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File Code: 1570-1

Date: April 15, 2008

Mr. Anthony N. L. Iarrapino  
Staff Attorney  
Conservation Law Foundation  
15 E. State Street, Suite 4  
Montpelier, VT 05602-3010

RE: Appeal of the Decision Memo for the Liberty Hill Snowmobile Trail Relocation Project, Rochester Ranger District, Green Mountain National Forest, Appeal # 08-09-20-0040 A215

Dear Mr. Iarrapino:

On February 28, 2008, you filed a notice of appeal pursuant to 36 CFR 215.11, on behalf of the Conservative Law Foundation and the Center for Biological Diversity. District Ranger Tracy Tophooven signed the Decision Memo on January 18, 2009, and the legal notice was published in *The Rutland Herald* on January 21, 2008. I have reviewed the Appeal Record and have also considered the recommendation of the Appeal Reviewing Officer (ARO), District Ranger Steve Goldman, Huron-Manistee National Forests, regarding the disposition of your appeal. The ARO's review focused on the decision documentation developed by the Responsible Official, District Ranger Tracy Tophooven, and the issues in your appeal. The ARO's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

### **FOREST ACTION BEING APPEALED**

The Liberty Hill Project proposes the need to relocate Forest Trail 727, closed since 2005 due to private land development along the existing trail location. The decision authorizes the relocation of the trail onto National Forest System lands for approximately 0.3 mile.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The ARO found no evidence that the Responsible Official's decision violated law, regulation, or policy. He found the decision responded to comments raised during the analysis process and public comment period and adequately assessed the environmental effects of the selected action. In addition, he found the issues raised in your appeal (i.e., "The USFS has failed to comply with NEPA ... , The GMNF Trail System has not been adequately analyzed Under the National Forest Management Act and Executive Orders 11644 and 11989, VAST and its Member Clubs that Operate in the GMNF Must be Required to Obtain Special Use Permits, The GMNF Trail System Decision making Has Been Compromised by Lack of Meaningful Public Involvement")



were addressed, where appropriate, in the decision documentation. Based on this review, the ARO recommended that District Ranger Tracy Tophooven's Liberty Hill Decision Memo of January 18, 2008 be affirmed.

## **DECISION**

After careful review of the Project Record and the appeal, I concur with the ARO's analysis and findings regarding your appeal issues. To avoid repetition, I adopt his rationale as my own, and refer you to the enclosed ARO's recommendation letter, dated April 11, 2008, for further details. It is my decision to affirm District Ranger Tracy Tophooven's Decision Memo for the Liberty Hill Project on the Green Mountain National Forest.

This project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR § 215.9(b)).

Pursuant to 36 CFR § 215.18(c), this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

*/s/ Meg Mitchell*  
MEG MITCHELL  
Appeal Deciding Officer  
Forest Supervisor

Enclosure

cc: Tracy Tophooven, Steve Goldman, Jay Strand, Joel Strong, Patricia R Rowell



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File Code: 1570-1  
Route To:

Date: April 11, 2008

Appeal of the Decision Memo for the Liberty Hill Snowmobile Trail Relocation Project, Rochester Ranger District, Green Mountain National Forest, Appeal # 08-09-20-0040 A215 (Goldman aro recommendation)

To: Meg Mitchell, Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by the Conservation Law Foundation and the Center for Biological Diversity, on the Liberty Hill Snowmobile Trail Relocation Project, Rochester Ranger District of the Green Mountain National Forest (GMNF). District Ranger Tracy Tophooven signed this Decision Memo on January 18, 2008. A legal notice of the decision was published on January 21, 2008 in the *Rutland Daily Herald*.

My review was conducted pursuant to 36 CFR § 215, "Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities." To ensure the analysis and decision are in compliance with applicable laws, regulations, policies, and orders, I have reviewed and considered each of the points raised by the Appellants and the decision documentation submitted by the GMNF. My recommendation is based upon review of the Project Record (PR), including but not limited to the scoping letter, public comments, and the Decision Memo (DM).

The Appellants were contacted through a combination of telephone conversations, emails, and voice mails attempting resolution of the appeal. The two parties were unable to reach an informal resolution.

### **Appeal Issues:**

The Appellants raised four main issues in this appeal of Liberty Hill Snowmobile Trail Relocation Project Decision. All issues were raised during the comment period unless otherwise noted. All appeal issues are addressed in the context of the following questions and may not appear in the same order as mentioned in the appeal.

- 1) Is the proposed action within a category listed in Section 31.12 or 31.2 of the National Environmental Policy Act (NEPA) Handbook that is excluded from further analysis and documentation in an Environmental Impact Statement (EIS) or Environmental Assessment (EA)? Is it an appropriate use of the category? Is this category subject to notice, comment and appeal?
  - 2) Did the Record show the Forest properly analyzed extraordinary circumstances related to the proposed action?
  - 3) Does the Record demonstrate compliance with law, regulation, and policy?
- 1) **Is the Proposed Action categorically excluded from further documentation in an EA or EIS? Is it an appropriate use of the category? Is this category subject to notice, comment and appeal?**



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The Appellants claim (Issue 1C), “*The Liberty Hill Project Cannot Be Categorically Exclude.*” (NOA, p. 9). “*Since the U.S. Forest Service has failed to conduct a systemwide NEPA assessment of the cumulative impacts of and reasonable alternatives to the extensive GMNF snowmobile trail network, it is not appropriate to categorically exclude the Liberty Hill Project from review.*” (NOA, p. 9).

**Response:** The Council on Environmental Quality (CEQ) NEPA regulations at 40 CFR § 1507.3 provide that agencies may, after notice and comment, adopt categories of actions (known as categorical exclusions) that typically do not have a significant effect on the human environment and therefore do not require preparation of an EA or an EIS (40 CFR §§ 1500.4(p), 1501.4(a) (2), 1508.4). A categorical exclusion (CE) is not an exemption from the NEPA, but rather a method of complying with the NEPA. Categorical exclusions are an administrative tool to promote efficiency by reducing excessive paperwork for those categories of actions that, based upon extensive practice and experience, have been determined not to have (individually or cumulatively) significant environmental effects. Forest Service categorical exclusions are set forth in Forest Service Handbook (FSH) 1909.15, Chapter 30. This project involves Category #1. FSH 1909.15, Chapter 30, Section 31.2, states:

Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or EA ....

1. Construction and reconstruction of trails.

The proposed action clearly fits within the Category as the project involves reconstructing an existing trail totaling 0.3 miles. The 0.3 miles of trail on National Forest System land will follow an existing (old) skid road except for two short sections, totaling 670 feet of new construction to avoid wetlands and a moderately steep slope (PR, Vol. I, Doc. A-1, p. 4). Review of the PR reveals no element of the project that falls outside of Category 1.

Since this project involves actions associated with off-highway vehicles routes, it was subject to notice, comment and appeal pursuant to Judge Singleton’s ruling in *Earth Institute v. Ruthenbeck*, 376 F. Supp. 2d 994 (E.D. Cal. 2005). Accordingly, the GMNF initiated a 30-day comment period for the project on March 26, 2007, the day in which a legal notice was published in the GMNF newspaper of record (PR, Vol. I, Doc. B-1 to B-5). In addition to the official 30-day comment period, the GMNF also included the Liberty Hill Project on the Schedule of Proposed Actions (SOPA) from April of 2007 to March 31, 2008 (PR, Vol. I, Doc. B-7 to B-10).

By definition, categorical exclusions have been determined to not individually or cumulatively have significant effects on the human environment (40 CFR 1508.4). Since the project fits within a categorical exclusion, the project does not necessitate a cumulative effects analysis. Therefore, there is no need to conduct a systemwide assessment on the GMNF’s entire snowmobile trail network (see also response to Issue 1A). For a discussion on reasonable alternatives, please see response to Issue 1B. The GMNF properly determined that the Liberty Hill Snowmobile Trail Relocation Project fell within Categorical Exclusion 1 and was categorically excluded from further documentation in an EA or EIS. Having made that determination, the GMNF was then required by regulation (40 CFR § 1507.3) to determine

whether there were extraordinary circumstances which would yet preclude application of the categorical exclusion.

**2) Did the Record show the Forest properly analyzed extraordinary circumstances related to the proposed action?**

**Response:** NEPA regulations require agencies to develop procedures “to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.” (40 CFR § 1508.4). Resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation are listed in FSH 1909.15 § 30.3(2). The presence of a listed resource condition, which does not rise to the level of a “significant environmental effect,” does not preclude the use of a categorical exclusion. FSH 1909.15, 30.3(2) provides further clarification on when an extraordinary circumstance precludes the use of a categorical exclusion. This FSH provision was recently amended<sup>1</sup> to reflect Supreme Court jurisprudence (*Public Citizen v. U.S. Dept. of Transportation*):

“The mere presence of one or more of these resource conditions does not preclude the use of a categorical exclusion. It is (1) the existence of a cause-effect relationship<sup>2</sup> between a proposed action and the potential effect on these resource conditions and (2) if such relationship exists, it is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.”

As described below, the GMNF examined the resource conditions set forth in FSH 1909.15, 30.3(2) and documented the rationale for why none of the resources were present in the project area or would not be significantly affected by the proposed action.

1. Federally Listed Threatened or Endangered Species or Designated Critical Habitat, Species Proposed for Federal Listing or Proposed Critical Habitat, or Forest Service Sensitive Species: In accordance with Section 7(c) of the Endangered Species Act, the GMNF evaluated effects of several federally listed wildlife species (no federally listed plant species occur on the GMNF). “The likelihood for occurrence of any Threatened or Endangered (T&E) animal species is low. The project area does not include potential or critical habitat for T&E animal species. Consequently, this project will have ‘No Effect’ on T&E animal species. Based on occurrence records and the unsuitable habitat conditions that exist[s] on NFS lands within the project area, the likelihood of occurrence for all Regional Forester’s Sensitive Species (RFSS) animals is ‘Unlikely’.” (DM, p. 6). Similarly, the likelihood of occurrence for all plant RFSS is also improbable; therefore, implementation of the Liberty Hill Project would have no impact to these species (Ibid).
2. Floodplains, Wetlands, or Municipal Watersheds:

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<sup>1</sup> 71 Fed. Reg. 75481, 75482, 75495 (Dec. 15, 2006)

<sup>2</sup> A cause-effect relationship speaks to the existence of a linkage between the proposed action and listed resource condition over time and within the geographic area. 71 Fed. Reg. 75490.

The trail would be located within close proximity to five small wetland areas on private and Forest Service property. The trail would be utilizing several sections of existing skid trails adjacent to one of the wetland areas. The other four wetland sites would have new trail construction adjacent to them. The project proposes several mitigation measures to reduce impacts to these adjacent wetland areas and describes impacts as minor in regards to soil erosion, sedimentation, compaction, and increased runoff to the wetlands (PR, Vol. I, A-2, pp. 6-8). The PR indicates construction of the trail on steeper slopes further away from the wetland would have more impact to those resources due to slope and amount of soil disturbance (PR, Vol. II, F-6, p. 1-2).

The project is located within the floodplain of the White River, on private land. Construction will follow Vermont Agency of Natural Resources standards for the crossing of the White River as described in the September 21, 2005 State Stream Crossing Structure Permit. “Consequently, there will be only minor impacts to the floodplain and riparian resource from this project.” (PR, Vol. I, A-2, p. 7).

The project was not located within a municipal watershed (PR, Vol. I, A-2, p. 8)

3. Archaeological Sites or Historic Properties or Areas:

An Archeologist report dated July 7, 2007 indicates there would be no effect to any historic properties or sites significant to Native Americans (PR, Vol. I, A-2, p. 9).

4. All Other Categories of Extraordinary Circumstances: The project is not located within any congressionally designated areas, Inventoried Roadless Areas, or existing/candidate Research Natural Areas.

My review clearly indicates the Responsible Official considered all the specific resource conditions contained in FSH 1909.15, Section 30.3 including any cause-effect relationships (DM, pp. 6-8). The Record demonstrates that the Forest thoroughly analyzed the degree of the potential effects of the project on the environment. I find no violation in the NEPA. I find the documentation, based on the best available science, supports the determination that no extraordinary circumstances exist related to the Liberty Hill Snowmobile Trail Relocation Project.

**3) Does the Record demonstrate compliance with law, regulation, and policy?**

***Issue 1: “The USFS Has Failed to Comply with NEPA by Allowing the Construction, Operation, Maintenance, and Expansion of the GMNF Snowmobile Trail System to Continue Without Taking a Hard Look at its Environmental Impacts and Considering Meaningful Alternatives for Managing Snowmobile Use.”*** (NOA, p. 2).

The Appellants contend:

**Sub-Issue 1A:** *“Operation, Construction, Maintenance, and Planned Expansion of the VAST Trail System on the GMNF Is a Major Federal Action Significantly Affecting the Quality of the Human Environment.”* (NOA, p. 2).

- ... “[T]he USFS has failed to conduct NEPA review for the GMNF snowmobile trail system by routinely granting categorical exclusions based on its conclusions that the construction, maintenance, and use of the trail system does not significantly affect the human environment. However, these conclusions fail to account for the interdependent cumulative effects of each and every trail project not only with the rest of the GMNF’s extensive 471-mile snowmobile trail system, but also with the much larger statewide snowmobile trail system ....” (NOA, p. 4).
- ... “[T]he Final Environmental Impact Statement (FEIS) for the 2006 Land and Resource Management Plan (LRMP) recently adopted by the GMNF, the USFS failed to examine the adverse impacts of snowmobile noise on other recreators, wildlife, and habitat; the conflicts between snowmobiling and other activities such as cross-country skiing; the unhealthy effect of snowmobiles’ toxic chemical discharges on air and watershed quality; and the disruption to wildlife habitat caused by snowmobile trail routes and snow compaction [i.e., Discussion of Adverse Effects ].” (NOA, p. 4).
- “... [T]he USFS has consistently failed to analyze the ‘long- and short-term effects’ that lead to ‘reasonable anticipat[ion] of cumulatively significant impact on the environment.’” [i.e., Discussion of Cumulative Effects ] (NOA, p. 5).
- “By applying categorical exclusions to individual snowmobile trail projects such as the Liberty Hill Project, the USFS is unlawfully circumventing the NEPA process [i.e., precluding meaningful public input]. This piecemeal approach has resulted in the fragmentation of the trail-system review into smaller projects, preventing the public from accurately assessing the context and the intensity of snowmobile use in the GMNF.” (NOA, p. 6).

**Response:** As already explained, this project falls within the proper use of a categorical exclusion and does not have individual or cumulative effects on the human environment, as such it is not a major federal action (see also response to **Question 1 (Issue 1C)**). Appellants desire a cumulative effects analysis on the existing snowmobile trails on the GMNF. However, this project seeks only to reconstruct a relatively small section of an existing trail system (0.3 miles) following an old skid trail, except for 670 feet, which will be constructed to avoid wetlands and moderately steep slopes. This proposal will not change the existing capacity or use of the trail or the existing snowmobile trail system (DN, p. B-8). The Responsible Official did seek public involvement in the projects design and those results are documented in the decision (DN, Appendix B) and PR. This project does not “circumvent the NEPA” process. An analysis on the GMNF’s entire snowmobile trail system is not required for this project.

Appellants also allege that the 2006 Land and Resource Management Plan (Forest Plan) failed to analyze impacts of snowmobile use on various resources. However, the Final Environmental Impact Statement (FEIS) used to adopt the Forest Plan did analyze activities for the entire forest, including snowmobiling, at the programmatic scale. More specifically, the EIS looked at snowmobiling as part of a “Recreation Management” issue and incorporated it into the analysis of five different alternatives (see response to **Issue 2**). This analysis evaluated different levels of snowmobile use (see response to **Issue 1B**). Examples of documented snowmobile effects are summarized below:

*Air Quality:* The FEIS analyzes the direct and indirect effects on activities, including emissions, ozone, regional haze, and atmospheric depositions. The PR clearly shows that modeling was used to derive specific snowmobile emissions data (e.g., PR, Vol. III, H-32). The FEIS states, “Vermont currently meets all ambient air quality standards and future snowmobile emissions are projected to mostly decrease.” (PR, Vol. III, H-22, pp. 3-46 to 3-47). Additional information on the forest air quality research and analysis can be found in the PR, Vol. III, H-25 through H-33. These documents include articles and reports on air quality concerns related to snowmobile usage in National Parks, regulatory announcement for frequently asked questions from snowmobile owners, emission standards for new non-road engines, and a Green Mountain & Finger Lakes Air Quality Assessment Package.

*Watershed Quality:* The FEIS analyzes the effects of ground disturbing practices such as timber harvest, road construction and maintenance, recreation development and use, trail construction and maintenance, prescribed fire, mineral exploration and extraction, and downhill ski area development and maintenance. The effects of snowmobiling are included in practices such as recreation development and use, and trail construction and maintenance. The FEIS states:

It is important to note that riparian conditions and water quality on a majority of the Forest (regardless of the alternative) would actually improve over the next planning period. This is because, as displayed in Table 3.2-2 of the soils section (PR, Vol. III, H-22, pp. 3-29), only 50 to 68 percent of GMNF lands would generally be subject to ground disturbing activities (PR, Vol. III, H-22, pp. 3-37 to 3-40).

It further concludes:

“The effects of existing snowmobile trails on soil quality are small because trails are generally well vegetated, and erosion control structures (such as culverts, ditches, water bars and bridges) are functioning.” (FEIS, Appendix H, p. 222).

*Recreation Use:* The FEIS and associated monitoring recognizes that conflicts between snowmobiling and other non-motorized activities such as cross-country skiing may occur (FEIS, 3-208). Using the Recreation Opportunity Spectrum, the Forest analyzed and



established a balance of uses, including snowmobiling, to allow a range of recreation experiences across different recreation settings (FEIS, pp. 3-216 through 3-219). The revised Forest Plan places focus on non-motorized recreation in specific management areas including Remote Backcountry Forest, Wilderness, Wilderness Study Areas, and the Appalachian Trail totaling 43 percent of the entire Forest.

*Wildlife Habitat:* The FEIS addressed reclusive habitat, which refers to those wildlife that need or prefer habitat which they can avoid or minimize contact, with, and disturbance from humans, along with other species (PR, Vol. III, H-22, pp. 3-99, 3-102 to 3-106, 3-108, 3-11 to 3-112). For example, the Biological Evaluation for the Forest Plan evaluated snowmobile trails on the Gray Wolf stating:

The presence of roads and snowmobiles trails can increase exposure of wolves to harassment and killing, but they can facilitate movement of wolves especially across areas of deep snow. Paquet et al. (1999) expressed uncertainty about the overall influence of roads and snowmobile trails on possible reintroduction of wolves in the Adirondack Park in New York. Such uncertainty is equally appropriate for the possible influence of roads and snowmobile trails on wolves on the GMNF. Further, management under the revised Forest Plan is more likely to enhance the diversity and abundance of prey (PR, Vol. III, H-23, E-32).

Analysis can also be found for other species including eastern cougar (PR, Vol. III, H-23, p. E-34), and aquatic habitats (PR, Vol. III, H-23, p E-107).

I find the GMNF successfully conducted a proper NEPA analysis for the Forest Plan including snowmobiling activities and the existing trail system, contrary to the Appellants claim. All of the analysis concluded there would be no irretrievable or irreversible effects of snowmobiling on any of the resources (i.e. wildlife, water, vegetation, air) or interfere with the human environment. The FEIS provided an appropriate level of effects disclosure commensurate with the nature of the programmatic decision (ROD, p. 7). The resulting Forest Plan guides future site-specific project decisions.

**Sub-Issue 1B:** “**The Forest Service Has Not Analyzed A Meaningful Range of Alternatives**” (NOA, p. 7). “*The U.S. Forest Service has also failed to analyze a full range of alternatives for snowmobile use in the GMNF. The FEIS for the 2006 GMNF LRMP merely notes the status quo mileage of snowmobile trails and the generalized management areas that allow snowmobile use.*” (NOA, p. 7). “[T]he USFS failed to consider the options of (1) limiting or prohibiting snowmobile use in the Forest when air quality is poor or (2) reserving the right to do so in the future subject to worsening climatic conditions [i.e., climate change].” (NOA, p.6).

**Response:** NEPA requires federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts of alternatives uses of available resources (42 U.S.C. § 4332). The CEQ regulations state in 40

CFR § 1502.14 (a) that “agencies are to rigorously explore and objectively evaluate reasonable alternatives development, and briefly discuss the reasons for eliminating alternatives from detailed study.” While regulations require that a range of alternatives be analyzed, the “No Action Alternative” is the only alternative specifically required as an option to the proposed action (40 CFR § 1502.14(d)). There is no set number of alternatives required in order to reflect a reasonable range. Agencies have discretion to determine appropriate alternatives based upon the purpose of the proposal. The GMNF did not consider alternatives that did not address the purpose and need for change (i.e., Why the 1987 Plan was being revised and what issues need to be considered in the revision process) (FEIS, pp. 1-1 to 1-5).

The FEIS for the GMNF Forest Plan discusses broad environmental effects and establishes a reference for compliance with environmental laws at the site-specific project level. Thus, the FEIS does not include exact trail mileages or locations. Nevertheless, the Forest analyzed five alternatives, which were developed through an extensive public involvement process that directly addressed snowmobile use in the FEIS for the 2006 Forest Plan revision. Those alternatives determine the percentage of the Forest in which construction and/or maintenance of a snowmobile trail would be consistent with the Forest Plan. The analysis focused on the number of acres available for development by trail activity, specifically addressing snowmobiling and summarizing the results in Table 3.10-12 of the FEIS (p. 3-218). These alternatives ranged from a low of 47 percent of the Forest remaining open to future snowmobile trails to a high of 70 percent (FEIS, p. 2-32). The 1987 Forest Plan level, representing current management and the present snowmobile trail system, was 55 percent (FEIS, p. 2-32). As mentioned previously, these alternatives were designed to meet the purpose and need for Plan revision and addressed the issues raised during the public involvement process (FEIS, p. 2-2). Thus, the range of analyzed alternatives is reasonable in regards to the Forest acreage available for snowmobile use and development. However, more extreme alternatives were considered and dropped from detailed study, which included the “All Inventoried Roadless Areas Recommended as Wilderness” (FEIS, p. 2-24). This would have increased the amount of Wilderness Study Areas from 19 to 31 percent depending on the alternative, significantly reducing opportunities for motorized activities such as snowmobiling. The Forest dropped this from detailed study due to the significant reduction of motorized use and the corresponding inability to meet requirements under the Multiple-Use Sustained Yield Act (MUSYA) of 1960 (FEIS, p. 2-24).

The Forest Service has considerable discretion under the National Forest Management Act (NFMA) and the MUSYA to weigh and decide the appropriate uses of particular areas of the National Forests and to “*Be best suited to the multiple-use goals stated in the Forest Plan.*” MUSYA, 16 U.S.C. § 529, states:

“The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained there from. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular areas . . . .”

MUSYA, 16 U.S.C. § 528 also states, “[I]t is the policy of Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and

wildlife and fish purposes.” Indeed, MUSYA provides considerable discretion to the Forest to balance competing uses, just as the GMNF has done here.

The FEIS for the revised Forest Plan analyzed a range of alternatives in regards to snowmobile use, contrary to the Appellants contention. Analysis did not indicate that significant resource damage from snowmobiles was a driving issue in revision of the Forest Plan. The primary issue of snowmobile use was impacts to deer wintering areas, which continue to be managed by site-specific closures and relocations of trails (FEIS, Appendix A, p. A-10). The existing Forest Plan does not limit the Forest’s ability to prohibit or restrict future snowmobiling activities. The GMNF retains the right to take management action if resource damage does occur. The Forest may limit or prohibit uses through authorities such as Forest Supervisor closure orders (36 CFR § 261). I find no violation in law, regulation or policy.

**Sub-Issue 1C:** “The Liberty Hill Project Cannot be Categorically Excluded” (NOA, p. 9).

**Response:** Refer to my response in **Question 1**.

**Issue 2:** “*The GMNF Trail System Has Not Been Adequately Analyzed Under the National Forest Management Act and Executive Orders 11,644 and 11,989*” (NOA, p. 10).

The Appellants claim:

- “Without performing a meaningful comprehensive analysis, which includes both forestwide and site-specific assessments of the environmental effects of snowmobiling in the GMNF, it is impossible for the USFS to demonstrate compliance with the substantive environmental protection requirements of these executive orders.” (NOA, p. 10).
- “None of the annual [monitoring] reports contain any evaluation of the Forest’s ORV management plan. From these findings, it is apparent that there was no monitoring program in effect nor any evaluations of the ORV use plan during the life of the 1987 Plan. This failure to manage snowmobile use in the GMNF constitutes a direct violation of NFMA regulations.” (NOA, p. 11).
- “Despite this disregard for federally-mandated snowmobile management during implementation of the 1987 Plan, the current 2006 GMNF Plan does nothing to remedy this failure. In fact, there is no basis in site-specific data in the 2006 Plan or supporting documents to determine whether extensive snowmobile use has impacted the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of the GMNF.” (NOA, p. 11).

**Response:** The purpose of Executive Order 11644 of 1972 (as amended by Executive Order 11989 in 1977) was to establish policy to direct off-road vehicle use on public lands in order to ensure resource protection, maintain safety of all users, and avoid conflicts between various land users. This was essentially incorporated into the NFMA land management planning process

utilized by the GMNF during their revision of the 1987 Forest Plan. During this process, the Forest identified “Recreation Management” as an issue, which included identifying an appropriate mix of motorized and non-motorized trails (PR, Vol. III, H-22, p. 1-9). The Forest restricted snowmobile trail designation to specific Management Areas and developed a total of five alternatives that differed in the amount of land assigned to these Management Areas (PR, Vol. III, H-22, p. 2-32) (See **Issue 1-B**).

Standards and guidelines were developed to mitigate effects and protect various resources, including those that might potentially occur as a result of trail construction (e.g., see S-2 in Soil, Water, and Riparian Area Protection and Restoration; PR, Vol. III, H-19, p. 20). Potential effects of the five alternatives were subsequently analyzed, including specific references to effects of snowmobiling and trail construction on air quality (PR, Vol. III, H-22, pp. 3-46 to 3-47), soils (PR, Vol. III, H-22, pp. 3-28 to 3-32), water quality (PR, Vol. III, H-22, pp. 3-35 to 3-40), wildlife (reclusive species) (PR, Vol. III, H-22, pp. 3-99, 3-102 to 3-106, 3-108, 3-111 to 3-112), and heritage resources (PR, Vol. III, H-22, pp. 3-321 to 3-323). In addition, the Biological Evaluation for the Forest Plan (Appendix E) assessed snowmobile trails on wolf (PR, Vol. III, H-23, p.E-32), eastern cougar (PR, Vol. III, H-23, p. E-34), and aquatic habitats (PR, Vol. III, H-23, p. E-107). For resources such as soils, water, and heritage resources, effects are a concern primarily during trail construction, not as a result of trail use. These effects are relatively minor in nature because implementation of standards and guidelines are expected to mitigate the bulk of any effect. For example, leaving a protective strip of predominantly undisturbed soil with plant or organic matter cover between soil-disturbing activities and all water sources (PR, Vol. III, H-19, p.20) mitigates potential erosion effects. Other resource areas such as wildlife may be more impacted by trail use rather than trail construction. However, standards and guidelines are also expected to mitigate effects for this as well (e.g., prohibiting construction of new winter-use trails in shelter portions of deer wintering areas) (PR, Vol. II, G-16; PR, Vol. III, H-19, p.30). Finally, some resource areas such as air are expected to have minimal effects as a result of actions outside Forest Service control, such as implementation of new national snowmobile emission standards which are expected to improve air quality despite projections of increased snowmobile use on the Forest (PR, Vol. III, H-22, p.3-46). In no resource area or alternative were unacceptable adverse effects identified as a result of snowmobiling or trail construction during implementation of the 1987 Forest Plan or predicted implementation of the 2006 Forest Plan.

During Forest Plan revision, the Forest did not focus solely on broad level direction and effects, but also looked closely at site-specific situations in order to fully examine alternatives and potential effects. For example, between the release of the Draft EIS and publication of the Final EIS, the Forest completed a field reconnaissance in the Monastery Mountain Area to determine if a proposed east-west snowmobile trail could feasibly be constructed. To allow for this possibility, the preferred alternative identified with the Draft EIS had bisected this piece of Remote Backcountry Forest with a corridor designated Diverse Backcountry. Forest Service staff sited, hiked, and mapped an approximate location for a trail that maintained the lowest possible gradient to cross the ridgeline. However, after estimating costs and considering the steep slopes and intensive engineering methods that would be required, the Forest recommended this trail would be out of character and impractical to construct and maintain. Therefore the

entire area was designated Remote Backcountry Forest in the Final EIS (PR, Vol. III, H-22, p. 2-4).

The Appellants are incorrect in their claim that no monitoring related to ORV's, especially snowmobiling and the snowmobile trail system, occurred under the 1987 Forest Plan. Annual monitoring reports briefly explained accomplishments and management concerns. For example, in 1997 trails were monitored for effectiveness in channeling water. "Relocation of some snowmobile trails for safety purposes, and improvement of their trail conditions (height and number of waterbars [for better drainage]) was noted for further planning." (PR, Vol. III, H-44, p. 21). New guidelines for protection of the soil and water resources on snowmobile trail construction projects were implemented in 1999 (PR, Vol. III, H-43, p. 24). In 2003, the Forest placed emphasis on monitoring of commercial snowmobile outfitter-guide permits. "Concerns had been raised that these operations [were] impacting the trail resource by affecting maintenance costs and impacting the recreation experience of individual riders." (PR, Vol. III, H-42, p. 19). Although funding and staffing may have limited the Forest from accomplishing all its objectives, as many of the monitoring reports note, the Record is clear that the GMNF was managing the snowmobile program.

The monitoring chapter in the revised 2006 Forest Plan includes a monitoring item specific to the effects of ORV use, which is intended to be measured and evaluated on an annual basis (PR, Vol. II, H-19, p. 118). The only monitoring report available thus far is for fiscal year 2006, which includes an evaluation of this subject based on law enforcement citations for the past 3 years (PR, Vol. III, H-42, pp. 31-32). The Forest identified an increasing trend in the number of violations issued and recommended that further protocols be developed to separate data on snowmobiles from other ORV users. In addition, the report also recommended that additional protocols be identified to further measure the effects of ORV uses on physical and social resources. Other resource monitoring related to this concern included soils, water, and wetland resource standards and guidelines, which were found to be generally effective (PR, Vol. III, H-42, p. 47) and completing conditions surveys on a sample of trails, which helps identify specific maintenance needs (PR, Vol. III, H-42, p. 50-51).

In brief, I find that the GMNF is in compliance with the cited Executive Orders, and that the 2006 Forest Plan addresses resources impacts from snowmobile use. I find no violations in the NFMA as the Appellants claim. The Forest has been managing its snowmobile program as documented in annual monitoring reports.

***Issue 3: "VAST and its Member Clubs that Operate in the GMNF Must be Required to Obtain Special Use Permits"*** (NOA, p. 10). The Appellants contend, "*The Forest Service's failure to comply with NEPA and Executive Orders 11,644 and 11,989 in the GMNF is compounded by the explicit failure of the USFS to require VAST to obtain legally mandated special use permits before operating in the Forest.*" [Appellants contest that VAST's operations are a "commercial activity" and also constitute a "group activity.]. (NOA, p. 11).

**Response:** The agency has the discretion as to how to implement this project through agency workforce, commercial contract, volunteer labor, in partnership with other groups such as VAST, or any combination of these methods. The administrative decision as to the method of implementation is not part of the NEPA decision to authorize this action. Thus, the issuance of a special use authorization to any entity is not required by this decision.

Issuance of a special use permit requires NEPA compliance of the proposed activities and that the special use applicant meets the requirements for the issuance of the permit. VAST and the GMNF are working as partners under a valid challenge-cost share (CCS) agreement (FSM 1587.1-3, p. 86) which will expire on May 1, 2009 (PR, Vol. III, H-36, p.1-9). This CCS agreement authorizes VAST for a variety of trail maintenance activities (PR, Vol. III, H-36, p.2; PR, Vol. 3, H-37, p. 1-5). The Forest has chosen to authorize these activities through the CCS, “under the provisions of the Department of Interior and Related Agencies Appropriation Act of 1992 (PL 102-154)” (PR, Vol. III, H-36, p.1), which is considered a contractual agreement, in lieu of the special use authorization, due to the partnership between VAST and the Forest (PR, Vol. III, H-40, p.1-9). This contractual agreement meets the requirements of 36 CFR § 261.10(a).

VAST is a non-profit organization that shares the mutual interest of maintaining and improving the snowmobile trail system on the Forest. The CCS agreement is the most appropriate method of authorization for this type of business relationship. Special use permits are typically used with profit-making organizations whose proposals are consistent with approved land management plans, but are not part of the agency’s core management activities and responsibilities. This is also true for non-profit individuals or organizations who seek to use or occupy National Forest System lands consistent with land management plans, but the proposal is not mutually beneficial.

In brief, the decision to relocate the trail does not require issuance of any special use authorizations or imply such action. The partnership between the Forest Service and VAST is appropriately authorized through a CCS agreement and a special use authorization is not appropriate in this instance. VAST is a non-profit organization and their activity on the Forest is not commercial in nature. The Annual Operations and Maintenance Plan between VAST and the Forest requires VAST to obtain a special use permit for special events for groups of 75 persons or more (PR, Vol. III, H-37 p.3). I find no violation in law, regulation, or policy as the Appellants claim.

**Issue 4:** *“The GMNF Trail System Decisionmaking Has Been Compromised by Lack of Meaningful Public Involvement”* (NOA, p. 12). The Appellants contend, *“With respect to the GMNF’s extensive snowmobile trail system, much of the U.S. Forest Service’s decisionmaking has been formed in private meetings between the USFS and VAST.”* (NOA, p. 12). *“The U.S. Forest Service has systematically circumvented the requirements of FACA and the Government in the Sunshine Act by meeting privately with VAST on numerous occasions.”* (NOA, p. 13).

**Response:** The Federal Advisory Committee Act (FACA) controls the establishment, management, and termination of advisory committees within the executive branch. In general,

FACA applies to collaborative efforts when all of the following criteria are met (CEQ, Collaboration in NEPA, A Handbook For NEPA Practitioners, p. 90):

1. A Federal agency establishes the group (that is, organizes or forms it) or utilizes an outside group by exerting “actual management or control” over the group;
2. The group includes one or more individuals who are not full-time or permanent part-time federal employees or elected officials of state, tribal, or local government or their designated employees with authority to speak on their behalf;  
*and*
3. The product of the collaboration is group or collective advice to the Federal agency. (Note that the advice is not required to be consensus advice for FACA to apply.) (Ibid, p. 91)

VAST is a non-profit organization that was not formed by the Forest Service and is not funded by the Forest Service. The Forest Service does not exercise or have management or control over this organization. The existing CCS allows either party to terminate at any time (PR, Vol. III, H-36 p.5). The interaction between the Forest Service and VAST do not meet the requirements of a federal advisory committee. The CCS agreement and working relationship between the Forest Service and VAST to maintain the snowmobile trail system predates this project. The purpose of this partnership is to “manage and maintain” (PR, Vol. III, H-36 p.1) the trail system, not as an advisory committee.

Route 100 Snow Travelers commented on this project during the formal 30-day comment period (PR, Vol. I, C-5, p. 1-2). This is one of many local clubs that make up the membership of VAST. Their participation in the public comment process indicates VAST’s desire to provide input on the project and no intention to circumvent the FACA or the NEPA public involvement process, as Appellants assert.

Additionally, the Government in Sunshine Act defines the terms “agency” and “meeting”

1) the term "agency" means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency [emphasis added];

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e).

The decision to authorize the Liberty Hill Snowmobile Trail Relocation Project was not made by a decision-making-body of two or more members as described under the definition of an “agency.” The Responsible Official in this case is the District Ranger, who has sole responsibility to authorize the action. Therefore, the Government in Sunshine Act is not applicable to this project.

The Forest has not held any meetings with VAST in which a disposition was made in regards to the Liberty Hill Trail Relocation Project. This decision was made by full disclosure through the NEPA process. Public scoping, 30-day formal comment, and notification of the decision were handled by legal notices, written and verbal comments, and internet postings as required by NEPA. Comments received were analyzed and addressed in the PR (PR, Vol. I, B-1 through B16; C-1 through C-8; and D-1 and D-2). This project has appropriately followed standard public involvement procedures as they pertain to the NEPA, as previously described in my response to **Issue 1C**. The public involvement and decision making process followed with this project did not provide for a meeting, as defined by the Sunshine in Government Act, where final deliberations and disposition of the project were made with VAST. The Decision Memo was signed, by the Responsible Official, on January 18, 2008, after this open public process was completed per NEPA regulations.

The PR clearly shows the decision is in compliance with law, regulation, and policy. There is no evidence to suggest the Forest has attempted to circumvent the FACA and the Government in Sunshine Act. Public involvement was conducted as required by the NEPA and in compliance with the NFMA. I find no violation in law, regulation or policy.

**RECOMMENDATION:**

After reviewing the Project Record for the Liberty Hill Snowmobile Trail Relocation Project Decision, and considering the issues raised by the Appellants, I recommend District Ranger Tracy Tophooven’s Decision Memo of January 18, 2008, be affirmed.

*/s/ Steven A. Goldman*  
STEVEN A. GOLDMAN  
Appeal Reviewing Officer  
District Ranger

cc: Patricia R Rowell