

Appendix A List of Preparers

OHV Route Designation Guidebook Team:

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Appendix B

FS Agreement No 03-MU-11052008-097

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

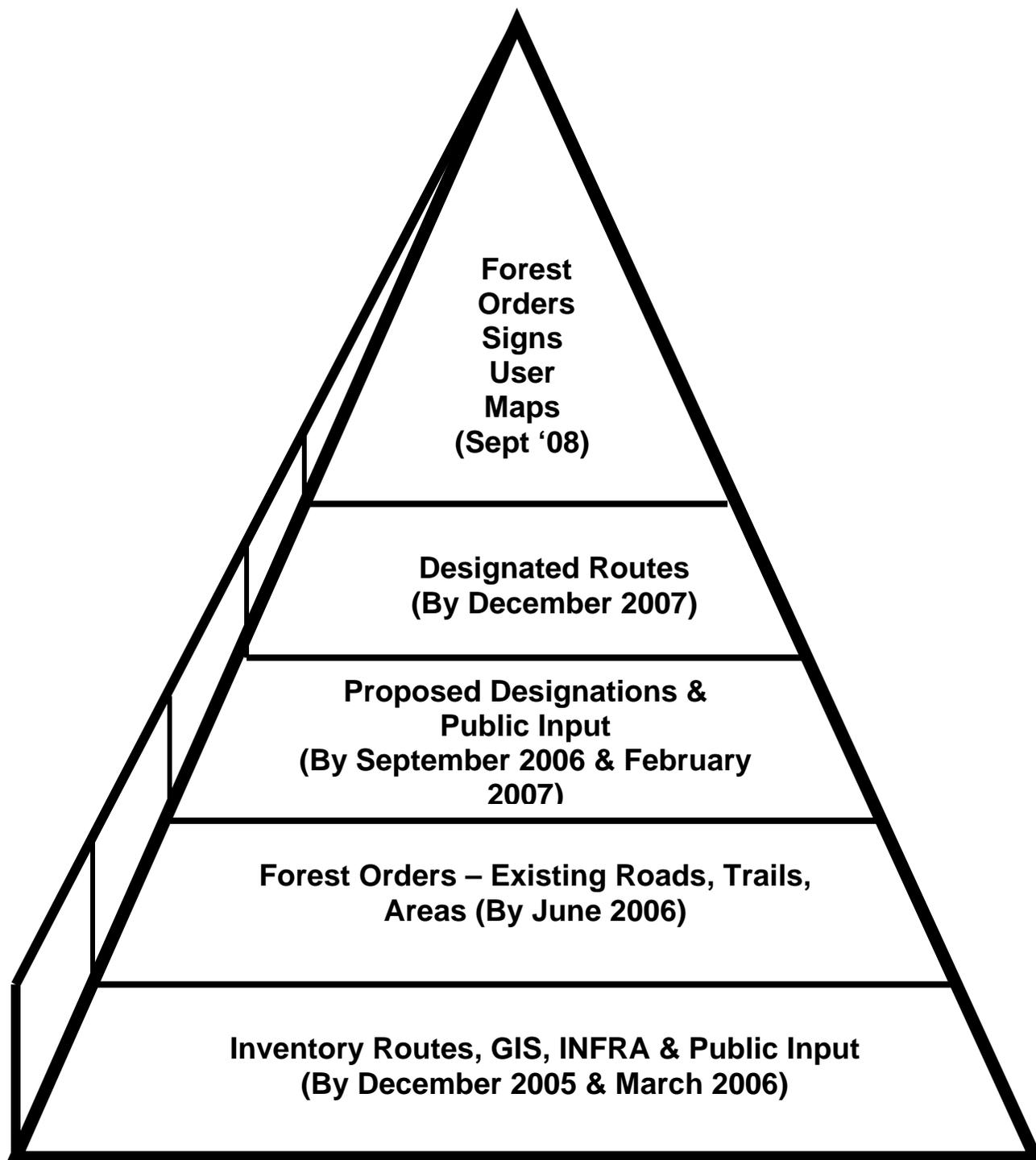
USDA FOREST SERVICE

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

36 CFR Part 295 – Use of Motor Vehicles Off Forest Service Roads

[Code of Federal Regulations]
[Title 36, Volume 2]
[Revised as of July 1, 2001]
From the U.S. Government Printing Office via GPO Access
[CITE: **36CFR295**]

[Page 397-398]

TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY

CHAPTER II--FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 295--USE OF MOTOR VEHICLES OFF FOREST SERVICE ROADS

Sec.

- 295.1 Applicability.
- 295.2 Planning and designation for use of vehicles off National Forest System roads.
- 295.3 Public participation.
- 295.4 Public information.
- 295.5 Monitoring effects of vehicle use off National Forest System roads.
- 295.6 Revision of off-road vehicle management plans.

Authority: 30 Stat. 35, as amended (16 U.S.C. 551): 50 Stat. 525, as amended (7 U.S.C. 1011): E.O. 11644, 11989 (42 FR 26959).

Source: 43 FR 20006, May 10, 1978, unless otherwise noted.

Sec. 295.1 Applicability.

The regulations in the following parts pertain to administrative designation and location of specific areas and trails of National Forest System lands on which the use of vehicles traveling off National Forest System roads is allowed, restricted or prohibited. Prohibitions regarding use of vehicles off roads is provided in 36 CFR part 261.

[43 FR 20006, May 10, 1978, as amended at 66 FR 3218, Jan. 12, 2001]

Sec. 295.2 Planning and designation for use of vehicles off National Forest System roads.

(a) On National Forest System lands, the continuing land management planning process will be used to allow, restrict, or prohibit use by specific vehicle types off roads. This process will include coordination with appropriate Federal, State and local agencies. The planning process will analyze and evaluate current and potential impacts arising from operation of specific vehicle types on soil, water, vegetation, fish and wildlife, forest visitors and cultural and historic resources. If the analysis indicates that the use of one or more vehicle types off roads will cause considerable adverse effects on the resources or other forest

visitors, use of the affected areas and trails by the vehicle type or types likely to

[[Page 398]]

cause such adverse effects will be restricted or prohibited until such time as the adverse effects can be eliminated as provided in 36 CFR part 261.

(b) Off-road vehicle management plans shall provide vehicle management direction aimed at resource protection, public safety of all users, minimizing conflicts among users, and provide for diverse use and benefits of the National Forests. Designation of 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.

However, this does not preclude the use of any fire, military, emergency, or law enforcement vehicle for emergency purposes, or the use of any combat or combat support vehicle for national defense purposes, or registered motorboats, or vehicle use expressly authorized by the Chief, Forest Service, under a permit, lease, license, or contract.

Sec. 295.3 Public participation.

The public shall be provided an opportunity to participate in the process of allowing, restricting, or prohibiting use of areas and trails to one or more specific vehicle types off forest development roads. Sixty days advance notice will be given to allow for public review of proposed or revised designations. In emergency situations, temporary designations up to one year in length may be made or revised without public participation if needed to protect the resources and/or to provide for public safety.

Sec. 295.4 Public information.

In addition to the requirements of 36 CFR 261.51, information and maps will be published and made available to the public, describing:

- (a) The regulation of vehicular use.
- (b) Time periods when use is allowed, restricted or prohibited.
- (c) The type of vehicle regulated.

Sec. 295.5 Monitoring effects of vehicle use off National Forest System roads.

The effects of use by specific types of vehicles off roads on National Forest System lands will be monitored. If the results of monitoring, including public input, indicate that the use of one or more vehicle types off roads is causing or will cause considerable adverse

effects on the factors and resource values referred to in Sec. 295.2, the area or trail suffering adverse effects will be immediately closed to the responsible vehicle type or types until the adverse effects have been eliminated and measures have been implemented to prevent future recurrence as provided in 36 CFR part 261. Forest Supervisors may delegate immediate closure authority to District Rangers or other forest officers in order to facilitate timely actions to meet these objectives. Designations, use restrictions, and operating conditions will be revised as needed to meet changing conditions.

Sec. 295.6 Revision of off-road vehicle management plans.

Forest Supervisors will annually review off-road vehicle management plans and temporary designations implemented since the last annual review. If the plan needs revision, the public will be given the opportunity to participate in the review as stated in Sec. 295.3.

Appendix E
FSM 2355 – OFF-ROAD VEHICLE USE MANAGEMENT

FOREST SERVICE MANUAL
WASHINGTON

TITLE 2300 - RECREATION, WILDERNESS,
AND RELATED RESOURCE MANAGEMENT

Amendment No. 2300-91-3

Effective March 12, 1991

POSTING NOTICE. Amendments are numbered consecutively by title and calendar year. Post by document name. Remove entire document and replace with this amendment. Retain this transmittal as the first page of this document. The last amendment to this Title was Amendment to 2300-91-2 to FSM 2350.

<u>Document Name</u>	<u>Superseded</u>	<u>New</u>
	<u>(Number of Pages)</u>	
2355-2356.6	-	18

Digest:

2355.05 - Revises the definitions of Road on Managing all-terrain (ATV) use on National Forest System development trails to conform to changes to 36 CFR Part 261.12 and 36 CFR Part 261.55.

F. DALE ROBERTSON
Chief

FSM 2300 - RECREATION, WILDERNESS, AND RELATED RESOURCE
MANAGEMENT
WO AMENDMENT 2300-91-3
EFFECTIVE 3/12/91

2355 - OFF-ROAD VEHICLE USE MANAGEMENT. Off-road vehicle (ORV) use is that vehicle use that occurs off of roads on areas and trails on National Forest lands.

2355.01 - Authority.

1. Executive Order 11644, as amended by Executive Order 11989, Use of Off-Road Vehicles (ex. 01).

2. Regulations issued by the Secretary of Agriculture pertaining to use of vehicles off roads are given in Title 36, Code of Federal Regulations (FSM 1013). Specific regulations relating to off-road vehicle management may be found in:

- a. 36 CFR 261 - Prohibitions. The regulation establishes prohibitions necessary to manage and control use on National Forest Development Trails. It includes general prohibitions and prohibitions in areas designated by order.
- b. 36 CFR 293 - Wilderness-Primitive Areas. Prohibits motorized use in Wilderness and Primitive Areas.
- c. 36 CFR 295 - Use of Motor Vehicles Off Forest Development Roads. The regulation establishes rules for planning and designation for use of vehicles off Forest Development Roads prescribe public involvement, and public information requirements, and prescribes monitoring and plan revision standards.
- d. 36 CRF 228.4 - Minerals. Prescribes the requirements for the plan of operation and access routes.

2355.01 - Exhibit 01

Executive Order

Executive Order 116-44, as amended by Executive Order 11989
Use of Off-Road Vehicles on the Public Lands
37 FR 2877 (Feb. 9, 1972), 42 FR 26959 (May 25, 1977)

An estimated 5 million off-road recreational vehicles -- motorcycles, minibikes, trail 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 USC 4121), 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 these 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 county travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that 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 defence 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. 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 of the public lands shall be completed. These 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 land.

(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 of 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 will 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 directive 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 area 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 see 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 Atomic Energy Commission.

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 J of this Order.

2355.02 - Objective. Provide off-road vehicle recreation opportunities that are in concert with the environmental setting, minimize off-road vehicle effects on the land and resources, promote public safety, and control conflicts with other uses of National Forest System lands.

2355.03 - Policy.

1. Provide a diversity of off-road vehicle recreational opportunities when:
 - a. The use is compatible with established land and resource management objectives.
 - b. The use is consistent with the capability and suitability of the resources.
 - c. The type of off-road vehicle opportunity is an appropriate National Forest Recreation activity (FSM 2302 and FSM 2303).
 - d. There is a demonstrated demand.
2. Allow competitive use of off-road vehicles only when it is determined, through an environmental analysis (FSM 1950), that the event is appropriate for the National Forest setting and that the conditions of the event meet the criteria set out in FSM 2355.14. This analysis may be conducted during Forest planning, during development of the Forest ORV implementation program, or as a special analysis. Events appropriate to the National Forest setting are prescribed by National Forest recreation objectives and policies (FSM 2302, FSM 2303, and FSM 2355.35).
3. Designate all National Forest System lands for off-road vehicle use in one of three categories: open, restricted, or closed (FSM 2352.11).
4. Use signing to identify either the areas that are open to off-road vehicle use or the areas that are closed to off-road vehicle use. Select the method that better informs the public and that is easier to administer. Coordinate signing policy with adjacent Federal, State, and local off-road vehicle managers.
5. Provide public information that, as a minimum, includes maps describing the areas and trails where use is permitted, prohibited, or restricted and that explains the conditions of such use.
6. Close areas or trails to the type of off-road vehicle causing, or likely to cause, considerable adverse effects. The areas or trails shall remain closed until the adverse effects have been eliminated and until measures have been implemented to prevent recurrence. Take action to provide alternate use areas where feasible and where consistent with the Forest Plan.
7. Use the monitoring activities established in the Forest plan and the management review procedures to monitor and evaluate off-road vehicle use, its effects, and enforcement of restrictions and closures.

2355.04 - Responsibility.

2355.04a - Chief. The Chief shall establish policy and guidelines for implementation of Executive Order 11644 as amended by Executive Order 11989.

2355.04b - Director, Recreation Management Staff, Washington Office. The Director, Recreation Management Staff, WO, shall:

1. Solicit support of manufacturers and off-road vehicle user groups at the national level for achieving program objectives.
2. Identify and coordinate research on testing and development of equipment and methods necessary to monitor and evaluate the effects of the off-road vehicles on National Forest System lands and on user's expectations, characteristics, and desires.
3. Issue guidelines for integrating the off-road vehicle program with other resource management programs.

2355.04c - Regional Foresters. Regional Foresters shall:

1. Achieve consistency in maps, in designating zones of use, and in signing, law enforcement, and monitoring activities between adjacent Forests and Regions and with other Federal, State, or local governmental agencies.
2. Develop cooperation and support of user groups on a Regional basis to help achieve program objectives.
3. Provide activity assessments through management reviews and Forest Plan monitoring procedures.
4. Issue guidelines and standards for providing off-road vehicle use opportunities and monitoring effects on resources.

2355.04d - Forest Supervisors. Forest Supervisors shall:

1. Develop, implement, and maintain the Forest program for use of vehicles on and off of roads and trails.
2. Integrate off-road vehicle use management with other resource management programs in the Forest Plan.
3. Provide the public with information on off-road vehicle use (FSM 2355.03, item 5).

4. Establish monitoring intervals and criteria, practices, sampling basis, and standards against which the effects of off-road vehicle use shall be evaluated and reported through the Forest planning and management review procedures.
5. Authorize, in writing or through the permit process, vehicle entry into closed or restricted areas or trails, except for Wilderness Areas.
6. Solicit involvement and cooperation of interested individuals and groups, adjacent National Forests, and other Federal, State, and local agencies in planning, implementing and obtaining compliance with off-road vehicle use regulations.
7. Promote public safety by providing hazard information or by taking corrective measures, as appropriate, to eliminate the hazard.
8. Close areas and trails immediately when vehicle use is causing or is likely to cause considerable adverse effects.
9. Approve group event permits.

2355.05 - Definitions.

1. All Terrain Vehicle (ATV). See FSH 2309.18, Trails Management Handbook.
2. Competitive Use. Events, involving two or more persons, organized for the purpose of a contest, match, or other trial of skill, ability, or machine.
3. Considerable Adverse Off Road Vehicle Effect. Any adverse effect that: will not meet the designation criteria as identified in FSM 2355.14; and that is or may become irreparable because of the impossibility or impracticability of performing corrective or remedial measures. In making this determination, the Forest Officer may consider the following factors:
 - a. Availability of funding and manpower to prevent or correct adverse effects.
 - b. Offsite (secondary) impacts.
 - c. Physical and biological conditions, such as slope, vegetation, soil erodibility and compaction, surface and subsurface hydrology, site's natural rehabilitative capability, and so forth.
 - d. Other social and political factors that may impair the ability to correct or prevent adverse effects.
 - e. Those natural, historical, and cultural resources and areas that are susceptible to irretrievable resource damage.

4. Four-Wheel Drive Way. See FSM 2353.05.

5. Group Events. Events involving more than 50 people or events involving a lesser number but having the potential to cause unacceptable resource impacts, user conflicts, safety problems, or administrative impacts.

6. Minimize Off-Road Vehicle Effects. To reduce off-road vehicle effects to the smallest degree feasible short of elimination, consistent with the specific management direction and practices established for the area as determined by economic, legal, environmental, and technological factors.

7. Adverse Off-Road Vehicle Effect. Any effect as a result of ORV use that does not meet the standards for the:

- a. Maintenance of the long-term productive capacity of the land.
- b. Maintenance of air and water quality.
- c. Maintenance of wildlife habitat and stable and balanced populations of wildlife.
- d. Maintenance of other existing and proposed uses of the Forest.
- e. Preservation of cultural and historical resource values.

8. Road. A general term denoting a facility for purposes of travel by vehicles greater than 50 inches in width. Includes only the area occupied by the road surface and cut and fill slopes.

9. Snowmobile. A self-propelled vehicle intended for travel primarily on snow, having a curb weight of not more than 1,000 pounds, driven by a track or tracks in contact with the snow, and steered by a ski or skis in contact with the snow.

10. Trail Vehicle. See FSM 2353.05.

2355.1 - Planning.

1. Integrate planning for the management of off-road vehicle into the Forest planning process. Reevaluate current approved ORV plans and incorporate them into Forest Plans.

2. The ORV portion of the Forest Plans must evaluate the potential effects of vehicle use off of roads on the basis of the criteria set out in FSM 2355.14.

The Forest Supervisor shall immediately provide public notice of such actions. Incorporate the final designation into the Forest planning process as soon as practical.

2355.11 - Inventory Data and Information Collection. As part of the planning process, determine the kinds of data and information needed for off-road vehicle management.

Identify research needs where information essential to management is inadequate or not available.

2355.12 - Analysis of Management Situation. The analysis of the management situation, as a minimum, must determine that the criteria established in FSM 2355.14 will be met (FSM 1920).

2355.13 - Designate Zones of Use. Designate National Forest System lands to allow, restrict, or prohibit specific types of off-road vehicle use as follows:

1. Open. Areas and trails on which all types of motorized vehicles may be operated off roads without restriction.
2. Restricted. 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 specified in orders issued under the authority of 36 CFR 261.
3. Closed. Areas and trails on which all motorized vehicle use is prohibited, except by permit, under authority of 36 CFR 261 or by law.

These areas include legislative closures such as units of the National Wilderness Preservation System, natural areas, key wildlife areas, and so forth.

Indicate designation on maps and by signing.

2355.14 - Designation Criteria.

1. The designation of areas and trails as open, restricted, or closed to off-road vehicle use shall be made in a manner that will:
 - a. Promote user enjoyment.
 - b. Minimize damage to soil, watershed, vegetation, or other natural, cultural, and historical resources of the public lands.
 - c. Minimize harassment of wildlife or significant disruption of wildlife habitats.
 - d. Minimize conflicts between off-road vehicle use and other existing or proposed uses on the same or neighboring public lands and ensure the

compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors of the human environment.

e. Promote the safety of all users of the public lands.

f. Be consistent with the established management objectives for the areas under consideration.

2. Within the confines of the foregoing requirements, the designation of open, restricted, and closed areas and trails should also:

a. Provide a range of opportunities as wide and balanced for off-road vehicle use as is possible, consistent with the Forest setting and National Forest Recreation objectives and policy.

b. Consider local standards for air, noise, and other factors not specifically addressed in the mandatory criteria described above.

c. Recognize the differences between various types of off-road vehicles, recognize the different impacts that they may have on the various resources and on public safety, and recognize different types of conflicts they may cause with other Forest visitors.

2355.15 - Coordination. Coordinate off-road vehicle use with adjacent National Forests; Federal, State, and local agencies; and interested individuals and groups to increase user understanding and compliance with off-road vehicle rules and regulations when moving between jurisdictional areas and to improve the user's experience by providing a range of compatible off-road vehicle use opportunities between jurisdictions, recognizing some types of activities are not appropriate on National Forests (FSM 2302, FSM 2303, and FSM 2355.35).

Coordination should address a range of off-road vehicle use experiences; common definitions of terms; consistency in maps, classification procedures, and signing practices; compatible regulations, control methods, law enforcement programs, and monitoring techniques; and common classification across jurisdictional lines for open, restricted, or closed areas and trails.

2355.16 - Implementation. Off-road vehicle management direction shall include a time schedule for implementation of the various action items.

2355.2 - Administration.

2355.21 - Information. Utilize signs, maps, and other means to inform the public of off-road vehicle use regulations (36 CFR 295.4).

Inform off-road vehicle operators that Forest Development Roads are subject to State vehicle laws (36 CFR 212.7) unless modified by an order issued pursuant to 36 CFR 261.54).

2355.22 - Safety. Users of undeveloped forest areas assume the obvious and inherent risks associated with the activities in which they participate. Safety problems from off-road vehicle use may arise from the user's lack of familiarity concerning dangers of back-country travel, from inexperienced vehicle operators, and from conflicts among user groups.

Promote public safety through cooperation with user groups, use of information media, and public contact. For example, in areas of concentrated public use or where there may be an abnormal level of safety risk involved in off-road vehicle use, it may be desirable to place conspicuous warnings and/or disclaimers in literature distributed to the public and on signs. Consult the local Office of General Counsel for the wording of such warning and disclaimers.

2355.23 - Signing. Signing should clearly indicate to users whether an area is open, closed, or restricted to off-road vehicle use. Signing may be accomplished by marking those areas and trails that are designated closed or restricted, or by marking those areas and trails that are designated open or restricted. Use uniform signing methods within areas of land that are perceived and identified by the public as a single unit (FSM 7160 and FSH 7109.11).

2355.3 - Regulation of Use. Use 36 CFR 261 - Prohibitions to regulate use (FSM 5330).

1. Regulate roads and trails used by off-road vehicles seasonally, when necessary, to prevent unacceptable damage and to reduce conflicts between recreational users.

2. In emergency situations, close areas, roads, or trails by temporary designations for up to 1 year without public participation. Such emergency situations include conditions that are unsafe or include situations where considerable adverse effects are or will be caused to resources.

2355.31 - Enforcement. See FSM 5300.

2355.32 - Exemptions. Provision is made in 36 CFR 261.50(e) to exempt certain persons from the prohibitions that are placed on off-road vehicle use. Although omitted from 36 CFR 261.50(e), the use of motorboats is exempted by 36 CFR 295.2. Exemptions must be included in the order that establishes the prohibitions. Forest Supervisors shall establish guidelines for persons exempted by reason of official duty so that potential adverse effects are minimized.

2355.33 - Permits. Require permits for:

1. Competitive events (FSM 2355.35).

2. Group events.
3. Entry into closed areas, trails, and roads.
4. Entry into a restricted zone when a use would violate the established restriction.

2355.34 - Permit Issuance Procedures. See FSM 2720 and FSM 1950.

2355.35 - Permit Issuance Restrictions. Do not issue permits for:

1. Competitive or group events in a closed zone.
2. Competitive or group events in a restricted zone where the event would violate the established restriction.
3. Individuals or companies filming or promoting vehicle use that would encourage improper use of vehicles on National Forests.
4. Inappropriate events for National Forest use, such as obstacle courses, hill climbs, drag or acceleration events, weight or vehicle-to-vehicle pulls, or some events based on minimum times (FSM 2302 and FSM 2303).

Appropriate events minimize adverse effects, promote vehicle operation in harmony with the natural terrain, and enhance the experience with and appreciation of the forest environment. Examples include events based on driver's ability to travel without environmental or machine abuse, travelling in a predetermined safe time over an environmentally acceptable route, or following such a route by map and compass.

5. Competitive events with reasonable available alternative locations off National Forests.

2355.4 - Monitoring Effects of Off-Road Vehicle Use. Monitor the effects of off-road vehicle use according to requirements established in the Forest Plan.

2355.5 - Revision of Off-Road Vehicle Management Direction. Off-road vehicle management direction revisions shall be in accordance with Forest Plan prescriptions and 36 CFR 295.6.

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, streambanks, 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
 - Mike McCorison** – Southern California Air Resource Specialist 626-574-5286 / mmccorison@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) 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](http://www.swrcb.ca.gov/regions.html) (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/), 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/ff/nwp-nat/nwptext.htm>.

The NWP 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 NWP, 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 NWP, some Army COE districts have adopted Regional General Permits (RGP). 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 NWP and RGP, but few of these apply to OHV activities (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).

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.

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 OHV Use Evaluation Form

Instructions

Criteria from 36 CFR 295.2 and FSM 2355.14 for evaluating trails and specifically defined areas for OHV 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

Topic

1, 2, and 3. Route/area is 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.

4. Route/area minimizes conflicts between OHV use and other existing or proposed uses.

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. Route/area minimizes impact to soil and watershed resources.

Trail/area placement should be such that OHV 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.

6. Route/area minimizes the harassment of wildlife.

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. 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 OHV 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.

Potential cumulative impacts on wildlife from OHV use on other trails, roads, and areas, including those that are already designated, should be considered in the assessment. Timing and intensity of OHV use, including daily/weekly use and any short-term events, should also be included in the assessment.

7. Route/area minimizes significant disruption of wildlife habitat.

The assessment should 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, trail monitoring data, and Wildlife Habitat Protection Plans (WHPPs) written for California Off-Highway Motor Vehicle Recreation Division grant applications. Methodologies to identify the degree of disruption of wildlife habitat include GIS habitat modeling looking at total acres affected by OHV use and potential disruption of habitat connectivity.

8. Route/area minimizes damage to vegetation.

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, 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.

9. Route/area minimizes damage to cultural and 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 OHV use and archeological or historic sites and GIS modeling of locations with high probability for archaeological or historic sites.

10. Route/area minimizes safety issues for users of the route/area and/or other forest users.

Methodologies to identify the existence of safety issues include accident records, vehicle counts, traffic speed surveys, road and trail surveys, and user input.

11. Route/area should be consistent with local standards for air, noise and other factors.

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 11, 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.

After answering questions 12 through 20, rank the OHV recreation opportunity value as high, moderate, or low on the form.

OHV Use Evaluation Form

Forest: _____ District: _____

Opportunity ID: *(road, trail or area number or identification)* _____

Segment: *(optional)* _____

Name: *(optional)* _____

Beginning termini: _____

(roads and 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

Management Area(s): _____ ROS Class(es): _____

1. Does the ROS class or classes allow OHV 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 motorized ROS class or classes, identify the segment(s) that can be considered. If no, the road, trail or area should be considered for non-motorized uses or decommissioning. Opportunities that are not consistent with ROS, but have high OHV value, may be noted for consideration in future planning.)

2. Does the Management Area(s) allow OHV 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 OHV use, identify the segment(s) that can be considered. If no, the road, trail or area should be considered for non-motorized uses or decommissioning. Opportunities that are not consistent with management area direction, but have high OHV value, may be noted for consideration in future planning.)

3. Is the opportunity entirely on National Forest System lands?

Yes No

3(a). If no, are there public rights-of-way/easements across private land parcel(s) or agreements with managing agencies for use of other public land? Yes No

Notes:

(If yes, continue evaluation. If no, the opportunity can still be considered for designation, however, designation 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 or 4-wheel drive), address each vehicle type separately. Remember to address FLRMP/OHV Plan direction (Step 3) in the appropriate questions below (FSM 2355.14f).

4. Does the route/area location minimize conflicts between OHV use and other existing or proposed uses? Yes No

Notes:

(FSM 2355.14d. List the methodology used. Identify specific conflict(s) and list possible mitigation measures.)

5. Does the route/area minimize impact to soil and watershed?

Yes No

Notes:

(FSM 2355.14b. List the methodology used. If impact is occurring or may occur, list possible mitigation measures and attempt to quantify the work required, i.e., 3 miles routine maintenance, .5 mile reconstruction, 1 minor reroute or 90% OK, 10% needs minor reconstruction.)

6. Does the route/area minimize the harassment of wildlife?

Yes No

Notes:

(FSM 2355.14c. List the methodology used. Identify specific harassment and list possible mitigations, i.e., blocking off trail access, minor rerouting, seasonal restrictions, etc.)

7. Does the route/area minimize significant disruption of wildlife habitat?

Yes No

Notes:

(FSM 2355.14c. List the methodology used. Identify specific disruptions and list possible mitigations, i.e., blocking off trail access, minor rerouting, etc.)

8. Does the route/area minimize damage to vegetation? Yes No

Notes:

(FSM 2355.14b. List the methodology used. Identify specific damage and list possible mitigations, i.e., blocking off trail access, minor rerouting, etc.)

9. Does the route/area minimize damage to cultural and historic resources?

Yes No

Notes:

(FSM 2355.14b. List the methodology used. Identify possible mitigations for sites impacted by the trail, i.e., data recovery, relocation of trail, encapsulating site, interpreting site, etc.)

10. Are there any known safety issues for users of the route/area or other forest users that are attributed to the route/area? Yes No

Notes:

(FSM 2355.14.e. List how safety issues were identified. Identify specific safety issues and possible mitigations, i.e., tread widening, tread realignment, removing hazard, etc.)

11. Identify and evaluate any local issues such as air, noise and other factors not addressed in the preceding questions.

Notes:

OHV Use Evaluation Form

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:

12. Does the route/area provide a unique OHV opportunity or one that is in limited supply in the local area? Yes No

Notes:

13. Does the route/area provide OHV opportunity to a particular type of OHV?
 Yes No

Notes:

14. Is the route/area of local, regional or national significance?

Yes No

Notes:

15. Does the route/area provide access to significant locations or to unique or unusual features?

Yes No

Notes:

16. Does the route provide access from a campground, staging area or other support facility?

Yes No

Notes:

17. Is the route an arterial route or does it connect two arterial routes?

Yes No

Notes:

18. Does the route provide a loop or part of a loop opportunity?

Yes No

Notes:

19. Does the route provide an alternative to having OHV traffic on maintenance level 3 or higher roads?

Yes No

Notes:

20. Is there any other factor(s) that makes this route/area desirable to the OHV system?

Yes No

Notes:

Based upon the above questions and OHV user input, rank the OHV recreation opportunity value and note any overriding factors in the ranking:

High OHV Value

Moderate OHV Value

Low OHV Value

Notes:

Appendix J OGC Opinion

United States Department of Agriculture *Office of the General Counsel*

Pacific Region—San Francisco Office
33 New Montgomery, 17th Floor
San Francisco, CA 94105-4511

Telephone: 415-744-3158
Facsimile: 415-744-3170
Internet: rose.miksovsky@usda.gov

April 29, 2004

TO: Richard Farrington
Regional ORV Coordinator

FROM: Rose Miksovsky /r/
Staff Attorney

RE: Authority to Designate ORV Routes and Areas
Procedure for Designation

You inquire who, under current regulations, has the authority to designate the routes for off road vehicle (ORV)¹ use within the National Forest. You also inquire as to the procedure for designation.

There is no statute or regulation which specifically identifies which line officer has the authority to designate the routes and areas for ORV use. To determine who has authority to designate, we have reviewed the applicable statutes and regulations and conclude that it is the Forest Supervisor. Forest Service Manual (FSM) 2355.04d(1) is consistent with this conclusion. That provision provides that Forest Supervisors shall “develop, implement, and maintain the Forest program for use of vehicles on and off of roads and trails.” This necessarily includes the authority to designate routes and areas for ORV use.

A discussion of the relevant regulations related to the authority to designate ORV routes follows. The regulations pertaining to ORV use are found at 36 C.F.R. 212, 261 and 295. 36 C.F.R. §295.2 provides that the land management planning process used to develop a Forest Land and Resources Management Plan (LRMP) shall be used to

¹ Off Road Vehicle (ORV) 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. The terms ORV and off-highway vehicles (OHV) are synonymous.

allow, restrict, or specific vehicle types off roads. The Regional Forester is the decision maker for the LRMP, and the Forest Supervisor is the responsible official for a plan amendment or revision. 36 C.F.R. §219.3(b)(2).

36 C.F.R. §295.6 provides that the Forest Supervisor shall annually review ORV management plans and temporary designations implemented since the last annual review. 36 C.F.R. §261.50(a) provides that the Forest Supervisor has the authority to issue a Forest Order to close or to restrict the use of described areas over which he has jurisdiction. Finally, the Forest Supervisor is responsible for maintaining the forest transportation atlas. 36 C.F.R. §212.2(a).

Given that the authority for maintaining and developing the ORV management plan, as well as ancillary activities related to ORV route designation, lies with the Forest Supervisor, it is my opinion that the Forest Supervisor has the authority to designate ORV routes and areas.

With respect to the designation process, the designation of ORV routes and areas is a discretionary decision, and the National Environmental Policy Act (NEPA) applies. Therefore, any decision designating ORV routes and areas must be supported by an environmental analysis and decision under NEPA. This is confirmed by 36 C.F.R. §295.2(a) which identifies that such designation is part of the LRMP process and that is a two-tier process - management direction is provided in the LRMP and site-specific project decisions implement the LRMP. In addition, 36 C.F.R. §295.3 requires public participation in the designation process. The NEPA process allows a forum for public participation.

The regulations at 36 C.F.R. 212, 262 and 295 are currently being revised. The pending regulations may either clarify or change who has the authority to designate ORV routes and areas. However, until such time as the regulations are revised, the Forest Supervisor is the officer authorized officer to designate ORV routes under Forest Service directives.

Appendix K Example Forest Order



Order No. XX-04-XX
Use of Wheeled Vehicles Off National Forest System Roads
USDA Forest Service
Smokey Bear National Forest
Pine Meadows Ranger District

Pursuant to 36 CFR 261.50(a) and (b), and to protect natural resources and public safety, the following act is prohibited within the Pine Meadows Ranger District of the Smokey Bear National Forest. This order is effective from _____, 2004, through _____, 2006.

Possessing or using a wheeled vehicle, including a bicycle, off National Forest System roads, except for the routes, areas, and National Forest System trails shown as open on Exhibit A. 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.
3. Persons with disabilities using assistive devices or aids. An assistive device is a piece of equipment, such as a wheelchair, used by a person with a disability on a daily basis to help in the accomplishment of one of life's major functions or activities. A wheelchair is defined in the Americans with Disabilities Act to be "a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area." 42 USC 12207(c)(2).



This prohibition is in addition to the general prohibitions contained in 36 CFR Part 261, Subpart A.

Executed in Big Tree, California, this _____ day of _____, 2004

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 OHV Management Direction

The following table is an example of the places within the Forest Land and Resource Management Plan (FLRMP) where direction regarding OHV management might be found. This example is not meant to be a comprehensive listing of all possible locations where OHV direction might be found, but rather to suggest the variety of places where direction affecting OHV 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 OHV direction for easy reference during the designation process. In addition to the written direction, maps, tables and appendices containing OHV 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 OHV 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 OHV management direction contained in multi-forest documents.

FOREST OHV MANAGEMENT DIRECTION SMOKEY BEAR NATIONAL FOREST

Compilation of OHV 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: -Forest Off-Road Vehicle Plan as amended for Wilderness recommendations -Peregrine Falcon Recovery Plan -Bald Eagle Recovery Plan -Wild Horse Management Plan -Southern Deer Herd Plan
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 NF 4.3.2.3 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

Source Document and Citation	Direction
	implementation documents (see Appendix I).
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.
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.

Source Document and Citation	Direction
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.
LRMP, Smokey Bear NF 4.3.2.19 Visual Resources	1. The Visual Quality Objectives will be met with the following exceptions: 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. 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.
LRMP, Smokey Bear NF Management Area 1 Management Emphasis:	General Forest Recreation Trail and OHV route construction is not emphasized but may occur when needed to maintain appropriate ROS class

Source Document and Citation	Direction
Resource Protection	experiences, or to provide loop trails or connecting links with adjacent opportunities.
LRMP, Smokey Bear NF Management Area 1 Management Emphasis: Resource Protection	Transportation Maintain Public access roads. Roads providing access to general forest opportunities are maintained to at least level 2 standard.
LRMP, Smokey Bear NF Management Area 5 Management Emphasis: Wildlife and Range Management	General Forest Recreation 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
LRMP, Smokey Bear NF Management Area 5 Management Emphasis: Wildlife and Range Management	Visual Resources 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.
LRMP, Smokey Bear NF Management Area 5 Management Emphasis: Wildlife and Range Management	Transportation 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.
LRMP, Smokey Bear NF Management Area 6 Management Emphasis: General Forest Recreation	General Forest Recreation 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.
LRMP, Smokey Bear NF Management Area 6 Management Emphasis: General Forest Recreation	Visual Resources 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).
LRMP, Smokey Bear NF Management Area 6 Management Emphasis: General Forest Recreation	Fish & Wildlife 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.
LRMP, Smokey Bear NF Management Area 6 Management Emphasis: General Forest Recreation	Transportation 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

Source Document and Citation	Direction
	average of one mile per square mile of area per major watershed.
Three-Toed Sloth Recovery Plan Habitat Section, pg 27	Projects which may destroy or modify Three-Toed Sloth habitat shall be reviewed by US Fish and Wildlife Service prior to approval.
Flying W OHV Area, EA Watershed, pg 18	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.
Flying W OHV Area, EA Watershed, pg 19	"Open" use areas shall encompass no more than 25% of the acreage of the Flying W OHV Area.

Appendix M
FOREST OHV MANAGEMENT DIRECTION
_____ NATIONAL FOREST

Compilation of OHV management direction found in the following documents:

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 (NWTf); 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

FS Agreement Number: 03-MU-11132424-275 BLM Agreement Number: BLM MOU WO170/250 - 2003-07 FWS Agreement Number 03-006

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 50million 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

FS Agreement Number: 03-MU-11132424-275 BLM Agreement Number: BLM MOU WO170/250 - 2003-07 FWS Agreement Number 03-006

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

FS Agreement Number: 03-MU-11132424-275 BLM Agreement Number: BLM MOU WO170/250 - 2003-07 FWS Agreement Number 03-006

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.

FS Agreement Number: 03-MU-11132424-275 BLM Agreement Number: BLM MOU WO170/250 - 2003-07 FWS Agreement Number 03-006

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 **FS Agreement Number: 03-MU-11132424-275 BLM Agreement Number: BLM MOU WO170/250 - 2003-07 FWS Agreement Number 03-006**

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.

FS Agreement Number: 03-MU-11132424-275 BLM Agreement Number: BLM MOU WO170/250 - 2003-07 FWS Agreement Number 03-006

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 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

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FS Agreement Number: 03-MU-11132424-275 BLM Agreement Number: BLM MOU WO170/250 - 2003-07 FWS Agreement Number 03-006

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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)

	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		

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

Example Purpose and Need statement for OHV 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 wheeled vehicle travel off of designated roads, trails, and limited off highway vehicle (OHV) use areas. (Sierra Nevada Forest Plan Amendment ROD, S&G #69) (*For non-Sierra Forests, summarize similar LRMP text pertaining to OHV use*)

In recent years, the use of off-highway 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 monitoring reports, landscape assessments, law enforcement reports and any other evidence that these impacts are indeed true*). Recent trail inventories in the _____ area (*cite the inventory and date*) identified approximately _____ miles of trails currently receiving some level of off-highway vehicle use. Of these, _____ miles of trail are currently designated for off-highway vehicle use.

The underlying need to which _____ National Forest is responding is for a network of routes, designated trails and areas for off highway vehicle use in the _____ area. In meeting this need, the selection of routes, trails and areas shall achieve the following purposes:

1. Minimize damage to soil, watershed, vegetation or other resources (36 CFR 295.2(b)(1)).
2. Minimize harassment of wildlife or significant disruption of wildlife habitat (36 CFR 295.2(b)(2)).
3. Minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands (36 CFR 295.2(b)(3)).
4. Ensure the compatibility of OHV use with existing conditions in populated areas, taking into account noise and other factors (36 CFR 295.2(b)(3)).
5. Ensure public health and safety.
6. Identify roads, trails, and areas that will be closed to motorized use. In order for the Forest Service to enforce prohibitions on OHV travel off roads and designated trails and areas, it is necessary for the Forest Supervisor to issue Forest Orders using regulations such as 36 CFR 261.56 "Use of vehicles off national forest system roads."

Appendix Q Questions and Answers

General Questions

Question: Can a non-system trail be a designated OHV route?

Answer: No, however, a non-system trail can become a designated OHV route. Designated OHV trails must be evaluated using the criteria at FSM 2355.14, 36 CFR 295, 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 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 OHV 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 OHV routes being used today 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 OHV 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)).”

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, all plans 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 because 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 295. The Washington Office has agreed to separate planning of trails for mountain bikes from designation of OHV 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 OHV routes are designated.