

# Chapter 1: Purpose and Need, and Proposed Action

## 1.1 OVERVIEW OF CHANGES FROM THE DRAFT TO THE FINAL EIS

- General edits were made throughout the chapter.
- Table 1-2 was updated to include references to Climate Change.
- The Revised Statute 2477, Motorized Game Retrieval, and Motorized Cross-Country Areas were updated with new information based on updated Forest Service Manual and Handbook, and Regional guidance.
- The South Dakota State Law section was clarified to better describe the relationship between route designations and state motor vehicle law.
- The Maintenance discussion was moved to Chapter 2.

## 1.2 BACKGROUND

### 1.2.1 AGENCY TRAVEL MANAGEMENT PLANNING

Travel management planning, or management of roads and trails, has received increasing attention in the last decade within the Forest Service. This increased attention is largely the result of increased use of National Forests for recreation purposes. Increased forest visitation has led to concerns that much of this increased use is unmanaged and may be causing undesirable resource and social impacts.

One of the initial activities on the Custer National Forest (Forest) related to travel management planning was inventorying system and non-system routes. This inventory, conducted during 1999 and 2000, established a baseline for future analyses. This effort was specifically in preparation of the Northern Region (Region) of the Forest Service analysis of cross-country vehicle use. That analysis resulted in the Tri-State Off-Highway Vehicle Decision (2001 Tri-State OHV Decision) in 2001. The primary focus of the decision was restricting motorized vehicles to the use of existing motorized routes.

During this time, the Forest Service developed a national framework for conducting roads analyses. The Forest Scale Roads Analysis for the Custer National Forest (see Project Record) was completed in January, 2003 based on the above framework. The report highlighted potential impacts of roads and/or motorized access on wildlife, water quality, cultural resources; right-of-way issues; and potential changes to road management objectives. The key findings in the Forest Scale Roads Analysis report were considered in the development of this proposal.

In 2005, the Forest Service finalized the Motorized Travel Rule which outlined a process for motorized travel management planning to be used by all National Forests. The Rule requires distribution of a Motor Vehicle Use Map to the public for implementation of travel management decisions, which the Forest Service has committed to completing by the end of 2009. The Forest Service Manual and Handbook amendments that reflect implementation of the 2005 Motorized Travel Rule went into effect on January 7, 2009.

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### 1.2.2 DISTRICT TRAVEL MANAGEMENT SYSTEM AND PLANNING

The Sioux Ranger District (District) contains a network of system and unauthorized (non-system) routes. The District's system roads are generally a result of: (1) historic routes determined to be needed for management of the District; (2) roads developed or improved in conjunction with specific agency activities such as timber harvesting; (3) and access needs associated with permits.

The District initiated the current travel management planning effort in late summer 2007, distributed a scoping letter for the proposed action on October 22, 2007, and distributed a draft environmental impact statement (DEIS) for public review on September 26, 2008. A Notice of Availability in the Federal Register was published on October 3, 2008, which initiated a 45-day comment period. The proposal was developed in compliance with the 2005 Motorized Travel Rule, the Custer National Forest Land and Resource Management Plan (Forest Plan), and other related guidance. This Final Environmental Impact Statement (FEIS) incorporates information gained from past planning efforts, current agency guidance, specialist's input, and comments received from the public on the proposed action.

**National Forest System road or trail** – A forest road or trail that the Forest Service has determined is necessary for the protection, administration, or utilization of the National Forest System and the use and development of its resources, and identified in the forest transportation atlas.

**Unauthorized route** – A route that is not a National Forest System road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

### 1.2.3 FOUR THREATS TO FOREST AND GRASSLAND HEALTH

Former Forest Service Chief Dale Bosworth identified four key threats to maintaining and restoring the health of America's forests and grasslands: fuels and fire, invasive species, unmanaged recreation, and habitat fragmentation. The Chief noted specific concerns related to unmanaged motorized recreation and the creation of unplanned motorized routes, and the potential for these to have adverse impacts on natural resources. The 2005 Motorized Travel Rule was developed to address this concern. Chief Bosworth committed to implementing this rule by the end of December, 2009. Gail Kimball, current Forest Service Chief, affirmed the agencies commitment to meeting this timeline. This project is a part of that commitment.

### 1.2.4 ROADS ANALYSIS

The Forest completed the *Forest Scale Roads Analysis* in January, 2003. The report indicated that route density (system and non-system) on the District may be of concern in terms of impact on wildlife secure habitat (see Wildlife section of Chapter 3 for information on this topic). The report also highlighted cultural resource concerns with maintenance level 3, 4, and 5 roads on the District (see Cultural Resource section of Chapter 3 for information on this topic).

**Maintenance Level (ML) 1** – A system road in "storage" for future use.

**ML 2** – Typically a low speed, single-lane, native-surfaced, high-clearance vehicle road.

**ML 3** – Typically a low speed, single-lane, gravel-surfaced, passenger vehicle road.

**ML 4** – Typically a double-lane, gravel-surfaced road.

**ML 5** – Typically a double-lane paved road.

1.2.5 GENERAL LOCATION AND GEOGRAPHIC SETTING

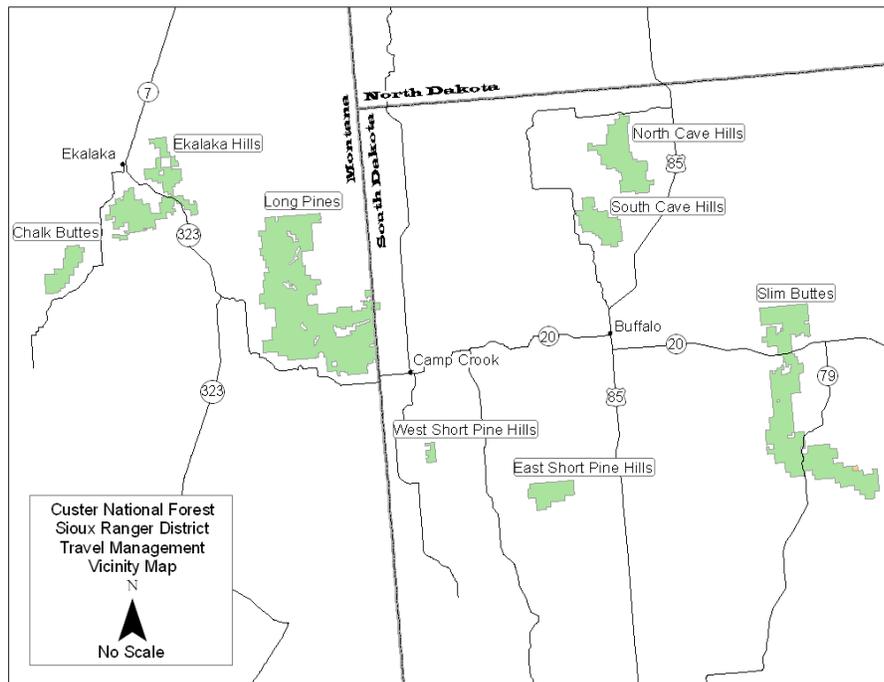
The District, situated in southeast Montana and northwest South Dakota, is composed of eight separate geographic units, which are also separate from any other National Forest System lands (see vicinity map below). These land units are often referred to as, “islands of green in a sea of rolling prairie”. This is an appropriate description as the District lands are hills or mesas of ponderosa pine rising above rolling grasslands. The District consists of approximately 163,107 acres of National Forest System land. The following table provides the names and acres for each of the land units.

**Table 1-1. Sioux Ranger District land units and acreages.**

Land Unit	Acres
South Dakota	
Slim Buttes	47,139
North Cave Hills	14,557
South Cave Hills	8,865
West Short Pines	1,269
East Short Pines	6,135
Montana	
Long Pines	70,969
Ekalaka Hills	22,707
Chalk Buttes	5,975

The District’s land units primarily border private lands, but also share a small portion of boundary with State of South Dakota, State of Montana, and Bureau of Land Management administered lands. Some private inholdings within the District exist, but are limited. The land units in South Dakota are within Harding County, while the land units in Montana are within Carter County.

**Figure 1-1. Vicinity map.**



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### 1.2.6 DOCUMENT STRUCTURE

This Environmental Impact Statement (EIS) discloses the potential environmental, cultural, social, and economic consequences of implementing alternatives to manage travel management within the Sioux Ranger District, Custer National Forest, Montana. The consequences of taking no action are also disclosed. This EIS, in conjunction with public comments, legal requirements, and existing management direction, will be used to establish travel management direction for the District.

**Chapter 1** – Purpose and need for the project, and the proposed action.

**Chapter 2** – Public involvement, issues, and alternatives.

**Chapter 3** – Description of the affected environment and environmental impacts of the alternatives.

**Chapter 4** – Project coordination, references, and those involved in preparation of the document.

**Chapter 5** – Response to comments.

This analysis is organized into five chapters and an appendices section. Chapter 1 identifies the reasons that the project is being conducted, legal requirements, and analysis parameters. Chapter 2 describes the public involvement, issues, and alternatives, including those not analyzed in detail. Chapter 3 presents the applicable affected environment and environmental consequences for each of the significant and other issues identified for this project. Chapter 4 describes the coordination conducted for this process and the individuals responsible for preparing the document.

Chapter 5 displays the Forest's response to public and agency comments to the Draft EIS. The Appendices incorporate additional material needed to more fully understand the analyses and alternatives.

This EIS has been prepared in compliance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations for implementing NEPA provisions (40 CFR 1500), the National Forest Management Act and its accompanying regulations, Forest Service Manuals and Handbooks, and applicable Department of Agriculture and agency guidance.

## 1.3 PURPOSE AND NEED

In December 2005, the 2005 Motorized Travel Rule took effect for all National Forest System lands (Appendix A). The new rule directs National Forests to designate roads, trails, and areas suitable for public motorized travel. The actions described in this document are part of the planning process to select routes for designation under the new regulation. National Forests are expected to complete the planning and designation process by the end of 2009. This commitment is displayed in the Chief's Schedule for Implementation of the Travel Management Rule for National Forests and Grasslands available on the internet at <http://www.fs.fed.us/recreation/programs/ohv/>. The Forest needs to complete travel management for the District to fulfill this commitment.

The purpose of travel management planning is to: 1) identify routes for public motorized use on the District, 2) provide for a mix of motorized and non-motorized opportunities, 3) minimize impacts on natural and cultural resources, and 4) have enforceable travel management decisions that meet the direction of the 2005 Motorized Travel Management Rule.

## 1.4 PROPOSED ACTION

The Forest Service is proposing to designate roads and trails available for public motorized use on the District in compliance with the 2005 Motorized Travel Rule. The existing *system* roads are considered the starting point for this analysis. Consequently, this proposal consists of proposed changes to system roads (also known as actions) that the Forest Service is considering. The proposal includes the following types of actions:

- Designate a system of roads and trails on the District for motorized public use.
- Designate the type of vehicle and season of use for each system road and motorized system trail.
- Change certain system roads to motorized trails or mixed motorized use roads.
- Change certain non-system routes to system roads or system motorized trails.
- Identify those system roads and non-system routes to be used for administrative use only.
- Designate dispersed vehicle camping along system roads and motorized trails.
- Change system roads for which there is no identified administrative, utilization, or protection need to Maintenance Level 1 system roads available for potential decommissioning in the future.

## 1.5 SCOPE OF DECISION TO BE MADE

### 1.5.1 DECISIONS TO BE MADE

The decision to be made is to designate a road and trail system on the District for public motorized use. In addition, some unauthorized (non-system) routes could be converted to system roads and motorized trails, and some system roads may be changed to system motorized trails. The type of vehicle and season of use would also be designated for each system road and motorized system trail. Dispersed vehicle camping distances or site specific restrictions would also be determined.

Existing Forest Orders that are not consistent with the decision made in the ROD would be rescinded and any new ones that are necessary for implementation of the decision would be issued.

### 1.5.2 DECISIONS THAT WILL NOT BE MADE

There were several subjects that commenters thought should be decided through this process, including cross-country game retrieval, exemptions for accessibility, changes to rights of access, decommissioning or obliterating routes, construction of motorized and non-motorized routes, and over-snow vehicle use. The Deciding Official has determined that these actions are outside the scope of the analysis for this process. Specific rationale related to the determination for cross-country game retrieval, exemptions for accessibility, and changes to rights of access determination can be found in section 1.6 Legal Framework.

## 1.6 LEGAL FRAMEWORK

The Forest Service must comply with laws, regulations, and policies in the management of the District. The Forest Plan is a part of the policy framework within which the Forest Service must conduct the analysis of District travel management planning. This framework also includes the laws, regulations, and policies that relate to travel management.

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### *1.6.1 AUTHORITY FOR TRAVEL MANAGEMENT PLANNING*

The Secretary of Agriculture's authority for travel management rulemaking, and regulating the use and occupancy of National Forest System lands are set forth in 16 U.S.C. 551; 23 U.S.C. 205; 7 U.S.C. 1011(f); 16 U.S.C. 551; E.O. 11644; E.O. 11989 (42 FR 26959); 7 U.S.C. 1011(f); 16 U.S.C. 460l- 6a, 460l-6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771; 7 U.S.C. 1011(f); 16 U.S.C. 460l- 6d, 472, 551, 620(f), 1133(c)-(d)(1), 1246(i).

### *1.6.2 EXECUTIVE ORDER 11644 AS AMENDED BY EXECUTIVE ORDER 11989*

Executive Order (EO) 11644 required federal land management agencies to establish policies and procedures for management of motorized vehicles on public lands to protect resources, promote safety of users, and minimize conflicts among uses. Executive Order 11989 amended EO 11644 with additional guidance on protecting resources when establishing policies related to motorized travel on public lands. The 2005 Motorized Travel Rule is the agency's implementation of these executive orders.

### *1.6.3 EXECUTIVE ORDER 13443*

EO 13443 requires federal land management agencies to consider the effects of agency actions on hunting, hunter participation, and wildlife habitat; work cooperatively with State and tribal entities on wildlife management; and consider programs and recommendations of comprehensive wildlife planning efforts. Chapter 3 discloses the effects of the proposed action on hunting, hunting participation, and wildlife habitat, and compliance with applicable species-specific and comprehensive wildlife management plans. Chapter 4 discloses consultation with State and tribal agencies regarding the proposed action.

### *1.6.4 2005 MOTORIZED TRAVEL RULE*

#### **1.6.4.1 Designation Criteria**

The 2005 Motorized Travel Rule requires consideration of the effects of designating roads, trails and areas on specific resources and components of travel management. The Rule states, "In designating National Forest System roads, National Forest System trails, and areas on the National Forest System lands for motor vehicle use, the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration." (36 CFR 212.55 (a))

The Rule also contains specific criteria related to designating trails and roads. For trails, it states, "In addition to the criteria listed in paragraph [a] of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing: (1) Damage to soil, watershed, vegetation, and other forest resources; (2) Harassment of wildlife and significant disruption of wildlife habitats; (3) Conflicts between motor vehicle use and existing or proposed recreation uses of National Forest System lands or neighboring Federal lands; and (4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands. In addition, the responsible

official shall consider: (5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and others factors.” (36 CFR 212.55 (b))

For roads, the Rule states, “In addition to the criteria in paragraph [a] of this section, in designating National Forest System roads, the responsible official shall consider: (1) Speed, volume, composition, and distribution of traffic on roads; and (2) Compatibility of vehicle class with road geometry and road surfacing.” (36 CFR 212.55 (c))

The effects associated with resources listed in the criteria identified above, are disclosed in this document for consideration by the responsible official. This disclosure of effects, in many cases, coincides with the disclosure of effects necessary for compliance with NEPA. However, the requirements of the 2005 Motorized Travel Rule do not supplant compliance with NEPA, rather the effects disclosure required by the Rule are in addition to that required by NEPA. The location of the effects disclosures for each of the criteria are listed in the following table. Because no designated motorized areas are proposed in any of the action alternatives, there is no discussion of criteria related to designation of areas.

**Table 1-2. Guide to Locating Criteria Considerations Identified in the 2005 Motorized Travel Management Rule**

<b>Rule Criteria</b>	<b>Location in Document</b>
<b>General</b>	
Natural Resources	Soils, Water, Vegetation, and Wildlife sections of Chapter 3; Air Quality and Climate Change in the Issues section of Chapter 2.
Cultural Resources	Cultural Resources section of Chapter 3.
Public Safety	Refer to Safety section below.
Provision of Recreation Opportunities	Recreation section of Chapter 3.
Access Needs	Refer to Access section below.
Conflicts Among Uses of National Forest System Lands	Recreation and Cultural Resource sections of Chapter 3; also refer to discussion below.
Need for Maintenance and Administration of Roads, Trails and Areas That Would Arise As a Result of Designation	Refer to Maintenance section in Chapter 2.
Availability of Resources for Maintenance and Administration	Refer to Maintenance section in Chapter 2.
<b>Trail Specific</b>	
Damage to Soil, Watershed, Vegetation and Other Forest Resources	Soils, Water, Vegetation, and Wildlife sections of Chapter 3; Air Quality and Climate Change in the Issues section of Chapter 2.
Harassment of Wildlife and Significant Disruption of Wildlife Habitats	Wildlife section of Chapter 3.
Conflicts Between Motor Vehicle Use and Existing or Proposed Recreation Uses of National Forest System Lands or Neighboring Federal Lands	Recreation section of Chapter 3.
Conflicts Among Different Classes of Motor Vehicle Uses of National Forest System Lands or Neighboring Federal Lands	Recreation section of Chapter 3.
Compatibility of Motor Vehicle Use with Existing Conditions in Populated Areas, Taking Into Account Sound, Emissions, and Others Factors	Generally not a concern - designated routes are generally not adjacent to populated areas on this District; also see Recreation section of Chapter 3 and Air Quality and Climate Change in Issues section of Chapter 2.
<b>Road Specific</b>	
Speed, Volume, Composition, and Distribution of Traffic on Roads	Refer to Safety section below.
Compatibility of Vehicle Class with Road Geometry and Road Surfacing	Refer to Safety section below.

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### ***Access Needs***

As required by the 2005 Motorized Travel Rule, access to National Forest lands was considered. The 1986 Forest Plan access objective is to provide at least one access point per five miles of administrative boundary where it has been determined that there is not adequate access from National Forest System land. There are some areas on the District that are not easily accessible by the general public, because private lands adjacent to the Forest as well as topographic features preclude access or roads/trails do not exist. Some additional access points have been identified outside of this process and, over time, access to the Forest may increase. However, the intent will not be to provide road/trail access to all areas on the Forest. Any access needs identified will be evaluated in a separate analysis from this project.

### ***Accessibility***

Special provisions aimed at providing people with disabilities motorized opportunities not available to all forest users have not been included in this proposal. In the comments and responses on the 2005 Motorized Travel Rule published on November 9, 2005 in the Federal Register, the agency states, “Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a Federal program that is available to all other people solely because of his or her disability. In conformance with section 504, wheelchairs<sup>1</sup> are welcome on all National Forest System lands that are open to foot travel and are specifically exempt from the definition of motor vehicle in § 212.1 of the final rule, even if they are battery-powered. However, there is no legal requirement to allow people with disabilities to use OHVs or other motor vehicles on roads, trails, and areas closed to motor vehicle use because such an exemption could fundamentally alter the nature of the Forest Service’s travel management program (7 CFR 12e.103). Reasonable restrictions on motor vehicle use, applied consistently to everyone, are not discriminatory”.

Similarly, in the comments and responses on the updated Forest Service Manual and Handbook travel management planning guidance published on December 9, 2008 in the Federal Register, the agency states, “Consistent with section 504, FSM 2353.05, and Title V, Section 507(c), of the Americans With Disabilities Act, wheelchairs and mobility devices, including those that are battery powered, that are designed solely for use by a mobility-impaired person for location and that are suitable for use in an indoor pedestrian area are allowed on all NFS lands that are open to foot travel. There is no legal requirement to allow people with disabilities to use motor vehicles on roads, on trails, or in areas that are closed to motor vehicle use. Restrictions on motor vehicle use that are applied consistently to everyone are not discriminatory. Generally, granting an exemption from designations for people with disabilities would not be consistent with the resource protection and other management objectives of designation decisions and would fundamentally alter the nature of the Forest Service’s travel management program (29 U.S.C. 794; 7 CFR 15e.103).”

The relative effects of the alternatives on forest visitors are addressed in the Recreation section of Chapter 3.

### ***Conflicts Among Uses of National Forest System Lands***

The 2005 Motorized Travel Rule requires consideration of conflicts among uses of National Forest System lands. The Recreation and Cultural Resources sections of Chapter 3 each address aspects of conflicts among uses, primarily among users, including effects of motorized activities on non-

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<sup>1</sup> A wheelchair is, “a device designed solely for use by a mobility impaired person for locomotion that is suitable for use in an indoor pedestrian area” (ADA, Title V Section 507 (c)).

motorized forest visitors and effects of motorized activities on uses associated with traditional religious and cultural practices. Conflict among other uses that may result from designation of system roads and trails, such as conflicts between motorized recreation and timber harvest activities, range management, and permit administration, were considered, but no substantive conflicts between these uses were identified.

### ***Safety***

The primary focus of public safety associated with route designation is mixing licensed and unlicensed vehicle use on District roads and trails. Commenters expressed an interest in having opportunities to operate unlicensed vehicles, while others have expressed safety concerns with permitting this activity. The 2005 Motorized Travel Rule lists public safety as one of the general criteria to be considered during the designation of roads, trails, and areas. The Forest Service believes that both mixed motorized use roads and motorized trails are legitimate and appropriate uses of the National Forests.

Public safety on Forest roads and trails depends on many factors including the condition of the facility, speed traveled, type of vehicles, human factors like driver expectations, and environmental factors such as weather, noise, and/or visual distractions. National Forest System roads are designed primarily for use by highway-legal vehicles (motor vehicles that are licensed or certified for general operation on public roads within the State) such as a passenger car or log truck. Motorized mixed use is defined as designation of a National Forest System road for use by both highway-legal and non-highway-legal motor vehicles. Currently all roads on the District require the use of highway-legal vehicles. No roads are currently designated as motorized mixed use.

Designating National Forest System roads for motorized mixed use involves safety and engineering considerations. A motorized mixed use analysis must be completed by a qualified engineer. The level of analysis is to be based on personal knowledge, expertise, and experience. During the analysis, the engineer will review crash probability and crash severity.

Designating system trails for motorized use does not require a motorized mixed use analysis. Trail use and characteristics, such as slower vehicle speeds than roads, generally indicate that crash severity and crash frequency are expected to be lower than for roads. Although the District does not have any motorized trails at this time, they are under consideration in this analysis. Motorized trails are common on many National Forests and nationally the Forest Service estimates that it has approximately 47,000 miles of motorized trails (USDA Forest Service, 2008).

It should be noted that designation of roads or trails for motor vehicle use by a particular class of vehicle under 36 CFR 212.51 should not be interpreted as encouraging or inviting use, or to imply that the road, trail, or area is passable, actively maintained, or safe for travel. Designation only indicates the types of vehicles that are permitted to be used on that route.

### **Montana State Law**

The Forest Service defers to state laws in regard to operation of vehicles on roads and trails. Montana laws related to roads fall under: Montana Code Annotated, Title 61. Motor Vehicles. Montana laws related to trails fall under: Montana Code Annotated, Title 23 Parks, Recreation, Sports, and Gambling, Chapter 2 Recreation.

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To operate a motor vehicle (highway-legal) on National Forest System roads, the vehicle must be registered with a valid license plate and the operator must possess a state drivers license and when operating a motorcycle must have a “motorcycle endorsement” on the license.

Montana state law does provide exemptions for use of non-highway-legal (aka off-highway or unlicensed) vehicles on National Forest System roads if the forest has designated and approved that road for such use (i.e. designated for motorized mixed use). The exemptions allow the operator of a non-highway-legal vehicle to be *under 16 years of age but at least 12 years of age* if at the time of driving the vehicle the operator has in their *possession a certificate* showing the successful completion of an off-highway vehicle safety education course approved by the State of Montana Department of Fish, Wildlife, and Parks and is in the *physical presence of a person who possesses a drivers license*.

Montana state law does not require that motor vehicles be licensed to operate on system trails, but if they are not licensed they must have an OHV sticker.

### **South Dakota State Law**

South Dakota laws related to public roads fall under: South Dakota Codified Laws Title 32, Motor Vehicles (SDCL 32-20). The State of South Dakota has determined that state motor vehicle laws apply to all Forest Service system roads open to the public. To operate a motor vehicle on National Forest System roads in South Dakota, the vehicle must be highway legal, i.e. the vehicle must be registered with a valid license plate. Operators must also be licensed.

The Code of Federal Regulations states that traffic on Forest System roads is subject to state traffic laws where applicable, except when in conflict with travel management designations (36 CFR 212.5(a)(1)). Consequently, mixed motorized use road designations, if included in the Record of Decision for this project, would “preempt” South Dakota state motor vehicle law.

South Dakota state law does not require that motor vehicles be licensed to operate on system trails.

### **Operator Responsibilities**

Operating a motor vehicle on National Forest System roads, National Forest System trails, and in areas on National Forest System lands carries a greater responsibility than operating a vehicle in a city or other developed setting. Not only must the motor vehicle operators know and follow all applicable traffic laws, but they need to show concern for the environment and other forest users. The misuse of motor vehicles can lead to the temporary or permanent closure of any designated road, trail, or area.

Users need to be aware of and comply with the following standard language found on the Motorized Vehicle Use Map per Forest Service policy: *“Operators of motor vehicles are subject to State traffic law, including State requirements for licensing, registration, and operation of the vehicle in question. Motor vehicle use, especially off-highway vehicle use, involves inherent risks that may cause property damage, serious injury, and possibly death to participants. Riders should drive cautiously and anticipate rough surfaces and features, such as snow, mud, vegetation, and water crossings common to remote driving conditions. Participants voluntarily assume full responsibility for these damages, risks, and dangers. Motor vehicle operators should take care at all times to protect themselves and those under their responsibility.”*

Much of the Custer National Forest is remote, and medical assistance may not be readily available. Cellular telephones do not work in many areas of the Custer National Forest. Operators should take

adequate food, water, first aid supplies, and other equipment appropriate for the conditions and expected weather.

#### 1.6.4.2 *Administrative Use*

In some situations, it is necessary and/or prudent for the Forest Service to identify a route for administrative use only. The most common situation on the District occurs when no right-of-way for public access exists, but access is needed to conduct administrative activities. In other cases, administrative use routes may be identified to reduce the potential for vandalism of facilities or to protect the public from health and safety concerns, such as potentially harmful mine waste.

Several scoping respondents expressed concerns about how travel management planning might impact their permitted use, or asked that exemptions or similar measures be included in this analysis for their permit activities. The 2005 Motorized Travel Rule Section 212.51(a) states that:

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

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

In other words, motorized use associated with permitted activities is exempt from the route designation process that is the subject of this analysis. Authorization for motor vehicle use for permitted activities, through a permit or another mechanism, is to be addressed separate from the designation process. That authorization must be “a written authorization issued under Federal law or regulations.”

Some scoping commenters were concerned that routes identified for administrative use only will provide permittees motorized access not available to the general public. These commenters would prefer that routes that are available for permittee use be designated for public motorized use so that everyone has the same motorized access. This approach is generally neither practical (i.e. the public may not have legal access) nor desirable (i.e. use of administrative routes to reduce the potential for vandalism) from a management perspective. However, motor vehicle use of administrative use routes is intended to be infrequent and only for specific, agency-approved activities required for administration, utilization, or protection of National Forest System resources.

Motor vehicle use may occur by personnel from the Forest Service or other agencies, such as state law enforcement or game management agencies, or those authorized to use the route “under a written authorization issued under Federal law or regulations.” Permit holders, such as utility companies, grazing permit holders, or outfitter/guides, are not automatically granted access to administrative use only routes. Their use of administrative routes must be specifically authorized in writing, must be necessary to conduct the activities authorized in their permit, must be for specific administrative routes, and may be limited to certain times of the year, as appropriate.

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### **1.6.4.3 Public Rights-Of-Way Access**

The 2005 Motorized Travel Rule states that, “In making designations pursuant to this subpart, the responsible official shall recognize: (1) Valid existing rights; and (2) The rights of use of National Forest System roads and National Forest System trails under § 212.6(b)” (36 CFR 212.55 (d)). This proposal is consistent with this direction. Furthermore, this proposal would not alter any existing authorizations for the use of routes on the District including, rights-of-way, road special use permits, operating plans, or special use permits. For example, this proposal does not contain actions that would alter the Forest Service’s commitment made in a road use permit authorizing a property owner to use National Forest System roads to access their private property.

### **1.6.4.4 Revised Statute (R.S.) 2477 Rights-Of-Way**

Commentors indicated an interest in the role of R.S. 2477 rights-of-way in this process. The 2005 Motorized Travel Rule exemption for legally documented rights-of-way held by State, county, or other local public road authorities covers rights-of-way under R.S. 2477 that have been adjudicated through the Federal court system or otherwise formally established. However, Congress has placed a moratorium on rulemaking concerning recognition of any unresolved R.S. 2477 rights-of-way claims. In addition, identification of unresolved R.S. 2477 rights-of-way is outside the scope of this project.

However, the Forest Service may, outside of this project, make a non-binding administrative determination as to the potential validity of an R.S. 2477 right-of-way claim for land use planning and management purposes. If the Forest Service identifies a potentially valid R.S. 2477 right-of-way claim through a non-binding determination, the agency will encourage the claimant to accept jurisdiction pursuant to an easement granted by the U.S. Department of Transportation (23 U.S.C. 317) or by the Forest Service under Section 2 of the National Forest Roads and Trails Act (FRTA) (16 U.S.C. 533) or to adjudicate the claim pursuant to the Quiet Title Act (28 U.S.C. 2409a).

### **1.6.5 MINIMUM ROAD SYSTEM (36 CFR 212.5(B)(1))**

This travel management planning process is expected to result in identification of the minimum road system necessary to meet the utilization (including recreation), protection, and administration needs of the District. Consistent with 36 CFR 212.5(b)(1), this process will involve the “science-based roads analysis” and “broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments” necessary for determining the minimum road system needed (see Chapters 2 and 3 of the EIS). In addition, the process is expected to result in the minimum “road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts....” Chapters 1 and 3 of the EIS identify consistency with the Forest’s land management plan and other statutory and regulatory requirements. EIS chapters 1, 2, and 3 disclose measures proposed to minimize adverse resource impacts and disclose the long-term funding expectations.

## 1.6.6 REGIONAL TRAVEL MANAGEMENT PLANNING GUIDANCE

### 1.6.6.1 *Motorized Game Retrieval*

The District is not proposing to designate any motorized game retrieval. In a June 30, 2006 letter to Forest and Grassland Supervisors, the Regional Forester for Region One of the Forest Service provided guidance that stated, “Travel off route for big game retrieval is not recommended and must have Regional Forester approval prior to initiating any proposals that consider off route use for this purpose”. No extraordinary circumstances were identified that warranted proposing motorized cross-country game retrieval on the District, consequently designation of motorized big game retrieval was not proposed in the DEIS.

Subsequent to distribution of the DEIS, the Forest Service issued a new Travel Management Manual (January, 2009) and issued a January 16, 2009 Regional Forester’s memo replacing the June 30, 2006 memo. The new Travel Management Manual states that, “The responsible official may include in a designation the limited use of motor vehicles within a specified distance of certain forest roads and forest trails where motor vehicle use is allowed, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken the animal (big game retrieval). The subsequent January 16, 2009 memo from the Regional Forester stated, “Decisions that include the use of motorized vehicles within a specified distance of designated routes for the purpose of big game retrieval should only be made after consulting with the Regional Forester.”

Big game retrieval on the District was reviewed following the issuance of this new guidance. Again, no extraordinary circumstances were identified that warranted proposing motorized cross-country game retrieval on the District, consequently designation of motorized big game retrieval is not proposed in the FEIS.

The use of non-motorized game carts for game retrieval would not be affected by this proposal.

### 1.6.6.2 *Motorized Cross-Country Areas*

In a June 30, 2006 letter to Forest and Grassland Supervisors, the Regional Forester for Region One of the Forest Service provided guidance that stated, “Designated areas should have natural resource characteristics that are suitable for cross-country motor vehicle use or should be so significantly altered by past actions that motor vehicle use might be appropriate”. Similar language was included in the January 8, 2007 Forest Service Travel Management Manual, “Areas should have natural resource characteristics that are suitable for cross-country motor vehicle use or should be so altered by past events that motor vehicle use might be appropriate. Examples might include sand dunes, quarries, the exposed bed of draw-down reservoirs, and other small places with clear geographic boundaries.”

The Forest Service did not identify any areas suitable for motorized cross-country use on the Sioux Ranger District based on this guidance. As a result, designated cross-country motorized areas are not being proposed as a part of this project.

## **Chapter 1: Purpose and Need, and Proposed Action**

### *1.6.7 1986 CUSTER NATIONAL FOREST LAND AND RESOURCES MANAGEMENT PLAN*

The Forest Plan directs management of all Forest Service administered lands within the Custer including the District. The Forest Plan provides both Forest-wide Management direction and direction for specific management areas. Forest Plan direction related to travel management is listed in Appendix B.

**- End of Chapter 1 -**