



United States
Department of
Agriculture

Forest
Service

Southwestern Region
Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570/2350

Date: September 9, 2014

Mr. Mark Werkmeister
New Mexico Off Highway Vehicle Alliance
1700 Willow Rd. NE
Rio Rancho, NM 87144

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 7000 2870 0000 1135 7173**

Dear Mr. Werkmeister:

This is my decision on the appeal (#14-03-00-0133-A215) you filed on behalf of the New Mexico Off Highway Vehicle Alliance, regarding the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) signed by Forest Supervisor Kelly Russell, for Travel Management on the Gila National Forest.

My review of your appeal was conducted pursuant to, and in accordance with, 36 CFR 215.18. My review focused on the project documentation and the issues raised in your appeal. I specifically incorporate in this decision the project record, the references and citations in the project record transmittal documentation, as well as the Appeal Reviewing Officer (ARO) analysis and documentation.

After considering your issues and the project documentation, the ARO recommends the Forest Supervisor's decision be affirmed with instructions. A copy of the recommendation and the technical review of your appeal contentions are enclosed.

Based upon a review of the project documentation provided, I find the issues were adequately considered. I agree with the ARO analysis and conclusions in regard to your appeal issues. I find the Forest Supervisor made a reasoned decision and has complied with all laws, regulations, and policy. After careful consideration of the above factors, I affirm the Forest Supervisor's decision to implement Travel Management on the Gila National Forest with the following instructions:

- In light of the July 08, 2014, Federal Register notice (Vol. 79, No. 130, pp. 38678-38746) listing the narrow-headed garter snake and northern Mexico garter snake as threatened, the Forest must initiate consultation on these species with the U.S. Fish and Wildlife Service to satisfy requirements of ESA.
- Analyze the effects of the Forest Plan amendment to Management Area 7D, the Silver City Watershed. The Forest Plan amendment for MA 7D may not be implemented until the environmental effects are disclosed through a proper NEPA analysis.
- Row 3 of Table 16 is incorrectly labeled. Through an erratum, correctly label Row 3 in Table 16 to read "Annual Maintenance" instead of "Deferred Maintenance." This does not change the results of the analysis.



- Through an erratum, correct the listing status for spikedace and loach minnow from “threatened” to “endangered.” The Forest complied with ESA Section 7(a)(2) consultation requirements for spikedace, loach minnow, and their designated critical habitat so no further action is required.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)]. A copy of this letter will be posted on the National Appeals Web Page at <http://www.fs.fed.us/appeals>.

Sincerely,

/s/ Gilbert Zepeda
GILBERT ZEPEDA
Appeal Deciding Officer, Deputy Regional Forester

Enclosures (2)

cc: Kelly M Russell



United States
Department of
Agriculture

Forest
Service

Tonto National Forest

2324 E. McDowell Rd.
Phoenix, AZ 85006
Phone: 602.225.5200
Fax: 602.225.5295
V/TTY: 602.225.5395

File Code: 1570/2350

Date: September 4, 2014

Route To:

Subject: Appeal Recommendation, Gila Travel Management

To: Deputy Regional Forester, Gilbert Zepeda

This is my recommendation on the disposition of the appeals filed regarding the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for Travel Management on the Gila National Forest.

BACKGROUND

Implementation of the Selected Alternative (Alternative G) makes the following changes to the Forest's current motorized travel system:

- Leaves open 3,334 miles of National Forest System roads for motor vehicle use.
- Increases all-terrain vehicle (ATV) trail opportunities from 16 to 179 miles.
- Maintains one 3-acre area for motorcycle and ATV use.
- Provides approximately 1,316 miles of motorized dispersed camping corridors of 300 feet and 36 areas.
- Allows motorized big game retrieval in the same 1,316 miles of motorized dispersed camping corridors.

Forest Supervisor Kelly Russell signed the ROD on September 26, 2013; however, the legal notice of her decision was not published until June 11, 2014. Because the ROD was signed within 6 months of the March 27, 2013 effective date of the 36 CFR 218 objection regulations, the decision is subject to administrative review under the 36 CFR 215 appeal regulations.

Twenty two appeals were filed as follows:

Appeal #14-03-00-xxxx-A215	Appellant	Remarks
0126	Tom Burris	Dismissed – Appellant did not comment on DEIS
0127	Bill and Bonni Jo Rogers	
0128	B. Keith Rogers	
0129	Faith Capps	
0131	James Baruch	



Appeal #14-03-00-xxxx-A215	Appellant	Remarks
0132	Donlee Martin	Dismissed – Appellant did not comment on DEIS
0133	Mark Werkmeister, New Mexico Off Highway Vehicle Alliance (NMOHVA)	
0135	W.D. Grubb	
0136	Larry McLaud	
0138	Joanne Spivack/Jo Anne Blount, NMOHVA	
0139	Hidalgo County	
0140	Catron County	
0141	Grant County	
0142	William Faust	Dismissed – Appellant did not comment on DEIS
0143	Coalition of Arizona/New Mexico Counties	
0144	Jo Anne and Larry Blount, Van Allred	
0145	Bill Carlis	
0146	Robert Williams, Keep Our Forest Open	
0147	Upper Gila Watershed Alliance, New Mexico Wilderness Alliance, Rio Grande Chapter of the Sierra Club, and WildEarth Guardians	
0148	Joanne Spivack	Dismissed – Appellant did not comment on DEIS on her own behalf
0149	Center for Biological Diversity	
0150	Joseph Faust	Dismissed – Appellant withdrew appeal

Pursuant to 36 CFR 215.17, attempts were made to seek informal resolution of the appeals. The record indicates that informal resolution was reached on the appeal filed by Joseph Faust who withdrew his appeal. Four appeals, filed by Tom Burris, Donlee Martin, William Faust, and

Joanne Spivack, were dismissed because the appellants failed to provide comments during the 60-day comment period. Informal resolution was not reached on the remaining appeals.

Review and Findings

As provided for under 36 CFR 215.19(c), I am consolidating the remaining appeals into one recommendation. My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal records, including the appellant's issues and requests for relief have been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeals and believe they are adequately addressed in the attached technical review and findings documents. Having reviewed the FEIS, ROD, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

- 1) The decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.
- 2) The selected alternative should accomplish the purpose and need established. The purpose and need stated in the EIS reflect consistency with direction in the Forest Plan for the Gila National Forest.
- 3) The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions and the Responsible Official's decision documents are based on the record and reflect a reasonable conclusion.
- 4) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposal.

After considering the claims made by the appellant and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Gila National Forest Plan.

Recommendation

I recommend that the Responsible Official's decisions relating to these appeals be affirmed with instructions. I recommend the following instructions:

- In light of the July 08, 2014, Federal Register notice (Vol. 79, No. 130, pp. 38678-38746) listing the narrow-headed gartersnake and northern Mexico gartersnake as threatened, the Forest should initiate consultation with the U.S. Fish and Wildlife Service to satisfy requirements of ESA.

- Analyze the effects of the Forest Plan amendment to Management Area 7D, the Silver City Watershed. The Forest Plan amendment for MA 7D should not be implemented until the environmental effects are disclosed through a proper NEPA analysis.
- Review of the deferred maintenance data presented in the FEIS identified inconsistencies between Tables 16 and 23 that may cause confusion. Row 3 of Table 16 is incorrectly labeled and should be corrected through an erratum. Correctly relabeling Row 3 in Table 16 to read “Annual Maintenance” instead of “Deferred Maintenance” does not change the results of the analysis.
- The Forest complied with ESA Section 7(a)(2) consultation requirements for spikedace, loach minnow, and their designated critical habitat; however, the listing status for spikedace and loach minnow should be corrected from “threatened” to “endangered” through an erratum.

/s/ Neil J. Bosworth
NEIL J. BOSWORTH
Forest Supervisor

cc: Margaret Van Gilder

Review and Findings

New Mexico Off Highway Vehicle Alliance (NMOHVA)

Mark Werkmeister

Appeal #14-13-00-0133-A215

Gila Travel Management

Overview: The appellants contend that the Forest Service failed to adequately respond to comments they submitted on the project. They contend that they identified material mistakes and process errors in their comments on the Draft Environmental Impact Statement (DEIS) but the agency failed to remedy the errors in the Final EIS (FEIS). These alleged errors are identified as separate issues and contentions below.

ISSUE 1: The Record of Decision (ROD) violates the National Environmental Policy Act (NEPA).

A. Supplement Required

Contention 1.A.1: The appellants contend the agency has added significant new information to the environmental documents between the DEIS and FEIS. They claim that the addition of 192 pages to Chapter 3 (Environmental Consequences) in the FEIS is evidence that a broad range of additional data, information, analyses, and conclusions are being presented in the FEIS without an opportunity for the public to review and comment on the new information, in violation of 40 CFR 1502.9(c)(1)(ii). The appellants present several examples supporting this claim as discussed in contentions below [Appeal, pp. 8-10].

Response: According to Council on Environmental Quality (CEQ) regulation 40 CFR 1502.9, agencies shall prepare supplements if substantial changes are made to the proposed action or there are significant new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts.

Changes and corrections regarding roads, unauthorized routes, maps, dispersed camping corridors, and motorized areas made to the alternatives were displayed in Appendix A of the FEIS [PR 2528, pp. 507-531]. These changes were made in response to comments and/or reflected the use of updated data. The source of the change is listed in the “Notes” column of the table.

Much of the additional data, information, and analyses in Chapter 3 were made in response to public comments: (1) analysis of the San Francisco River area [PR 2526, p. 6; PR 2528, p. 716]; and (2) analysis and information regarding Non-Motorized Opportunities, Equestrian, Quiet, Noise and User Conflicts, Concentrated Use, Motorized Routes (and Opportunities), Motorized Opportunities -Analysis, Cross Country Travel Prohibition, User-Created Routes, National Forest System Trails, Single Track Motorcycle Opportunities, Both Motorized Dispersed

Camping and Big Game Retrieval, Motorized Dispersed Camping, Motorized Big Game Retrieval, One Vehicle Length Parking, Motorized Areas, Recreation Opportunity Spectrum (ROS), Visual Quality Objectives and eligible Wild & Scenic Rivers [PR 2516-00, p. 1; PR 2527, pp. 56-163; PR 2528, pp. 618, 628, 636, 650, 655,].

Other changes reflected updated information: (1) Air Quality- fugitive dust and monitoring [PR 2528, pp. 539-540]; (2) Watershed and Soils- 6th code watershed conditions, riparian areas, cumulative effects, ephemeral channels [PR 2528, pp. 572, 731, 742, 743-747, 749; PR 2514-1, pp. 28, 37, 38, 47, 48, 51, 67; PR 2527, pp. 194-195]; (3) Invasive Species- cumulative effects, species list [PR 2528, pp. 598-600]; (4) Economics- current economic data [PR 2528, p. 722]; and (5) Wildlife- cumulative effects [PR 2528, pp. 756].

The corrections, updates, and additional analysis enhanced the discussion of environmental consequences but did not result in significant changes to the conclusions or the proposed action. Restating, improving, or modifying the analysis of a DEIS does not automatically require a supplemental EIS.

Finding: The Forest was in compliance with 40 CFR 1502.9(c)(1)-(2) regarding the issuance of a supplement to the draft or final environmental impact statement.

Contention 1.A.2: As an example supporting their claim that the FEIS presents new information requiring a supplement, the appellants contend that in the DEIS, the agency relied on the concept/methodology of “riparian risk zones.” In the FEIS, these risk zones have been dropped completely and the agency used an entirely new data/methodology: the 2011 Gila National Forest Riparian Map (RMAP). They argue that this was a complete replacement of a challenged methodology, the entire data set, and a wholly and newly derived set of conclusions. The public was not given a chance to review and comment on the new methodology or its appropriateness, the completeness and the accuracy of the new data set, or the rationality or impact of the newly derived conclusions [Appeal, pp. 9 and 26].

Response: Analysis can differ between the DEIS and the FEIS based on new information, additional analysis, comments, or correcting factual errors. According to 40 CFR 1502.9(c)(1)-(2), supplements to a draft or final environmental impact statement should be issued when there are: substantial changes to the proposed action; new circumstances or information relevant to environmental concerns, the proposed action or its impacts; and when the agency determines that doing so will further the purposes of NEPA. Restating, improving, or modifying the analysis does not require a supplemental EIS.

The FEIS examined effects at a forestwide scale; the analyses displayed effects as trends or potential effects [PR 2527, p. 45].

Appendix A of the FEIS [PR 2528, pp. 507-531] lists changes made to proposed action since the DEIS. None of the changes listed were made in response to changed conditions resulting from the revised analyses.

The FEIS clearly articulates the changes that took place between the DEIS and FEIS [PR 2527, pp. 194-195] as a result of new, improved data being available from the State of New Mexico and the Forest Service. The new data did not change the outcome of the overall effects analysis for the watershed and soils resources [PR 2527, pp. 194-195].

Finding: The modified/improved analysis did not result in substantial changes to the proposed action. The revised effects were within the scope and scale of the analysis. The additional analysis enhanced the discussion of environmental consequences but did not result in significant changes to the conclusions.

Contention 1.A.3: In their second example, the appellants contend that the FEIS changes the underlying assumptions and methodology for road density calculations. They claim that the methodology has changed in that in the FEIS all routes, both Forest Service (FS) and non-FS are used to calculate density versus only Forest routes in the DEIS; the calculations presented have changed (the ranges of road density included in each category), and the results (the percentages) have all changed. The appellants contend the public has been denied its right and obligation to review and comment on this methodology and its accuracy because this significant new information was first presented in the FEIS [Appeal, p. 9].

Response: Analysis can differ between the DEIS and the FEIS based on new information, additional analysis, comments, or correcting factual errors. According to 40 CFR 1502.9(c)(1)-(2), supplements to a draft or final environmental impact statement should be issued when there are: substantial changes to the proposed action; new circumstances or information relevant to environmental concerns, the proposed action or its impacts; and when the agency determines that doing so will further the purposes of NEPA. Restating, improving, or modifying the analysis does not require a supplemental EIS.

The Forest used the same analysis methods for road density between draft and final – TIGER data was used in both the DEIS and FEIS to calculate road density by watershed [PR 1834-45]. However, the Forest did change watershed boundaries by using a more updated analysis method, the 2011 Watershed Condition Classification, which analyzed the 6th code boundaries (in the FEIS) versus 5th and 6th code NRCS watershed boundaries [PR 2514-00, p. 47] which slightly changed road densities.

Appendix A of the FEIS [PR 2528, pp. 507-531] lists changes made to proposed action since the DEIS. None of the changes listed were made in response to changed conditions resulting from the revised analyses.

The corrections, updates, and additional analysis enhanced the discussion of environmental consequences but did not result in significant changes to the conclusions or the proposed action. Restating, improving, or modifying the analysis from a DEIS to an FEIS does not automatically require a supplemental EIS.

Finding: The Forest was in compliance with 40 CFR 1502.9(c)(1)-(2) regarding supplements to an FEIS.

Contention 1.A.4: The appellants contend the addition of a whole new section of the Recreation Analysis in Chapter 3, *Recreation – Special Management Areas* is another example of significant content changes between the draft and final EIS that the public did not have the opportunity to review. They claim that there is so much new information that it required an entirely new and additional underlying specialist’s report: The inventoried roadless areas and wilderness study areas report (USDA Forest Service 2013b2) [Appeal, pp. 10, 34, 51].

Response: Analysis can differ between the DEIS and the FEIS based on new information, additional analysis, comments, or correction of factual errors. According to 40 CFR 1502.9(c)(1)-(2), supplements to a draft or final environmental impact statement should be issued when there are: substantial changes to the proposed action; new circumstances or information relevant to environmental concerns, the proposed action or its impacts; and when the agency determines that doing so will further the purposes of NEPA. Restating, improving, or modifying the analysis does not automatically require a supplemental EIS.

The FEIS examined effects at a forestwide scale; the analyses displayed effects as trends or potential effects [PR 2527, p. 45].

Appendix A of the FEIS [PR 2528, pp. 507-531] lists changes made to proposed action since the DEIS. None of the changes listed were made in response to changed conditions resulting from the revised analyses.

The FEIS included an evaluation of effects to roadless characteristics on inventoried roadless areas (IRAs) and qualities of wilderness character on wilderness study areas (WSAs) in response to comments on the DEIS [PR 2528, p. 618]. Due to the level of public comment, the responsible official also decided to have the Lower San Francisco River area specifically addressed in the FEIS [PR 2526, p. 6].

The modified/improved analysis did not result in substantial changes to the proposed action. The revised effects were within the scope and scale of the analysis. The additional analysis enhanced the discussion of environmental consequences but did not result in significant changes to the conclusions.

Finding: The Forest was in compliance with 40 CFR 1502.9(c)(1)-(2) regarding supplements to an FEIS.

B. Response to Comments

Contention 1.B.1: The appellants contend that the agency has not provided specific responses New Mexico Off Highway Vehicle Alliance’s (NMOHVA) substantive comments as required by law. They argue that in aggregating and summarizing comments, the agency failed to accurately reflect the errors identified by their comments and therefore did not adequately respond. The appellants conclude that by attempting to group comments by category and sub-category and then aggregating the individual comments into “summary statements,” the agency has generalized comments to the point that they have lost the specificity of the original comments [Appeal, pp. 11-13].

Response: CEQ regulations at 40 CFR 1503.4 clarify how agencies process comments on an EIS by stating that “all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement. These regulations require agencies to assess, consider, and respond to comments on the DEIS; however, comments may be summarized. The agency can: (1) Modify alternatives including the proposed action. (2) Develop and evaluate alternatives not previously given serious consideration by the agency. (3) Supplement, improve, or modify its analyses. (4) Make factual corrections. (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

The responses to comments by the appellants were addressed in Appendix B of the FEIS [PR 2528, pp. 536, 598, 609, 612, 613, 618, 628, 652, 653, 654, 664, 716, 722, 723, 727, 731, 755 767, 771]. The comments were consolidated and summarized with other similar comments as the appellants note in their appeal [Appeal, pp. 11-13].

Most comments implied only an explanation was needed. For instance, summarized comments that request the Forest to “disclose the methodology and rationale for proposing designation across private property or closure of roads if multiple roads access the property” was responded to by including Forest Service requirements for dealing with access across private lands [PR 2528, p. 536]. This summarized comment appeared in full in the “Content analysis of DEIS comments databases” document in the project record [PR 2405]. Here, the comment reads:

“ERROR: The DEIS does not disclose the agency’s methodology and rationale for proposing designations for route segments that cross private property. The DEIS does not adequately inform the public of the designation process for route segments that cross private property to allow a meaningful review. The DEIS does not provide the decision maker with the information needed to compare the benefits of the route segment designation against the risks and impacts of that designation...” [PR 2405, pp. 57]

The “DISCUSSION” and “RESOLUTION” portions of the comment continue for another 2½ pages. The Forest focused on the “ERROR” as the main point when responding to the comment. As stated above, CEQ directs agencies to use summaries where exceptionally voluminous.

Sometimes, the Forest agreed with and acknowledged changes to the EIS and other records based on public comments and other information. This statement was provided in response to one of the appellant’s comments: “The FEIS will be updated with indicators that allow comparison of effects of each of the alternatives and cumulative effects analysis. The FEIS will also update the recreation analysis with data from the 2011 National Visitor Use Monitoring Report (NVUM),...” [PR 2528, p. 618]. In response to a comment from the appellants about spread of invasive weeds, the Forest said “Cumulative effects of the proposed action and alternatives on the distribution, establishment and spread of invasive plant species are disclosed in the DEIS on page 226 and clarified in the updated invasive species specialist report and FEIS” [PR 2528, p. 598].

While it is true that comments were summarized and consolidated, they were not ignored. Some even resulted in modifications to analyses or clarifications of effects or other information.

Finding: The Forest followed CEQ Regulation 1503.4 and appropriately assessed, considered, and responded to comments on the DEIS.

C. Best Available Science

Contention 1.C.1: In their comments on the DEIS, the appellants stated: “The DEIS fails to utilize the best available science and information available to the agency for the Economic analysis. This lack of science and data directly impacts the environmental consequences presented and the comparisons made and presented.” They claim in their appeal that instead of responding to the error described, the agency’s response focused on refuting a single sample calculation they used in the comment to illustrate the potential under-reporting of economic impact. The appellants contend the agency did not use “better” information to update their estimated impacts but simply continued to limit the analysis to IMPLAN. The appellants claim that it appears the initial numbers in the DEIS were badly in error because the total numbers of recreation-related jobs estimated by the agency in the FEIS is now five times the “56 jobs” reported in the DEIS. The appellants conclude that by focusing the response on one single calculation in their comment, the agency missed the “bigger picture” of their error statement [Appeal, pp. 14-15].

Response: It is agency policy that social and economic evaluations are conducted by or in concurrence with subject matter experts, and utilize generally accepted methods, practices and data relevant to the planning process and decision (Forest Service Manual (FSM) 1970.3). The cost and availability of social and economic data may be considered when determining scope (FSM 1970.6). The social economic specialist reports considered and employed best available data and relevant methodologies as they became available to the subject matter expert.

Updated data and modeling methodology became available during the time period between the DEIS and FEIS. The economic analysis supporting the DEIS was completed in 2010, which utilized National Visitor Use Monitoring (NVUM) visitation data and regional economic model/data from 2006 [PR 1872, p. 6]. The economic analysis supporting the FEIS was completed in 2013, utilizing NVUM visitation and expenditure data from 2011 and regional economic model/data from 2010 [PR 2521, p. 4].

NVUM data revealed that recreation visitation on the Gila NF differed greatly between 2006 and 2011. Total estimated recreation site visits to the Gila National Forest was 398,000 from the 2006 NVUM data [PR 1872, p. 9]; while the 2011 NVUM data showed a total of 699,000 site visits [PR 2527, p. 58].

The economic analysis supporting the DEIS modeled motorized recreation visits differently than the analysis supporting the FEIS. The economic analysis in the DEIS only accounted for those activities explicitly labeled as motorized into the motorized recreation category: OHV use, driving for pleasure, snowmobiling, and other motorized activities [PR 1872, pp. 23-24]. The FEIS analysis incorporated additional activities into the motorized category. This stemmed from

the understanding that many of the recreation activities could include both motorized and non-motorized elements, for example, hunting, fishing, and camping, and other activities requiring some road access [PR 2521, p. 29]. By including portions of those recreation visits (using a percentage between 25 to 75 percent) into the motorized category, motorized visits accounted for 26.3 to 49.5 percent of all recreation visits in the Gila NF [PR 2521, p. 30]. The reasonable ranges in employment and income results reflect the above percentages for motorized recreation [PR 2521, pp. 30-31].

The applications of updated data and methodologies contributed to the differences in results exhibited between the DEIS and FEIS. Various limitations on economic modeling, data, and methodologies were also documented [PR 2521, pp. 18-19 and pp. 29-31; PR 2527, p. 443].

Finding: The social economic specialist reports considered and employed best available data and relevant methodologies as they became available to the subject matter expert. The analysis is appropriate, meets the needs of the FEIS, and provides adequate information in terms of economic effects across alternatives in order for the decision maker to evaluating the range of alternatives.

D. Effects

Contention 1.D.1: In their comments on the DEIS, the appellants stated: “The DEIS fails to disclose site specific analysis of cause-and-effect that relates resource issues to motorized use. It fails to disclose how this analysis was used to determine motorized routes. The agency makes no claims that the cost of obtaining this information is exorbitant.”

The appellants contend that in response to their comment, the agency used a reference to the Travel Management Final Rule (TMR) Publication in the Federal Register inappropriately and out of context. They interpret the TMR to mean the agency is not required to complete an inventory on all user-created routes but is still expected to complete a site-specific analysis of any and all routes considered for designation. They assert that the agency has claimed to disclose site specific analysis only on those routes proposed for designation, not on all the routes considered. The appellants argue that the GIS information (from INFRA) used by the agency in its analysis is unreliable, as demonstrated by the shrinkage of Operational Maintenance Level (OML)-1 road inventory from 1169 miles in the DEIS to only 530 miles in the FEIS. They assert that this proves that the GIS-dependent method is so inaccurate and so lacking the appropriate level of detail as to be insufficient. Furthermore the agency has not shown the cost of obtaining actual site-specific data for all routes considered for designation was cost-prohibitive as required by 40 CFR 1502.22(b)(1-4) [Appeal, pp. 16-18].

Response: “As recognized in the preamble to the proposed rule, to a certain degree, NFS roads are in effect already designated for some classes of motor vehicle use. These roads are included in a forest transportation atlas, and road management objectives may establish the appropriate vehicle classes and uses for each road segment. In recent years, the roads analysis process established under 36 CFR 212.5 and FSM 7712 has been used to evaluate the long-term management objectives for the passenger car road system in each National Forest. This final rule does not require responsible officials to reconsider decisions authorizing motor vehicle use on

NFS roads and NFS trails. After consulting with the public, responsible officials may choose to reconsider past decisions as necessary to achieve the purposes of this final rule” [PR 0029, pp. 68268-68269].

The TMR also states that the Department does not believe that a “complete inventory of user-created routes is required in order to complete the designation process. As a practical matter, such an inventory may never be fully complete, as new routes will continue to be created during the inventory process. A complete inventory would be very time-consuming and expensive, delaying completion of route designation” [PR 0029, p. 68269]. The TMR does recognize that unauthorized roads and trails are not part of the forest transportation system and are not officially recognized by the Forest Service. However, “user-created roads and trails may be identified through public involvement and considered in the designation process. After public consideration and appropriate site-specific environmental analysis, some user-created routes may be designated for motor vehicle use pursuant to §212.51 of the final rule” [PR 0029, p. 68277].

In the response to comments on the DEIS, the Forest acknowledged that it doesn’t have complete information on the condition and level of use of its forest system roads and trails, unauthorized routes, or motorized cross-country use. Collecting that information over the entire forest system of routes, an unknown amount of unauthorized routes, and the entire National Forest System (NFS) lands would be exorbitant and time consuming. Where data sources did not clearly indicate that they were missing or incomplete in the DEIS, will be clarified in the FEIS and specialist reports per 40 CFR 1502.22 – “Incomplete or unavailable information” [PR 2528, p. 612].

This is compliant with CEQ regulations. CEQ regulation 40 CFR 1502.22 addresses incomplete or unavailable information. The agency shall include a statement in the impact statement that there is (1) incomplete or unavailable information, (2) the relevance of the incomplete or unavailable information to evaluating significant adverse impacts, and (3) a summary of credible scientific evidence that is relevant to evaluating such impacts, and the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

The Forest did not do a complete inventory of on-the-ground unauthorized routes. Unauthorized routes proposed in the action alternatives were recommended from the public and proposed to respond to the issues and intent of each alternative [PR 2527, p. 63]. Many roads were visited on each district as part of the Priority 1 and 2 coarse filter inventory and stream crossing surveys. During development of the proposed action (using the criteria described in Gila’s Process Presentation) and the alternatives (using the alternative framework) an interdisciplinary team consisting of district rangers, resource specialists, and other field-going personnel systematically reviewed each road, trail, corridor, and area one by one using the Forest GIS route information, natural and cultural resource information, other available land management information, and imagery. The motorized system presented in the proposed action and subsequently, each of the alternatives were developed using surveys, comments, GIS information, and Forest staff knowledge, and guided by the Gila’s Process document and alternative framework. Although, for the most part, the analysis was a forestwide assessment, there were also areas (management areas, habitat, etc.) where subsets of routes, corridors, or areas were assessed specifically

depending on the resource area. Description of analysis of the proposals can be found in Chapter 3 of the DEIS and each specialist report [PR 2528, p. 612].

Having complete information on the condition and motorized use of every mile and acre is not relevant to effectively analyzing the reasonably foreseeable impacts on the human environment. The general effects of the existence and use of routes and off-road travel on natural and cultural resources are well documented and presented in each section of Chapter 3 [PR 2528, p. 612]

Cause and effect relationships were demonstrated in the analyses. The analysis is a cause-and-effect analysis at the Forest level and analyses are displayed as trends or potential effects. This is stated in the FEIS at the beginning of Chapter 3 [PR 2527, p. 45].

Scientific integrity is addressed in the CEQ regulations at 40 CFR 1502.24 and directs agencies to insure the scientific integrity of the discussions and analyses in the EIS. The Forest Service met the intent of 40 CFR 1502.24 by creating an interdisciplinary team of resource professionals with the relevant education and experience appropriate for analysis and document preparation in their specialty areas. Each specialist reviewed pertinent data, scientific studies (including opposing viewpoints), monitoring, and used professional judgment to draw conclusions about the effects of each alternative and the appropriateness of the information sources, including scientific literature, used in the analyses.

The ROD [PR 2526, p. 3] documents the FEIS uses the best available science, and, where appropriate, acknowledges incomplete or unavailable information.

The GIS information is not unreliable, as the appellants contend. Table 19 in the DEIS does show that there are 1,169 miles of ML1 roads [PR 1865, p. 46]. The 1,169 miles of ML1 roads is actually the number of miles of ML1 roads plus the number miles of decommissioned roads. Refer to Table 21 in the DEIS for the breakdown between miles of ML1 roads (527 miles) and miles of decommissioned roads (642 miles) [PR 1865, p. 48]. Table 19 (same as Table 19 in the DEIS) was modified in the FEIS to only show the miles of ML1 roads, and did not include the miles of decommissioned roads [PR 2527, p. 48].

Finding: The FEIS complies with law, regulation, and policy. There are no requirements in the TMR or agency direction to analyze or reconsider the entire road system. The Forest used a travel analysis and a detailed Roads Specialist report that complied with agency direction to identify the existing condition and to tightly focus on motorized use designations in the analysis. The TMR allows the responsible official to incorporate previous decisions regarding travel management. The GIS information is reliable.

Contention 1.D.2: In their comments on the DEIS, the appellants stated: The DEIS does not provide an analysis that is CEQ compliant or based on the agency's own published guides. The DEIS depends on broad generalizations while ignoring site specific analysis and empirical evidence readily available to the Forest. The DEIS depends on general conclusions based on study areas that do not accurately reflect the GNF's past, current, or future condition." The appellants contend that the agency's response only highlights their point that agency has chosen to rely on studies of potential effects rather than the empirical evidence with in the Forest itself.

They argue that the agency had no need to rely on literature for potential effects of motorized recreation on wildlife because it had ample data within the subject forest on which to base its analysis. The appellants conclude that even when the past effects of all motorized use are taken into account (including nearly 2.4 million acres of “open” forest that has experienced cross-country travel) and are added to the most motorized intensive use projected for the future (Alternative C), the universal result was clear: “the incremental impacts of the proposed project...are at levels that do not cause significant effects...” [Appeal, pp. 30-33].

Response: The CEQ regulations describe scoping as an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action [40 CFR 1501.7 and Forest Service Handbook (FSH) 1909-15, 05]. The CEQ regulations describe the environmental consequences section of the EIS as forming the scientific and analytic basis for the comparison of the alternatives (40 CFR 1502.16).

It is through the scoping process that the Forest Service identifies important issues and determines the extent of analysis necessary for an informed decision on a proposed action. Scoping helped the Forest identify four significant issues: 1. Motorized Routes; 2. Motorized Dispersed Recreation; 3. Motorized Big Game Retrieval; and 4. Areas [PR 2527, p. iv]. These issues were defined at a forestwide scale.

Similarly, the Forest acknowledged using a broad scale effects analysis approach by stating, “This final environmental impact statement examines effects on a forestwide scale. Effects are discussed at the national forest level, with analyses displayed as trends or potential effects” [PR 2527, p. 45]. Although, for the most part, the analysis was a forestwide assessment, there were also areas (management areas, habitat, etc.) where subsets of routes, corridors, or areas were assessed specifically depending on the resource area. Description of analysis of the proposals can be found Chapter 3 of the DEIS and each specialist report [PR 2528, p. 612].

The FEIS’ Wildlife section states, “An extensive amount of time was spent reviewing the most up to date and most relevant literature to use the best available science for this analysis” [PR 2527, p. 268]. The Forest Service has not defined “best available science” in policy; instead, the agency works to fulfill regulation and policy aimed at analyzing the best and most relevant scientific data. The use of best available science is evidenced by the extensive literature citations in the FEIS [PR 2527, pp. 469-504]. Assumptions and methodologies are listed within each resource area of the FEIS, [PR 2527, pp. 46, 63, 86, 90, 166, 195, 233, 264, 381, 402, 411-413, and 443] and each of the resource specialist reports; 6th code Watershed, Soils and Aquatics Cumulative Effects Analysis [PR 2508], Final Roads Report [PR 2513], Final Watershed and Soils Specialist Report [PR 2514], Final Recreation Report [PR 2516], Recreation-Inventoried Roadless Areas and Wilderness Study Areas Report [PR 2517], Final Air Quality Specialist Report [PR 2518], Final Wildlife Report and Biological Evaluation [PR 2519], Final Invasive Species Specialist Report [PR 2520], Final Social and Economic Report [PR 2522], Aquatic Specialist Report [PR 2522], Final Cultural Resources Specialist Report [PR 2523], and the Final Sensitive Plant Species Report [PR 2535].

Finding: The Forest followed CEQ Regulations, used best available science, and appropriately assessed, considered, and documented effects in the EIS.

Contention 1.D.3: In their comments on the DEIS, the appellants stated: “The closure of the lower San Francisco river to motorized use in the Preferred Alternative does not flow logically or rationally from the DEIS.” Their concern goes on to state that the initial proposed action included FSR 4223 L as designated to motorized use. They contend there is no logical and rational connection between what is disclosed in the analysis of the DEIS and the proposed designation of FSR 4223 L (as Closed to all motorized use) in the agency’s preferred alternative. The appellants state that in looking at the other responses to the public comments they found this statement by the agency: “The San Francisco road is similar in that it is an *old historic road that users created long ago*” (emphasis added). The appellants claim that the Cultural Resources section of the FEIS fails to mention the San Francisco road as a cultural or historical resource, nor does it disclose any analysis on how losing motorized access to the road would impact users or the road itself. The appellants assert that removing motorized use from an “old historic road” could potentially “change the character of the property’s use...that contributes to its historic significance” [citing 36 CFR 800.5(a)(1)]. They further assert that the agency has not properly analyzed this potential impact nor disclosed this analysis and its results [Appeal, pp. 34-36].

Response: There was a great deal of public comment and concern regarding the motorized route system in the San Francisco River, specifically the area from Big Dry Creek to Mule Creek. All alternatives in the DEIS analyzed changes to the route system in this area. However, due to the level of public comment, the responsible official decided to have the San Francisco River area specifically addressed in the FEIS [PR 2526, p. 6; PR 2527, pp. 136-163]. The modified/improved analysis did not result in substantial changes to the proposed action, and the revised effects were within the scope and scale of the analysis. The additional analysis enhanced the discussion of environmental consequences, but did not result in significant changes to the conclusions. Such changes between DEIS and FEIS are in compliance with CEQ regulations (see responses to 1.A.1 and 1.A.4 for more).

The lower San Francisco River area is located within an inventoried roadless area (IRA) and a wilderness study area (WSA). A WSA is an area that Congress deemed worthy of consideration by Congress for wilderness designation. The Gila National Forest Plan recommends that the area not be designated as wilderness, but until Congress acts on the recommendation, the Forest manages the WSA in a manner as to prevent impairment of the area’s suitability for wilderness designation [PR 2516, p. 27; PR 2527, pp. 134-135]. Inventoried roadless areas are managed for nine roadless characteristics or features. Wilderness study areas are managed for the four qualities of wilderness character. The modified/improved analysis that specifically addresses the lower San Francisco River area (included in the FEIS) clarifies the effects of the alternatives on roadless characteristics [PR 2516, pp. 1-26, pp. 52-63; PR 2527, pp. 153-161] and on wilderness character [PR 2516, pp. 27-41; PR 2527, pp. 134-145].

The treatment of FR 4223 L in the lower San Francisco River area varies by alternative. In Alternative F, the modified proposed action, the road would be designated open to motorized use. In Alternative G, the preferred alternative, the road would be designated open to motorized use from Highway 180 to the confluence of the San Francisco River and Big Dry Creek, and would be closed to motor vehicle use beyond that point. The effects of the different alternatives (which include designating the road as open and designating it as closed) on resources in the

lower San Francisco River area are disclosed in the effects on roadless characteristics in Chapter 3 of the FEIS, which also summarizes information from the Soils and Watershed report, Aquatic Species and Habitat report, and the Air Quality report [PR 2527, pp. 153-161]. The nine roadless characteristics are: 1) soil, water and air resources; 2) sources of public drinking water; 3) diversity of plant and animal communities; 4) habitat for TES and species dependent on large undisturbed areas of land; 5) primitive and semi-primitive motorized and non-motorized classes of recreation; 6) reference landscape for research study or interpretation; 7) natural appearing landscapes with high scenic quality; 8) traditional cultural properties and sacred sites; and 9) other locally unique characteristics.

The ROD explains the responsible official's rationale in making her decision. Regarding the lower San Francisco River, the responsible official felt that Alternative G "is the best choice to provide public access to the San Francisco River, continue the parking and camping opportunities currently used near the river, and greatly reduce the impacts to resources adjacent to or along the San Francisco River" [PR 2526, p. 6].

The FEIS discloses that the Forest is using the USDA-Forest Service Region 3 Protocol regarding Section 106 consultation for Travel Management Route Designation (TM Protocol) to meet its National Historic Preservation Act (NHPA) responsibilities in lieu of following 36 CFR 800 [PR 2527, p. 409; PR 2535-05, pp. 1-2]. The TM Protocol is Appendix I of the Southwestern Region Programmatic Agreement (PA) between the State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation, and USDA-Forest Service. [PR 2535-05, p. 1; PR 2527, p. 409]. The PA and the TM Protocol have gone through consultation, and were signed by the Forest Service, SHPO, and Advisory Council. Under the protocol, decisions to restrict travel on an existing system road are not considered undertakings subject to further section 106 review and consultation [PR 2535-05, p. 3]. The San Francisco road is identified as FR 4223 L, an existing system road, so no further NHPA review or consultation is needed to restrict motorized travel on that route.

That is not to say no analysis was done on historic roads. The FEIS identifies "historic roads" as one of the types of cultural resources found on the Forest on page 408, and again under Cumulative Effects on page 431 [PR 2527, pp. 408, 431]. The Specialist's Report also identifies historic roads as a site type [PR 2523-00, pp. 5, 40]. The Forest has recorded more than 6500 cultural resources, [PR 2523-00, p. 6] and some of these are historic roads [PR 2527, p. 408; PR 2523-00, p. 5]. The Specialist's report and FEIS note that restricting motorized use is generally considered a beneficial effect. In the Specialist's report, it is stated that: "In the Action Alternatives, some existing motorized routes are proposed to become non-motorized (Table 3). These route closures would be beneficial to cultural resources because this reduces motorized access to forest lands and direct contact between vehicles and sites. Routes that are closed may also promote natural reclamation of the routes, including vegetation growth. This may also benefit cultural resources through stabilizing soil erosion" [PR 2523-00, p. 24; PR 2527, p. 416, 420]. Removal of motorized use is also identified as one of the cultural resource protection measures in the FEIS and TM Protocol [PR 2527, p. 30; PR 2535-05, p. 8]

Finding: The effects of the different alternatives (which include designating FR 4223 L as open or designating it as closed) on resources in the lower San Francisco River area are disclosed in

the effects on roadless characteristics in Chapter 3 of the FEIS. Restricting motorized use on an existing system road is not considered an undertaking subject to further NHPA compliance under the TM Protocol. Therefore, no further NHPA analysis is needed to restrict motorized use on FR 4223 L, the San Francisco Road. The FEIS considered historic roads in its analysis.

Contention 1.D.4: In their comments on the DEIS, the appellants stated: “The DEIS repeatedly ascribes all impacts to the natural environment to motorized use, ignoring the impacts from all other forms on the Forest.” Another comment states: “The agency has failed to disclose or analyze the current source of all recreation use impact on wildlife. The agency ascribed all current baseline impact to motorized use in the analysis of Environmental Consequences to Wildlife.” The appellants contend that it is illogical, inappropriate, and hugely prejudicial to not make clear in the agency’s analysis that removing motorized use will not remove all impacts to wildlife and attempt to parse impact to the appropriate and varied sources. They argue that the agency’s lack of effort to properly apportion impacts to the many sources involved calls into question the use of miles of road and acres of disturbance as viable indicators.

The appellants also contend that the cumulative effects analysis does not acknowledge that removing only motorized recreation will not totally remove the total effects of recreation on wildlife, nor will it stop non-motorized recreation from using roads and continuing to impact that same wildlife. They assert the cumulative effects analysis also does not try to apportion some amount of the impact to other non-motorized recreational pursuits in spite of the National Visitor Use Monitoring (NVUM) data that would rationally support such an assignment [Appeal, pp. 43-45].

Response: The appellants allege that the analyses in the FEIS are predicated on a false premise of negative impacts to wildlife that is not factual, since most wildlife species are not at risk due to current road use. The appellants also allege that the cumulative effects analysis did not discuss the effects of non-motorized activities. The standard applied here is whether the analyses utilized an appropriate baseline or no to comply with the requirements of Forest Service Manual (FSM) 2672, and whether the cumulative effects analysis adequately looked at those actions which are cumulative to the action under consideration.

The Wildlife Specialist Report [PR 2535-23], Aquatic Specialist Report [PR 2535-21], and Sensitive Plant Report [PR 2535-24] all compare metrics such as road density, miles of road within a certain distance of habitat, crossings of roads with streams, acres open to dispersed motorized camping or big game retrieval, and miles of road with reduction in use/non-reduction in use in relation to the amount of habitat for each status species, as required under FSM 2672. Assumptions are well documented in each report, and each report cites to literature which demonstrates the negative effects that vehicle use on and off road, as well as the presence of roads themselves, has on the various species analyzed. Nothing in any report states that the current condition is either good or bad; they merely state that vehicle travel and/or the presence of roads will be reduced in each of the action alternatives, and these reductions translate to lower impacts to wildlife based on the scientific literature. The findings of each of the reports are summarized in the FEIS [PR 2527].

Each specialist report discusses cumulative effects; the Aquatic Specialist Report [PR 2535-21, pp. 57-58] and Sensitive Plants Specialist Report [PR 2535-24, p. 28] have specific cumulative

effects sections. The Wildlife Specialist Report [PR 2535-23] has cumulative effects from off-forest activities that change road density, off-road travel, or other motorized recreation in the vicinity of the action area. In addition, the Wildlife Specialist Report [PR 2535-23, pp. 161-172] discloses impacts from land ownership, livestock grazing, mining, and wildfire in addition to other activities. These effects are summarized in the FEIS [PR 2527, pp. 254-255; 369-381; 398].

Finding: The analysis of the direct, indirect, and cumulative effects and comparison to the baseline No Action alternative meets the standard for analysis of effects under FSM 2672 and NEPA.

Contention 1.D.5: The appellants contend that the FEIS contains no rational connection between the cumulative effects for recreation and the alternatives presented for consideration. They go on to state that none of the alternatives explored in the FEIS address the negative cumulative effects identified for recreation: Fewer open routes for OHV use. Even Alternative B (no action) and Alternative C (2 percent reduction) contain massive and real reductions from the true current existing condition [Appeal, p. 46].

Response: According to 40 CFR 1502.16, the environmental consequences section of the EIS is what “forms the scientific and analytical basis for the comparisons” of the alternatives, including the proposed action. Agencies shall consider the cumulative effects of their actions. This includes the incremental effects of the action when added to the past, present, and reasonably foreseeable related future actions of the Forest Service, as well as those of other agencies and individuals, that may have a measurable and meaningful impact on particular resources (40 CFR 1508.7).

In its response to comments on the DEIS, the Forest stated that “the final environmental impact statement (FEIS) updates the cumulative effects analysis for the project. The analysis includes past, present, and reasonably foreseeable actions relating to each of the issues and related indicators and discussion of the range of motorized and nonmotorized road and trail opportunities provided by alternative” [PR 2528, p. 618]. Much of the additional data, information, and analyses in Chapter 3 were made in response to public comments, including analysis and information regarding motorized routes and opportunities and an updated cumulative effects analysis for each issue [PR 2516-00, p. 1].

The Forest included cumulative effects for recreation [PR 2527, pp. 77-79, 85, 88, 93-94, 95, 100-101, 106-107, 109-110, & 111; PR 2516-00, pp. 39, 44-45, 49-50, 56, 59, 64-65, 73, 75-76, and 78; PR 2517, pp. 25-26]. The FEIS explicitly states the cumulative impacts of the action alternatives, including: “**All action alternatives** have the potential for the following cumulative effects upon motorized recreational opportunities: Change the array of recreational opportunities across the forest and would restrict motorized cross-country travel and reduce the amount of motorized access on the Gila National Forest; The possibility of user dissatisfaction over the loss of cross-country motorized access; The possibility of user dissatisfaction with the loss of motorized recreational opportunities throughout the forest lands in the Southwestern Region 3 and particularly in New Mexico” [PR 2527, p. 79]

The ROD also acknowledges that motorized access will change but also stated that the majority of the roads to be closed to motor vehicle use are less than ½ mile in length; some had signs of little to no use; some had cultural or natural resource concerns; and some were duplicates of others or parallel to each other and ended near the same locations [PR 2526, p. 4]. Ultimately, the decision-maker felt “the designated motorized roads and trails open to the public and the roads and trails under administrative use only, provides the access needed for both the public and management of the Forest.”

Finding: The FEIS appropriately discloses the cumulative impacts of the proposed action and alternatives.

Contention 1.D.6: In their comments on the DEIS, the appellants stated: “The DEIS equates the existence of the roads with the use of the roads in its analysis of the Environmental Consequences.” Their comment goes on to state that by using total miles of routes in the area and acreage of disturbance zones in the area as the only indicators for effects on wildlife, the agency has made the analysis entirely dependent on the existence of roads instead of the intensity of use of the roads [Appeal, p. 161]. The appellants contend that the agency failed to consider that all of the factors selected (disturbance and harvest) go to zero in a case of zero use [Appeal, p. 48].

Response: The appellants allege that the analyses in the FEIS are predicated on a false premise of negative impacts to wildlife that is not factual, since most wildlife species are not at risk due to current road use. The standard applied here is whether the wildlife analyses utilize an appropriate baseline consistent with requirements under FSM 2672.

The Wildlife Specialist Report [PR 2535-23], Aquatic Specialist Report [PR 2535-21, and Sensitive Plant Report [PR 2535-24] all compare metrics such as road density, miles of road within a certain distance of habitat, crossings of roads with streams, acres open to dispersed motorized camping or big game retrieval, and miles of road with reduction in use/non-reduction in use in relation to the amount of habitat for each status species, as required under FSM 2672. Assumptions are well documented in each report, and each report cites to literature which demonstrates the negative effects that vehicle use on and off road, as well as the presence of roads themselves, has on the various species analyzed. Nothing in any report states that the current condition is either good or bad; they merely state that vehicle travel and/or the presence of roads will be reduced in each of the action alternatives, and these reductions translate to lower impacts to wildlife based on the scientific literature. The findings of each of the reports are summarized in the FEIS [PR 2527].

Finding: The Forest used the appropriate baseline for analysis and comparison of alternatives regarding effects to fish, wildlife, and rare plants.

Contention 1.D.7: In their comments on the DEIS, the appellants stated: “The agency fails to disclose specific user and use data in the Environmental Consequences section of the DEIS.” The appellants contend the agency response was inadequate because it focused on “user conflict” and they conclude that the agency still has not provided the user and use data identified in their comment as necessary to make a reasoned and defensible choice or stated a reason why the data need not be provided [Appeal, pp. 51-52]. (NOTE: The appeal point also discusses the addition

of new information in the FEIS that the public did not have the opportunity to review (see responses to Issue 1 contentions above).

Response: CEQ regulation 40 CFR 1502.22 addresses incomplete or unavailable information. The agency shall include a statement in the impact statement that there is (1) incomplete or unavailable information, (2) the relevance of the incomplete or unavailable information to evaluating significant adverse impacts, and (3) a summary of credible scientific evidence that is relevant to evaluating such impacts, and the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

There is a statement in the FEIS that “specialists presented any limitations and assumptions in their analyses in accordance with the Council on Environmental Quality; Regulations for Implementing NEPA; 40 CFR Section 1502.22; Incomplete or unavailable information” [PR 2527, p. 46].

The appellants are correct that the Forest responded to their comments on the DEIS with a statement about user conflict. However, this was probably an attempt to respond to the appellant’s comment on the metrics used for user conflict [PR 2405, p. 269]. Additionally, the Forest responded that, “The FEIS will also update the recreation analysis with data from the 2011 National Visitor Use Monitoring (NVUM), Recreation Facility Analysis Forest Niche description and Forest Plan Recreation Opportunity Spectrum (ROS) data...” and “An analysis of qualities of wilderness character within Wilderness Study Areas (WSAs) will be added. Solitude is one of these qualities...” [PR 2528, p. 618]. Beyond this data, the agency did not disclose specific user and use data because there is no site-specific user and use data, which is disclosed in the FEIS and the recreation specialist report per CEQ regulations.

Visitor use information is taken from the NVUM survey. The NVUM process is designed to provide an estimate of national forest recreation visits, and to help ensure Forest Service-wide consistency in data collection and establish a minimum standard of statistical accuracy [PR 2521-18, p. 3]. There are limitations to the NVUM survey results, which are disclosed in the NVUM report [PR 2521-18, pp. 5-6]. Despite the limitations, the NVUM program does provide reliable information about recreation visitors to national forest system managed lands at the national, regional, and forest level [PR 2521-18, p. 3]. It is also the best available data on visitation type and quantity [PR 2521, p. 18], and the only use data the Forest has collected [PR 2516, p. 4; PR 2527, p. 58].

Regarding user data, again, the information provided in the NVUM is the best available data the Forest has. The Forest doesn’t have complete information on the condition and level of use of its forest system roads and trails, unauthorized routes, or motorized cross-country use. Collecting that information over the entire forest system routes, an unknown amount of unauthorized routes, and the entire NFS lands would be exorbitant and time consuming. Having complete information on the condition and motorized use of every mile and acre is not relevant to effectively analyzing the reasonably foreseeable significant adverse impacts on the human environment. The general effects of the existence and use of routes and off-road travel on natural and cultural resources are well documented and presented in each section of Chapter 3 [PR 2528, p. 612].

Additional data limitations are disclosed in the recreation section of the FEIS. “There are no data available regarding user conflicts. Miles of proposed motorized activities has been used to estimate the risk of potential conflicts by alternative. There are no site-specific motorized or non-motorized visitor use data for wilderness, IRAs, WSAs, or GMUs. NVUM data are presented in the background section. These data pertain to the forest level and are not site-specific. Council on Environmental Quality regulations for implementing NEPA state that when an agency is evaluating reasonable foreseeable significant adverse effects on the human environment, in an EIS, and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking (40 CFR 1502.22)” [PR 2527, p. 63]. Furthermore, the FEIS provides a summary of credible scientific evidence that is relevant to evaluating such impacts, and the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community [PR 2527, pp. 61-62].

See Issue 1 contentions above for response regarding the addition of new information in the FEIS that the public did not have the opportunity to review.

Finding: The agency does not have specific user and use data, which was disclosed in the FEIS. Having complete information on the condition and motorized use of every mile and acre is not relevant to effectively analyzing the reasonably foreseeable significant adverse impacts on the human environment. The FEIS is in compliance with CEQ regulations.

Contention 1.D.8: The appellants contend the agency response to their comment related to the adequacy of the maps and the availability of a full list or matrix showing the road segments affected by the proposed action was inadequate for four reasons: 1.) Route designation tables were not readily available during the comment period for the DEIS; 2.) The agency admits that even when the tables were specifically requested, they were not always successfully delivered; 3.) The FEIS is not an appropriate place to rectify the situation; and 4.) the FEIS includes no more information about “route designation tables” than the DEIS did [Appeal, pp. 53-54].

Response: The appellants’ original comment questions the adequacy of the maps and the availability of a full list or matrix showing the road segments affected by the proposed action. Appropriate responses to comments are described in 40 CFR 1503.4. According to 40 CFR 1503.4, preparation of a FEIS requires an assessment and consideration of comments on the DEIS in a response that may include: (1) modification of alternatives; (2) development of new alternatives; (3) supplementation or modification of analyses; (4) factual corrections; or, (5) explanation of why the comments do not warrant a further response.

To the appellants’ first point, the travel analysis process (TAP) includes road recommendation tables [PR 1796, Appendix L). The Forest developed the TAP and the road recommendations with the public [PR 1796, pp. 14-15]. The Forest also involved the public in the development of the proposed action. The Forest held numerous open houses when scoping the proposed action, and had route designation tables available at those open houses for public comment [PR 1284]. The Forest did inform the public of the route designations tables (by having them available at the proposed action scoping). The Forest also responded to the appellants comment with a supplementation of the analyses, by informing the appellants that they may request route designation tables: “Route designation tables were available upon request” [PR 2528, p. 613]

Furthermore, “hard copy maps and electronic copies on CD were available upon request at all Gila National Forest offices” [PR 2528, p. 613]. Additionally, the Forest did make an effort to fulfill requests for data. For example, the appellants submitted a request to the Forest for geospatial data in support of review of the DEIS [PR 2109]. The Forest responded to their request two days later via email, and provided the information requested on an ftp site [PR 2111]. Additionally, the project record is compiled as project development moves forward, but the project record index (not required in NEPA) is typically compiled at the administrative review stage of a project.

Regarding the second point, the agency did state that “it appears from comments that not all requests were correctly routed, and therefore not fulfilled” [PR 2528, p. 613]. The agency did attempt to fulfill requests, but errors do occur, so some requests may not have been filled. This response is in compliance with CEQ regulations.

Regarding the third point, there is nothing in law, regulation, or policy preventing the Forest from fixing a data delivery issue during the development of the FEIS.

Regarding the fourth point, the FEIS includes Appendix E which provides location information for proposed change to the NFS road and motorized trail systems. It provides the route identifier and legal description to assist in locating the routes on the alternative map packets for the following type of proposed routes: unauthorized routes, maintenance level 1 closed roads, decommissioned routes, and non-motorized trails [PR 2528, pp. 871-878].

Finding: The Forest’s response to the appellants comment is in compliance with CEQ regulations.

Contention 1.D.9: The appellants contend the designation of routes leading to private inholding parcels give preferential treatment to the owners of the inholding parcels at the expense of the public. They assert that the agency is using the in-holder requests to illegally deny public access to public lands via public roads [Appeal, p. 57].

Response: In recognizing private land owner rights, the Forest is not giving preferential treatment to private landowners. When making designations, the responsible official is required to consider rights of access, where “the responsible official shall recognize: 1) valid existing rights; and 2) the rights of use of NFS roads and NFS trails under §212.6(b) [PR 0029, p. 68290]. When making these designations, 36 CFR 212.6 (a-b) requires the responsible official to provide “*appropriate*” access to inholdings, “*provided, such ingress and egress or use shall conform to rules and regulations governing the protection and administration of the lands and the roads or trails to be used.*” Furthermore, Section 1323(a) of the Alaska National Interest Lands Conservation Act (ANILCA) provides property owners within the boundaries of the NFS certain rights of access across NFS lands. According to the terms of ANILCA, such access shall be “subject to such terms and conditions as the Secretary of Agriculture may prescribe,” and “as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System” (16 U.S.C. 3210(a)) [PR 0029, p. 68282].

In compliance with the TMR, the Forest has attempted to not designate roads across private lands for which there is no acquired easement or right-of-way. Some of those private land parcels have public land on the opposite side, but the Forest does not have a legal right-of-way authority to cross the private land parcels to the National Forest System road on the opposite side. It is known that some landowners to allow individuals to cross, but not all individuals have been allowed access. Where the Forest cannot ensure consistent public access, some road systems beyond private lands are proposed closed. There are also instances where jurisdiction remains unresolved and public access has not been ruled out with certainty, and therefore, motorized travel through private land is displayed [PR 2528, pp. 563-564].

The treatment of roads leading to private land was based on consideration of factors such as existing easement or right-of-way through the private land, public input, landowner input, Forest staff knowledge of the area, length of the road, adequate space to allow vehicles or vehicles with trailers to turn around before or near the private land, need for public access, and if the road only serves as access to the private land. The Forest also considered comments from landowners recommending closure of roads that led to their property. Examples include trespass, not primary access to their property, gates being left open, and impact to private land resources [PR 2528, p. 563].

Finding: The Forest is not giving preferential treatment to private landowners in making designations. The Forest and the responsible official are in compliance with the requirements in the TMR, and ANILCA, in recognizing rights of access.

Contention 1.D.10: The appellants contend there are significant and material changes between the DEIS and FEIS in the Social and Economic Section in Chapter 3. The DEIS claimed that motorized recreation accounted for 2-3 jobs in the four county area but the FEIS claims 73-138 jobs related to motorized recreation activities. The appellants assert that the only update in information that the agency had disclosed is that they used the newly available NVUM data. The appellants find it hard to believe that an update in NVUM data would possibly result in a 4200 percent change in employment related to motorized recreation activities. The appellants conclude that while the agency is still using road mileage available as a proxy for the estimated impacts of the alternatives, the updated employment and labor income figures make any discrepancies and “unknowns” in the original assumption underestimated by the same 4200 percent [Appeal, pp. 58-59],

Response: It is agency policy that social and economic evaluations are conducted by or in concurrence with subject matter experts, and utilize generally accepted methods, practices and data relevant to the planning process and decision (Forest Service Manual (FSM) 1970.3). The cost and availability of social and economic data may be considered when determining scope (FSM 1970.6). The social economic specialist reports considered and employed best available data and relevant methodologies as they became available to the subject matter expert.

Updated data and modeling methodology became available during the time period between the DEIS and FEIS. The economic analysis supporting the DEIS was completed in 2010, which utilized National Visitor Use Monitoring (NVUM) visitation data and regional economic model/data from 2006 [PR 1872, p. 6]. The economic analysis supporting the FEIS was

completed in 2013, utilizing NVUM visitation and expenditure data from 2011 and regional economic model/data from 2010 [PR 2521, p. 4].

NVUM data revealed that recreation visitation on the Gila NF differed greatly between 2006 and 2011. Total estimated recreation site visits to the Gila National Forest was 398,000 from the 2006 NVUM data [PR 1872, p. 9]; while the 2011 NVUM data showed a total of 699,000 site visits [PR 2527, p. 58].

The economic analysis supporting the DEIS modeled motorized recreation visits differently than the analysis supporting the FEIS. The economic analysis in the DEIS only accounted for those activities explicitly labeled as motorized into the motorized recreation category: OHV use, driving for pleasure, snowmobiling, and other motorized activities [PR 1872, pp. 23-24]. The FEIS analysis incorporated additional activities into the motorized category. This stemmed from the understanding that many of the recreation activities could include both motorized and non-motorized elements, for example, hunting, fishing, and camping, and other activities requiring some road access [PR 2521, p. 29]. By including portions of those recreation visits (using a percentage between 25 to 75 percent) into the motorized category, motorized visits accounted for 26.3 to 49.5 percent of all recreation visits in the Gila NF [PR 2521, p. 30]. The reasonable ranges in employment and income results reflect the above percentages for motorized recreation [PR 2521, pp. 30-31].

The applications of updated data and methodologies contributed to the differences in results exhibited between the DEIS and FEIS. Various limitations on economic modeling, data, and methodologies were also documented [PR 2521, pp. 18-19 and pp. 29-31; PR 2527, p. 443].

Finding: The social economic specialist reports considered and employed best available data and relevant methodologies as they became available to the subject matter expert. The analysis is appropriate, meets the needs of the FEIS, and provides adequate information in terms of economic effects across alternatives in order for the decision maker to evaluating the range of alternatives. Review of this issue finds no violation of law, regulation, or policy.

Contention 1.D.11: The appellants contend the Social and Economic analysis does not meet the requirements of Forest Service Manual (FSM) 1900 Chapter 1970 because it does not include a description of the ‘desired social and economic conditions’ [Appeal, p. 60].

Response: Forest Service Manual 1970.2 states that social and economic evaluations are to provide responsible officials with information sufficient to support planning and management decisions reflecting to the extent appropriate current social and economic conditions and trends potentially affected by National Forest System management actions; Desired social and economic conditions; and Expected and actual effects of National Forest System management actions on social and economic sustainability.

Desired conditions such as “provide employment and economic development opportunities while meeting natural resource goals” from the 1986 Gila National Forest Plan, as well as other desired conditions related to travel management such as sustainable employment opportunities and access to favorite sites on Forest are listed in the social and economic specialist report [PR 2521,

p. 17]. The desired social and economic conditions were defined collaboratively with county officials and at public meetings [PR 1865, pp.6-8]. The general concerns and issues identified form the basis of the social and economic analysis, as summarized in the FEIS.

Finding: The social and economic analysis is consistent with FSM 1970.

Contention 1.D.12: In their comments on the DEIS, the appellants stated: “The agency has buried, obscured, and obfuscated the simple truth of its conclusions to the point that the public and decision-maker cannot find, follow, or rationally connect them to the evidence presented.” The appellants contend that the agency responded by “fixing” Table 16 but that did nothing to better inform the public or the decision-maker of the agency’s conclusions of “very little impact even under current conditions” [Appeal, p. 61].

Response: CEQ regulations at 40 CFR 1502.16 (a)(b)(d) address direct effects, indirect effects, and the environmental effects of the proposed action and the alternatives.

Scientific integrity is addressed in the CEQ regulations at 40 CFR 1502.24 and directs agencies to insure the scientific integrity of the discussions and analyses in the EIS. The Forest Service met the intent of 40 CFR 1502.24 by creating an interdisciplinary team of resource professionals with the relevant education and experience appropriate for analysis and document preparation in their specialty areas. Each specialist reviewed pertinent data, scientific studies (including opposing viewpoints), monitoring, and used professional judgment to draw conclusions about the effects of each alternative and the appropriateness of the information sources, including scientific literature, used in the analyses.

The Forest received a comment on the DEIS from the appellants that stated Table 16 “does not clearly distinguish direct, indirect, and cumulative effects.” The Forest acknowledged this needed revision and replied that the “watershed and soils specialist report and the FEIS will be clarified where necessary to discuss direct, indirect, and cumulative effects” [PR 2528, p. 731].

The Forest did change the title of Table 16 from DEIS to FEIS from “Summary of effects described in detail in chapter 3” to “Comparison of resources by alternatives” to avoid giving the reader the impression that all effects were summarized there. Instead, the effects were thoroughly described in the FEIS Chapter 3 [PR 2527, pp. 198-226] and the Watershed and Soils Specialist Report [PR 2514, pp. 53-110].

Finding: The analysis of direct, indirect, and cumulative effects followed Forest Service and CEQ guidelines. CEQ requirements regarding scientific integrity were also met.

E. Alternatives – No Action

Contention 1.E.1: The appellants contend the No Action alternative does not meet the requirements of the CEQ regulations at 40 CFR 1502.15 and does not accurately document the existing condition on the Forest. They claim the No Action alternative fails to clearly present the current condition of many of the resources studied. In their comments on the DEIS, the appellants asserted that the agency disclosed no information on how the resources were doing

under current conditions and cited the Wildlife section as an example. They contend that the FEIS fails to disclose how wildlife species were doing under the No Action alternative and it provides no new information source on how birds, amphibians, reptiles, and other terrestrial wildlife are faring under the current condition of the forest. They argue that without this information, the comparison of road miles and acres of disturbance is meaningless [Appeal, pp. 19-22].

Response: The appellants allege that the analyses in the FEIS are predicated on a false premise of negative impacts to wildlife that is not factual, since most wildlife species are not at risk due to current road use. The standard applied here is whether the analyses utilized an appropriate baseline or no to comply with the requirements of FSM 2672.

CEQ regulation 40 CFR 1502.15 states that the EIS should “describe the environment of the area(s) to be affected or created by the alternatives under consideration.”

The Forest clearly discloses what is meant by the No Action alternative for this project [PR 2527, pp. 2-5, 13-14, 25-27] and describes the current condition for each resource in the effects chapter [PR 2527, pp. 45-453].

The Wildlife Specialist Report [PR 2535-23], Aquatic Specialist Report [PR 2535-21, and Sensitive Plant Report [PR 2535-24] all compare metrics such as road density, miles of road within a certain distance of habitat, crossings of roads with streams, acres open to dispersed motorized camping or big game retrieval, and miles of road with reduction in use/non-reduction in use in relation to the amount of habitat for each status species, as required under FSM 2672. Assumptions are well documented in each report, and each report cites to literature which demonstrates the negative effects that vehicle use on and off road, as well as the presence of roads themselves, has on the various species analyzed. Nothing in any report states that the current condition is either good or bad; they merely state that vehicle travel and/or the presence of roads will be reduced in each of the action alternatives, and these reductions translate to lower impacts to wildlife based on the scientific literature. The findings of each of the reports are summarized in the EIS [PR 2527].

Finding: The analysis of the direct, indirect, and cumulative effects and comparison to the baseline No Action alternative meets the standard for analysis of effects under FSM 2672 and NEPA.

Contention 1.E.2: The appellants contend the No Action alternative does not meet the requirements of the CEQ regulations and does not accurately document the existing condition on the Forest. Specifically, the No Action alternative presented does not accurately portray the present management direction or level of management intensity. They claim the agency failed to address this DEIS comment in violation of 40 CFR 1503.4(a) [Appeal, p. 23].

Response: The CEQ regulations at 40 CFR 1502.14(d) require EISs to include the alternative of No Action in the discussion of alternatives with no additional guidance in regulation. The CEQ’s 40 Most Asked Questions, No. 3 provides guidance and explanation of two ways to consider describing the no action. One way describes the No Action Alternative as, “no change from

current management direction or level of management intensity,” and “it may be thought of in terms of continuing with the present course of action until that action is changed.” The Forest clearly discloses what is meant by the No Action alternative for this project [PR 2527, pp. 2-5, 13-14, 25-27; 2528, pp. 664-665]. In the description of the alternatives the Forest describes the current management direction and indicates that management is based on previous decisions, some of which do not need to be revisited. These previous decisions include management direction from the land use plan; Wilderness designation closes areas to motorized travel; all ML 1 roads are closed to public travel; the forest, except in areas indicated as closed, is open to cross-country travel. Alternative B displays the existing motorized system for the Gila National Forest which includes those roads that are classified as Maintenance Level 2 through 5 and designated motorized trails as recorded in the respective INFRA databases. In Chapter 3 (analysis) the Forest consistently compares the impacts of the no action to the impacts of the action alternatives.

Finding: The no action alternative accurately portrays a continuation of the current management direction against which the action alternatives can be meaningfully and realistically compared and meets the requirements of NEPA and CEQ regulations. The No Action complies with law, regulation, and policy.

Contention 1.E.3: In their comments on the DEIS, the appellants contended the No Action alternative does not meet the requirements of the CEQ regulations and does not accurately document the existing condition on the Forest. Specifically, the agency has failed to adequately explore, define, and document the existing condition in the No Action alternative. They object to the way the No Action alternative was defined in the DEIS and the way it is still defined in the FEIS (“It represents the existing condition, which is our best estimate of where people are driving now”) and argue that the agency is not given the latitude of writing its own definition of what ‘no action’ means. They contend the CEQ requires that the ‘no action’ alternative is “*no change from current management direction or level of management intensity*” yet the agency definition arbitrarily eliminates OML 1 roads, unauthorized routes, and trails outside of wilderness. The appellants claim the agency failed to address this DEIS comment in violation of 40 CFR 1503.4(a) [Appeal, p. 24-25].

Response: The CEQ regulations at 40 CFR 1502.14(d) require EISs to include the alternative of No Action in the discussion of alternatives with no additional guidance in regulation. The CEQ’s 40 Most Asked Questions, No. 3 provides guidance and explanation of two ways to consider describing the no action. One way describes the No Action Alternative as, “no change from current management direction or level of management intensity,” as the appellants quote. It may be thought of in terms of continuing with the present course of action until that action is changed. In the description of the alternatives the Forest describes the current management direction [PR 2527, pp. 2-5, 13-14, 25-27] and how this represents current management direction or the “existing condition of travel management” on the Forest. The Forest describes the current management direction [PR 2527, pp. 2-5, 13-14, 25-27] and indicates that management is based on previous decisions, some of which do not need to be revisited. These previous decisions include but are not limited to management direction from the forest plan; Wilderness designation areas closed to motorized travel; all ML 1 roads closed to public travel; the forest, except in areas indicated as closed, is open to cross-country travel. Alternative B displays the existing motorized

system for the Gila National Forest which includes those roads that are classified as Maintenance Level 2 through 5 and designated motorized trails as recorded in the respective INFRA databases.

The quote the appellants provide only exists in the EIS summary and reflects a summary of the “No Action” description from subsequent chapters of the EIS. While “estimate” may be a poor choice in wording, the FEIS clearly documents what the Forest means by the “No Action.” Because the forest is open to cross country travel, even the best inventories are limited and using the word “estimate” is one way to briefly state what is going on. The Travel Management Rule allows a Forest to define and document the existing condition and management direction regarding the road system on the forest at the time the TMR process begins. The designation of a system of roads in this process is not the final decision. As conditions or goals change new roads can be added to the system and old roads removed by completing additional environmental review of those future proposals.

Finding: The no action alternative accurately portrays a continuation of the current management direction on the Gila National Forest against which the action alternatives were meaningfully and realistically compared and meets the requirements of the NEPA and CEQ regulations. The No Action complies with law, regulation, and policy.

Contention 1.E.4: The appellants contend the agency has chosen to consider designation of existing routes that are not in the baseline condition (no action analysis) and therefore have not been analyzed. They argue that this error is not limited to the routes the agency has proposed to add to the system but it also includes all of the unauthorized/OML-1/decommissioned routes the agency considered for inclusion in the action alternatives. The appellants contend the agency completely failed to disclose the methodology used to select some routes while discarding others and results of that analysis of those routes [Appeal, pp. 49-50].

Response: The CEQ regulations at 40 CFR 1502.14(d) require EISs to include the alternative of No Action in the discussion of alternatives with no additional guidance in regulation. The Forest describes the current management direction in the FEIS [PR 2527, pp. 2-5, 13-14, 25-27]. Alternative B displays the existing motorized system for the Gila National Forest which includes those roads that are classified as Maintenance Level 2 through 5 and designated motorized trails as recorded in the respective INFRA databases. It does not include ML 1 roads because they are closed to motorized uses or authorized roads because they are not NF system roads managed or maintained for motorized uses.

The appellants contends ML 1 roads and unauthorized roads considered for motorized designation should be included in the baseline condition in order to be considered for inclusion in the action alternatives. When designating motorized uses under the TMR, FSM 7703.11 requires forests to use the travel analysis process outlined in FSM 7712 and FSH 7709.55 20 to consider the criteria in 36 CFR 212.55. The purpose of travel analysis is to identify proposed changes to the forest transportation system (FSM 7712.13) and should be based on the current inventory of NFS roads (FSM 7712.1). These changes include a variety of actions, including the closing or decommissioning of unneeded roads as well as the addition of needed roads to the NF road system and changes to how existing roads are used and managed.

A travel analysis was completed and identified some of those changes [PR 1796]. Additional changes to the existing road system were further identified in the action alternatives [PR 2527, pp. 13-30] and analyzed in the effects analysis [PR 2527, Chapter 3, pp 45-444]. Changes to the road system are described in the alternative descriptions in the FEIS summarized in Table 5 [PR 2527, pp. 19-25]. These changes include adding authorized roads, including decommissioned to the system, opening closed roads, closing open roads.

The Travel Management Rule allows the responsible official to incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating NFS roads, trails, and areas on NFS lands for motor vehicle use (36 CFR 212.50(b)). Therefore, existing roads or trails that are designated as maintenance level 1 (ML1) closed roads and decommissioned roads are not considered part of the existing open motorized system in Alternative B and are not shown on the Alternative B maps. Although they are not shown, it does not preclude the Forest from considering these routes during the NEPA process. The existing miles of designated road system that are not being closed or changed are not included in the proposed action; only the changes to the transportation system are included [PR 2527, p. 5]

Having complete information on the condition and motorized use of every mile and acre is not relevant to effectively analyzing the reasonably foreseeable impacts on the human environment. The general effects of the existence and use of routes and off-road travel on natural and cultural resources are well documented and presented in each section of Chapter 3 [PR 2528, p. 612]. The TMR also does not require agencies to have a complete inventory of routes before completing the designation process [PR 0029, p. 68289].

40 CFR 1502.22 addresses unavailable or incomplete information. The agency shall include a statement in the impact statement that there is (1) unavailable or incomplete information, (2) the relevance of the incomplete or unavailable information to evaluating significant adverse impacts, and (3) a summary of credible scientific evidence that is relevant to evaluating such impacts, and the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

The Forest acknowledged that it does not have complete information on the condition and level of use of its forest system roads and trails, unauthorized routes, or motorized cross-country use. Collecting that information over the entire forest system of routes, an unknown amount of unauthorized routes, and the entire National Forest System lands would be exorbitant and time consuming. Where data sources did not clearly indicate that they were missing or incomplete in the DEIS, will be clarified in the FEIS and specialist reports per 40 CFR 1502.22 – “Incomplete or unavailable information” [PR 2528, p. 612].

With the forest being open to cross-country travel, there are an unknown amount of miles of unauthorized (user-created) routes that exist across the forest and within roadless areas. The Forest acknowledged through public input over the years, many of the routes were surveyed and recommended for inclusion in the Travel Management process. A full inventory across the Forest was not completed and per direction, the Forest does not have to inventory these routes. The Forest's interpretation of the existing condition as being that shown in the INFRA database

(Maintenance Level 2 through 5 roads and motorized trails) precluded displaying the routes provided by the public as part of alternative B. Due to the forest being open to cross-country travel the entire acreage (approximately 2.44 million acres) of National Forest System land outside of wilderness and other areas restricted to off-road vehicles was used for Alternative B during assessment of all possible motorized activities off of the motorized system [PR 1865, p. 44]. The Forest also acknowledged that the entire acreage was not available for use by motor vehicles. So, the miles of unauthorized routes inventoried and not inventoried; maintenance level 1 closed; or decommissioned routes being used were included in the acreage and assessed there. Changes to the motorized system in the action alternatives were consistently compared to the base number developed in Alternative B [PR 2528, pp. 664-666]

The ROD [PR 2526, p. 3] documents the FEIS uses the best available science, and, where appropriate, acknowledges incomplete or unavailable information. The use of best available science is evidenced by the extensive literature citations in the FEIS [PR 2527, pp. 469-504]. Assumptions and methodologies are listed within each resource area of the FEIS, [PR 2527, pp. 46, 63, 86, 90, 166, 195, 233, 264, 381, 402, 411-413, and 443] and each of the resource specialist reports; 6th code Watershed, Soils and Aquatics Cumulative Effects Analysis [PR 2508], Final Roads Report [PR 2513], Final Watershed and Soils Specialist Report [PR 2514], Final Recreation Report [PR 2516], Recreation-Inventoried Roadless Areas and Wilderness Study Areas Report [PR 2517], Final Air Quality Specialist Report [PR 2518], Final Wildlife Report and Biological Evaluation [PR 2519], Final Invasive Species Specialist Report [PR 2520], Final Social and Economic Report [PR 2522], Aquatic Specialist Report [PR 2522], Final Cultural Resources Specialist Report [PR 2523], and the Final Sensitive Plant Species Report [PR 2535].

The TMR does not presume the designation of previously disturbed areas [PR 0029, p. 62274]. When making travel management decisions such as adding a route to or removing a route from the forest transportation system, or decommissioning a route agency policy allows forests to use previous decisions as a starting point for proposals to change travel management decisions. It requires appropriate environmental analysis to evaluate proposals to change existing travel management decision (FSM 7715.03).

The Forest shared its process for route designation [PR 0511-38], which is in compliance with the TMR. The process is also briefly explained in the response to comments: Many roads were visited on each district as part of the Priority 1 and 2 coarse filter inventory and stream crossing surveys. During development of the proposed action and the alternatives, an interdisciplinary team consisting of district rangers, resource specialists, and other field-going personnel systematically reviewed each road, trail, corridor and area one by one using the Forest GIS route information, natural and cultural resource information, other available land management information, and imagery [PR 2528, p. 612]. The Forest also received and considered site-specific input from the public [PR 2528, p. 738; PR 0511; PR 1079; PR 1082; PR 1084; PR 1085]. The FEIS itself does not discuss each individual route that is proposed to be closed and why. However, information on specific routes can be found in the TAP and in the proposed action tables [PR 1796; PR 1283].

The appellants also contend the agency failed to disclose the methodology used to select some routes while discarding others. The forestwide coarse and fine filters used in the TAP to identify roads that have potential to negatively impact stream systems and watersheds are described in Chapter 2 of the TAP [PR 1796, pp. 11-14, 17-18]. Specific recommendations for changing the existing road system based on the filters and criteria in the TAP are in Appendix L. These recommendations are supported by the notes for each road that are in the forestwide spreadsheet in Appendix L. The spreadsheet contains all proposed action codes and road specific notes for each district on the forest [PR 1796, Appendix L].

The filters in the TAP explain the methodology and the road specific notes in Appendix L explain the reasons for why roads were or were not proposed for motorized use in the proposed action. In addition, the Forest held approximately ten proposed action open houses from Sept 19-Oct 3, 2009. The Forest provided proposed action road tables by district at the open houses. The road tables provide a proposed action and detailed notes for all roads by district [PR 1284]. The notes provided for each road offer specific reasons as to why a road was or was not proposed for motorized designation.

Finding: The No Action Alternative complies with law, regulation, and policy. The Forest followed direction in the TMR and agency policy by establishing the baseline condition as the existing open road system then analyzing proposed changes to that baseline. The Forest used a travel analysis and a detailed Roads Specialist report that complied with agency direction to identify the existing condition and to tightly focus on motorized use designations in the analysis. The FEIS is in compliance with CEQ regulations and with the TMR. The methodology for how any specific closure was decided was disclosed to the public.

F. Alternatives – Preferred/Selected Alternative

Contention 1.F.1: In their comments on the DEIS, the appellants contended that the preferred alternative did not flow reasonably from the disclosures made within the DEIS because the agency did not identify unacceptable natural resource impacts yet the preferred alternative closed over three thousand miles of routes. The appellants contend the decision also does not flow rationally from the evidence provided in the FEIS [Appeal, p. 38].

Response: The appellants contend that the preferred alternative did not identify unacceptable natural resource impacts yet closed over three thousand miles of routes. The preferred alternative is defined as “the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors...It is identified so that agencies and the public can understand the lead agency's orientation,” (CEQ 1979, 40 Most Asked Questions). The proposed action and the preferred alternative are not necessarily the same. The EIS must be objectively prepared and not biased so as to support the choice of the preferred alternative over any others. Regulations at 40 CFR 1502.14(e) address alternatives, including the proposed action: “Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.” A preferred alternative must be identified in the DEIS, if there is no preferred alternative at that time, it must be identified in the FEIS.

Public input was used to develop the proposed action and the alternatives. The Gila National Forest held a series of travel management workshops in 2008. Federal, State, County and local agencies/governments and the public were invited to review and provide input on a draft proposed action [PR 0502; PR 0504-0509]. Those comments were used to develop a final proposed action [PR 1240], which was made available for public comment at the start of the scoping phase in 2009 [PR 1189]. No other alternatives were presented to the public during the scoping period.

After the scoping period, the Forest developed five action alternatives (Alternatives C, D, E, F, and G). Alternative A was the proposed action, and Alternative B was the no action. Alternatives C-G were developed to address significant issues identified from public comments as well as comments from other government agencies and elected officials [PR 1865, p. 13]. All of these action alternatives were first presented and analyzed in the DEIS [PR 1865, pp. 13-41], and Alternative G was identified as the preferred alternative [PR 1865, p. 23]. The DEIS was presented to the public in a series of meetings shortly after the Notice of Availability for the DEIS was published [PR 2047-01, p. 25 and PR 2047-18].

Alternative G was ultimately selected for implementation because it met the purpose and need, reflected the public response to the DEIS, and is a balanced effort to protect resources and provide for public access and continued forest management [PR 2526, pp. 3-6]. It combined elements from other alternatives to provide a mix of motorized and nonmotorized opportunities [PR 2527, p. v]. Richard Markley, former Forest Supervisor, had selected Alternative G as the preferred alternative because he believed it would fulfill its statutory mission and responsibilities of implementing the Travel Management Rule [PR 2528, p. 541].

The ROD recognizes that Alternative G provides "...for a system of roads, trails, and areas designated for motor vehicle use by class of vehicle and time of year as specified in the Travel Management Rule (rule)..." while "...minimizing adverse effects to natural and cultural resources ..." [PR 2526, pp. 3-5]. There is no indication of any violation of NEPA policy.

Finding: Stating the preferred alternative in the DEIS and FEIS met the requirements of 40 CFR 1502.14. The rationale for selecting Alternative G was thoroughly stated in the ROD. Public input was used to develop the action alternatives (C-G).

G. Alternatives – Range

Contention 1.G.1: The appellants contend that the Travel Management Rule prevents a complete range of alternatives and a rational assessment of ‘user conflict’ as required under NEPA. They claim that under TMR, reduction of ‘user conflict’ is always achieved by formulating alternatives which ban only the motorized user, because no other decision is allowed. The appellants conclude the restriction of decision options results in a severely distorted analysis that misinforms the decision-maker, restricts the allowed options, and prevents the decision-maker from selecting a rational and CEQ-compliant decision [Appeal, p. 62].

Response: CEQ guidance on range of alternatives is provided in the document *“Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations.”* The

phrase "range of alternatives" refers to all the alternatives discussed in environmental documents. It includes "reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them" [40 CFR 1502.14]. For an alternative to be reasonable, it must meet the stated purpose and need and address one or more issues.

The purpose and need of the project is to: comply with the TMR by providing for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use by vehicle class, and if appropriate, by time of year (36 CFR 212.51(a)); manage motorized vehicle use on NFS lands on the Gila NF in accordance with the provisions of the TMR and 36 CFR parts 212, 251, and 261; comply with 36 CFR 216.13, which requires that forests prohibit motorized vehicle use off the system of designated roads, trails, and areas (i.e., close the forest to motorized cross-country travel); amend the forest plan to comply with the TMR [PR 2527, pp. 4-5]. The alternatives are reasonable, because they meet the purpose and need, and address one or more issues [PR 2527, pp. 9-10].

The TMR requires the agency to consider user conflict when designating roads, trails, and areas. The TMR at 36 CFR 212.55(a) sets forth general criteria that must be considered by the responsible official in designating roads, trails and areas for motor vehicle use and specific criteria at 36 CFR 212.55(b) for designating motorized trails. In designating roads, trails and areas, the responsible official must consider "conflicts among uses of National Forest System lands." In designating trails for motor vehicle use, the responsible official must consider, with the objective of minimizing, conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and conflicts among different classes of motor vehicle uses of National Forest lands or neighboring Federal lands, and others [PR 0029, p. 68289]. Furthermore, the TMR regulations implement Executive Orders 11644 and 11989, both of which direct Federal agencies to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users on those lands, and to minimize conflict among the various uses of those lands [PR 0029, p. 68264].

The purpose of the TMR is to provide for a system of NFS roads, NFS trails and areas on NFS lands that are designated for motor vehicle use [PR 0029, p. 68289]—not to ban motorized use, as the appellant contends. The TMR recognizes that motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests—in the right places, and with proper management [PR 0029, p. 68264]. Since the alternatives were developed to meet the purpose and need of the project, to "manage motorized vehicle use on NFS lands on the Gila National Forest in accordance with the provisions of the Travel Management Rule" [PR 2527, p. 5], the alternatives do not "ban the motorized user," as the appellant contends.

Finding: The TMR requires the agency to consider user conflict when designating roads, trails and areas. The range of alternatives is in accordance with CEQ regulations.

ISSUE 2: The ROD violates the Travel Management Rule (TMR).

Contention 2.A: In their comments on the DEIS, the appellants stated: “The agency has not disclosed what specific previous decisions pertaining to route designations have been incorporated into the DEIS.” The appellants contend the agency’s response to this comment is inadequate because the agency fails to provide the whole “story” that the Final Rule makes clear about previous designations. There are certain and specific requirements contained in the Final Rule and the appellants assert that the agency has violated at least two: 1.) The administrative “decision” to designate the referenced roads was made without public involvement (the agency has provided no NEPA-compliant document that shows public involvement in the bulk designation of the OML-1 roads; and 2.) The agency is not adopting the previous designation without changes. Instead the agency is making changes (designating some of the OML-1 roads as open to motorized use) to their claimed “previous designation.” The appellants contend the agency is using this claim of previous designation to avoid providing the public with a true and accurate current condition (No Action alternative). The appellants contend the agency did not disclose this claim in the DEIS which deprived the public of its right to review and comment on it [Appeal, pp. 27-29].

Response: The travel management rule allows the responsible official to incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating NFS roads, trails, and areas on NFS lands for motor vehicle use (36 CFR 212.50(b)).

The appellants contend that previous decisions incorporated were not specifically disclosed. The DEIS described previously incorporated decisions as the existing miles of designated road system that are not being closed or changed [PR 1865, p. 5] and developed Alternative B as the no action alternative. Alternative B is the baseline from which all action alternatives are compared [PR 1865, p. iii] and is described in detail in Chapter 2 of the DEIS [PR 1865, p. 13-14, pp. 24-30]. The FEIS described previously incorporated decisions similarly and also clarified that ML 1 roads and decommissioned are not considered part of the existing open motorized system in Alternative B and are not shown on the Alternative B maps. [PR 2527, p. 5]. The existing system is described in detail in the TAP [PR 1796, pp. 9-10] and the Roads Specialist Report [PR 2513, p. 5].

The appellants also contend opening existing closed (ML1) is not an incorporation of previous decisions and that the public should have been given opportunity to review changes to existing closed roads. The action alternative includes actions that make changes to existing road system. These changes include adding authorized roads, including decommissioned to the system, opening closed roads, closing open roads. The various alternatives in Tables 5 and 8 of the FEIS display decommissioned and/or closed roads proposed to be re-opened or converted to motorized trails. The proposal to open/convert closed and decommissioned routes has been included in the analysis captured in the DEIS (see discussion titled “Reopening Roads” or “Adding New Roads to the System” on page 14 of the DEIS) [PR 2865, p. 665].

Specific previous decisions pertaining to route designations incorporated were disclosed in the both the DEIS and the FEIS through detailed description and displays of Alternative B. Through

the public involvement process, the public had opportunity to review previously incorporated decision included in Alternative B [PR 1865, p. i; PR 2527, p. 6].

Finding: Previous travel management decisions incorporated into the environmental analysis were disclosed through detailed descriptions and displays of the no action alternative. Through the public involvement process, the public was given an opportunity to review and comment on the no action alternative which as well as the proposed changes to the no action contained in the action alternatives.

Contention 2.B: The appellants contend the agency has not provided any disclosure of a methodology or analysis on a segment by segment basis of the routes considered for designation. The agency has not provided any disclosure of why each route segment is being proposed for designation or not being proposed for designation (results of an actual methodology and analysis) [Appeal, p. 55]. Lest the agency claim that Appendix L of the Travel Analysis Process (TAP) is that analysis, the agency has repeatedly claimed the TAP is not a NEPA document and only “informs” the EIS. The appellants contend that if that is so, both the EIS is clearly lacking the information that is required to be disclosed to the public.

The appellants also contend the TAP does not include the myriad of metrics that the EIS states were used in analyzing the segments for potential designation. The TAP only covers a few (road density, stream buffers) and provides no disclosure of methodology or results for numerous parameters considered as part of the “fine filter” [Appeal, p. 37; 55-56].

Response: The forestwide coarse and fine filters used in the TAP to identify roads that have potential to negatively impact stream systems and watersheds are described in Chapter 2 of the TAP [PR 1796, pp. 11-14, 17-18]. Specific recommendations for changing the existing system based on the filters and criteria in the TAP are in Appendix L. These recommendations are supported by the notes for each road that are included in the forestwide spreadsheet. The spreadsheet contains all proposed action codes and road specific notes for each district on the forest [PR 1796, Appendix L].

When designating motorized uses under the TMR, FSM 7703.11 requires forests to use the travel analysis process outlined in FSM 7712 and FSH 7709.55 20 to consider the criteria in 36 CFR 212.55. The purpose of travel analysis is to identify proposed changes to the forest transportation system (FSM 7712.13) and it should be based on the current inventory of NF roads (FSM 7712.1). Travel analysis may be conducted at a broad scale when used to inform decisions related to the designation of motorized uses (FSM 7712.1). Travel analysis provides a comprehensive view of the road system across a broad landscape. Some travel management issues are best addressed at a broad scale while some are best addressed at a smaller scale. The TAP process outlined in FSH 7709.55 allows for flexibility in scale of the TAP (FSH 7709.55 Ch. 13). The TAP conducted for this project was on a forestwide level to ensure consistency in data management and outputs, and to best utilize limited personnel and time [PR 1796, p. 3]. There are no requirements to conduct site specific analysis of roads when informing designations for motorized uses.

The TAP, while not at a road specific scale, was used to inform the NEPA process as required by agency policy in FSM 7700. The modified proposed action in the DEIS was based on the travel analysis that was completed in 2010 and well as comments received during the comment period [PR 1865, p. 5]. The DEIS disclosed the direct, indirect, and cumulative effects of the range of alternatives developed to meet the purpose and need and the issues identified early in the analysis [PR 2528, p. 727].

The appellants contend the agency has not provided any disclosure of why each route segment is being proposed for designation or not being proposed for designation. The filters in the TAP explain the methodology and the road specific notes in Appendix L explain the road specific reasons for why roads were or were not proposed for motorized use in the proposed action. In addition, the Forest held approximately ten proposed action open houses from Sept 19- Oct 3, 2009. The Forest provided proposed action road tables for every district at the open houses. The road tables provide a proposed action and detailed notes for all roads by district [PR 1284]. The notes provided for each road offer specific reasons as to why a road was or was not proposed for motorized designation.

Finding: Agency policy allows travel analysis that informs motorized designation to be conducted at a broad scale. The Forest completed a broad scale travel analysis and used the recommendations from that analysis to inform the NEPA process as required by agency policy. The Forest disclosed the methodology and road specific notes that explain why each route segment was proposed or not proposed for designation.

Contention 2.C: In their comments on the DEIS, the appellants stated: “The agency misrepresents OML 1 roads and decommissioned roads as ‘closed to travel by the public’ in the DEIS.” Their comment goes on to assert the statement is false because OML 1 roads are not closed to travel by the general public for a forest that is open to cross country travel unless the OML 1 road is closed to motorized travel by a special order. The appellants contend the agency response to their comment is nonsensical and that the error has been carried forward in the FEIS [Appeal, p. 42].

Response: When designating motorized uses for implementation of the TMR, FSM 7703.11 requires forests to use the travel analysis process outlined in FSM 7712 and FSH 7709.55 20 to consider the criteria in 36 CFR 212.55. The purpose of travel analysis is to identify proposed changes to the forest transportation system (FSM 7712.13) and should be based on the current inventory of NFS roads (FSM 7712.1). The TAP was used to inform the NEPA process as required by agency policy in FSM 7700. The FEIS disclosed the direct, indirect, and cumulative effects of the range of alternatives developed to meet the purpose and need and the issues identified early in the analysis [PR 2527, Ch. 3].

The existing motorized transportation system consists of roads that are stored in the INFRA database as existing” and operational maintenance level 2 through 5 [PR 2527, p. 2]. Operational Maintenance Level (OML) 1 road are roads that have been placed in storage between intermittent uses. The period of storage must exceed 1 year. Appropriate traffic management strategies are “prohibit” and “eliminate” all traffic. These roads are not shown on motor vehicle use map while being maintained at level 1, they are closed to vehicular traffic but may be

available and suitable for nonmotorized uses [PR 2527, p. 463 and FSH 7709.59 63.32]. OML 1 roads are not managed or maintained for vehicular traffic; therefore use of OML 1 roads is unauthorized use. An unauthorized road is a road that is not a forest road or a temporary road and is not included in the forest transportation atlas [36 CFR 212.1]. A decommissioned road is a road that has been removed from service [Infrastructure Application, Travel Routes Data Dictionary, pp. 6-40]. Since decommissioned roads have been removed from service, they are not a forest road and are not included in the forest's transportation atlas. Use of previously decommissioned roads is unauthorized use.

The Travel Management Rule allows the responsible official to incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating NFS roads, trails, and areas on NFS lands for motor vehicle use [36 CFR 212.50(b)]. Therefore, motorized roads or trails that are designated as OML1 closed roads and decommissioned roads are not considered part of the existing open motorized system in Alternative B and are not shown on the Alternative B maps. The nonsystem roads (i.e., decommissioned, unauthorized, etc.) will not be shown on the motor vehicle use map and may not be used for motorized travel [PR 2527, p. 5].

The appellants contend that OML 1 roads and decommissioned roads are misrepresented in the analyses and are being used. Use of OML 1 and previously decommissioned roads is an unauthorized use according to agency policy. The Forest does not have complete information on unauthorized roads or unauthorized uses. Collecting that information on an unknown amount of unauthorized routes on all National Forest System lands would be exorbitant and time consuming [PR 2528, p 612] and is not necessary for designation of motorized uses and is not required [FSM 7711.12 and FSM 7712.1]. A complete inventory of unauthorized routes would be very time consuming and expensive delaying completion of route designation [PR 2528, p. 621].

Once the designation process is complete, motorized use on unauthorized roads is prohibited (FSM 7715.78 and 36 CFR 261.13). There are no requirements in the TMR to reconsider previous decisions to decommissioning roads or to inventory unauthorized roads or estimate the amount unauthorized use on OML and decommissioned roads (FSM 7715.78).

Finding: The Forest followed agency policy by incorporating previous decisions to decommission roads and to consider use of OML1 and decommissioned roads as unauthorized uses.

ISSUE 3: The agency has violated the Freedom of Information Act (FOIA).

Contention 3.A: The appellants contend the agency failed to provide them with the project record index in a timely manner as requested through FOIA [Appeal, pp. 39-40].

Response: From January 2011 to July 2014, the appellants made ten FOIA requests pertaining to the Gila TMR. A total of seven of those requests were for specific records in the project record or the project record index. Three of the seven responses extended past the allowable 20 working days permitted by the FOIA. The FOIA, 5 U.S.C.§552, authorizes agencies to provide for a

“multitrack processing” of FOIA requests, which allows agencies to process requests on a first-in, first-out basis within each track. This also permits agencies to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records.

The FOIA allows a request to capture responsive records in existence on the date the search for records begins, unless the requester provides a specific timeframe. Therefore, if the project record index was not in existence at the time of the request(s), it could not be provided under the FOIA. However, in all instances the Gila NF provided the specific records the requester wanted even though the project record index had not been created.

Finding: The Forest complied with FOIA by providing the appellants requested documents. The project record index did not exist at the time of their requests; therefore, the Forest was not required to provide it.