are evaluated. These respondents believed that designation decisions should be made only at the National Forest or Regional level.

*Response.* The Department believes it is appropriate to give Forest Service field officers the flexibility to designate routes and areas for an entire administrative unit or for a single Ranger District. Designation at the Ranger District level may make sense, given the size of some Ranger Districts, which, at over three million acres, are more than ten times the size of the smallest administrative units. The Department believes that local evaluation and consideration of routes, with public involvement and coordination with Federal, State, local, and tribal governments, will lead to better decisions and better compliance with them.

Enforcement at these two scales is feasible because the regulation specifically authorizes designation at these two levels and triggers the prohibition pertaining to motor vehicle use once a designation decision has been made at either of these levels. Administrative units and Ranger Districts are discrete management and

**68279 Federal Register** / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations routes for motor vehicle use, must be consistent with the applicable land management plan. If a proposed designation is not consistent with the

geographic units within the NFS. The Department believes that Ranger Districts are large enough to permit adequate effects analysis for designation decisions and that field officers should be given the flexibility to determine the appropriate scope for that analysis. The Department believes that it would be unwieldy to make designation decisions and comply with the associated legal requirements at a Regional scale.

Section 212.52. This section governs public involvement.

The Department has changed the title of this section from “Public involvement in the designation process”

to “Public involvement,” since this section addresses public involvement in the designation process (§ 212.52(a)) and

the absence of public involvement in the case of temporary, emergency closures (§ 212.52(b)).

Section 212.52(a). This section of the rule governs public involvement in the designation process.

*Comment.* Some respondents suggested that the final rule require consultation with user groups. Other respondents requested that the final rule include detailed requirements for public involvement in route and area designation, including publication of a **Federal Register** notice, legal notices, 60-to-90-day public comment periods, mailings, postings on bulletin boards, and postings on internet sites. Some respondents requested that the final rule provide for public notice and comment on inventories of routes and areas, as well as on designation decisions.

*Response.* Consistent with E.O. 11644, E.O. 11989, and § 212.52 of the proposed rule, the final rule requires public participation generally rather than consultation with specific parties in the designation of roads, trails, and areas pursuant to the rule. Also consistent with the E.O.s and § 212.52 of

the proposed rule, the final rule does not enumerate specific requirements for public involvement, so as to give field officers flexibility in meeting the requirement to give advance notice to allow for public comment on proposed designations and revisions to designations.

The Department believes that public involvement associated with the NEPA process will often fulfill the

requirements of § 212.52(a). Rather than

duplicating existing requirements for public involvement, the Department is adding language to § 212.52(a) of the final rule to establish that advance notice and public comment will be consistent with agency procedures under NEPA.

The Department does not believe it is necessary to provide for public notice and comment on inventories of routes and areas. NFS roads and NFS trails are reflected in the forest transportation atlases. User-created routes on NFS lands that have resulted from cross-country motor vehicle use may be identified through public involvement and considered in the designation process under the final rule. These routes will not necessarily be inventoried. The decision about which routes and areas to designate, rather than the gathering of information prior to designation, is the decision point with substantive effects on users and the environment. Designation decisions will be subject to public notice and comment as provided in § 212.52(a).

Section 212.52(b)(1). This section of the rule addresses temporary, emergency closures without advance public notice.

*Comment.* Some respondents suggested that the final rule allow cooperative work, volunteer work, or mitigation to address environmental problems associated with motor vehicle use of routes as an alternative to temporary, emergency closures.

*Response.* Section 212.52(b)(1) of the proposed and final rules restates existing authority in § 295.3 to implement temporary, emergency closures pursuant to 36 CFR part 261, subpart B. This authority augments other measures that might be taken to address resource protection or to protect public health and safety, including cooperative work, volunteer work, and mitigation.

Section 212.52(b)(2). This section of the rule governs temporary, emergency closures based on a determination of considerable adverse effects.

*Comment.* Some respondents stated that the final rule should restore “including public input,” from 36 CFR 295.5, after “If, based on monitoring pursuant to § 212.57,” and before “the responsible official determines that motor vehicle use on a National Forest

System road or a National Forest System

trail or in an area on National Forest System lands is causing or will cause considerable adverse effects.”

*Response.* There is no legal obligation to obtain public input in connection with monitoring the effects of motor vehicle use, or in making a determination of considerable adverse effects for purposes of § 212.52(b)(2). The public is welcome to provide information to the responsible official regarding motor vehicle use on routes and in areas and to highlight potential problems associated with motor vehicle use on particular routes and in particular areas. The Forest Service values this input as an important adjunct to agency monitoring efforts. However, the Department believes it is not appropriate, and could be counter-

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productive, to imply that public input is required in connection with a determination of considerable adverse effects pursuant to § 212.52(b)(2).

To track the language of E.O. 11644 more precisely and to clarify that monitoring pursuant to § 212.57 is not the only potential source of information about “considerable adverse effects,” the Department is removing “based on monitoring pursuant to § 212.57” from the final rule. This section now begins “If the responsible official determines that motor vehicle use \* \* \*

”  
*Comment.* Some respondents requested that the word “mitigated” be removed from § 212.52(b) in the final rule, or that the final rule include a standard for mitigation, such as “to a level of insignificance.” These respondents contended that the addition of “mitigated” in § 212.52(b) weakens the strong wording of E.O. 11644 and E.O. 11989 which, according to these respondents, require such effects to be eliminated. These respondents maintained that the explanation for the addition of “mitigated” in the preamble to the proposed rule is contradictory.

*Response.* The Department believes that temporary, emergency closures based on a determination of considerable adverse effects should remain in place until the effects have

been mitigated or eliminated. Use of only the term “eliminated” could be read to imply that the closure must stay in place until there is no effect whatsoever, a practical impossibility in some situations. By “mitigated,” the Department means the effects will be reduced to the point where they are not considerable adverse effects. The Department believes that the inclusion of both terms, “mitigated or eliminated,” better expresses the intent of the E.O.s. Where motor vehicle use directly causes or will directly cause considerable adverse effects, use must be stopped until the considerable adverse effects have been mitigated or eliminated. The final rule further requires that the closure remain in place until measures have been implemented to prevent future recurrence.

*Comment.* Some respondents stated that the final rule should limit temporary, emergency closures to one year as in § 295.3 of the current rule and should require documentation of impacts and consideration of alternatives before closure. Respondents suggested changing “considerable adverse effects,” which they believed is vague and open to interpretation, to “irreversible physical harm.”

*Response.* The Department believes it is appropriate to retain the flexibility to implement a temporary, emergency closure for a period that is longer than a year, if warranted by the situation. E.O. 11644, as amended by E.O. 11989, requires that the closure remain in place until the considerable adverse effects have been eliminated (mitigated or eliminated in the final rule). Setting a mandatory expiration date could conflict with this requirement.

Requiring formal documentation of impacts and consideration of alternatives also could frustrate the purpose of the E.O.s and this final rule, which require the responsible official to close a road, trail, or area immediately when motor vehicle use on that route or in that area is causing considerable adverse effects. However, the Department is adding “directly” before “causing” and “cause” in § 212.52(b)(2)

of the final rule to clarify that the motor vehicle use must directly cause a considerable adverse effect to be subject to this section. The Department is also including a requirement for public notice of the closure pursuant to 36 CFR

261.51, including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.

The Department does not believe that it would be appropriate to substitute “irreversible physical harm” for “considerable adverse effects” as the trigger for a temporary, emergency closure under the final rule. The E.O.s provide that a determination of considerable adverse effects will trigger a temporary, emergency closure. In addition, the E.O.s and this final rule provide for the closure to be lifted when the considerable adverse effects have been redressed. If irreversible harm, which is permanent, is the trigger, the closure could never be lifted.

For consistency with § 212.51, the Department is removing “Forest Supervisor or other” before “responsible official” in § 212.52(b)(2) of the final rule. The Department is making the same change in §§ 212.53 and 212.57 of the final rule. In addition, the Department is changing the phrase “cultural or historic resources” in § 212.52(b)(2) to “cultural resources” because the phrase “cultural resources” includes historic resources for purposes of the National Historic Preservation Act.

Section 212.53. This section of the rule governs coordination with Federal, State, county, and other local governmental entities and tribal governments.

*Comment.* Some respondents stated that the final rule should require consultation with gateway communities and State tourism offices.

*Response.* Section 212.53 of the final rule requires coordination with appropriate Federal, State, county, and other local governmental entities and tribal governments in implementing the final rule. State governments are organized differently across the country. While the Department relies on States to identify the appropriate points of contact, State tourism offices generally would fall into this category. “Gateway communities” is a broad term encompassing county and local governments in the vicinity of a National Forest. The Department believes that coordination with State, local, and tribal governments is critical to the success of this final rule. Not only

can their programs be affected by designation of NFS roads, NFS trails, and areas on NFS lands under the final rule, but they often maintain their own networks of roads intertwined with the Forest Service’s system of roads and trails.

Section 212.54. This section of the rule governs revision of designations.

*Comment.* Some respondents stated that the final rule should make designations permanent, rather than subject to future review and reconsideration. Other respondents suggested that the rule provide for development of new trails, and avoid the implication that the system designated pursuant to this final rule represents all the routes that will ever be approved for motor vehicle use. Some respondents stated that the final rule should allow users to continue to develop new trails independent of the Forest Service.

*Response.* The Department believes that field officers need to be able to revise designations made pursuant to the final rule to meet changing conditions. This flexibility is consistent with E.O. 11644, which provides for closure of designated routes based on environmental impacts. Section 212.54 of the final rule will allow for revisions to designations to reflect changes in environmental conditions, recreation demand, and other factors identified through monitoring pursuant to § 212.57

of the final rule. These revisions may include additions to the system of designated routes, as well as route closures. New motor vehicle routes can be planned, constructed, and designated after appropriate public involvement and environmental analysis. The Department does not agree that users should construct new routes without agency approval. Trail construction without a written authorization from the Forest Service is prohibited by § 261.10(a).

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The Department has added language to § 212.54 of the final rule to clarify that revision of designations shall include coordination with Federal, State, county, and other local

governmental entities and tribal governments as provided under § 212.53.

Section 212.55. This section of the rule governs the criteria for designation of roads, trails, and areas for motor vehicle use.

*Comment.* Some respondents suggested consolidating § 212.55(a), (b),

and (c) to reduce redundancy and to provide the same standards for motor vehicle use on roads and trails.

*Response.* The general criteria of § 212.55(a) and the specific criteria of § 212.55(b) are taken directly from E.O. 11644. The E.O. applies only to trails and areas designated for motor vehicle use. However, the Department believes that the general criteria cited in the E.O. are of such universal applicability that they should be considered in designating roads, as well as trails and areas. Therefore, §212.55(a) describes criteria to be considered in all designations.

Section 212.55(b), on the other hand, reflects the specific criteria to be used in designating trails and areas under the E.O. Section 212.55(c) contains specific criteria for designation of roads drawn from existing Forest Service transportation policy. The Department believes that consolidating these sections into a single set of criteria for roads, trails, and areas would not provide the opportunity to address the different management challenges and opportunities in different contexts. Section 212.55(a). This section of the rule contains general criteria for designation of NFS roads, NFS trails, and areas on NFS lands.

*Comment.* Some respondents suggested removing “minimization of conflicts among uses of NFS lands” and

other criteria unrelated to physical and biological impacts. These respondents stated that the government should not eliminate one use to avoid conflict with another and asked that the final rule specify that motorized and nonmotorized use on the same route does not represent a conflict.

*Response.* The references to use conflicts in this section are taken from E.O. 11644. In issuing this E.O., President Nixon directed agencies to take conflicts among uses into account in designating trails and areas for motor vehicle use. The Department believes

that some trails can accommodate both motorized and nonmotorized uses. However, the Department also believes that some trails are better managed for one use or the other, and that providing separate trail systems can sometimes result in better recreational experiences for all users.

The Department is changing the phrase “National Forest System resources” in § 212.55(a) to “National Forest System natural and cultural resources” to make it clear that this criterion includes cultural, as well as natural, resources on NFS lands. To emphasize consideration of effects through a public process, the Department is replacing “protection of” prior to “National Forest System resources” with “effects on” and removing “promotion of” before “public safety” and “minimization of” before “conflicts among uses.”

*Comment.* Some respondents stated that the final rule should ensure that no routes are designated unless there is funding for maintenance and enforcement. Other respondents asked field officials to consider the availability of volunteers and cooperators in evaluating resources available for maintenance.

*Response.* The Department agrees that availability of resources should be a consideration in designating routes for motor vehicle use. Section 212.55(a) of the proposed and final rules include as a criterion for designation “the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.” The Department believes, however, that this determination involves the exercise of judgment and discretion on the part of the responsible official. At times, resources are scarce, and the Department does not believe that this scarcity should lead to blanket closures of NFS lands to recreational users. Volunteers and cooperators can supplement agency resources for maintenance and administration, and their contributions should be considered in this evaluation.

Section 212.55(b). This section of the rule contains specific criteria for designation of trails and areas.

*Comment.* Some respondents suggested rewriting the criteria in this section to make clear that some level of impacts is acceptable. Other respondents stated that the final rule should retain what they characterized as the mandatory language from E.O. 11644 with respect to application of the specific criteria for trails and areas (“Designation of these areas and trails shall be in accordance with the following: areas and trails shall be located to minimize. \* \* \*”), rather than what they viewed as the discretionary language in the proposed rule (“In designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing. \* \* \*”).

*Response.* The Department has retained the proposed language, “the responsible official shall consider effects on the following, with the objective of minimizing,” in the final rule. The retained language is mandatory with respect to addressing environmental and other impacts associated with motor vehicle use of trails and areas. The Department believes this language is consistent with E.O. 11644 and better expresses its intent. It is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address environmental and other impacts, but that motor vehicle use on Federal lands continue in appropriate locations. An extreme interpretation of “minimize” would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple use of NFS lands. Neither E.O. 11644, nor these other laws and policies, establish the primacy of any particular use of trails and areas over any other. The Department believes “shall consider \* \* \* with the objective of minimizing \* \* \*” will assure that environmental impacts are properly taken into account, without categorically precluding motor vehicle use.

Section 212.55(c). This section of the rule contains specific criteria for designation of roads.

*Comment.* Some respondents stated that the final rule should clarify the

application of the criteria in § 212.55(c) to user-created and temporary roads. Other respondents suggested that the final rule make road management objectives dependent on designation rather than designation dependent on road management objectives. *Response.* Only NFS roads, NFS trails, and areas on NFS lands will be designated for motor vehicle use under the final rule. Temporary roads are not NFS roads and may not be designated. Temporary roads are used for emergency purposes or under a written authorization for a particular time frame and then decommissioned. Motor vehicle use on a temporary road is exempted from designations under § 212.51(a)(5) and (a)(8). User-created roads may be considered for designation under the criteria in § 212.55 of the final rule. Those that are not designated will

**68282 Federal Register / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations** be closed to motor vehicle use by operation of the final rule.

The Department does not expect road and trail management objectives to remain static over time. Road and trail management objectives document prior decisions regarding the role of roads and trails in providing access to implement land management plans. This information about the intent and purpose of roads and trails should be considered when making designation decisions under the final rule. However, road and trail management objectives must be revised when designations under the final rule change motor vehicle use on roads and trails. Consequently, the Department has deleted “consistency with road management objectives” from § 212.55(c) of the final rule. Likewise, the Department has deleted “consistency with trail management objectives” from § 212.55(b) of the final rule. In addition, the Department has added compatibility of vehicle class with road geometry and road surfacing as a specific criterion for designation of roads because this criterion is an important factor in assessing public safety in designating roads for motor vehicle use.

Section 212.55(d). This section of the rule addresses rights of access in the context of the designation process. *Comment.* Some respondents stated that the final rule should provide clear protection of tribal treaty rights. Other respondents stated that the final rule must not revoke valid existing rights-of-way held by miners. Some respondents stated that the final rule must not interfere with rights of access to private property and should recognize private use by right for inholders, rather than requiring private use by inholders to be authorized by a permit. One respondent requested that the proposed rule be revised to reflect other provisions of the Alaska National Interest Lands Conservation Act (ANILCA) besides sections 811 and 1110(a).

*Response.* Nothing in the final rule revokes any rights-of-way held by miners or others or alters or is inconsistent with any treaty rights held by tribal governments. In the final rule, the Department clarifies this intent by substituting “recognize” for “take into account” with regard to rights of access.

Responsible officials will consult with affected tribal governments when designating NFS roads, NFS trails, and areas on NFS lands, pursuant to FSM 1563.11.

Section 212.55(d) of the final rule requires responsible officials in designating roads, trails, and areas to recognize valid existing rights, including valid outstanding or reserved rights-of-way for a road or trail. Examples include a valid outstanding or reserved right-of-way for a road or trail in existence at the time title to the underlying land was acquired by the United States, and a right-of-way for a road or trail acquired by the United States where the owner of the underlying land may have retained control of the right-of-way and may have reserved the right to allow others to use it. The Forest Service may not regulate uses within the scope of these rights-of-way if the agency has not acquired the right to do so. However, the agency may regulate use on these rights-of-way if the agency has obtained the right to do so.

Section 1323(a) of ANILCA provides property owners within the boundaries

of the NFS certain rights of access across NFS lands. According to the terms of ANILCA, such access shall be “subject to such terms and conditions as the Secretary of Agriculture may prescribe,” and “as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System” (16 U.S.C. 3210(a)). While ANILCA provides certain rights to property owners, those rights are subject to such reasonable terms and conditions as the Forest Service may prescribe in a written authorization.

Some property owners also may possess reserved or outstanding rights-of-way or other rights providing access across NFS lands, which may or may not require a written authorization from the Forest Service. Those rights must be recognized under § 212.55(d). The Department believes that questions of valid existing rights are best examined at the local level, where they can be individually evaluated.

The Department is moving the requirement in § 212.55(d)(2) of the proposed rule to take into account the provisions concerning rights of access in

sections 811 and 1110(a) of ANILCA to § 212.81(c) of the final rule, governing establishment of restrictions and prohibitions on use by over-snow vehicles, because these sections of ANILCA specifically refer to snowmobile use. In addition, the Department is changing “take into account” to “recognize” in § 212.81(c) of the final rule. In the final rule, the Department is citing section 811(b), rather than section 811, because section 811(b) contains the reference to snowmobile use. To the extent other provisions of ANILCA may address rights for motor vehicle access, they are covered by § 212.55(d)(1), which requires that the responsible official recognize valid existing rights in making designations under the final rule. It is not feasible for the Department to list every right that may be implicated in any given situation in designating roads, trails, and areas for motor vehicle use under the final rule.



Section 212.55(e). This section of the rule addresses wilderness areas and primitive areas in the context of the designation process.

*Comment.* Some respondents commented that the final rule should retain the more comprehensive ban on motor vehicle use in wilderness areas contained in the current rule, and drop the exception for motor vehicle use authorized in enabling legislation for wilderness areas.

*Response.* Mechanical transport and motor vehicles are prohibited in wilderness areas unless they are necessary to meet minimum requirements for administration of the areas or they are expressly authorized under individual statutes designating wilderness areas. The language in § 212.55(e) proscribing designation of roads, trails, and areas for motor vehicle use in wilderness areas, unless motor vehicle use is authorized by the applicable enabling legislation for those areas, is required for consistency with those statutes.

To avoid confusion with designated roads, trails, and areas, the Department has removed “Congressionally designated” before the phrase “wilderness areas” in § 212.55(e) of the final rule.

*Comment.* Some respondents requested specific direction on protection of wilderness study areas and inventoried roadless areas to preserve their roadless, nonmotorized character. Respondents also suggested prohibiting motor vehicle use within a buffer zone surrounding wilderness areas.

*Response.* Management of wilderness study areas established by Congress is generally governed by their authorizing legislation. Management of inventoried roadless areas is governed by the applicable land management plan and Forest Service policy. The Department does not believe that additional direction for management of these areas is necessary or required in this final rule. Nor does the Department believe that it would be appropriate to prohibit motor vehicle use within a buffer zone surrounding wilderness areas. Responsible officials will consider impacts to nearby wilderness areas, wilderness study areas, and inventoried

**68283 Federal Register** / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations roadless areas during the designation process.

Section 212.56. This section of the rule governs identification of designated roads, trails, and areas.

The Department is making a technical change in the final rule to clarify that motor vehicle use maps will be available at Ranger District headquarters

and as soon as practicable on appropriate Web sites, as well as at administrative unit headquarters.

Section 212.57. This section of the rule governs monitoring of effects of motor vehicle use on designated roads and trails and in designated areas.

*Comment.* Some respondents recommended reinstating the requirement for annual review of OHV management from § 295.6 of the current rule and including public participation in these reviews to allow for adaptive management. Other respondents suggested requiring regular updates of motor vehicle use maps and signs marking designated roads, trails, and areas.

*Response.* The Department supports the concept of adaptive management and agrees that monitoring and, if needed, revision of motor vehicle designations will be an ongoing part of travel management. Since the system of designated routes and areas will change over time, the Department anticipates that local units will publish new motor vehicle use maps annually and update signs as necessary or appropriate.

The Department does not believe that a regulatory requirement for annual review of OHV management, having no basis in law or the E.O., should be imposed. Local review of designations should be conducted as needed, and the Department favors providing local officials with discretion in determining how often they are conducted.

The Department is adding “consistent with the applicable land management plan, as appropriate and feasible” to § 212.57 of the final rule to clarify that monitoring should be incorporated into land management plans under 36 CFR 219.11 to the extent possible to avoid redundant monitoring requirements.

Subpart C—Snowmobile Use  
Comments on snowmobile use are addressed in the response to comments

on § 261.13 of the proposed rule and the corresponding discussion in the preamble to the proposed rule. No specific comments were received on this subpart.

Section 212.81. This section covers over-snow vehicle use.

The Department has added “If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart” to the beginning of § 212.81(c) in the final rule

to stress that the requirements governing the designation process apply to over-snow vehicles only if the responsible official proposes to establish restrictions or prohibitions on over-snow vehicle use.

#### *Part 251—Land Uses*

The Department is making a technical change to conform the definitions for “National Forest System road” and “National Forest System trail” in part 251 with corresponding definitions in part 212 of this final rule.

#### *Part 261—Prohibitions*

Section 261.2. This section contains the definitions for part 261.

In addition to the revised definition for “motor vehicle,” § 261.2 of the final

rule contains new definitions for “administrative unit” and “area” and revised definitions for “National Forest System road” and “National Forest System trail” to match the definitions added to § 212.1. Comments associated with these definitions are addressed under § 212.1. No specific comments were received on this section of the proposed rule.

Section 261.13. This section of the rule prohibits use of motor vehicles not in accordance with designations and provides for exemptions.

*Comment.* Some respondents suggested that bicycles should be included in the prohibition on use of motor vehicles off designated roads and trails and outside designated areas.

*Response.* The Department disagrees that bicycles should be regulated under the same provisions as motor vehicle use. The Department believes that bicycles are distinct from motor vehicles

and should be managed separately from them and that a nation-wide prohibition on cross-country bicycle use is unwarranted at this time. Noise (and its impacts on wildlife and other users) is

a critical distinction between bicycles and motor vehicles. Other differences can (depending on the vehicle) include speed, power, weight, and tread width. Like all uses, including hiking, horseback riding, and motor vehicle use, bicycling has environmental impacts and can affect the experience of other users. Local Forest Service officials retain authority to regulate bicycle use according to their local situation and needs. Some National Forests, through travel plans and orders, restrict bicycles to particular roads and trails. Others allow cross-country bicycling.

*Comment.* Some respondents suggested that the rule specify penalties for violations of §261.13 and that fines for violations be substantially increased.

*Response.* Penalties for violations of § 261.13 are beyond the scope of this rulemaking and are established by Federal statute. Violations of prohibitions in part 261 are Class B misdemeanors, which are punishable by a prison term of up to six months (18 U.S.C. 3559(a)(7); 36 CFR 261.1b). Pursuant to 18 U.S.C. 3571(e), the \$500 maximum fine specified in § 261.1b is superseded by the \$5000 maximum fine established for Class B misdemeanors in 18 U.S.C. 3571(b)(6). However, the maximum penalties are rarely imposed for violations of the Forest Service's criminal regulations.

Each Federal judicial district implements a schedule of collateral forfeiture amounts for violation of each Federal agency's criminal regulations. The applicable collateral forfeiture amount is normally entered on a citation issued to violators of Forest Service criminal regulations. The applicable collateral forfeiture amount may be paid by the violator to end the case without appearing in court. Except for serious offenses or those for which a court appearance is mandatory, these collateral forfeiture amounts generally are less than \$1,000, and most are less than \$100.

Restitution also may be required for criminal violations involving environmental damage (18 U.S.C. 3663A).

*Comment.* Some respondents observed that the rule's prohibition does not require signage to take effect and that users are responsible for using motor vehicles in accordance with designations reflected on a motor vehicle use map. These respondents

asked the Forest Service to amend the rule to require signage of roads, trails, and areas closed to motor vehicle use. *Response.* The Department disagrees with this suggestion. The Forest Service will continue to use signs widely to provide information and inform users on a variety of topics, including regulations and prohibitions. However, the agency has found that posting routes as open or closed to particular uses has not always been effective in controlling use. One of the reasons is that new unauthorized routes continue to proliferate, even in areas closed to cross-country motor vehicle use. Requiring each undesignated route and area to be posted as closed would be an unreasonable and unnecessary burden on agency resources and would tend to defeat the purpose of the final rule. Signs have also proven difficult to maintain and subject to vandalism. The final rule places more responsibility on

**68284 Federal Register / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations** users to get motor vehicle use maps from Forest Service offices or websites and to remain on routes and in areas designated for motor vehicle use. The Department has added language to the final rule clarifying that the prohibition on motor vehicle use other than in accordance with designations does not go into effect until designations have been identified on a motor vehicle use map.

*Comment.* Some respondents suggested replacing the prohibition in § 261.13 with a provision restricting motor vehicle use in certain areas to people with specific training and endorsement from organizations promoting environmental ethics, such as Tread Lightly! or the National Off-Highway Vehicle Conservation Council.

*Response.* The Department appreciates the long-standing work of nongovernmental organizations, including user groups, to promote environmental ethics and responsible behavior on the part of motor vehicle users. These groups make vital contributions to sustainable motor vehicle recreation. Nevertheless, the

Department declines to adopt this suggestion, which would make these nongovernmental organizations gatekeepers for Federal lands and resources. Moreover, the prohibition in § 261.13 is needed because in many situations cross-country motor vehicle use, and in some situations motor vehicle use on routes, can cause unacceptable impacts, regardless of driver training and endorsement of the driver by organizations promoting environmental ethics.

*Comment.* Some respondents asked that motorcycles be exempted from the prohibition regarding motor vehicle use in § 261.13.

*Response.* The Department disagrees with this suggestion. Motorcycles are motor vehicles under E.O. 11644 and § 212.1 of this final rule. Noise and other impacts of motorcycles can be similar to those of other motor vehicles. The final rule seeks to establish a common regulatory framework for management of all motor vehicles to increase consistency and reduce confusion and lack of compliance. At the same time, the Department recognizes that user demands and environmental impacts vary by class of vehicle. Many motorcyclists prefer to ride on single-track trails too narrow for ATVs and larger vehicles. Similarly, some ATV riders prefer to ride on trails not used by larger sport utility vehicles. Local Forest Service managers, with input from the public, will take these differences into account when designating roads, trails, and areas for motor vehicle use. The Department anticipates that many National Forests will designate some single-track trails for motorcycles, but not for other motor vehicles.

*Comment.* Some respondents asked the Forest Service to remove the exemption from snowmobiles from the prohibition regarding motor vehicle use in § 261.13 and consolidate §§ 261.13 and 261.14. Others suggested making the exemption seasonal or limiting it to specific dates or snow conditions.

*Response.* Use by over-snow vehicles, including snowmobiles, presents a distinct suite of issues. A snowmobile traveling over snow results in different impacts to natural resource values than motor vehicles traveling over the ground. Unlike other motor vehicles traveling cross-country, over-snow vehicles traveling cross-country

generally do not create a permanent trail or have a direct impact on soil and ground vegetation. Therefore, the Department believes that use by over-snow vehicles should be addressed in separate regulatory provisions and that mandatory designation of use by over-snow vehicles is not appropriate. Nevertheless, since there are impacts associated with use by over-snow vehicles, and since they are included in the definition of off-road vehicle in E.O. 11644 and E.O. 11989, the Department is preserving the authority currently in part 295 to allow, restrict, or prohibit use by over-snow vehicles, including snowmobiles, on a discretionary basis in part 212, subpart C. Local Forest Service

officials retain authority to manage use by over-snow vehicles to address local situations and concerns and may establish restrictions based on the season of use or local snow conditions that might not make sense nationally. In addition, the final rule establishes a prohibition regarding use by over-snow vehicles in § 261.14 that is very similar to the prohibition regarding motor vehicle use in § 261.13.

The final rule clarifies that over-snow vehicles qualify as such only while in use over snow.

*Comment.* Some respondents asked the Forest Service to continue to allow motor vehicle use, where appropriate, for activities authorized under a written authorization, such as livestock operations, mining, logging, firewood collection, and maintenance of pipelines and utility corridors.

*Response.* The Department agrees that motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations should be exempted from designations made under § 212.51 and restrictions and prohibitions established under § 212.81, as well as from the prohibitions in §§ 261.13 and 261.14 of the rule. To clarify this intent, the Department is changing the exemption from designations in § 212.51(a)(8) and the corresponding prohibition in § 261.13(h) from “use and occupancy of

National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations” to “motor vehicle use that is specifically authorized under a written authorization issued under

Federal law or regulations.” Likewise, the Department is changing the exemption from restrictions and prohibitions in § 212.81(b)(5) and the corresponding prohibition in § 261.14(e)

from “use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under Federal law or regulations” to “use by over-snow vehicles that is specifically authorized under a written authorization issued under Federal law or regulations.” If a written authorization for such activities as livestock operations, mining, logging, firewood collection, and maintenance of pipelines and utility corridors specifically provides for motor vehicle use, that use is exempted from designations and the prohibition regarding motor vehicle use and may continue. Local Forest Service officials retain the authority to regulate uses under a written authorization and to determine whether and under what conditions to authorize motor vehicle use on routes and in areas not generally open to motor vehicle use.

The Forest Service expects to provide additional guidance on application of these exemptions, including the exemption for “limited administrative use by the Forest Service,” in agency directives which will be published for public notice and comment.

*Comment.* Some respondents asked the Forest Service to provide for limited cross-country travel by motor vehicles for dispersed camping and big game retrieval.

*Response.* The Department believes that some discretion should be provided to local agency officials to consider limited use of motor vehicles within a specified distance of certain designated routes for these specific purposes. Consequently, the final rule includes a new provision in § 212.51(b), which allows the responsible official to include in the designation of a road or trail the limited use of motor vehicles within a specified distance of certain designated routes solely for the purposes of big game retrieval or dispersed camping.

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The Department expects the Forest Service to apply this provision sparingly, on a local or State-wide basis, to avoid undermining the purposes of the final rule and to promote consistency in implementation.

Provision for cross-country travel for big game retrieval and dispersed camping will be at the discretion of the responsible official. Nothing in this final

rule requires inclusion of either activity in a designation, or reconsideration of any decision prohibiting motor vehicle use while engaging in these activities. On some units, it may be possible to administer motor vehicle use associated with dispersed camping or big game retrieval through a permit system, rather than as a component of a designation. Motor vehicle use specifically authorized under a permit is exempt under § 261.13(h) from the prohibition on motor vehicle use other than in accordance with designations.

*Comment.* Some respondents asked the Forest Service to provide for permits or exemptions for cross-country motor vehicle use by people with disabilities. Some respondents stated that denying access to people with disabilities constitutes discrimination.

*Response.* Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a Federal program that is available to all other people solely because of his or her disability. In conformance with section 504, wheelchairs are welcome on all NFS lands that are open to foot travel and are specifically exempted from the definition of motor vehicle in § 212.1 of the final rule, even if they are battery-powered. However, there is no legal requirement to allow people with disabilities to use OHVs or other motor vehicles on roads, trails, and areas closed to motor vehicle use because such an exemption could fundamentally alter the nature of the Forest Service’s travel management program (7 CFR 15e.103). Reasonable restrictions on motor vehicle use, applied consistently to everyone, are not discriminatory.

*Comment.* Some respondents observed that under § 261.13(h), the responsible official could still issue permits for competitive cross-country motor vehicle events, including motorcycle observed trials (an event in

which a rider, under observation, has to navigate natural obstacles without putting a foot down). These respondents requested a specific prohibition of such events on the grounds that they violate the purposes of the rule.

Other respondents sought specific recognition for motorcycle observed trials and other organized events as a legitimate cross-country use that is not subject to the prohibitions of the rule. These respondents requested provisions in the rule authorizing creation of temporary trails for a single event.

*Response.* The Department declines to establish either a blanket prohibition or a blanket allowance for motor vehicle events. The Department believes that such decisions are best made at the local level, based on public involvement and appropriate environmental analysis. The exemption in § 261.13(h) of the final rule provides local Forest Service officials the discretion to continue to consider requests for permits involving motor vehicle use on a site-specific basis.

Section 261.14. This section of the rule prohibits use of snowmobiles in violation of restrictions or prohibitions established under part 212, subpart C. Comments related to the prohibition on snowmobile use are addressed in the response to comments on § 261.13 of the

proposed rule and in response to comments on the corresponding discussion in the preamble to the proposed rule. No specific comments were received on this section.

Section 261.55. This section of the rule governs NFS trails.

This section was not included in the proposed rule. However, the Department is making technical changes to this section to conform the terminology in the title and introductory text to terminology used elsewhere in the Forest Service's regulations. Specifically, the Department is changing

“forest development trails” to “National

Forest System trails.”

*Part 295—Use of Motor Vehicles Off National Forest System Roads*

The proposed rule removed part 295 and integrated its requirements, except for the annual review under § 295.6, into part 212. Comments and responses related to specific changes in the existing rule's language are addressed in

this preamble under the corresponding sections of part 212.

### **Regulatory Certifications in the Proposed Rule**

#### *Environmental Impact*

*Comment.* Some respondents asserted that this rulemaking is a major Federal action with significant effects on the human environment that requires preparation of an environmental impact statement.

*Response.* The Department has determined that this final rule falls within the category of actions excluded from documentation in an environmental assessment or environmental impact statement under FSH 1909.15, section 31.1b. This provision excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. No extraordinary circumstances enumerated in the Forest Service NEPA procedures exist that would preclude reliance on this categorical exclusion. The final rule would have no effect on users or on the environment until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Specific decisions associated with designation of routes and areas at the local level may trigger the need for documentation of environmental analysis on a case-by-case basis under NEPA.

#### *Regulatory Impact*

*Comment.* Some respondents asserted that the proposed rule would have an annual economic impact of over \$100 million on private landowners, local communities, the recreation industry, small businesses, and State and local governments and therefore should be considered a significant regulatory action under E.O. 12866. Respondents cited statistics on the overall size of the OHV industry in support of this statement.

*Response.* In light of the substantial interest expressed in the proposed rule, the Office of Management and Budget (OMB) has determined that the final rule is significant under E.O. 12866. Accordingly, the Department has prepared a cost-benefit analysis for the final rule. This documentation is available in the rulemaking record. The Department disagrees that the

final rule will have annual economic impacts of over \$100 million. The final rule requires National Forests to designate which roads, trails, and areas are open to motor vehicle use. Once designation is complete, the rule will restrict motor vehicle use to designated roads, trails, and areas and prohibit motor vehicle use on those routes and in those areas that is inconsistent with the designations. Until designation is complete for a particular administrative unit or Ranger District, the rule will have no impact on motor vehicle use on NFS lands. Even after designations are complete, the rule will have no direct economic impact because designations merely will regulate where and, if appropriate, when motor vehicle use will occur on NFS roads, on NFS trails, and in areas on NFS lands.

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The Department expects that some user-created routes will become designated roads and trails, after site-specific evaluation. The overall network of routes designated for motor vehicle use would then expand. These designated routes will form a more stable base for long-term management and will receive increased maintenance, through agency resources and cooperative relationships, thereby expanding opportunities for motor vehicle users.

At the same time, unregulated cross-country motor vehicle use will no longer be permitted. Unauthorized routes that are not designated will be closed to motor vehicle use, which would limit opportunities for motor vehicle users but might expand opportunities for other recreational visitors seeking a nonmotorized experience.

The Department does not question respondents' assertion that the OHV industry as a whole has an annual impact of over \$100 million on the national economy. However, only a fraction of this economic activity is associated with use on National Forests and National Grasslands. Moreover, only a fraction of that use represents cross-country motor vehicle travel. Over the long-term, the rule will result in a shift from unregulated, cross-country

OHV use to OHV use on a system of designated routes and areas. This shift might have minor impacts on local users and economies, but the national economic impact will be far less than \$100 million annually.

#### *Regulatory Flexibility Act*

*Comment.* Some respondents asserted that the proposed rule would have a significant economic impact on a substantial number of small entities, including OHV dealerships and livestock operations, pursuant to the Regulatory Flexibility Act.

*Response.* The final rule establishes a procedural framework for local decisionmaking and will not have any effect until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Even after designations are complete, the rule will have no direct impact on small entities because designations merely will regulate where and, if appropriate, when motor vehicle use will occur on NFS roads, on NFS trails, and in areas on NFS lands. The Department has determined that the final rule will not have a significant economic effect on a substantial number of small entities because the final rule will not impose recordkeeping requirements on them, nor will it affect their competitive position in relation to large entities or their cash flow, liquidity, or ability to remain in the market.

#### *No Takings Implications*

*Comment.* One respondent stated that the proposed rule could cause takings of private property when areas closed to motor vehicle use are then established as wilderness areas. Another respondent asserted that the rule revokes or modifies rights-of-way held by miners, inholders, and others, thereby effecting a taking of private property.

*Response.* There is no taking of private property from implementation of this final rule. The final rule applies only to NFS roads, NFS trails, and areas on NFS lands. Any NFS lands that will be closed to motor vehicle use will be Federal lands. Nothing in this rule creates wilderness areas, which can be established only by Congress. Nothing in the final rule revokes or alters any rights-of-way held by miners, inholders, or others. The final rule merely requires responsible officials to

designate which NFS roads, NFS trails, and areas on NFS lands are open to motor vehicle use. In making designations, responsible officials must recognize valid existing rights, including valid reserved and outstanding rights-of-way for a road or trail (§ 212.55(d)).

#### *Civil Justice Reform*

No comments were received on this section of the proposed rule.

#### *Federalism and Consultation and Coordination With Indian Tribal Governments*

*Comment.* One respondent asserted that the proposed rule has tribal implications and may pose a taking of treaty rights guaranteeing access to certain lands.

*Response.* The proposed rule does not have tribal implications pursuant to E.O. 13175. Nothing in the final rule alters or is inconsistent with any treaty rights held by tribal governments.

#### *Energy Effects*

No comments were received on this section of the proposed rule.

#### *Unfunded Mandates*

No comments were received on this section of the proposed rule.

#### *Controlling Paperwork Burdens on the Public*

No comments were received on this section of the proposed rule.

### **3. Regulatory Certifications for the Final Rule**

#### *Environmental Impact*

The final rule requires designation at the field level, with public input, of those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use. The final rule would have no effect on users or on the environment until designation of roads, trails, and areas is complete for a particular administrative unit or Ranger District, with opportunity for public involvement. Section 31.1b of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.”

The Department’s conclusion is that this final rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact

statement.

This final rule is essentially procedural. It has no direct environmental effects, and consideration of extraordinary circumstances would be meaningless at this level. This rule will be implemented through travel management decisions at the administrative unit or Ranger District level, which may have environmental impacts. These site-specific decisions will involve appropriate environmental analysis and documentation.

#### *Regulatory Impact*

This final rule has been reviewed under USDA procedures and E.O. 12866

on regulatory planning and review. It has been determined that this is not an economically significant rule. This final rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. However, in light of the substantial interest expressed in the proposed rule and the important policy issues involved, OMB has determined that the final rule is significant under E.O. 12866. Accordingly, the Department has prepared a cost-benefit analysis for the

**68287 Federal Register** / Vol. 70, No. 216 / Wednesday, November 9, 2005 / Rules and Regulations final rule. This documentation is available in the rulemaking record.

#### *Regulatory Flexibility Act*

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.). The final rule requires designation at the field level, with public input, of those NFS roads, NFS trails, and areas on NFS lands that are open to motor vehicle use. This final rule will not have a significant economic impact on a substantial number of small entities as defined by

the act because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

#### *No Takings Implications*

This final rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630. It has been determined that the final rule will not pose the risk of a taking of private property.

#### *Civil Justice Reform*

This final rule has been reviewed under E.O. 12988 on civil justice reform.

After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

#### *Federalism and Consultation and Coordination With Indian Tribal Governments*

The Department has considered this final rule under the requirements of E.O.

13132 on federalism, and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with tribes is not required.

#### *Energy Effects*

This final rule has been reviewed under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the E.O.

#### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector.

This final rule will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

#### *Controlling Paperwork Burdens on the Public*

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR part 1320 do not apply.

#### **4. Text of the Final Rule**

##### **List of Subjects**

##### *36 CFR Part 212*

Highways and roads, National Forests, Public lands—rights-of-way, and Transportation.

##### *36 CFR Part 251*

Administrative practice and procedure, Electric power, National Forests, Public lands rights-of-way, Reporting and recordkeeping requirements, Water resources.

##### *36 CFR Part 261*

Law enforcement, National Forests.

##### *36 CFR Part 295*

National Forests, Traffic regulations.

# Appendix F

## FSM 7703.2 paragraph 3 – “Adding new roads”

3. Adding new roads. Consistent with FSM 7703.1, para. 4, decisions to add new roads to the transportation system are appropriate only where the resource management objectives, environmental impacts, and benefits have been carefully considered and documented.

Additionally, decisions to add new roads to the forest transportation system must be informed by a roads analysis process (FSM 7712.1) conducted at an appropriate scale. Resource management objectives are established in the relevant land and resource management plans (FSM 1920). Identify and consider values associated with or impacted by new roads which include utilization, protection, and administration of National Forest System lands; public health and safety; or private rights. Consideration must be given to long-term road funding opportunities and obligations. In examining the environmental impacts of potential new roads, consider (1) maintenance of ecological processes; (2) introduction of exotic species; and (3) effects on threatened and endangered species or areas of high unique biodiversity, cultural uses or historical sites, fish and wildlife habitat, water quality, and visual quality. Adding new roads to the transportation system includes both new road construction and newly acquired roads through land purchases, exchanges, or interchanges.

# Appendix G

## Relevant Laws, Regulations, and Policies

### National Forest Management Act

**Overview.** The National Forest Management Act requires the Secretary of Agriculture to assess forest lands, develop a management program based on multiple-use, sustained-yield principles, and implement a resource management plan for each unit of the National Forest System. It is the primary statute governing the administration of national forests.

The regulations implementing the National Forest Management Act are found at 36 CFR 219. These regulations are known as the “planning regulations”. The planning regulations are currently being revised and publication of a new version of 36 CFR 219 is expected to be released in the coming months. Until then, the current regulation (1982 version) remains in effect.

The 1982 planning regulation states that forest plans shall provide a broad spectrum of outdoor recreation opportunities while taking into account the needs and demands of other major resources. The 1982 planning regulation specifically addresses OHV use at 219.21(g):

“Off-road vehicle use shall be planned and implemented to protect land and other resources, promote public safety, and minimize conflicts with other uses of the National Forest System lands. Forest planning shall evaluate the potential effects of vehicle use off roads and, on the basis of the requirements of 36 CFR part 295 of this chapter, classify areas and trails of National Forest System lands as to whether or not off-road vehicle use may be permitted.”

The 1982 planning regulation goes on to describe “management requirements” at 219.27 that establish requirements for resource protection that all management prescriptions shall meet. These include protection of soil and water resources, streams, stream banks, shorelines, wetlands, fish, wildlife, and the diversity of plant and animal communities.

In summary, the 1982 planning rule directs that OHV use be considered in the forest planning process and that impacts of OHV use be minimized with respect to other forest resources.

### Wilderness Act

Public Law 88-577, section 2: ...“there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by the Congress as “wilderness areas,” and these shall be administered for the use and



enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness..."

#### AUTHORITIES:

Section 4(c) "Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any Wilderness Area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area."

FSM 2326 - Use of Motorized Equipment or Mechanical Transport in Wilderness.

2326.03 Do not approve the use of motorized equipment or mechanical transport unless justified as described in 2326.1.

2326.04b - Regional Forester. The Regional Forester is responsible for approving: 1. Transport and supply by aircraft, air drop, motor boat, or mechanical transport for situation that meet the conditions under items 2, 4, or 5, in FSM 2326.1.

2326.1 - Conditions under which use may be approved. Allow the use of motorized equipment or mechanical transport only for:

5. To meet minimum needs for protection and administration of the area as wilderness, only as follows:
  - a. A delivery or application problem necessary to meet wilderness objectives cannot be resolved within reason through the use of non-motorized methods.
  - b. An essential activity is impossible to accomplish by non-motorized means because of such factors as time, season limitations, safety, or other material restrictions.

36 CFR 261.16 National Forest Wilderness. The following are prohibited in a National Forest Wilderness:

- (a) Possessing or using a motor vehicle, motorboat, or motorized equipment except as authorize by Federal law or regulation.

#### **Wild and Scenic Rivers Act**

Section 1(b): "...outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."

Section 10(a): "...shall be administered in such manner as to protect and enhance the values which caused it to be included in said system..."

Federal Register - final revised guidelines for Wild and Scenic Rivers, Sept. 7, 1982.

"Motorized Travel. Motorized travel on land or water is generally permitted in wild, scenic, and recreational river areas, but will be restricted or prohibited where necessary to protect the values for which the river area was designated."

FSH 1909.12 Chapter 8 - Wild and Scenic River Evaluation.

Section 8.12 - Interim Management of Study Rivers: "Management prescriptions for river corridors identified in the National River Inventory, or otherwise identified for study, should provide protection in the following ways: 1. To the extent the Forest Service is authorized under law to control stream impoundments and diversions, the free flowing characteristics of the identified river cannot be modified. 2. Outstandingly remarkable values of the identified river area must be protected and, to the extent practicable, enhanced. 2. Management and development of the identified river and its corridor cannot be modified to the degree that eligibility or classification would be affected."

## **Clean Air Act**

- Federal Clean Air Act
  - Conformity determinations are required of federal actions in federal non-attainment areas. An Air Quality Conformity Handbook was published in 1995 by the Air Resource Management Program and distributed to R5 Forests. Contact the ARM staff for a copy.
- California Clean Air Act
  - The California Air Resources Board regulates emissions from mobile sources including Off-Highway Vehicles. These regulations are focused on emissions related manufacturing specifications for vehicles sold in California. More information can be found at:  
<http://www.arb.ca.gov/msprog/offroad/orrec/orrec.htm>
- Air Pollution Control District Regulations
  - Air Pollution Control Districts have the authority to develop regulations related to fugitive dust. More information can be found through the APCD rules database at: <http://www.arb.ca.gov/drdb/drdb.htm>
- Contacts:
  - Suraj Ahuja** – Northern California Air Resource Specialist  
530-934-3316 / [sahuja@fs.fed.us](mailto:sahuja@fs.fed.us)
  - Mike McCorison** – Southern California Air Resource Specialist  
626-574-5286 / [mmccorison@fs.fed.us](mailto:mmccorison@fs.fed.us)

**Trent Procter** – Regional Air Resource Program Manager  
559-784-1500 / [tprocter@fs.fed.us](mailto:tprocter@fs.fed.us)

## **National Historic Preservation Act**

Section 106 (16 USC 470f) of the National Historic Preservation Act requires federal agencies to consider the effects of their actions on historic properties. The regulations at 36 CFR 800 outline the procedures for inventory, evaluation, consideration of effects, and meeting consultation responsibilities for historic properties under Section 106 of the NHPA. The Regional Programmatic Agreement for R5 defines expedited consultation procedures, as alternatives to 36 CFR 800, for agency actions that do not adversely affect historic properties. The Regional Office is working with the State Historic Preservation Officer to develop a programmatic agreement for OHV route designation.

## **Federal Clean Water Act and State Porter-Cologne Water Pollution Control Act**

The Federal Water Pollution Control Act (Clean Water Act, CWA):

- Requires states to adopt water quality standards, specifying a “beneficial use” of each water body, and standards for how clean water bodies must be to meet the designated beneficial uses. These beneficial uses include drinking water supply, industrial supply, wildlife, and recreation.
- Requires states to carry out a continuing planning process by developing and implementing water quality management plans that form the basis for states’ regulatory and voluntary water programs.
- Recognizes two separate classes of pollutant sources, point and non-point sources, and establishes separate schemes to control them.
  - Section 402 prohibits the discharge of *pollutants* through *point sources* into *waters of the United States* without a National Pollutant Discharge Elimination System (NPDES) permit.
  - Section 404 requires permits for the discharge of dredged or fill materials into *waters of the United States*.
  - Section 319 requires Best Management Practices (BMPs) for *non-point sources* that would result in water quality violations if they were not controlled.
  - Section 208 requires area-wide treatment plans which must include a process for identifying *non-point source* pollution from agriculture and silviculture and establishment of procedures to control them (e.g., BMPs).
- Through Section 401, requires State water quality certification for permits that allow discharges to *waters of the United States* (e.g., 402 and 404 permits). Certification indicates that the discharge will comply with other provisions of the CWA including effluent limitations, technical performance standards, pretreatment requirements, and water quality standards and plans
- Mandates states to identify all the water bodies that do not meet applicable water quality standards and to establish the amounts of pollutants these “impaired” water bodies can assimilate and still meet relevant water quality standards. These are referred to as Total Maximum Daily Loads (TMDLs). Subsequently,

states are responsible for implementing existing *point* and *non-point source* control programs and augmenting them as needed to attain water quality standards.

The State Water Resources Control Board (SWRCB; [www.swrcb.ca.gov](http://www.swrcb.ca.gov)) has ultimate authority over water quality in California and has authority to implement both the CWA and the State's *Porter-Cologne Water Pollution Control Act*. There are nine Regional Water Quality Control Boards (RWQCBs; <http://www.swrcb.ca.gov/regions.html>). The mission of the RWQCBs is to develop and enforce water quality objectives and implementation plans to protect the beneficial uses of the State's waters. California's continuing planning process consists of the statewide water quality control plans and the nine regional Basin Plans. Basin Plans provide the regulatory framework for controlling the activities and factors that affect water quality in the State. Each Basin Plan establishes:

- beneficial uses of water designated for each water body to be protected;
- water quality standards, known as water quality objectives, for both surface water and groundwater; and
- actions necessary to implement and maintain these standards in order to control non-point and point sources of pollution.

Unlike the CWA, *Porter-Cologne* does not distinguish between point and non-point sources of water pollution. Consequently, besides issuing NPDES permits for point sources, the State issues permits for non-point sources. These permits are referred to as waste discharge requirements (WDRs). In some cases, the State can waive the issuance of WDRs.

Through a Management Agency Agreement (MAA) between the Regional Office and the SWRCB, in most cases, WDRs have been waived for many Forest Service activities in California. The MAA designates the Forest Service as a *Water Quality Management Agency* responsible for implementing its *Water Quality Management Plan (WQMP)*. This WQMP, entitled *Water Quality Management for National Forest System Lands in California, Best Management Practices* (USFS 2000; [http://www.fs.fed.us/r5/publications/water\\_resources/waterquality/](http://www.fs.fed.us/r5/publications/water_resources/waterquality/)), is part of the State's overall WQMP. Through execution of the MAA, the WQMP, BMPs, and the Region's BMP Evaluation Program (BMPEP, a BMP implementation and effectiveness monitoring program; <http://fswb.r5.fs.fed.us/unit/ec/water/bmp.html>), the Forest Service meets the requirements of CWA Sections 319 and 208 (i.e., the non-point source provisions). In addition, because project-level WDRs are waived in most cases, implementation of these programs dramatically reduces administrative and regulatory burdens and costs.

The MAA, WQMP, and BMPs do not address the requirements of Section 402 and Section 404. Consequently, the USFS must obtain NPDES permits for point source discharges, 404 permits for discharges of dredged and fill material, and the associated 401 water quality certifications.

## **Applicability of CWA and Porter-Cologne to Off Highway Vehicles (OHVs)**

There are many BMPs applicable to OHVs and these must be implemented during trail designation and project planning and implementation. The Region's BMP Manual (USFS 2000) should be consulted for additional details. A BMPEP protocol to evaluate implementation and effectiveness of OHV BMPs is currently being developed and will likely be implemented in 2005 or 2006. NPDES permits will not be needed for most, if any, OHV projects, but Section 404 permits and associated 401 water quality certifications may be needed. There are several exemptions from 404 permit requirements that apply to USFS activities, but these are generally limited to silvicultural practices and associated forest roads.

Discharges of fill can be covered under one of three types of 404 permits: Nationwide Permits, Regional General Permits, and Individual Permits. Nationwide permits (NWP) have been developed for a variety of common activities that are generally considered to have minimal environmental effects. As the name implies, these permits apply nationally. A list of these permits can be found at:

<http://www.nww.usace.army.mil/html/offices/op/rf/nwp-nat/nwptext.htm>.

The NWPs that could be applied to some OHV projects include: Maintenance (#3), Bank Stabilization (#13), Linear Transportation Crossings (#14), Minor Discharges (#18), Approved Categorical Exclusions (#23), Stream and Wetland Restoration Activities (#27), Temporary Construction, Access and Dewatering (#33), and Recreational Facilities (#42). These permits are limited in their applicability and each has their own specific requirements, which may include pre-construction notification and/or approval, monitoring, post-project reporting, compliance certifications. Consequently, the applicability and requirements of each NWP should be scrutinized before their application. Besides the general requirements of the NWPs, the Army COE Districts sometimes establish *Regional Conditions for Nationwide Permits*. Each District should be consulted to determine whether Regional Conditions have been established for a particular NWP. There are three Army COE districts in California, including the San Francisco District. A map of the districts can be found at

<http://www.spn.usace.army.mil/regulatory/cmap2.html>

To supplement NWPs, some Army COE districts have adopted Regional General Permits (RGPs). Individual districts should be consulted regarding the applicability of an RGP to a specific project. If a project requires a 404 permit and is not covered under a NWP or RGP, an individual permit is required. It is expected that few, if any OHV projects on National Forests, would require an individual permit. The state has issued programmatic 401 certifications for several NWPs and RGPs, but few of these apply to OHV activities

[http://www.swrcb.ca.gov/cwa401/docs/statecertification\\_nationwidepermits.pdf](http://www.swrcb.ca.gov/cwa401/docs/statecertification_nationwidepermits.pdf)).

Consequently, project-level certification from the State may be required for some OHV projects.

## **Definitions**

*Point source* broadly defined to mean any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill, leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. The term does not include return flows from irrigated agriculture or agriculture storm water runoff.

*Pollutant* is broadly-defined to mean dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

*Waters of the United States* is broadly defined to mean:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate "wetlands";
- (c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

## Endangered Species Act

The Endangered Species Act (ESA) of 1973, as amended (1978, 1979, 1982), and implementing regulations (16 U.S.C. 1531-1544; 50 CFR 402) were passed by Congress to conserve “the ecosystems upon which endangered and threatened species depend” and to conserve and recover listed plant and animal species. Under the law, species are listed as either “endangered” (in danger of extinction throughout all or a significant portion of its range) or “threatened” (likely to become endangered within the foreseeable future). Federal agencies must utilize their authorities to conserve listed species and make sure that their actions do not jeopardize the continued existence of listed species. The USDI Fish and Wildlife Service (USFWS) and the USDI National Marine Fisheries Service (NMFS) administer the law. Federal agencies are required to consult with the USFWS or NMFS to ensure that the actions they authorize, fund, or carry out will not jeopardize listed species or critical habitat. In addition, Section 9 of the ESA makes it unlawful for anyone to “take” a listed species. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct” and includes “significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.”

## Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (MBTA) (16 U.S.C. 703-712; 50 CFR 21; and 50 CFR 13) implements four bilateral conventions for the conservation of migratory birds, as well as provides prohibitions regarding the “take” of migratory birds. **Executive Order (E.O.) 13186** of January 10, 2001, directs executive departments and agencies to take certain actions that further implement the MBTA. Under the MBTA, it is unlawful “by any means or manner, to pursue, hunt, take, capture [or] kill” any migratory bird except as permitted by regulation (16 U.S.C. 703-704). The regulations at 50 CFR 21.11 prohibit the take, possession, import, export, transport, sale, purchase, barter, or offering of these activities, except under a valid permit or as permitted in the implementing regulations. A migratory bird is any species listed in 50 CFR 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg. The USFWS administers individual permits to take migratory birds in accordance with regulations at 50 CFR 21, and Federal agencies are required to obtain permits for activities involving the intentional take of migratory birds (50 CFR 21). However, the USFWS does not currently have regulations for issuance of permits for activities involving unintentional take, such as OHV use. The NEPA analysis for OHV route designation should include an assessment of impacts to migratory birds when the proposed action or alternatives are having, or are likely to have, a measurable negative effect on migratory bird populations. Conservation measures have been identified in the E.O. and a 2001-2003 Memorandum of Understanding between USFS and USFWS, which focus on maintaining habitat for migratory birds, especially those considered at risk, as identified in existing comprehensive planning efforts for migratory birds, including Partners In Flight Bird Conservation Plans, North American Waterfowl Management Plan, U.S. National Shorebird Plan, North American Colonial Waterbird

Plan, and the integration of those and other bird conservation planning efforts through the North American Bird Conservation Initiative.

### **Tribal Relations**

Consult with Tribes on matters that may affect tribal rights and interests, utilizing the following principles:

- a. Comply with laws and regulations in a manner consistent with the special and unique legal and political relationship with Tribes. Government-to-government consultation generally involves more than the rights of tribal officials, as members of the general public, to comment on proposed policies or actions under other Federal laws of general applicability.
- b. Collaboratively involve Tribes, as early as possible, in the development of regulatory and management policies, resource and land management plans, study plans and actions that may have tribal implications. Work with Tribes to determine whether a proposed Forest Service policy or action has implications for their rights or interests that may warrant consultation and where consultation is necessary work with Tribes to establish an effective consultation process.
- c. Respond in a timely manner to all requests for consultation by Tribes and maintain confidentiality of information to the extent authorized by law as may be implemented through Executive order.
- d. Coordinate with other Federal and State agencies and local governments during consultation with Tribes.

### **Roads Analysis**

Forest Service regulations require that a science based roads analysis be incorporated into decisions needed to determine the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands (36CFR212.5b). Forest Service policy requires further, that a Forest level roads analysis be completed, and that decisions that result in new road construction, reconstruction, and decommissioning be informed by roads analysis (FSM 7712.12b). Roads analysis is also used to evaluate opportunities and priorities for converting classified and unclassified roads to other uses.

The roads analysis, as a minimum, should:

1. Assess economic costs and benefits along with social and ecological factors when identifying forest transportation facility options.
2. Assess effects of forest transportation facility options on ecological processes and ecosystem health, diversity, and productivity.



3. Consider the needs of all parties when developing transportation system opportunities in areas of intermingled ownership.
4. Consider long- and short-term uses, including possible mechanized, non-mechanized, and off-highway vehicle uses, when analyzing forest transportation facilities.
5. Actively engage the public in transportation analysis.
6. Use the forest transportation atlas as a record of forest transportation facility decisions, including:
  - a. Documenting road management objectives,
  - b. Identifying all classified and unclassified roads,
  - c. Documenting the results of transportation analysis, and
  - d. Documenting road management project priorities. (FSM7712.03)

Road management decisions must be informed by roads analysis but are not a product of roads analysis. Although road management decisions must be informed by roads analysis, they are to be disclosed in an appropriate NEPA document (FSM 1950 and FSH 1909.15). See FSM 7710 for policy concerning roads analysis, considerations that should be included in roads analysis at various scales, and the outcomes of roads analysis at various scales.

The Responsible Official must determine **whether additional roads analysis below the Forest-scale is needed and, if needed, what additional information is required to be able to make an informed decision** (FSM 7712.13).

### **Federal Noxious Weed Act**

The FNWA of 1974 as amended, gives direction for State, local, and Federal agencies in management and control of noxious weeds. Among other things the Act requires the Department of Agriculture to develop and coordinate a management program for noxious weeds. The Executive Order on Invasive Species, signed by the President on February 3, 1999 states that all federal agencies will use relevant programs and authorities to prevent the introduction of invasive species, and not authorize or carry out actions that are likely to cause the introduction or spread of invasive species unless the agency has determined and made public documentation that shows that the benefits of such actions clearly outweigh the potential harm and all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

Several management strategies provide direction in managing weeds, including the National Strategy and Implementation Plan for Invasive Species Management (1998), Region 5 Noxious Weed Management Strategy (2000), and various province-wide strategies throughout Region 5.

FSM 2080 describes policies to govern management of the noxious weed program. Specific responsibilities include:

2080.44.1. Preventing the introduction and establishment, as well as providing for the containment and suppression of noxious weeds

2080.44.6 Determining the risk of noxious weed introduction or spread as part of the NEPA process for proposed actions, especially for ground disturbing and site altering activities

2080.44.8 Enforcing closure or prohibition orders issued under 36 CFR Part 261.50(a) and 261.58(t) and enforcing contract specifications intended to prevent and control the spread of noxious weeds.

FSM 2081.03 gives direction to determine the risk of introducing or spreading noxious weeds associated with proposed actions that cause ground disturbance. Specific responsibilities include:

1. For projects having moderate to high risk of introducing or spreading noxious weeds, the project decision document must identify noxious weed control measures that must be undertaken during project implementation.
4. Use contract and permit clauses to prevent the introduction or spread of noxious weeds by contractors and permittees. For example, where determined to be appropriate, use clauses requiring contractors or permittees to clean their equipment prior to entering national Forest System lands.

FSM 2081.1 gives direction to manage noxious weeds on National Forest System lands to achieve the goals and objectives identified in Forest Land and Resource Management plans.

# Appendix H

## OHV Routes: Roads vs. Trails



United States  
Department of  
Agriculture

Forest  
Service

Pacific  
Southwest  
Region

Regional Office, R5  
1323 Club Drive  
Vallejo, CA 94592  
(707) 562-8737 Voice  
(707) 562-9130 Text (TDD)

File Code: 7700/2350/1900

Date: March 6, 2002

Route To:

Subject: High Clearance Roads vs. 4WD Trails

To: Forest Supervisors

This memo replaces the Region 5 memo of May 4, 2001. That memo attempted to clarify which facilities should be classified as roads and which as trails. This replacement memo is being issued to reflect the discussions at the December 2001 joint forest engineer – recreation staff officers meeting in San Diego and more recent discussions with the Washington Office.

A road is defined in the new road rule released January 2001 in 36 CFR 212.1 as: "Road. A motor vehicle travelway over 50 inches wide, unless designated and managed as a trail. A road may be classified, unclassified, or temporary".

Application of this definition will occur at a local Forest level. Forests must use local knowledge and judgment to determine which routes should be designated as roads and which as trails. These decisions must be consistent with the intended use of the area where the road or trail is located, consistent with the forest plan, and documented in Road Management Objectives (RMO's) or Trail Management Objectives (TMO's). RMO's and TMO's require approval by the Responsible Official (usually the District Ranger) consistent with current policy.

The direction in the Recreation Manual (FSM 2352.1), which directs that "Four-Wheel Drive Ways" be managed as part of the "Forest Development Road System (FSM 7703)," predates the new road rule. This direction should be applied consistent with the roads rule definition, such that a four-wheel drive way can be a road or a trail.

Again your key in implementing this direction should be local knowledge and judgment. When questions arise we would like to work with your staffs to help answer them. We will also monitor Forest implementation as they make these designations to help assure consistency.

Please contact Rich Farrington (707) 562-8849 and Gary Lybrand (707) 562-8878 with your implementation questions.

/s/ Kent P. Connaughton (for)  
JACK A. BLACKWELL  
Regional Forester



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Excerpt from Appendix H of the USDA Forest Service 2003 Access and Travel Management Report dated June 2003. Entire report available at [http://fsweb.wo.fs.fed.us/rhwr/disp\\_rec/ATM.pdf](http://fsweb.wo.fs.fed.us/rhwr/disp_rec/ATM.pdf).

The following answers are provided for internal Forest Service use and reference in response to questions contained in input from the field to the Access and Travel Management Request to Regional Foresters, dated May 2, 2002.

### **Recreation**

#### **7. What is the Forest Service doing to instill consistent policy for motorized trail designation and use? Is a 4-Wheel Drive trail a trail or a road?**

A 4-wheel drive trail is a trail if it is so classified, managed, and signed as a trail. It could also be classified, managed, and signed as a road if so designated by the local forest staff. This decision, consistent with the LRMP, should be documented through use of local travel management plans and inventoried in the infrastructure database. There is a section of the FSH 2309.18 regarding planning, developing and managing 4-wheel drive ways in accordance with policies and procedures in FSM 7700 and 7709.56—this would not be the current recommended action if the way were to be managed as a trail. For additional guidance see E.O. 11644 and 11989, 36 CFR 295, FSM 2355 and FSH 2309.18.

# Appendix I

## Motor Vehicle Use Evaluation Forms Instructions

Criteria from 36 CFR 212.55(a) and (b) for evaluating **trails and specifically defined areas** for public motor vehicle use designation are listed below in bold with suggestions of the types of information that may be used to conduct the evaluation. Other available information may also be used. The bolded numbers and paragraphs refer to the numbered questions on the form.

### Questions

#### **1 and 2. Trail or area is consistent with the established management objectives for the areas under consideration.**

Check for consistency with FLRMP including Management Area Direction or Prescriptions.

#### **3. Is there conflict between motor vehicle use and other uses of NFS lands?**

Methodologies to identify the degree of use conflicts include evaluation of the geo-spatial relation to other uses, sound level measurements, public query of various users, and assessment of historic complaints.

#### **4. Is there conflict between motor vehicle use and existing or proposed recreational uses of NFS lands or neighboring Federal lands?**

Methodologies to identify the degree of use conflicts include evaluation of the geo-spatial relation to other uses, sound level measurements, public query of various users, and assessment of historic complaints.

#### **5. Is there conflict among different classes of motor vehicle uses of NFS lands or neighboring Federal lands?**

Methodologies to identify the degree of use conflicts include evaluation of the geo-spatial relation to other uses, sound level measurements, public query of various users, and assessment of historic complaints.

#### **6. Is motor vehicle use not compatible with existing conditions in populated areas, taking into account sound, emissions, and other factors, such as dust?**

Methodologies to identify the degree of use conflicts include evaluation of the geo-spatial relation to other uses, sound level measurements, public query of various users, and assessment of historic complaints.

**7. Is there a safety issue for the public because of the use of the trail or area?**

Methodologies to identify the existence of safety issues include accident records, vehicle counts, traffic speed surveys, road and trail surveys, and user input.

**8. Does use of the trail or area damage soil or watershed?**

Trail/area placement should be such that motor vehicle use will meet FLRMP standards and guidelines for soil and water quality. Any applicable best management practices should be identified and site-specific protection measures documented (Water Quality Management for Forest System Lands in California – Best Management Practices, Forest Service, Pacific Southwest Region, 2000). Use existing information that to identify the degree of impact to soil and watershed including annual soil monitoring data and watershed assessments.

**9. Does use of the trail or area damage vegetation or other forest resources?**

Plant species that are threatened, endangered, proposed, Forest Service Sensitive, plan Watch List species, or Management Indicator Species should be included in the assessment. Known or potential damage to sensitive areas, such as riparian areas and meadows, should also be assessed.

Existing information that can be used for this assessment includes trail monitoring data, GIS vegetation and trail layers, Biological Evaluations, Biological Assessments, species recovery plans, species conservation assessments or strategies, range monitoring reports, GIS weed layers, NRIS Invasive Weeds database, State and County weed databases, project field survey reports, and Wildlife Habitat Protection Plans (WHPPs) written for California Off-Highway Motor Vehicle Recreation Division grant applications. Methodologies to identify the degree of damage to vegetation include ground-based vegetation protocols such as plot sampling, transect sampling, etc.

**10. Does use of the trail or area harass wildlife or significantly disrupt wildlife habitat?**

The assessment should focus on species of concern, particularly threatened, endangered, proposed, or Forest Service Sensitive species, and species with management emphasis identified in the FLRMP, such as Management Indicator Species. The assessment should also focus on habitat for species of concern, particularly threatened, endangered, proposed, or Forest Service Sensitive species, and species with management emphasis identified in the FLRMP, such as Management Indicator Species. In addition, potential disruption of sensitive habitats, such as meadows and riparian areas, should also be assessed.

Existing information that can be used for this assessment includes Biological Evaluations, Biological Assessments, species recovery plans, species conservation assessments or strategies, survey results, range maps, and Wildlife

Habitat Protection Plans (WHPPs) written for California Off-Highway Motor Vehicle Recreation Division grant applications.

Methodologies to identify the degree of harassment of wildlife include identification of areas important to reproduction (e.g., fawning or nesting areas) and assessment of the degree to which disturbance from motor vehicle use is causing or is likely to cause significant stress and reduction of reproductive success. A similar assessment should be made for areas important during other critical times of the life cycle of species of concern, such as important wintering or foraging areas. Methodologies to identify the degree of disruption of wildlife habitat include GIS habitat modeling looking at total acres affected by motor vehicle use and potential disruption of habitat connectivity.

Potential cumulative impacts on wildlife from motor vehicle use on other trails, roads, and areas, including those that are already designated, should be considered in the assessment. Timing and intensity of motor vehicle use, including daily/weekly use and any short-term events, should also be included in the assessment.

**11. Does use of the trail or area damage cultural or historic resources?**

Existing information that can be used for this assessment includes trail monitoring data, previous cultural resource surveys, tribal consultation, and old maps or other records showing mines, ranches, etc.

*Methodologies to identify the potential for damage to cultural resources include known co-location of motor vehicle use and archeological or historic sites and GIS modeling of locations with high probability for archaeological or historic sites.*

**12. Does the Forest have the resources to operate and maintain the proposed designated system of trails?**

**13. Identify and evaluate any local issues not addressed in the preceding questions.**

Identify any local standards that should be considered. Where possible, local studies or monitoring should be used to identify issues on routes/areas. If national or regional studies or monitoring is used, be certain that they are applicable to the local standards and area. The FLRMP and monitoring of similar site-specific projects may provide information to use in assessing issues and possible mitigations.

After answering questions 4 through 13, rank the level of resource impacts and use conflicts as minimal, moderate, high, very high, or unacceptable.

For each of the issues recognized above, identify possible mitigations. Also, identify the probable success of mitigation measures and the relative cost and difficulty to implement.

**14 through 22 - Does the proposed trail or area provide high quality recreational motor vehicle opportunity or provide motor vehicle access to desirable locations?**

Utilize Recreation Niche (vision) and user needs assessment information to help answer these questions. User needs assessments are not required to be formal studies, but should include the following: Compilation of relevant existing information; Identification of the user community; Public outreach; and Identification of user profiles and desired experiences. Staff with local knowledge and local community members can assist with identifying access or recreational opportunities. Maps (either GIS or hand-drawn) of existing and proposed motor vehicle routes by vehicle type can help identify important trails or areas. The National OHV Implementation team also put together a guide on User Needs Assessment. It can be downloaded at:

<http://fsweb.wo.fs.fed.us/rhwr/ohv/hd/ohv-users.shtml>.

After answering questions 14 through 22, rank the recreation opportunity value as high, moderate, or low on the form. If the use is primarily OHV, rank the OHV opportunity value.



# Sample Trail and Area Evaluation Form for Motor Vehicle Designation

Forest: \_\_\_\_\_ District: \_\_\_\_\_

Opportunity ID: *(trail or area number or identification)* \_\_\_\_\_

Segment: *(optional)* \_\_\_\_\_

Name: *(optional)* \_\_\_\_\_

Beginning termini: \_\_\_\_\_

*( trails - landmarks, road or trail junctions, long/lat)*

Ending termini: \_\_\_\_\_

Boundary Description: *(specifically defined areas)* \_\_\_\_\_

Type of vehicle use occurring:  Motorcycle  ATV  4-Wheel Drive

Commercial Haul  High Clearance 2WD  Passenger Car

Management Area(s): \_\_\_\_\_ ROS Class(es): \_\_\_\_\_

**1. Does the Management Area(s) allow motorized use?**  Yes  No

Notes:

*(If yes, continue evaluation. Note any other pertinent information for later reference. If only a portion of the opportunity is within a management area allowing motor vehicle use, identify the segment(s) that can be considered. If no, the trail or area should not be considered for motorized uses. Opportunities that are not consistent with management area direction, but have high motor vehicle use value, may be noted for consideration in future planning.)*

**2. Is the opportunity entirely on National Forest System lands?**  Yes  No

**2(a). If no, are there public rights-of-way/easements, prescriptive or other rights the FS has across private land parcel(s) or agreements with managing agencies for use of other public land?**

Yes  No

Notes:

36 CFR 212.55(d). (If yes, continue evaluation. If no, the opportunity can still be considered for designation, however, designation and inclusion on the MVUM cannot occur until right-of-ways and or agreements are obtained. List right-of-ways/easements for each parcel of private land and agreements for use of non-National Forest System land. Be sure to note any restrictions on the right of public use.)

For the following questions, if the conflicts or resource issues vary because of vehicle type (e.g., motorcycle, ATV, 4-wheel drive, high clearance, commercial haul or passenger car), address each vehicle type separately. Remember to address FLRMP/motor vehicle management direction (Step 3) in the appropriate questions below.

**3. Is there conflict between motor vehicle use and other uses of NFS lands?**

Yes       No

Notes:

*36 CFR 212.55(a). List the methodology used. Identify specific conflict(s) and list possible mitigation measures.)*

**4. Is there conflict between motor vehicle use and existing or proposed recreational uses of NFS lands or neighboring Federal lands?**

Yes       No

Notes:

*36 CFR 212.55(b)(3). List the methodology used. Identify specific conflict(s) and list possible mitigation measures.)*

**5. Is there conflict among different classes of motor vehicle uses of NFS lands or neighboring Federal lands?**

Yes       No

Notes:

*36 CFR 212.55(b)(4). List the methodology used. Identify specific conflict(s) and list possible mitigation measures.)*

**6. Is motor vehicle use not compatible with existing conditions in populated areas, taking into account sound, emissions, and other factors, such as dust?**

Yes       No

Notes:

*36 CFR 212.55(b)(5). List the methodology used. Identify specific conflict(s) and list possible mitigation measures.)*

**7. Is there a safety issue for the public because of the use of the trail or area?**

Yes  No

Notes:

*36 CFR 212.55(a). List how safety issues were identified. Identify specific safety issues and possible mitigations, i.e., warning signs, fencing, tread widening, route relocation, removing hazard, etc.)*

**8. Does use of the trail or area damage soil and watershed?**

Yes  No

Notes:

*36 CFR 212.55(b)(1). List the methodology used. If damage is occurring or may occur, list possible mitigation measures and attempt to quantify the work required to minimize damage, i.e., 3 miles routine maintenance, .5 mile reconstruction, 1 minor reroute or 90% OK, 10% needs minor reconstruction.)*

**9. Does use of the trail or area damage vegetation or other forest resources?**

Yes  No

Notes:

*36 CFR 212.55(b)(1). List the methodology used. If damage is occurring or may occur, list possible mitigation measures and attempt to quantify the work required to minimize damage, i.e., 500 yds of fencing, ¼ mile reroute to avoid sensitive plant population, etc.*

**10. Does use of the trail or area harass wildlife or significantly disrupt wildlife habitat?**

Yes  No

Notes:

*36 CFR 212.55(b)(2). List the methodology used. Identify specific harassment or disruptions of habitat and list possible mitigations, i.e., blocking off trail access, minor rerouting, seasonal restrictions, etc.)*

**11. Does use of the trail or area damage cultural or historic resources?**

Yes       No

Notes:

*36 CFR 212.55 (a). List the methodology used. Identify possible mitigations for sites damaged by the trail, i.e., data recovery, relocation of trail, encapsulating site, interpreting site, etc.)*

**12. Does the Forest have the resources to operate and maintain the proposed designated system of trails?**

Notes:

*36 CFR 212.55 (a). List the methodology used.*

**13. Identify and evaluate any local issues not addressed in the preceding questions.**

Notes:

Assign the relative level of resource impact and use conflict to one of the following categories based upon the above evaluation. If differences were noted between vehicle types in the evaluation, assign categories based on vehicle types:

- Minimal resource impacts/use conflicts**  
(Has impacts/conflicts in no more than 2 of the above questions and the impacts/conflicts are easily mitigated)
- Moderate resource impacts/use conflicts**  
(Has impacts/conflicts in 3 or more of the above questions, but the impacts/conflicts are easily mitigated; or has one or more impacts/conflicts and one will require moderate amounts of time and/or resources to mitigate to acceptable levels)
- High resource impacts/use conflicts**  
(Has one or more impacts/conflicts in the above questions and one will require large amounts of time and/or resources to mitigate to acceptable levels; or multiple impacts/conflicts, 2 or more that will require moderate amounts of time and/or resources to mitigate to acceptable levels)
- Very high resource impacts/use conflicts**  
(Has more than one impact/conflict that will require large amounts of time and/or resources to mitigate to acceptable levels)
- Unacceptable resource impacts/use conflicts**  
(Has one or more impacts/conflicts that cannot be mitigated to acceptable levels with available time, resources and/or technology)

Recreation opportunity provided by the route/area also needs to be assessed. Answer the following questions and then assign the route/area a recreation opportunity value at the end of the form. 36 CFR 212.55(a)

**14. Does the trail or area provide a unique motor vehicle opportunity or one that is in limited supply in the local area?**  Yes  No

Notes:

**15. Does the trail or area provide opportunity to a particular type of motor vehicle?**  Yes  No

Notes:

**16. Is the trail or area of local, regional or national significance?**

Yes  No

Notes:

**17. Does the trail or area provide access to significant locations or to unique or unusual features including dispersed camping or day use areas? 36 CFR 212.55(a)**

Yes  No

Notes:

**18. Does the trail or area provide access from a campground, staging area or other support facility?**

Yes  No

Notes:

**19. Is the trail an arterial route or does it connect two arterial routes?**

Yes  No

Notes:

**20. Does the trail provide a loop or part of a loop opportunity?**

Yes  No

Notes:

**21. Does the trail provide an alternative to having OHV traffic on maintenance level 3 or higher roads?**

Yes  No

Notes:

**22. Is there any other factor(s) that makes this trail or area desirable to the public wheeled motor vehicle system?**

Yes  No

Notes:

Based upon the above questions and recreation user input, rank the recreation opportunity value and note any overriding factors in the ranking. If the **trail or area** is primarily an OHV opportunity, rank the OHV value including OHV user input.

**High Rec. Value**       **Moderate Rec. Value**       **Low Rec. Value**

**High OHV Value**       **Moderate OHV Value**       **Low OHV Value**

Notes:

List any reasons why the trail or area will continue to exist even if it is not designated for public motor vehicle use.

Notes: *Examples: ROW for other than public use; area is an active borrow pit; access to private property; under SUP; etc.*

Consider the need for administration and maintenance that would arise if the trail or area is designated and the resources available to accomplish it.

Notes: *The impacts to administration and maintenance can be either negative or positive. For instance, a properly located and constructed trail may have lower maintenance costs than a poorly located trail which it replaces or the impacts on law enforcement may lessen when a legal route from a campground to the OHV area is established. As a minimum, estimate whether administration and maintenance costs are going to increase or decrease and by some measure of magnitude (e.g., small moderate or large). Include other resources such as, volunteers, grants, other agencies, etc.*

# Sample Road Evaluation form for Motor Vehicle Designation

Criteria from 36 CFR 212.55(a) and (b) for evaluating **roads** for public motor vehicle use designation are listed below in bold with suggestions of the types of information that may be used to conduct the evaluation. Other available information may also be used. The bolded numbers and paragraphs refer to the numbered questions on the form.

## Questions

### **1. Is the road consistent with the established management objectives for the areas under consideration?**

Check for consistency with FLRMP including Management Area Emphasis and Direction and Recreation Opportunity Spectrum.

### **2. Is there conflict between motor vehicle use and other uses of NFS lands?**

Methodologies to identify the degree of use conflicts include evaluation of the geo-spatial relation to other uses, sound level measurements, public query of various users, and assessment of historic complaints.

### **3. Is there a safety issue for the public because of the use of the road?**

Methods of indicating possible safety issues include accident records, vehicle counts and type, traffic speed surveys, road and trail surveys, and user input. Follow the national guidelines in EM-7700-30 prior to designation.

### **4. Does use of the road have effects on natural resources (soil, water, vegetation, wildlife, etc)?**

Roads Analysis should identify the effects caused by the road. Existing information that can be used to identify the degree of impact to natural resources includes road monitoring data, soil monitoring data, watershed assessments, GIS vegetation and road layers, Biological Evaluations, Biological Assessments, species recovery plans, species conservation assessments or strategies, range monitoring reports, GIS weed layers, NRIS Invasive Weeds database, State and County weed databases, project field survey reports, and Wildlife Habitat Protection Plans (WHPPs) written for California Off-Highway Motor Vehicle Recreation Division grant applications.

### **5. Does use of the road damage cultural or historic resources?**

Existing information that can be used for this assessment includes road monitoring data, previous cultural resource surveys, tribal consultation, and old maps or other records showing mines, ranches, etc.



Methodologies to identify the potential for damage to cultural resources include known co-location of motor vehicle use and archeological or historic sites and GIS modeling of locations with high probability for archaeological or historic sites.

**6. Does speed, volume, composition or distribution of traffic affect vehicle types or the time of year when they can use this road?**

Methodologies include local traffic studies, current use patterns and accident history. Regional or national studies of traffic patterns and related conflicts between vehicle types may be applicable.

**7. Does road surface and road geometry effect compatibility of use by vehicle class or type?**

Methodologies include road design standards, current use patterns and accident history.

**8. Are there any existing rights of use for NFS roads being considered for designation?**

**9. Is the road system, including maintenance levels and administrative costs, “right-sized” to fit the Forest road budget?**

Notes: Most Forests in the Region need 2x – 3x their current budget for road operation and maintenance based on current Road Management Objectives. One way to reduce this short-fall is to reduce all maintenance level 3 to 2 and lower some of levels 4, and 5.

**10. Does the Forest have the resources to operate and maintain the proposed designated system of roads?**

Notes: *The impacts to administration and maintenance can be either negative or positive. For instance, a properly located and constructed road may have lower maintenance costs than a poorly located road which it replaces or the impacts on law enforcement may lessen when a legal route from a campground to the OHV area is established. As a minimum, estimate whether administration and maintenance costs are going to increase or decrease and by some measure of magnitude (e.g., small moderate or large). Include other resources such as, volunteers, grants, other agencies, etc.*

**12. Identify and evaluate any local issues not addressed in the preceding questions.**

After answering questions 2 through 5, rank the level of resource impacts and use conflicts as minimal, moderate, high, very high, or unacceptable.

For each of the issues recognized above, identify possible mitigations. Also, identify the probable success of mitigation measures and the relative cost and difficulty to implement.

## Ranking

Assign the relative level of resource impact and use conflict to one of the following categories based upon the above evaluation. If differences were noted between vehicle types in the evaluation, assign categories based on vehicle types:

- Minimal resource impacts/use conflicts**  
(Has impacts/conflicts in no more than 2 of the above questions and the impacts/conflicts are easily mitigated)
- Moderate resource impacts/use conflicts**  
(Has impacts/conflicts in 3 or more of the above questions, but the impacts/conflicts are easily mitigated; or has one or more impacts/conflicts and one will require moderate amounts of time and/or resources to mitigate to acceptable levels)
- High resource impacts/use conflicts**  
(Has one or more impacts/conflicts in the above questions and one will require large amounts of time and/or resources to mitigate to acceptable levels; or multiple impacts/conflicts, 2 or more that will require moderate amounts of time and/or resources to mitigate to acceptable levels)
- Very high resource impacts/use conflicts**  
(Has more than one impact/conflict that will require large amounts of time and/or resources to mitigate to acceptable levels)
- Unacceptable resource impacts/use conflicts**  
(Has one or more impacts/conflicts that cannot be mitigated to acceptable levels with available time, resources and/or technology)

Recreation opportunity provided by the route/area also needs to be assessed. Answer the following questions and then assign the road a recreation opportunity value at the end of the form. 36 CFR 212.55(a)

### 13. Does the proposed trail or area provide high quality recreational motor vehicle opportunity or provide motor vehicle access to desirable locations?

Utilize Recreation Niche (vision) and user needs assessment information to help answer these questions. User needs assessments are not required to be formal studies, but should include the following: Compilation of relevant existing

information; Identification of the user community; Public outreach; and Identification of user profiles and desired experiences. Staff with local knowledge and local community members can assist with identifying access or recreational opportunities. Maps (either GIS or hand-drawn) of existing and proposed motor vehicle routes by vehicle type can help identify important roads. The National OHV Implementation team also put together a guide on User Needs Assessment. Forest Service employees can download it from:

<http://fsweb.wo.fs.fed.us/rhwr/ohv/hd/ohv-users.shtml>.

**14. Does the road provide a unique motor vehicle opportunity or one that is in limited supply in the local area?**  Yes  No

Notes:

**15. Does the road provide opportunity to a particular type of motor vehicle?**  Yes  No

Notes:

**16. Is the road of local, regional or national significance?**  Yes  No

Notes:

**17. Does the road provide access to significant locations or to unique or unusual features including dispersed camping or day use areas? 36 CFR 212.55(a)**  Yes  No

Notes:

**18. Does the road provide access from a campground, staging area or other support facility?**  Yes  No

Notes:

**19. Is the road an arterial route or does it connect two arterial routes?**  Yes  No

Notes:

**20. Does the road provide a loop or part of a loop opportunity?**  Yes  No

Notes:

**21. Does the road provide an alternative to having OHV traffic on maintenance level 3 or higher roads?**  Yes  No

Notes:

**22. Is there any other factor(s) that makes this road desirable to the public motor vehicle system?**  Yes  No

List any reasons why the road will continue to exist even if it is not designated for public motor vehicle use.

Notes: *Examples: ROW for other than public use; area is an active borrow pit; access to private property; under SUP; etc.*

## Ranking

Based upon the above questions and recreation user input, rank the recreation opportunity value and note any overriding factors in the ranking. If the road is primarily an OHV opportunity, rank the OHV value including OHV user input.

**High Rec. Value**       **Moderate Rec. Value**       **Low Rec. Value**

**High OHV Value**       **Moderate OHV Value**       **Low OHV Value**

Notes:

# Appendix J

Regional Forester Direction on Forest Orders to prohibit cross-country travel, March 23, 2006



**File Code:** 2350-5

**Date:** March 23, 2006

**Route To:**

**Subject:** Forest Orders to Prohibit Cross-Country Wheeled Vehicle Travel

**To:** Forest Supervisors

This is to clarify the use of Forest Orders in Step 2 of the R5 Route Designation Guidebook (modified February 27, 2005). The purpose of these Forest Orders is to stop resource damage from cross-country travel by prohibiting wheeled vehicles off existing roads and trails. The term “existing” means routes that are visible on the ground that have previously received vehicle use regardless of whether they are on the National Forest Transportation system. Forest Orders issued in Step 2 should not be used to close existing roads and trails.

Road or trail closures should be accomplished with separate Orders. The following are examples:

- 1) Roads or trails where severe resource damage is resulting from motor vehicle use that would constitute an imminent emergency can be closed consistent with the authority in 36 CFR 212.52 (b)(2):
  - (2) *Temporary, emergency closures based on a determination of considerable adverse effects.* If the responsible official determines that motor vehicle use on a National Forest System road or National Forest System trail or in an area on National Forest System lands is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources associated with that road, trail, or area, the responsible official shall immediately close that road, trail, or area to motor vehicle use until the official determines that such adverse effects have been mitigated or eliminated and that measures have been implemented to prevent future recurrence.
- 2) Closure of roads or trails in non-motorized land allocations in your Forest Land and Resource Management Plan or in project level NEPA documents.

Please contact Rich Farrington at (707) 562-88491, if you have any further questions.

/S/ THOMAS L. TIDWELL (FOR)  
BERNARD WEINGARDT  
Regional Forester



# Appendix K

## Example Forest Order

Order No. 06-  
USDA Forest Service  
Smokey Bear National Forest  
Pine Meadow Ranger District

### MOTORIZED VEHICLE RESTRICTIONS

Pursuant to 36 CFR 261.50(a) and (b), and to protect natural resources, the following act is prohibited within the Pine Meadow Ranger District of the Smokey Bear National Forest. This order is effective from \_\_\_\_\_, 2006 through \_\_\_\_\_, 2007.

Possessing or using a motorized wheeled vehicle (or bicycle) off National Forest System roads, except for the routes, open areas, and National Forest System trails shown on Exhibit A. For purposes of this order, a wheelchair is not considered to be a motorized or wheeled vehicle. 36 CFR 261.56.

Pursuant to 36 CFR 261.50(e), the following persons are exempt from this order:

1. Any Federal, State, or local officer or member of an organized rescue or fire-fighting force in the performance of an official duty.
2. Persons with a permit from the Forest Service specifically authorizing the otherwise prohibited act or omission.

This prohibition is in addition to the general prohibitions in 36 CFR Part 261, Subpart A.

Executed in Big Tree, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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Rick Forester  
Forest Supervisor  
Smokey Bear National Forest

A violation of this prohibition is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, or imprisonment for not more than 6 months, or both. 16 USC 551 and 18 USC 3559, 3571, and 3581.

# Appendix L

## Example Forest Motor Vehicle Management Direction

The following table is an example of the places within the Forest Land and Resource Management Plan (FLRMP) where direction regarding motor vehicle management might be found. This example is not meant to be a comprehensive listing of all possible locations where motor vehicle direction might be found, but rather to suggest the variety of places where direction affecting motor vehicle management could be located. In addition to the FLRMP, documents that were incorporated into the FLRMP or subsequent documents or analyses that amend or modify the FLRMP must be considered (i.e., Sierra Nevada Framework, species conservation plans, watershed analyses, Wilderness legislation, etc.). The format is a suggestion for organizing and displaying motor vehicle direction for easy reference during the designation process. In addition to the written direction, maps, tables and appendices containing motor vehicle direction should be referenced as appropriate. The example is from the mythical Smokey Bear National Forest and utilizes the older style FLRMP format. Each Forest Plan is unique, and may vary in format, but addresses similar information that provides motor vehicle management direction. Forests that share regional planning direction (e.g., the Sierra Nevada Framework or Northwest Forest Plan) may want to work cooperatively to identify motor vehicle management direction contained in multi-forest documents.



# EXAMPLE FOREST MOTOR VEHICLE MANAGEMENT DIRECTION SMOKEY BEAR NATIONAL FOREST

Compilation of motor vehicle management direction found in the following documents:

- Land and Resource Management Plan, Smokey Bear National Forest, dated August 9, 1994
- Sierra Nevada Forest Plan Amendment – Final Supplemental Environmental Impact Statement, dated January 21, 2004
- Environmental Assessment, Flying W OHV Area, dated April 1, 2000
- Three-Toed Sloth Recovery Plan, dated February 29, 1996

Source Document and Citation	Direction
ROD, SNFPA Management S&G Forestwide S&G Wheeled Vehicles #69	Prohibit wheeled vehicle travel off of designated routes, trails, and limited off highway vehicle (OHV) use areas. Unless otherwise restricted by current forest plans or other specific area standards and guidelines, cross-country travel by over-snow vehicles would continue.
LRMP, Smokey Bear NF 1.2 Relationship to other Planning Levels and Studies	The following existing management plans and environmental documents are incorporated in their entirety into the Forest Plan: <ul style="list-style-type: none"> <li>- Forest Off-Road Vehicle Plan as amended for Wilderness recommendations</li> <li>- Peregrine Falcon Recovery Plan</li> <li>- Bald Eagle Recovery Plan</li> <li>- Wild Horse Management Plan</li> <li>- Southern Deer Herd Plan</li> </ul>
LRMP, Smokey Bear NF 4.3.2.1 General	9. Forest activities which significantly increase noise levels above background levels will be reviewed to determine the environmental effects and appropriate mitigation. Frequency and duration of the noise are considered in determining significance. Off-highway vehicle operation in the Forest will comply with State noise control laws. (36CFR261.13)
LRMP, Smokey Bear NF4.3.2.3 Seismic and Geological Hazards	2. Land disturbing actions will be avoided or conducted in a manner to preclude acceleration of active landslides or activation of dormant landslides.
LRMP, Smokey Bear NF 4.3.2.5 Watershed	2. Best Management Practices (BMP) will be implemented to meet water quality objectives and maintain and improve the quality of surface water on the Forest. Methods and techniques for applying the BMP will be identified during project level environmental analysis and incorporated into the associated implementation documents (see Appendix I).

Source Document and Citation	Direction
LRMP, Smokey Bear NF 4.3.2.5 Watershed	3. Excessive surface disturbance of watersheds and resulting on-site and off-site soil and water deterioration will be precluded by conducting cumulative watershed impact assessments of Order III and greater drainages at the time the project environmental analysis is prepared and documented in appropriate project records.
LRMP, Smokey Bear NF 4.3.2.6 Vegetation	5. Prevent the destruction or adverse modification of habitat determined to be essential for Sensitive or special Emphasis plant species.
LRMP, Smokey Bear NF 4.3.2.7 Riparian/Wetland Areas	2. Management activities or practices may occur in riparian areas as long as the habitat and species diversity of the area is maintained in a healthy state. Resource impacts are mitigated in favor of riparian dependent resources. Mitigating measures may include but are not limited to: a. restricting entry, b. revegetation, c. replacement of lost habitat, d. public information and contact, e. visitor capacity management, f. relocation of incompatible facilities or operations, g. maintenance of wildlife corridors.
LRMP, Smokey Bear NF 4.3.2.7 Riparian/Wetland Areas	4. Ensure habitat conditions necessary for maintenance of viable populations of riparian Management Indicator Species (Bird Assemblage) using the Habitat Capability Model.
LRMP, Smokey Bear NF 4.3.2.7 Riparian/Wetland Areas	6. Limit new vehicular activities in riparian areas to road and trail crossings. Any existing motorized vehicular activities in riparian areas should be relocated where feasible.
LRMP, Smokey Bear NF 4.3.2.7 Riparian/Wetland Areas	9. Culverts, trail crossings and other in-channel structures in existing fishery streams shall be designed and installed to minimize adverse impacts to fishery habitats.
LRMP, Smokey Bear NF 4.3.2.10 Fish and Wildlife	5 Existing water sources will be maintained in a usable state for wildlife needs. Minimize human/wildlife/livestock interactions which may be detrimental to wildlife populations
LRMP, Smokey Bear NF 4.3.2.10 Fish and Wildlife	9. To enhance hunting and fishing access, limited use of Forest administrative roads may be permitted when conditions would not cause road or resource damage, be in conflict with other emphasized uses or restrictions, and not pose a safety hazard.
LRMP, Smokey Bear NF 4.3.2.10 Fish and Wildlife	13. High noise producing activities should be located and timed to avoid disturbance of nesting/breeding locations of Sensitive or Special Emphasis wildlife species.
LRMP, Smokey Bear NF 4.3.2.10 Fish and Wildlife	16. Identify essential habitat for all Sensitive and Special Emphasis species and prescribe measures to prevent the destruction or adverse modification of such habitat. Apply management prescriptions (Habitat Management Plans) which will provide high and medium capability habitat (as defined in Habitat Capability models) sufficient to maintain or enhance the above species.

Source Document and Citation	Direction
LRMP, Smokey Bear NF 4.3.2.10 Fish and Wildlife	17. Allow no ground disturbing activities in known or suspected habitat of the Giant Kangaroo, Three-Toed Sloth, or Dwarf Alligators, without consulting with the U.S. Fish and Wildlife Service and California Department of Fish and Game.
LRMP, Smokey Bear NF 4.3.2.14 Recreation	1. Recreation planning and management will be integrated with other management activities through use of the Recreation Opportunity Spectrum (ROS). The recreational environmental setting, experience, and activity opportunities appropriate to each management area will be maintained.
LRMP, Smokey Bear NF 4.3.2.14 Recreation	3. Separation of conflicting recreational uses will be provided, consistent with Management Area objectives.
LRMP, Smokey Bear NF 4.3.2.14 Recreation	5. OHV use will be permitted only on designated roads and trails as shown on the Forest OHV map or as authorized under special use permit.
LRMP, Smokey Bear NF 4.3.2.15 Cultural Resources	3. All project impact areas will be inventoried, sites evaluated if adversely affected, and consulted upon prior to a NEPA decision for designation or classification to allow identification, protection, and mitigation of any significant cultural properties. The consultation process under the Regional Programmatic Agreement will be used for no effect and no adverse effect projects that fit PA treatments; the consultation process mandated by Federal regulations (36 CFR 800) will be completed for adverse effect projects; all consultation will be completed early in the planning for individual designation or classification projects
LRMP, Smokey Bear NF 4.3.2.16 Lands	11. Road and trail rights-of-way will be acquired across non-National Forest lands as needed to implement Management Area objectives
LRMP, Smokey Bear NF 4.3.2.16 Lands	12. The Forest will cooperate with owners of intermingled and adjacent land and with local governments in order to develop road or trail systems that serve the needs of the public.
LRMP, Smokey Bear NF 4.3.2.18 Roads	2. The number of miles of roads and/or motorized trails will be limited to an average of three miles per square mile of area per major watershed. Road and trail straight-of-way should not exceed one-half mile where possible. Total cleared rights-of-way width should be limited to no more than 66 feet when possible.

<b>Source Document and Citation</b>	<b>Direction</b>
LRMP, Smokey Bear NF 4.3.2.19 Visual Resources	<p>1. The Visual Quality Objectives will be met with the following exceptions:</p> <p>a. Minor adjustments, not to exceed a drop of one VQO level are allowed with the Forest Supervisor's approval, provided the minimum VQO specified for each Management area will not be exceeded and visual resource improvement measures (rehabilitation, enhancement) will be undertaken elsewhere in the Management Area to balance the resulting decline in visual quality.</p> <p>b. Temporary drops of more than one VQO may be made during and immediately following project implementation with Forest Supervisor's approval providing they do not exceed one year in duration.</p>
LRMP, Smokey Bear NF Management Area 1 Management Emphasis: Resource Protection	<p>General Forest Recreation</p> <p>Trail and OHV route construction is not emphasized but may occur when needed to maintain appropriate ROS class experiences, or to provide loop trails or connecting links with adjacent opportunities.</p>
LRMP, Smokey Bear NF Management Area 1 Management Emphasis: Resource Protection	<p>Transportation</p> <p>Maintain Public access roads. Roads providing access to general forest opportunities are maintained to at least level 2 standard.</p>
LRMP, Smokey Bear NF Management Area 5 Management Emphasis: Wildlife and Range Management	<p>General Forest Recreation</p> <p>Trail and OHV route construction is not emphasized but may occur when needed to maintain appropriate ROS class experiences, or to provide loop trails or connecting links with adjacent opportunities</p>
LRMP, Smokey Bear NF Management Area 5 Management Emphasis: Wildlife and Range Management	<p>Visual Resources</p> <p>Variety Class A areas within the State Highway 978 viewshed are managed to meet retention; all other Variety Class A lands are managed to meet partial retention. All lands within the State Highway 978 viewshed, other than Variety class A lands, are managed to meet partial retention. Foreground view areas from NFS Road9N11 are managed to meet partial retention.</p>
LRMP, Smokey Bear NF Management Area 5 Management Emphasis: Wildlife and Range Management	<p>Transportation</p> <p>Design and locate public roads or motorized trails to minimize impacts on wildlife. Density of roads or motorized trails is limited to an average of one mile per square mile of area per major watershed.</p>

<b>Source Document and Citation</b>	<b>Direction</b>
LRMP, Smokey Bear NF Management Area 6 Management Emphasis: General Forest Recreation	<p>General Forest Recreation</p> <p>Provide opportunities for motorized and non-motorized trail oriented activities through maintenance or construction of a trail system, OHV routes, trailheads and staging facilities Adequate to meet public demand, maintain ROS Class experiences and insure acceptable resource protection. Emphasize providing loop and connecting trails to enhance opportunities and minimize resource damage.</p>
LRMP, Smokey Bear NF Management Area 6 Management Emphasis: General Forest Recreation	<p>Visual Resources</p> <p>Variety Class A lands are managed to meet retention. Lands visible from Interstate Highway 40, State Highway 133, Big Tree State Park, County Road 127 and Forest Roads 8N01, 8N12, 7N03, 9N10 and 9N05 are managed to meet retention and partial retention (see VQO Map).</p>
LRMP, Smokey Bear NF Management Area 6 Management Emphasis: General Forest Recreation	<p>Fish &amp; Wildlife</p> <p>Manage stream segments containing resident species only to provide 80% or more of identified potential habitat capability based on habitat capability models developed for rainbow trout or other identified emphasis species as appropriate.</p>
LRMP, Smokey Bear NF Management Area 6 Management Emphasis: General Forest Recreation	<p>Transportation</p> <p>Design and locate public roads or motorized trails to minimize impacts on wildlife. With the exception of the Flying W OHV Area the density of roads or motorized trails is limited to an average of one mile per square mile of area per major watershed.</p>
Three-Toed Sloth Recovery Plan Habitat Section, pg 27	<p>Projects which may destroy or modify Three-Toed Sloth habitat shall be reviewed by US Fish and Wildlife Service prior to approval.</p>
Flying W OHV Area, EA Watershed, pg 18	<p>The density of roads or motorized trails is limited to an average of 5 miles per square mile of area per major watershed within the Flying W OHV Area.</p>
Flying W OHV Area, EA Watershed, pg 19	<p>“Open” use areas shall encompass no more than 25% of the acreage of the Flying W OHV Area.</p>

# Appendix M

## FOREST MOTOR VEHICLE MANAGEMENT DIRECTION \_\_\_\_\_ NATIONAL FOREST

Motor vehicle management direction is contained in the following decisions:

Source Document and Citation	Direction

# Appendix N

## National MOU - Sportsmen's Access to Federal Public Lands

FS Agreement Number: 03-MU-11132424-275  
BLM Agreement Number: BLM MOU WO170/250 - 2003-07  
FWS Agreement Number: 03-006

### SPORTSMEN'S ACCESS TO FEDERAL PUBLIC LANDS MEMORANDUM OF UNDERSTANDING

#### *TO PROMOTE IMPROVED ACCESS TO FEDERAL PUBLIC LANDS FOR HUNTERS AND ANGLERS*

DEPARTMENT OF AGRICULTURE  
Forest Service  
DEPARTMENT OF THE INTERIOR  
Bureau of Land Management  
Fish and Wildlife Service  
AND  
American Sportfishing Association  
Boone and Crockett Club  
Bowhunting Preservation Alliance  
Congressional Sportsmen's Foundation  
Foundation for North American Wild Sheep  
International Association of Fish and Wildlife Agencies  
National Rifle Association  
National Shooting Sports Foundation  
National Wild Turkey Federation  
Pheasants Forever  
Pope and Young Club  
Public Lands Foundation  
Recreational Boating and Fishing Foundation  
Rocky Mountain Elk Foundation  
SCI – First for Hunters  
Theodore Roosevelt Conservation Partnership  
Wildlife Management Institute.

FS Agreement Number: 03-MU-11132424-275  
BLM Agreement Number: BLM MOU WO170/250 - 2003-07  
FWS Agreement Number: 03-006

This Memorandum of Understanding (MOU) is made and entered into by and among the Department of Agriculture: Forest Service (FS); the Department of the Interior: Bureau of Land Management (BLM) and Fish and Wildlife Service (FWS); hereinafter referred to by their initials or collectively as “the Agencies;” and the American Sportfishing Association (ASA); Boone and Crockett Club (B&C Club); Bowhunting Preservation Alliance (BPA); Congressional Sportsmen’s Foundation (CSF); Foundation for North American Wild Sheep (FNAWS);

International Association of Fish and Wildlife Agencies (IAFWA); National Rifle Association (NRA); National Shooting Sports Foundation (NSSF); National Wild Turkey Federation (NWTFF); Pheasants Forever (PF); Pope and Young Club (P&Y Club); Public Lands Foundation (PLF); Recreational Boating and Fishing Foundation (RBFF); Rocky Mountain Elk Foundation (RMEF); Safari Club International (SCI); Theodore Roosevelt Conservation Partnership (TRCP); Wildlife Management Institute (WMI); hereinafter collectively referred to as “the Private Organizations.”

## **I. PURPOSE**

The purpose of this MOU is to establish a general framework for cooperation between the Agencies and the Private Organizations, their local offices, chapters, and affiliated organizations to cooperatively work towards achieving improved access to federally managed public land units for hunters or anglers. These activities and projects shall complement the respective missions of the participating Agencies and Organizations.

## **II. STATEMENT OF MUTUAL INTEREST AND MUTUAL BENEFITS**

The Agencies are responsible for the management of Federal lands, waters, and resources and have a desire to increase the public’s knowledge, awareness, use, enjoyment, and appreciation of these Federal lands and resources and their management. The Agencies also provide technical assistance to help insure the sustainability of natural resources on non-Federal lands.

The primary mission of the FS and the BLM is multiple use management of public lands and resources. Under the multiple use mandate, public land areas for hunting and waterways for fishing are some of the intended multiple uses of lands. The agencies have jurisdiction over many roads and trails within their system that provide access for hunting and fishing on their lands.

The mission of the FWS includes working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The FWS supports, encourages, and promotes hunting and angling opportunities on over 300 units of the National Wildlife Refuge System. Improved hunting or fishing opportunities and/or sportsmen’s access is evaluated through the comprehensive planning and compatibility processes as provided by the National Wildlife Refuge System Improvement Act of 1997. In addition, the FWS actively supports the recruitment and retention of hunters and anglers through the Federal Aid Program by providing financial grants and technical assistance to states, and through the states to local governments and private organizations for programs that promote hunter and angler access. The ASA is a nonprofit trade association whose members include fishing tackle



manufacturers, boat builders, state fish and wildlife agencies, angler organizations, sportfishing retailers, and the outdoor media. For over 50 years, ASA and its predecessor organizations have promoted the conservation of fishery resources and environmental measures that improve the aquatic environment, in order to ensure the enjoyment of healthy fisheries by America's nearly 50 million anglers. It is the policy of the B&C Club to promote the guardianship and provident management of big game and associated wildlife in North America and maintain the highest standards of fair chase and sportsmanship in all aspects of big game hunting, in order that this resource of all the people may survive and prosper in its natural habitats. Consistent with this objective, the Club supports the use and enjoyment of our wildlife heritage to the fullest extent by this and future generations. The Bowhunting Preservation Alliance (BPA) is a foundation dedicated to the preservation of bowhunting and the protection of bowhunters rights. The BPA works to maintain and enhance networking, communication, and cooperation among and between bowhunting organizations, wildlife agencies and the archery and bowhunting industry. BPA provides the forum for the promotion of bowhunting as an outdoor recreational opportunity, a wildlife management tool and a sustainable use conservation program. The Congressional Sportsmen's Foundation (CSF) works on behalf of current and future generations of Americans to protect the right and increase the opportunity to hunt, fish and trap by serving as the sportsmen's link to Congress. CSF provides this link by acting as the conduit between sportsmen, wildlife conservation organizations and the Congressional Sportsmen's Caucus (CSC), a bi-partisan caucus that supports wildlife conservation, professional wildlife management, hunting and fishing. FNAWS is an international wildlife conservation organization whose goals are: to enhance populations of indigenous wild sheep; to educate the public about wild sheep and wildlife conservation; to promote professional wildlife management; and to protect the lawful right and privilege of recreational hunting. The IAFWA is an association of State/provincial/commonwealth-level agencies of the Western Hemisphere that have management and protection responsibility for fish and wildlife resources in their respective jurisdictions. The federal land managing agencies are also members. The mission of the Association is to strengthen the ability of its member agencies to maintain healthy populations of the fish and wildlife. The NRA is a national organization dedicated to protecting and defending the Constitutional right to own and use firearms for legitimate purposes and promoting hunting as a method of enhancing the propagation and wise use of renewable wildlife resources.

The mission of the NSSF is to provide trusted leadership in addressing industry challenges and delivering programs and services to measurably advance participation in, and understanding of, hunting and the shooting sports.

The NWTF is a grassroots, nonprofit organization that supports scientific wildlife management on public, private and corporate lands as well as wild turkey hunting as a traditional North American sport. Pheasants Forever is a non-profit grassroots organization dedicated to protect and enhance pheasants and other wildlife populations throughout North America through habitat improvements, public awareness and education, and sound land, water, and wildlife management policies and programs.

The P&Y Club advocates and encourages responsible bowhunting by promoting quality, fair chase hunting, and sound conservation practices. It fosters and nourishes bowhunting excellence and acts in the best interest of our bowhunting heritage everywhere. The Club promotes and participates in improving sound wildlife conservation and wise use of our natural resources.

The Public Land Foundation (PLF) is dedicated to the ecological stability of the public lands administered by the Bureau of Land Management. The objectives of PLF are to keep the public lands open and accessible to the public; foster effective multiple use management of the public lands and natural resources under BLM management; encourage optimum implementation of the Federal Land Policy and Management Act of 1976; foster professionalism among employees; and encourage networking and communications between Foundation members. The RBFF is a nonprofit organization whose mission is to increase participation in recreational angling and boating and thereby increase public awareness and appreciation of the need for protecting, conserving and restoring this nation's aquatic natural resources. The Rocky Mountain Elk Foundation (RMEF) is an international, nonprofit, wildlife conservation organization whose mission is to ensure the future of elk, other wildlife and their habitat. In support of this mission RMEF works to foster cooperation among federal, state and private organizations and individuals to conserve natural habitats to promote the sound management of wild, free-ranging elk as well as to educate the public about the value of hunting, hunting ethics and wildlife management.

SCI-First for Hunters is an international organization promoting conservation education and research and the wise use and management of renewable natural resources of the world. The TRCP is guaranteeing places to hunt and fish by actively engaging America's 40 million hunters and anglers to make sure America's public and private lands always remain open and accessible, continue to be scientifically managed for abundant fish and wildlife populations, and provide a lifetime of hunting and fishing opportunities for generations to come. The WMI is an international scientific and educational organization promoting professional management of natural resources for the benefit of the resources and the people of North America.

The Agencies and the Private Organizations understand that federal public lands are an important destination for America's hunters and anglers - millions of sportsmen utilize federal public lands every year to fish or hunt. The Agencies and Private Organizations also understand that hunters and anglers help fish and wildlife management agencies to accomplish specific wildlife management goals. In localities where Federal public land is a large percentage of the land base, public access to the federal public land is critical to allow hunters and anglers to carry out responsible fish and wildlife management. Increasingly, some hunters and anglers are reporting that problems with access have taken away from their enjoyment of hunting and fishing and have caused them to hunt and fish less. These sportsmen perceive access as becoming an even greater issue in the future. The Agencies and the Private Organizations share common interests in seeking to improve and maintain public access to public lands and lawful hunting and angling where those activities are compatible with the conservation and management of natural resources and fish and wildlife species and other multiple uses.

### **III. THE AGENCIES AGREE TO:**

- A. Consistent with public notice requirements under land use planning, National Environmental Policy Act (NEPA) regulations and other applicable law, specifically notify the Private Organizations when land use plans and/or access and travel management plans are to be developed, revised, or amended, and cooperate with local chapters and affiliates of the Private Organizations to assess recreational needs and access opportunities for hunters and anglers.

- B. Assist in the identification of areas where access is perceived to be inadequate for hunting and angling opportunities and consider potential solutions to improve access to such areas, or alternative areas. Work with the Private Organizations to coordinate efforts to improve access to these areas where appropriate and when determined to be mutually beneficial and within the confines of their legal mandates.
- C. When maintenance needs of access points and federally managed roads and trails are identified, explore the potential for cooperative projects to address those needs with local chapters and affiliates of the Private Organizations. Work with the Private Organizations on a sportsmen's volunteer day to gain visibility for the efforts of the Agencies and Private Organizations on the maintenance of recreation opportunities on public lands.
- D. Consistent with applicable law, specifically notify the Private Organizations of significant management changes for land units that would impact access for sportsmen. Work with interested parties at the field, regional and national levels to seek alternative access opportunities and/or work together to notify users of the changes and why the changes were necessary.
- E. Explore the use of web-based technology to ensure that maps and other outreach information on the status of access points for use by hunters and anglers are updated in a timely manner.

#### **IV. THE PRIVATE ORGANIZATIONS AGREE TO:**

- A. Encourage local chapters and affiliated organizations to contact and meet with the appropriate Agencies' field offices and to participate in agency land use planning efforts to identify suitable access points or locations where access is inadequate.
- B. Encourage local chapters and affiliated organizations to provide leadership, services, and/or materials, as available and appropriate, for the maintenance of roads, trails and access points on public lands.
- C. Inform the Agencies of any potential grant opportunities in their respective organizations that may provide a source of funding for hunter and/or angling access related projects and programs.
- D. Provide technology and skill to support and improve the delivery of outreach information regarding hunter and angler access opportunities.
- E. Provide communication with local sportsmen about opportunities to participate in the land management planning process.
- F. Offer their support to facilitate the acquisition of easements for roads and trails across private lands that are necessary to provide public access to public lands for hunting and fishing.

## **V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND AMONG THE COOPERATING AGENCIES AND PRIVATE ORGANIZATIONS THAT:**

Specific work projects or activities that involve the transfer of funds, services, or property among the parties to this MOU will require the execution of separate agreements or contacts, contingent upon the availability of funds from the Agencies or as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property between the parties to this MOU must comply with all applicable statutes, regulations and policies, including those statutes and regulations applicable to procurement activities and must be independently authorized by appropriate statutory authority. This MOU in no way restricts the Agencies and the Private Organizations from participating in similar activities or arrangements with other public agencies, private organizations, and the public.

Any information furnished to the Agencies under this MOU is subject to the Freedom of Information Act. Nothing in this MOU shall obligate the Agencies and Private Organizations to expend appropriations or to enter into any contract with other obligations. Additional Federal agencies and private organizations may be added to this MOU by administrative modification with the written concurrence of the cooperating agencies and private organizations at the time of the proposed action. A written record of the consent of the cooperators will be maintained by the Agencies and Private Organizations. This MOU shall not be construed to provide a private right or cause of action by any person or entity.

## **VI. COMMUNICATIONS AMONG THE MOU PARTICIPANTS**

To provide for consistent and effective communication among the MOU participants, each of the entities shall appoint a representative to complete assigned tasks, discuss, and consider new activities as appropriate that may be pursued under this MOU. The annual work plan includes:

- Participate in scheduled meetings and conference calls (approximately 4 times per year);
- Participate in the annual strategic meeting and identify goals, objectives, and demonstration projects;
- Develop a communication strategy for disseminating accomplishments and information internally and externally.

## **VII. COMMENCEMENT/EXPIRATION/TERMINATION**

This MOU takes effect upon signature by each Agency and each private organization that is a party to the MOU and shall remain in effect for five years from the date of execution. This MOU may be amended upon written request of any party to this MOU and the subsequent written concurrence of the other(s).

Any party may terminate its participation in this MOU with a 60-day written notice to the other parties.

## **VIII. RESPONSIBILITIES OF THE PARTIES**

Each of the Agencies and Private Organizations will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives.

## **IX. ESTABLISHMENT OF RESPONSIBILITY**

This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

## **X. PRINCIPAL CONTACT:**

Principal contact for the Private Organizations concerning this MOU is:

Jodi Stemler,  
Director of Communications Congressional Sportsmen's Foundation  
110 North Carolina Ave. SE  
Washington, DC 20003 202-543-6850  
[www.sportsmenslink.org](http://www.sportsmenslink.org)

The respective contacts for each Agency and private organization are identified in the attached Appendix to this Memorandum of Understanding.

## **XI. LEGAL AUTHORITY**

This agreement is entered into under the following authorities:

USDA Forest Service: Organic Administration Act of 1897 (16 U.S.C. 473-475, 477-482, 551)  
National Trails Systems Act October 2, 1968 (PL 90-543, 82 STAT. 919)  
Volunteers in the National Forest of 1972 (PL92-300, 88 STAT 147)

DOI Bureau of Land Management Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.)

DOI Fish and Wildlife Service Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.)  
Fish and Wildlife Act of 1956 (16 U.S.C. 742(f) et seq.).

## **XII. SPORTSMEN'S ACCESS MOU SIGNATORIES**

(Signatures available in hardcopy)

## **APPENDIX I – CONTACTS FOR MOU SIGNATORIES**

### **Forest Service Project Contact**

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### **Primary Cooperator Project Contact**

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**BLM Project Consultant**

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Bowhunting Preservation Alliance  
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**IAFWA Project Contact**

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**NSSF Project Contact**

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National Shooting Sports Foundation  
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**FWS Project Contact**

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**FNAWS Project Contact**

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Found. for North American Wild Sheep  
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**NRA Project Contact**

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**NWTF Project Contact**

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FAX: 803-637-0034  
E-Mail: [jkennamer@nwtf.net](mailto:jkennamer@nwtf.net)

**PF Project Contact**

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**PLF Project Contact**

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**RMEF Project Contact**

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**RBFF Project Contact**

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Foundation  
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**SCI Project Contact**

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**WMI Project Contact**

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# Appendix O

## Trail Management Objectives



### TMO—Setting the Standard

The following section deals with establishing and documenting Trail Management Objectives (TMOs). The TRACS Trail Management Objective Form is easy to use and provides information needed for setting and recording a TMO for each National Forest System Trail.

Trail Management Objectives are the building blocks for trail management. You cannot effectively manage a trail until you have answered these basic questions: “What is the purpose of this trail? How much use will it receive? What type of use will it receive?” Often, in the past, units have managed trails based on the use they were getting and did not look at the planned use or future trends and needs. This sometimes resulted in managing a trail for a type of use that was not compatible with the trail management direction, design or location. Establishing and communicating the trail’s TMO will prevent this from occurring.

Trail Management Objectives tier off of the unit’s travel management plan and/or forest plan. They also provide basic information for subsequent trail planning, management and reporting.

Each TMO should be approved by a line officer after review and recommendation from the unit trail manager. For districts, it is recommended that the forest planning group and trail coordinator review these objectives prior to district ranger approval. This will assure that the objectives for a trail are consistent with the forest plan, district and forest travel management plans, and anticipated future land management actions. This will also assure consistency between units so that one trail will not be motorized on one district then switch to pack and saddle stock at the district boundary.

These TMOs must be established for every individual trail or trail segment. Information on how best to do this is provided on the Trail Management Objective Form, in the supplemental trail documents posted on the MM website and in the TRACS Reference section of this *User Guide*.





# TRACS Trail Management Objectives

Region:  Forest:  District:

Trail Name:  Trail Number:

Trail Beginning Termini:  Beg. Milepost:

Trail Ending Termini:  End. Milepost:

Trail Inventory Length:  Miles Trail Mileage Source:  Wheel  GPS  Map  Unknown

## TMO Trail Section

Section Beg. Termini:  Beg. Milepost:

Sec.# Section End. Termini:  End. Milepost:

## Designed Use Objectives

(Check one)

Trail Type

Standard Terra Trail

Snow Trail

Water Trail

(Check one)

Trail Class

1 (Primitive/Undeveloped)

2 (Simple/Minor Development)

3 (Developed/Improved)

4 (Highly Developed)

5 (Fully Developed)

**ROS/WROS Class** (Check one)

**ROS**

Non-Wilderness

Urban

Rural

Roaded Modified

Roaded Natural

Semi-Primitive Motorized

Semi-Primitive NonMotorized

Primitive

**WROS**

Wilderness

WROS 1

WROS 2

WROS 3

WROS 4

WROS 5

WROS 6

**Designed Use**

(Check one)

Hiker / Pedestrian

Pack & Saddle

Bicycle

Wheelchair

Motorcycle

All Terrain Vehicle (ATV)

\_\_\_\_\_

Cross-Country Ski

Snowshoe

Dog Sled

Snowmobile

\_\_\_\_\_

Watercraft - NonMotorized

Watercraft - Motorized

**Design Parameters**

(Fill in all that apply)

Basic Tread Width, inches

Clearing Width, feet

Clearing Height, feet

Switchback Radius, feet

Max. Sustained Grade, %

Max. Pitch Grade, %

\_\_\_\_\_

\_\_\_\_\_

**Target Frequency Per Year**

(Fill in all that apply)

Trail Opening

Tread Repair

Drainage Cleanout

Logging Out

Brushing

Snow Trail Grooming

Condition Survey

\_\_\_\_\_



# TRACS Trail Management Objectives

## Travel Management Strategies FSH 7731 (WO 7700-94-1)

### Managed Use

(Fill in all that apply)

	From Date (mm/dd)	To Date (mm/dd)
<input type="checkbox"/> Hiker / Pedestrian		
<input type="checkbox"/> Pack & Saddle		
<input type="checkbox"/> Bicycle		
<input type="checkbox"/> Wheelchair		
<input type="checkbox"/> Motorcycle		
<input type="checkbox"/> All Terrain Vehicle (ATV)		
<input type="checkbox"/> _____		
<input type="checkbox"/> Cross-Country Ski		
<input type="checkbox"/> Snowshoe		
<input type="checkbox"/> Dog Sled		
<input type="checkbox"/> Snowmobile		
<input type="checkbox"/> _____		
<input type="checkbox"/> Watercraft - NonMotorized		
<input type="checkbox"/> Watercraft - Motorized		

### Prohibited Use

(Check if applicable)

	From Date (mm/dd)	To Date (mm/dd)
<input type="checkbox"/> All Motorized Use		
(Or, fill in all that apply)		
<input type="checkbox"/> Hiker / Pedestrian		
<input type="checkbox"/> Pack & Saddle		
<input type="checkbox"/> Bicycle		
<input type="checkbox"/> Wheelchair		
<input type="checkbox"/> Motorcycle		
<input type="checkbox"/> All Terrain Vehicle (ATV)		
<input type="checkbox"/> _____		
<input type="checkbox"/> Cross-Country Ski		
<input type="checkbox"/> Snowshoe		
<input type="checkbox"/> Dog Sled		
<input type="checkbox"/> Snowmobile		
<input type="checkbox"/> _____		
<input type="checkbox"/> Watercraft - NonMotorized		
<input type="checkbox"/> Watercraft - Motorized		

### Other Use

(Optional: Check any that apply)

	Accept	Discourage	Eliminate
<input type="checkbox"/> Hiker / Pedestrian			
<input type="checkbox"/> Pack & Saddle			
<input type="checkbox"/> Bicycle			
<input type="checkbox"/> Wheelchair			
<input type="checkbox"/> Motorcycle			
<input type="checkbox"/> All Terrain Vehicle (ATV)			
<input type="checkbox"/> _____			
<input type="checkbox"/> Cross-Country Ski			
<input type="checkbox"/> Snowshoe			
<input type="checkbox"/> Dog Sled			
<input type="checkbox"/> Snowmobile			
<input type="checkbox"/> _____			
<input type="checkbox"/> Watercraft - NonMotorized			
<input type="checkbox"/> Watercraft - Motorized			

### Special Considerations

(Check any that apply. Underline appropriate clarifier in parenthesis. Provide specifics and reference information below.)

<input type="checkbox"/> Accessible per Current Agency Guidelines
<input type="checkbox"/> Mechanized Tools or Equipment Prohibited
<input type="checkbox"/> T&E or Sensitive Species Present (Plant / Wildlife)
<input type="checkbox"/> Heritage Resource Present
<input type="checkbox"/> Easement across Non-FS Land (Existing / Needed)
<input type="checkbox"/> Existing Permit or Agreement (Trail-Specific / Area)
<input type="checkbox"/> _____

### Remarks / Reference Information

(Use continuation sheet if needed.)

Line Officer: Name

Title

Signature

Date

# Appendix P

## Road Management Objectives

FSH 7709.55 – Transportation Planning Handbook

33 - ROAD MANAGEMENT OBJECTIVES. Road management objectives establish the intended purpose of an individual road based on management area direction and access management objectives. Road management objectives contain design criteria, operation criteria, and maintenance criteria.

33.02- Objective. To identify and document a management objective for each road in the Forest Development Transportation Plan (FSM 7711).

33.03 - Policy. See FSM 7712.31.

33.1 - Development. Develop road management objectives from the appropriate management area direction, access management objectives, and similar sources of resource management direction, standards, and guidelines. Secure data concerning the type and extent of resource activities to be served by the road, environmental constraints, and mitigating measures to be employed. Utilize this data to prepare specific objectives that define the intended purpose of the road and that describe how the road will be designed, operated, and maintained.

1. The primary sources of information for developing road management objectives are:

a. Management Area Direction. Typical information is the management emphasis for the area, and resource practices for timber, wildlife, recreation, minerals, soils, and water. Some Forest plans provide schedules for resource outputs such as timber to be harvested, roads to be closed, and trails to be constructed. Road densities or even site specific road location may be described. Standards and guidelines may discuss visual quality objectives, recreation and OHV opportunities, and wildlife featured species. All of this information needs to be accumulated to provide the background for developing access management objectives and road management objectives.

b. Access Management Objectives. Typical objectives concern ROS classifications, densities for facility development, soil sedimentation limits, and fish and wildlife protection measures. Some access management objectives may be obtained directly from the Forest plan; others will have to be developed from the management area direction. See section 31 for development of access management objectives.

2. Road management objectives contain:

- a. Design Criteria. These govern the selection of design elements and standards. Vehicle characteristics, such as the design and critical vehicles, and traffic service levels are examples of design criteria. FSH 7709.56, chapter 4, contains a description of design criteria.
- b. Operation Criteria. These govern operation of the road. Examples are such items as seasonal road use restrictions, special OHV and ATV use, and traffic management strategies. FSH 7709.59, chapter 10, contains a description of operation criteria.
- c. Maintenance Criteria. These govern maintenance of the road. Examples are such items as surface smoothness and financial responsibility. FSH 7709.58, chapter 10, contains a description of maintenance criteria.

Whenever possible, develop road management objectives during transportation planning activities.

33.2 - OHV Use on Forest Development Roads. As a part of the consideration of off-highway vehicle management, the transportation planner needs to recognize the potential for OHV (including all terrain vehicles (ATV)) use on forest development roads. Two primary situations exist:

1. OHV or ATV use that competes with regular on-road vehicle use; safety is a concern.
2. OHV or ATV use is the only user group on a specially designated road (four-wheel drive way, FSM 2353.05).

Consider OHV or ATV use on forest development roads in the same manner as any other vehicular use. Competition with other vehicle use is resolved with road management techniques, documented in road management objectives (sec. 33).

Manage four-wheel drive ways as provided in FSM 2352. Criteria for the location and development of four-wheel drive ways are provided in FSH 2309.18, Section 2.32c. Prepare road management objectives (sec. 33) for all four-wheel drive ways.

33.3 - Documentation. Document road management objectives as a permanent record that is readily available for use. Exhibit 01 is a suggested format. It is not a mandatory format, but is provided to illustrate a method of documentation. The documentation should include a summary of management area direction and access management objectives, as well as the specific design, operation, and maintenance criteria.

33.3 - Exhibit 01

Road Management Objectives

ROAD NUMBER: 213 ROAD NAME: Summit

TERMINI: County 10 - dead end LENGTH 0.8 mi.

FUNCTIONAL CLASS: ARTERIAL        COLLECTOR    LOCAL   X

FOREST: Green DISTRICT: Timber

MANAGEMENT AREA DIRECTION

Designated wildlife management area; featured species--bear. Minimize human disturbance; minimize roads open to motorized vehicles. Emphasize management of hardwood species. Leave vegetation intact along streams; provide for fish habitat. Road system to emphasize log transport. Area closed to OHV use. Soil erosion critical around streams. Timber harvest is 0.8 MMBF (FY88), 0.5 MMBF (FY 96).

ACCESS MANAGEMENT OBJECTIVES

ROS class is Roaded Natural. Minimum spacing of open local roads is 1 mile. 80% of new local roads to be closed in area. Timber harvest about 0.5-0.8 MMBF every 10 year, from FY 88. No new trails. No OHV use. No 4-wheel driveway use.

33.3 - Exhibit 01--Continued

DESIGN CRITERIA

TRAFFIC REQUIREMENTS:

COMMERCIAL: Timber; about 300 round trips in 1988-1989; 6 ADT maximum. Future use about 5 ADT maximum every 10 years. No timber motorized access needed between sales.

RECREATION AND OTHER PUBLIC USE: No new motorized vehicle use. Dispersed recreation by foot travel. Hunting allowed.

ADMINISTRATION: Motorized travel only during sales; about 3 ADT.

SAFETY: Intersection with County Road; warning signs during sale. Effectively block road between sales to minimize traffic hazards on County Road. Clay soils are slick on steep grades when wet.

VEHICLE CHARACTERISTICS:

DESIGN VEHICLE: Tractor trailer logging truck; L = 50', W = 8.5'

CRITICAL VEHICLE: NA

TRAFFIC SERVICE LEVEL: D

ENVIRONMENTAL AND RESOURCE CONSIDERATIONS: Provide for fish passage on stream crossing at Hall Creek; bridge, arch. Place surfacing on steep grades. Protect bear habitat; closing roads.

ECONOMICS: Compare total construction cost of road with resource benefits. Determine most cost-effective stream crossing considering road use, traffic service level, and intermittent service life.

OTHER: Intermittent service life.

33.3 - Exhibit 01--Continued

OPERATION CRITERIA

SUBJECT TO HIGHWAY SAFETY ACT: YES \_\_\_\_ NO X

JURISDICTION: Forest Service

TRAFFIC MANAGEMENT STRATEGY: Prohibit during timber sales; eliminate at other times.

TRAFFIC RULES AND ORDERS: Close to public motor vehicle use during sales. Close to all motor vehicle use between sales. Confine timber sale activities to May-October to avoid rainy season.

PERMITS:

TRAFFIC CONTROL DEVICES: Road will be gated by purchaser during sale; provide safety devices. After sale, purchaser to remove gate, ditch road, and treat entrance to discourage motor vehicle traffic. Forest Service installs barricade and signs to encourage foot travel.

OTHER: Road can be operated with high clearance vehicles.

MAINTENANCE CRITERIA

Purchaser responsible for all maintenance during sale. Purchaser responsible for installing, maintaining, and removing gate. Purchaser responsible for closing road after use. Surface can be maintained for high clearance vehicles. During sale; M.L. 2. After sale; M.L. 1.

PREPARED BY: \_\_\_\_\_ DATE:

REVIEWED BY: \_\_\_\_\_ DATE:

APPROVED BY: \_\_\_\_\_ DATE:

DISTRICT RANGER

# Appendix Q

## Example Purpose and Need statement for motor vehicle designations

It is Forest Service policy to provide a diversity of trail opportunities for experiencing a variety of environments and modes of travel consistent with the National Forest Recreation role and land capability (FSM 2353.03 (2)). Modes of travel include hiking, horseback riding, motor biking and so forth (FSM 2353.2).

The Land and Resource Management Plan for the \_\_\_\_\_ National Forest prohibits motor vehicle travel off of designated roads, trails, and limited motor vehicle use areas. (Sierra Nevada Forest Plan Amendment ROD, S&G #69) (*For non-Sierra Forests, summarize similar LRMP or amendment text pertaining to OHV use*)

In recent years, the use of motor vehicles in the \_\_\_\_\_ area of the \_\_\_\_\_ National Forest has grown substantially. This increased use has led to development of user-created trails, increased conflict between motorized and non-motorized uses, complaints about noise from adjacent landowners, and areas of degraded soil, water and vegetation conditions (*cite photographs, monitoring reports, landscape assessments, law enforcement statistics/reports and any other evidence to support statement about impacts*). Recent route inventories in the \_\_\_\_\_ area (*cite the inventory and date*) identified approximately \_\_\_\_\_ miles of routes currently receiving some level of motor vehicle use. Of these, \_\_\_\_\_ miles of routes are currently designated for motor vehicle use.

The underlying need to which \_\_\_\_\_ National Forest is responding is for a network of designated roads, trails and areas for motor vehicle use in the \_\_\_\_\_ area. In meeting this need, the selection of roads, trails and areas shall achieve the following purposes:

1. Minimize damage to soil, watershed, vegetation or other resources (36 CFR 212.55).
2. Minimize harassment of wildlife or significant disruption of wildlife habitat (36 CFR 212.55).
3. Minimize conflicts between motor vehicle use and other existing or proposed recreational uses of the same or neighboring public lands (36 CFR 212.55).
4. Ensure the compatibility of motor vehicle use with existing conditions in populated areas, taking into account noise and other factors (36 CFR 212.55).
5. Ensure public health and safety.
6. Identify roads, trails, and areas that will be designated for public motor vehicle use.



# Appendix R

## Questions and Answers

### General Questions

**Question:** Can a non-system road or trail be a designated motor vehicle route?

**Answer:** No, however, a non-system road or trail can become a designated motor vehicle route. Designated motor vehicle roads or trails must be evaluated using the criteria at 36 CFR 212.55 and have a completed EA or EIS and decision document. Once the decision to designate the route is made, the route must be added to the Forest Transportation Atlas as a NFS road or trail, and be listed in INFRA and in the Forest GIS database.

### Questions and Answers pertaining to SNFP amendment

**Question:** The FEIS for the Sierra Nevada Forest Plan Amendment (January 2001), in Volume 2, Chapter 3, part 5.6 – page 482, paragraph 2, states:

*“Roads, trails or areas that remain open with no change in use would not require further NEPA analysis or a forest plan amendment.”*

Does this mean that no NEPA is required for route designation?

**Answer:** No. It means that routes or areas that are currently designated for motor vehicle use (i.e., open) do not need to undergo NEPA in order for them to remain open as long as there is no change in use. The 2004 ROD for the SNFPA clarified at Standard and Guideline #69:

*“Prohibit wheeled vehicle travel off of designated routes, trails, and limited off highway vehicle (OHV) use areas.”*

Many motor vehicle routes being used today are not NFS roads or trails and are not designated, so they are not officially open. The standard and guideline suggests that we either close or designate these routes. NEPA applies to all federal actions including the action of designating a new motor vehicle route or area. Those actions that are of minor consequence can be categorically excluded per FSH 1909.15, Chapter 30. In this case, there is no categorical exclusion (CE) for designating a network of previously undesignated routes and user-created trails. The responsible official and the public must be informed of, and consider the consequences of, route designation before a decision can be made.

**Question:** The FEIS for the Sierra Nevada Forest Plan Amendment (January 2001), in Volume 2, Chapter 3, part 5.6 – page 482, paragraph 2, states:

*“Routes or areas proposed for closure would require site-specific NEPA analysis and a plan amendment to disclose the effects on forest resources and public use (39 CFR 295.2(a)).*

**Question:** Does this mean that route and area closures require a plan amendment?

**Answer:** No. The 2004 ROD for the SNFPA supplement supercedes the 2001 ROD. Under the 2004 ROD, the Forest plans for 11 National Forests were amended to include the standard and guideline: “Prohibit wheeled vehicle travel off of designated routes, trails and limited off highway vehicle (OHV) use areas.”(S&G #69). Therefore, a decision to limit travel by closing non-designated routes is in keeping with the standard and guideline and would not require a plan amendment. An exception could occur where designated routes were specifically identified in a Forest Plan and we are now proposing to close them. Since the designated routes are part of the Forest Plan, closing them would require a plan amendment. Where designated routes are not part of a forest plan, no amendment is needed to close them.

**Question:** Why is mountain bike use included in Steps 1 and 2?

**Answer:** Mountain bikes are included as wheeled vehicles in Steps 1 and 2 where there is considerable evidence that mountain bike use off of roads and trails is causing resource damage. OHVs are also using trails created by mountain bikes, so the uses are intertwined. One example of this is mountain bike “downhill runs” are being used by motorcycles as hillclimbs, which cause considerable resource damage. Including mountain bike use in Steps 1 and 2 was approved by the Regional Foresters for R4 and R5 in the MOI with the State. The leadership of the International Mountain Bike Association has expressed support for keeping mountain bikes on legal roads and trails and the MOI (in Steps 1 and 2). However, there is no requirement to “designate” trails for mountain bikes like that for motor vehicles in 36 CFR 212. The Washington Office has agreed to separate planning of trails for mountain bikes from designation of motor vehicle routes (national MOU with IMBA). So mountain bikes are included in steps 1 and 2 to stop and prevent further resource damage, and they are left out of Steps 3,4, and 5, because we are not designating trails specifically for mountain bikes. Forest staff should conduct further planning of mountain bike trails soon after motor vehicle routes are designated.