

**APPEAL TO THE REGIONAL FORESTER
ROCKY MOUNTAIN REGION
UNITED STATES FOREST SERVICE**

In the Matter of the June 28, 2010 Decision of Forest Supervisor Charles S. Richmond
of the Grand Mesa, Uncompahgre, and Gunnison National Forests
Regarding the Gunnison Travel Management Plan Record of Decision

**NOTICE OF APPEAL PURSUANT TO 36 C.F.R. PART 215.11 BY HIGH COUNTRY
CITIZENS' ALLIANCE, WILDERNESS WORKSHOP, QUIET USE COALITION AND
SIERRA CLUB – ROCKY MOUNTAIN CHAPTER**

I. Introduction

High Country Citizens' Alliance (HCCA) and the undersigned organizations respectfully appeal the June 28, 2010 record of decision signed by Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forest Supervisor Charles S. Richmond (the "ROD"), pursuant to 36 C.F.R. Part 215.11. HCCA and the undersigned organizations wish to acknowledge, and are greatly appreciative of, the Forest Service's efforts to develop a comprehensive Gunnison Travel Management Plan (TMP) that balances the diverse interests of the public with critical environmental concerns. However, we respectfully appeal the decision due to several inadequacies in the Final Environmental Impact Statement (FEIS) and ROD.

HCCA's mission is to champion the protection, conservation and preservation of the natural ecosystems within the Upper Gunnison River Basin. Many of HCCA's approximately 600 members live, work and recreate in the Gunnison Basin and have a vested interest in ensuring the continued integrity of wildlife, habitat, cultural resources and water resources as well as balanced recreation opportunities on Forest Service lands.

II. Argument

A. Failure to Respond to DEIS Comments and Inadequate Range of Alternatives

On June 3, 2009 HCCA submitted detailed, substantive comments to the Forest Service (USFS) regarding the agency's Gunnison TMP Draft Environmental Impact Statement (DEIS). That comment letter addresses specific trail designations and alternatives organized under the following topic areas: (1) Proposed Changes to Designations, (2) Additional Alternatives for Analysis, (3) NEPA Analysis Requested, (4) Comments on DEIS Alternatives and (5) Suggestions for the Proposed Alternative. With the agency's release of the FEIS, many of our comments were noted, addressed and analyzed. However, while the organizational structure of the FEIS made it difficult to determine whether specific public comments were addressed, we determined that at least ten of HCCA's route-by-route comments were not addressed by the agency. Below are the specific comments from HCCA's DEIS scoping comment letter that were overlooked by the agency in its FEIS and ROD:

Trail Number (Name)

400 (Brush Creek)

- "The MO designation found in all alternatives fails to consider a reasonable range of alternatives and fails to analyze impacts to soils from such a designation."
- "HCCA requests that at least one alternative in the FEIS analyze the impacts of a non-motorized designation and that the impacts of a motorized designation on soils and recreation opportunities be disclosed."

578 (McIntyre Gulch)

- "The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives."
- "HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative."

557 (Teocalli Ridge)

- “Parallel motorized routes exist adjacent to 557. Designating 557 as non-motorized will reduce user conflicts in addition to reducing erosion and degradation of this trail.”

549 (Cameron Gulch)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

495 (Left Hand)

- “All alternatives propose this trail for ATV use. We suggest that this status is inaccurate in the No Action alternative. Further, the lack of other potential designations fails to consider a reasonable range of alternatives.”
- “HCCA requests that a hiker and horse designation be considered in at least one alternative and that a mountain bike designation be considered in at least one alternative.”

427 (Gold Creek)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

578.2A (Sargents Mesa)

- “Further analysis is required in order to propose a change from Administrative to HC (high clearance). In addition, proposing a HC designation in all action alternatives fails to consider a reasonable range of alternatives. We recommend closure.”
- “HCCA requests that at least one alternative should consider closure of this route. If this route is proposed for inclusion in the travel system, it must be accompanied by additional, site-specific NEPA analysis.”

426 (Fairview)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

610 (Bear Gulch)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

478 (Fossil Ridge)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

Nowhere in the FEIS is there any indication that the USFS internalized and analyzed these comments and requests. In the FEIS there is no discussion whatsoever for trails 400, 557, 549, 495, 427, 578.2A, 426, 610 and 478. Comments on route 578 submitted by another entity are addressed by the agency with the following:

Route #578 is currently limited by the terrain and roughness of the road as it turns into a motorized trail. This is the current situation on the ground and there does not appear to be a need for change. Experience has shown that the northern end of road #578 is better suited for ATV travel than full-sized vehicles and the proposed location for transitioning the road to trail is a physically logical location (before it starts down into the canyon).¹

Juxtaposing HCCA’s comments on route 578 with the agency’s response above demonstrates that there are resource conditions on the ground impacting the ability of the route to support certain categories of motorized use, yet HCCA’s recommendations and concerns were not addressed in the response to the other commenter or in any other discussion of this route elsewhere in the FEIS or ROD.

Following the release of the FEIS, HCCA brought this oversight to the agency’s attention in comments submitted on May 28, 2010. Unfortunately, the ROD again ignored HCCA’s comments and made no effort to analyze trail designations based upon our recommendations and concerns. The two documents disregard legitimate resource impacts from motorized and mechanized uses, and also disregard suggested alternatives intended to minimize those impacts. The agency’s failure to acknowledge comments creates the appearance that numerous trail designations may have been pre-ordained, made without consideration of public input. Unfortunately, “the existence of a viable but unexamined alternative renders an environmental impact statement inadequate.”²

The National Environmental Policy Act (NEPA) “ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.”³ An agency preparing an FEIS must assess and consider comments both individually and collectively, and must state its response to all comments in the FEIS.⁴ 40 C.F.R. § 1503.4 states:

(a) An agency preparing a final environmental impact statement *shall assess and*

¹ United States Forest Service and Bureau of Land Management, *Final Environmental Impact Statement, Gunnison Basin Federal Lands Travel Management*, Appendix XX, 49 (2010).

² *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985).

³ *Marsh v. ONRC*, 490 U.S. 360, 371 (1989).

⁴ 40 C.F.R. 1503.4; see for example *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437 (4th Cir. 1996) (stating that agencies are required to respond to comments by explaining in the EIS why the comments do not warrant further agency response and by citing the authorities or reasons that support the agency’s position).

consider comments both individually and collectively, *and shall respond* by one or more of the means listed below, stating its response in the final statement.

Possible responses are to:

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.

- (b) 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.

Our concerns with this lack of analysis are not merely procedural. Rather, we worry that the agency has prematurely precluded an adequate range of alternatives from being considered for certain routes and failed to sufficiently analyze resource impacts. While we are aware of the agency's position that a full range of alternatives does not need to be created for every route on the Gunnison National Forest, public input that brings attention to deficiencies in that range should be addressed. Because the alternatives analysis is the "heart" of NEPA, "an agency must on its own initiative study all alternatives that appear reasonable and appropriate for study at the time, and *must also look into other significant alternatives that are called to its attention* by other agencies, or *by the public* during the comment period afforded for that purpose"⁵ (emphasis added). The Forest Service Handbook guides managers to "develop . . . alternatives fully and impartially . . . [and to] ensure that the range of alternatives does not prematurely foreclose options that might protect, restore, and enhance the environment."⁶ NEPA also requires that agencies "present complete and accurate information to decision-makers and to the public to allow an informed comparison of the alternatives considered in the EIS."⁷ The USFS failed in these mandates by not considering HCCA's legitimate recommendations. This failure has caused the agency to foreclose options that would protect, restore, or enhance the environment.

The decision to disregard HCCA's comments was arbitrary and capricious and in violation of NEPA. By ignoring these comments the USFS has opted to base a decision on incomplete information. This failure to respond is not a case of relatively insubstantial procedural imperfections. Rather, it is evidence of an agency decision that is not "based on a consideration of the relevant factors."⁸ This error in judgment precluded the agency and the public from a full understanding of the issues and impacts associated with numerous trail designations.

⁵ *Dubois v. Dep't of Agriculture*, 102 F.3d 1273, 1291 (1st Cir. 1996), quoting *Seacoast Anti-Pollution League, v. Nuclear Reg. Comm'n*, 598 F.2d 1221, 1231 (1st Cir. 1979).

⁶ Forest Service Handbook 1909.15 § 14.

⁷ *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813 (9th Cir. 2005).

⁸ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

Request for Relief

HCCA respectfully requests that the ROD be remanded to the GMUG to analyze and respond to our trail-by-trail comments. This includes the possibility that trail designations could be changed to reflect the additional information.

B. Dispersed Motorized Camping Policy

With the release of the ROD, the USFS has improperly authorized extensive dispersed motorized camping and failed to analyze the effects of its exemption allowing cross-country motorized use for dispersed motorized camping in certain areas. The ROD states:

[I]t is my decision that for the majority of the areas on the Gunnison National Forest the existing situation that allows for motorized travel off of designated roads, up to 300 feet on either side of the centerline of the road . . . for the sole purpose of camping will be continued. It is also my decision that for the 12 road corridors listed in the Final EIS (Pages 47-48) that the Forest Service will, in the future, designate road spurs off the designated open roads as open to public travel solely based on the need to provide access to appropriate and suitable camping areas.⁹

The 2005 Travel Management Rule provides for an exemption to the ban on cross country travel, but only for the “the *limited* use of motor vehicles within a specified distance of *certain* designated routes”¹⁰ (emphasis added). Moreover, this exemption cannot be imposed, as it is in the decision, without the proper NEPA analysis and an evidentiary basis provided in the record. Unfortunately, the USFS has failed to follow this direction to apply dispersed motorized camping “sparingly” and “on a route by route basis.” The agency has authorized the use of motor vehicles for dispersed camping on every designated route except for along 12 corridors, without regard to compliance with the 2005 Travel Management Rule and without completing the requisite environmental review of the direct impacts from this aspect of the decision.

There is an abundance of regulatory, manual and internal agency language, both regionally and nationally, that outlines clear criteria for dispersed motorized camping management. The USFS may not simply designate a blanket motor vehicle dispersed camping exception for all routes (or all but 12 routes, as is the case with the Gunnison TMP). Forest Service Manual 7710 (7715.74) provides:

2. The authority [to designate] should be *used sparingly to avoid undermining the purposes of the travel management rule* and to promote consistency in its implementation (emphasis added).

In 2006, Dale Bosworth, former Chief of the USFS, issued the following directive to agency staff:

⁹ United States Forest Service, *Record of Decision for Gunnison National Forest Travel Management*, 18 (2010).

¹⁰ 36 C.F.R. § 212.51(b).

The responsible official may include in the designation the limited use of motor vehicles within a specified distance of *certain designated routes* solely for the purposes of dispersed camping or big game retrieval. *Such designations represent site-specific decisions associated with specific roads and trails or road or trail segments, rather than a blanket exception to the rule.* Designations under 36 C.F.R. § 212.51(b) will be applied *sparingly* to avoid undermining the purposes of the rule and to promote consistency in implementation¹¹ (emphasis added).

The Forest Service Travel Management Directives reinforce the notion that the authorization of off-route motorized access to dispersed camping is to be a designation used sparingly, as opposed to a blanket exception to general prohibition on cross-country travel. With regard to the motorized dispersed camping exception, the preamble to the TMR states:

The Department expects the Forest Service to apply this provision *sparingly*, on a local or State-wide basis, to avoid undermining the purposes of the final rule and to promote consistency in implementation¹² (emphasis added).

The USFS Region 2 office has issued guidance which addresses the designation of dispersed camping sites. Former Deputy Regional Forester Greg Griffith made the following request in a April 16, 2007, letter to Forest Supervisors within Region 2:

I am writing to request each Forest Supervisor consider these recommendations in your travel management planning effort so that there is a standard approach towards consistency efforts by all Region 2 Forests and Grasslands. The recommendations are:

2. Forest Motor Vehicle Maps (MVUM) must clearly identify the roads and distance where off road motor vehicle use is authorized for dispersed camping ...so that the public understands the rules and regulations...
3. Over time, the long term goal for the Rocky Mountain Region's forests...will be to strive towards designating individual spur routes or dispersed camping sites. During future travel management planning efforts, forests...will identify those areas or locations where unacceptable resource damage is occurring or where there are opportunities to improve the recreation experience by designating individual dispersed sites. Forest Supervisors and District Rangers are charged with the responsibility of identifying and managing these areas in a manner that best meets the resource objectives of the area with consideration of their overall program of work and funding situation.

¹¹ Letter from Dale Bosworth, Chief of the USFS, to Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs and WO Staff, June 8 2006.

¹² 70 Fed. Reg. 68,264, 68,285 (Nov. 9, 2005); *see also* Forest Service Manual 7703.11(4).

Complimentary to the requirement that dispersed camping only be designated along discrete routes, agency policy mandates that the Forest “[a]pply the provision for big game retrieval and dispersed camping *sparingly after conducting travel analysis and appropriate site-specific environmental analysis and public involvement*”¹³ (emphasis added). The GMUG’s dispersed motorized camping policy does not adequately address or disclose the resource damage caused by unwarranted cross-country motorized travel associated with dispersed camping. An agency’s explanation of the basis for its decision must be documented in and supported by an administrative record, which includes a “rational connection between facts found and the choice made.”¹⁴ In this case, there is no evidence or analysis provided for the agency’s decision to allow widespread dispersed motorized camping. Neither is there any indication that the agency seriously considered the implications of this blanket exception for wildlife, wildlife habitat, or any other resource. Because the ROD’s dispersed motorized camping policy is based on an incomplete analysis of resource impacts (in violation of the requirements of NEPA to fully analyze and disclose the impacts from a selected action), and violates the Travel Management Rule regarding allowances for cross country motorized travel, it must be remanded back to the agency for correction of these deficiencies.

Request for Relief

HCCA urges the USFS to allow dispersed camping generally but to restrict motor vehicle travel for the purposes of dispersed camping according to a combination of the following options, as dictated by resource, safety and private property concerns:

- a) Forest visitors may park a motor vehicle within one vehicle length from the edge of the road surface when it is safe to do so and without causing damage to the USFS resources, and/or
- b) Motor vehicles may access signed campsites via designated spur routes that are signed and demarcated on a travel management map.

C. Carbon Trail Designation

HCCA and the undersigned organizations respectfully appeal the USFS decision regarding the motorized designation for Trail 436 (Carbon). Despite the fact that the DEIS’ preferred alternative indicated the trail would be reserved for hikers and horseback riders only, this route, which traverses the Whetstone Inventoried Roadless Area (IRA), was designated for motorized use in the FEIS and ROD. We can find no sufficient analysis in the FEIS or ROD that would warrant this change, besides justifying the decision as “based on . . . Forest Plan direction”¹⁵ and “preference by the public for maintaining existing conditions and keeping some traditional motorized trails open for public travel . . .”¹⁶ As outlined below, we disagree with these assertions, and without a more detailed explanation of the reasoning behind them, it is impossible for the public to know why the agency backpedaled regarding this designation. The USFS failed

¹³ FSM 7703.11(4).

¹⁴ *Bowen v. American Hospital Ass’n*, 476 U.S. 610, 626 (1986).

¹⁵ USDA Forest Service, *supra* note 1, at Appendix XX, 34.

¹⁶ *Id.* at 43.

to consider resource impacts, public input and applicable agency policy in changing the management directive for this route.

The agency neglected to address wildlife concerns and other resource impacts in its Carbon Trail designation. When evaluating the Whetstone IRA, the Colorado Division of Wildlife (CDOW) stressed its critical importance for elk, mule deer and lynx:¹⁷

14,170 acres in this IRA most of which contains elk production (calving area) and summer concentration area which is contiguous with summer concentration areas to the west and south in the West Elk Wilderness. A major migration corridor also crosses this area which currently allows migration to winter ranges south and west. IRA also contains lynx habitat and is adjacent to home ranges for several lynx. IRA provides important summer habitat for mule deer.

Given these important wildlife values, CDOW stated:

Concur with this IRA remaining *Semi-primitive Non-motorized and motorized travel occurring only on designated routes on the periphery on the IRA*. No new routes for motorized or mechanized travel should be designated within this IRA¹⁸ (emphasis added).

The USFS did not undertake a critical analysis of resource impacts that would be caused by the motorized designation. Input from the public drawing the agency's attention to negative environmental implications were given short shrift:

I have considered these assertions and find that the area's current wilderness character exists with motorized and mechanized use; and therefore, continued use should not change its character.¹⁹

An examination of the record belies this assumption. Nowhere in the record is there any indication of a hard look analysis that would support this statement. As such, the designation of Trail 436 as motorized is not based on substantial evidence and the agency did not take the requisite hard look when making this designation.

The agency also ignored significant public input on this issue and overemphasized comments from those seeking a motorized designation. The agency justifies its designation reversal, in part, by claiming it reflects public preference. Specifically, the FEIS Ch. 2, pg. 43 states:

The Preferred Alternative also incorporates the existing conditions for the Carbon trail (#436) from Ohio Pass area to the Kebler Pass road (CR-12), allowing motorcycles and non-motorized travel (including mountain bikes). The overall

¹⁷ Colorado Division of Wildlife, General Comments on Inventoried Roadless Areas in GMUG, 95 (2006), available at <http://wildlife.state.co.us/NR/rdonlyres/05FA7B35-B194-4CBD-AC3B-216093B31935/0/FieldRecommendationsSWRegionArea16forGMUGNFIRAs.pdf>.

¹⁸ *Id.* at 96.

¹⁹ USDA Forest Service, *supra* note 9, at 22.

miles of routes open for public travel would be slightly different than the DEIS Proposed Action, *but these changes reflect a strong preference by the public* for maintaining existing conditions and keeping some traditional motorized trails open for public travel” (emphasis added).

On the one hand, the USFS is purporting that this switch is a reflection of the public’s preference while, on the other, the response to site-specific DEIS comments shows that many individuals and organizations favor non-motorized, non-mechanized use in Whetstone IRA and along Trail #436.²⁰ We are aware that many members of the public have sent letters and comments to the Forest Service asking that Whetstone be managed for non-mechanized use. Among these is a letter from the Town of Crested Butte, submitted to the USFS in May 2009. In this letter, which is attached to this appeal as Attachment 1, the Town of Crested Butte voices its support for protecting the wilderness character in the Whetstone Roadless Area, thereby preserving the ability of the Whetstone area to potentially be designated as wilderness. An excerpt from the letter reads:

Underlying all the comments from the Town of Crested Butte are the following principles:

3. The ability to further the potential wilderness area in the vicinity of Whetstone Mountain and Carbon Peak should be preserved.²¹

Rather than furthering potential wilderness designation for the Whetstone IRA, the motorized designation of the Carbon Trail hinders its wilderness capability.

The Hidden Gems Wilderness Campaign is actively seeking designation of 16,060 acres of the area as a new Wilderness.²² With respect to IRAs and citizen-proposed wilderness, the Forest Service must evaluate two distinct types of effects resulting from the motorized travel plan. First, the FEIS must “disclose that significant roadless areas will be affected [under the motorized travel plan] and take the requisite ‘hard look’ at the environmental consequences of that fact,” including analyses of the plan’s effects on “water resources, soils, wildlife habitat, and recreation opportunities.”²³ “Roadless Area Characteristics” are “[r]esources or features that are often present in and characterize inventoried roadless areas, including:

- (1) High quality or undisturbed soil, water, and air;
- (2) Sources of public drinking water;
- (3) Diversity of plant and animal communities;
- (4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land;
- (5) Primitive, semi-primitive non-motorized and semi-primitive motorized classes of dispersed recreation;

²⁰ USDA Forest Service, *supra* note 1, comments Ss 209 through Ss219.

²¹ See Attachment 1.

²² See <http://www.whiteriverwild.org/p-130.html>.

²³ *Lands Council v. Martin*, 529 F.3d 1219, 1230, 1232 n. 7 (9th Cir. 2008); *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1078 (9th Cir. 1994); *Or. Natural Desert Ass’n v. Bureau of Land Mgmt.*, 531 F.3d 1114, 1137-38 (9th Cir. 2008).

- (6) Reference landscapes;
- (7) Natural appearing landscapes with high scenic quality;
- (8) Traditional cultural properties and sacred sites; and
- (9) Other locally identified unique characteristics.”²⁴

Second, the Forest Service must disclose the effect of designating routes in roadless areas on potential wilderness designation.²⁵ The “possibility of future wilderness classification triggers, at the very least, an obligation . . . to disclose the fact that development will affect a 5,000 acre roadless area” or a roadless area of “sufficient size as to make practicable its preservation and use in an unimpaired condition.”²⁶ Nowhere did the USFS disclose this type of analysis, leaving the public unable to determine if the agency evaluated resource impacts from this motorized designation. Agency decisions must “be supported by the facts in the record” and those facts must form “substantial evidence” to support the agency’s decision.²⁷ We see no substantial evidence to support this decision, and no substantial evidence to support the change in trail designation from non-mechanized in the DEIS to motorized in the ROD.

The USFS also failed to consider applicable agency policy in reverting to the motorized designation. Under the 1982 Planning Rule (and NFMA), Forests are required to evaluate potential wilderness area designations during forest plan revision.²⁸ The GMUG was actively engaged in this process, which culminated in the Draft 2007 Forest Plan. The Draft Plan contained wilderness recommendations based on the 2005 GMUG Roadless Inventory, including a wilderness recommendation for the Whetstone IRA.²⁹ The Draft GMUG Forest Plan specifically recommends 12,820 acres of the Whetstone IRA for wilderness designation.³⁰ Forest Service Manual 1923.03 states:

Any inventoried roadless area recommended for wilderness or designated wilderness study is not available for any use or activity that may reduce the wilderness potential of an area. Activities currently permitted may continue, pending designation, if the activities do not compromise wilderness values of the area.

However, the agency skirts this directive with the following statements:

I am fully aware of the details of recent Forest Plan revision considerations for this area. Those draft plan revision management objectives were not subject to public review and comment because the public was not afforded a full comment period. The Forest Service has never been able to gauge the public’s support or opposition to the draft Forest Plan revision (2007) that could have affected travel management decisions in the future. Therefore the current Forest Plan (1983 as

²⁴ 36 C.F.R. § 294.11.

²⁵ *Lands Council v. Martin*, 529 F.3d . 1219, at 1230 (9th Cir. 2008).

²⁶ *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, at 1078 (9th Cir. 1994).

²⁷ *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1575 (10th Cir. 1994).

²⁸ 36 C.F.R. § 219.17(a).

²⁹ USDA Forest Service, *Proposed Land Management Plan, Grand Mesa, Uncompahgre and Gunnison National Forests*, 93 (2007).

³⁰ *Id.*

amended) direction is still in effect.³¹

The Forest Plan management area prescriptions for this area include 2A, 2B, and 7A. The recreational travel objectives for these management area units all allow motorized travel. The 2A management area recreational opportunity objective is specifically designated as semi-primitive motorized recreation. The Carbon trail is the only travel route within this management unit, therefore it is the only travel opportunity that can meet this objective.³²

This 2A management designation mentioned above dates back to 1983, the year the current Gunnison Forest Plan went into effect. The management designation provides guidance, not a binding prescription, and allows motorized use, but does not require it. We question why the agency has relied exclusively on a nearly three-decade old forest plan to make a travel decision when there is pertinent, up-to-date analysis that the USFS could rely upon. We recognize that there are no formal proposals for new wilderness being promoted by the agency. However, to ignore the high quality research and recommendations associated with the Draft 2007 Forest Plan is to arbitrarily disregard existing information. While it did not go through a final public review, the Draft Plan nevertheless comprises a wealth of pertinent information, as well as recommendations based on extensive analysis of roadless areas contained in the 2005 GMUG Roadless Inventory. We direct the USFS to its travel analysis guidelines, which dictate that the agency

[d]etermine if any relevant analyses have already been conducted and if relevant data are available. Existing data and assessments should be used whenever they are accurate and available.³³

The Draft Forest Plan is based on data, analyses and assessments that are accurate and available. Such evaluations are planning-rule neutral, and reflect comprehensive, current analyses. In addition, such data is not dependent on public input. Instead of utilizing this resource, the USFS has chosen to disregard current analysis and wilderness evaluations by basing its decision exclusively on a 27-year old forest plan. To consciously ignore the agency's own wilderness evaluation in making forest policy or implementation decisions is arbitrary. The agency erred when it did not incorporate the 2005 GMUG Roadless Inventory and 2007 Draft Forest Plan in its analysis of the Carbon Trail.

USFS Region 2 has a standing policy not to allow non-conforming uses in recommended wilderness, and to phase-out non-conforming uses.³⁴ We are fully aware that the areas are not officially recommended under the current operating GMUG Forest Plan. However, by ignoring the Draft Forest Plan and the wilderness capability of the Whetstone IRA, the USFS is undermining its approach to wilderness management, with possible long-lasting ramifications for wildlife, ecosystems and quiet recreation. Legitimate resource concerns, significant public input,

³¹ USDA Forest Service, *supra* note 9, at 23.

³² USDA Forest Service, *supra* note 9, at 22.

³³ Forest Service Handbook 7709.55, Chapter 20.

³⁴ USDA Forest Service National Forest System Briefing Paper, *Management of Recommended Wilderness*, July 16 2007.

the Draft Forest Plan, agency policy and the DEIS recommendation that the Carbon Trail be non-mechanized all support a non-mechanized designation for this route. At the very least, we expect a more complete analysis and justification for the agency's reversal.

Request for Relief

Because of wildlife concerns, public input and maintaining the wilderness characteristics of the Whetstone IRA, HCCA respectfully requests that the Carbon Trail be designated non-motorized, non-mechanized, as it was in the Preferred Alternative in the DEIS. At a minimum, the agency must disclose the potential impacts that a motorized designation would have on wilderness qualities and roadless characteristics.

D. The Crest Trail Designation

HCCA and the undersigned organizations respectfully appeal the agency's decision to allow motorized use on the Crest Trail (531) from Monarch Pass to Marshall Pass. This popular trail is part of the Continental Divide National Scenic Trail (CDNST). Motor vehicle and bicycle use by the general public on the CDNST is prohibited, except where allowed by exception. Alternatives that allow motor vehicle use on the CDNST are inconsistent with the National Trails System Act, which states:

The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this Act shall be construed as authorizing the use of motorized vehicles within the natural and historic areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary.³⁵

Despite the intent of legislation that the CDNST be managed for hiker and horseback use only, throughout the TMP revision process the agency has consistently sought a mechanized or motorized designation for the Crest Trail. The USFS designated the Crest Trail as mechanized in the DEIS Preferred Alternative, then reverted to a motorized designation in the FEIS and ROD. The agency based its decision in large part on the lack of coordination between adjacent forests, overemphasizing this aspect while downplaying legitimate resource concerns and potential user conflicts. The ROD states:

Further, to make changes on those portions of the CDNST that are on the Gunnison National Forest has the potential to affect other trails on adjacent forests. A comprehensive CDNST travel plan does not exist; therefore, it is not possible to take a look at travel on the CDNST that takes into account adjacent forest's management. There may be a need to revisit travel designations on the CDNST if a comprehensive plan for the trail in this area is completed in the future.³⁶

³⁵ 16 U.S.C. § 1246(c) (2009).

³⁶ USDA Forest Service, *supra* note 9, at 25.

In fact, the *Continental Divide National Scenic Trail Comprehensive Plan* and FSM Policy direction became effective in 2009. The GMUG should be leading the way for environmentally sound and forward-looking management of the CDNST by implementing this Comprehensive Plan, rather than using the confusion that exists between the multiple managers of the CDNST as a shield for its poorly supported and environmentally harmful decision. Pertinent passages in the Plan state:

The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.³⁷

It is the intent of the Forest Service that the CDNST will be for non-motorized recreation.³⁸

Bicycle use may be allowed on the CDNST (16 U.S.C. 1246(c)) if the use is consistent with the applicable land and resource management plan and *will not substantially interfere* with the nature and purposes of the CDNST³⁹ (emphasis added).

Motor vehicle use by the general public is prohibited on the CDNST, unless that use is consistent with the applicable land management plan and:

- 4) Is on a motor vehicle route that crosses the CDNST, as long as that use *will not substantially interfere* with the nature and purposes of the CDNST;
- 5) Is designated in accordance with 36 C.F.R. Part 212, Subpart B, on National Forest System lands or is allowed on public lands and:
 - a) The vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, and the use *will not substantially interfere* with the nature and purposes of the CDNST or
 - b) That segment of the CDNST was constructed as a road prior to November 10, 1978⁴⁰ (emphasis added).

Specific Forest Service Manual direction regarding management of the CDNST echoes these prescriptions.⁴¹

Because management of the CDNST is within the scope of the TMP NEPA analysis,⁴² agency analysis must include the recognition of the CDNST direction contained in the *Comprehensive Plan* and FSM policy. Decisions to be made include deciding if bicycle⁴³ and motor vehicle⁴⁴

³⁷ United States Forest Service, *Continental Divide National Scenic Trail Comprehensive Plan*, 4 (2009).

³⁸ *Id.* at 3.

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 19.

⁴¹ Forest Service Manual 2300, Ch. 2350.

⁴² 40 C.F.R. § 1508.25(a).

⁴³ Forest Service Manual 2353.44b, paragraph 10.

⁴⁴ *Id.* at paragraph 11.

use will be allowed on the CDNST. The USFS made these decisions, but did so without providing sufficient analysis and justification. For example, the agency addressed motorized use with the following rationales:

For those other sections of the CDNST that would allow motorized travel, it has been determined that continuation of this type of use would not substantially interfere with the nature and purposes of the CDNST.⁴⁵

The existing use and modes of travel have not been shown to result in unacceptable levels of environmental impact and continued motorized use was supported in many of the public comments.⁴⁶

These statements are subjective and do not meet the scientific integrity requirements of NEPA.⁴⁷ Evaluations of “substantial interference” must be objective and based on the management objectives of the CDNST. The ROD’s Crest Trail designation violates and disregards the specific language in Section 7(c) of the National Trails System Act and directives in the *Comprehensive Plan* that generally prohibit motorized use on National Scenic Trails, and further prohibit motorized use when it will “substantially interfere” with the nature and purpose of the trail. There is no analysis in any of the TMP documents of whether motorized use will “substantially interfere” with the nature and purpose of the CDNST. The analysis and documentation to support a “not substantially interfere” determination are critical to the current and future management of the CDNST.

Pursuant to the 2005 Travel Planning Rule, in designating National Forest system roads the USFS is required to “consider effects on National Forest System natural and cultural resources, public safety, provisions of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads . . . that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.”⁴⁸ Perusing the DEIS, FEIS and ROD reveals no analysis by the agency that would support a motorized or a mechanized designation for the trail. HCCA and the undersigned organizations believe that continued motorized use would substantially and significantly hinder the nature and purposes of the CDNST, the experience sought by hikers and horseback riders on the CDNST, and wildlife habitat vitality. The agency’s lack of critical analysis of the impacts of motorized and mechanized use renders the designation moot.

Request for Relief

Because of resource impacts, user conflicts and the spirit and intent of the CDNST, HCCA respectfully requests that the Crest Trail be designated non-mechanized, non-motorized. At the very least, we request that the agency support any proposed designation for this route with evidence that it will not substantially interfere with the nature and purposes of the CDNST.

⁴⁵ USDA Forest Service, *supra* note 1, at 175.

⁴⁶ USDA Forest Service, *supra* note 9, at 25.

⁴⁷ 40 C.F.R. § 1502.24 states: Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon conclusions in the statement.

⁴⁸ 36 C.F.R. § 212.55 (2005).

E. Routes 578 and 578.2A

HCCA and the undersigned organizations respectfully appeal the high-clearance designation afforded routes 578 and 578.2A. The FEIS states:

[I]t has been confirmed that there is motorized access on the Saguache District leading up to road #578. The Preferred Alternative would continue to allow full-sized motorized travel on road #578 and #578.2A since that is the existing conditions [sic] and there were no adverse conditions anticipated with such use that would warrant closure.⁴⁹

An examination of the 2009 Saguache District MVUM confirms that there is no legal, open to the public, full-sized motorized access over the divide to route 578. A road over the divide from Road 855 or 860 on the Rio Grand National Forest (RGNF) has never appeared as open to public use (including the 1975 and 1996 Forest Visitor maps and the 1999, 2002 and 2005 travel maps produced in conjunction with Travel orders). We do not understand what type of confirmation the agency is referring to. The agency states that there is motorized access, yet this is not legal *public* motorized access. Examination of INFRA data from the RGNF shows that there is a timber road that extends up to the divide to connect with Road 578, but the operational and objective maintenance level of this road is ML 1: Closed.

Since there is no legal, public, full-sized vehicle access to 578 and 578.2A from the Gunnison District lands, and there is no legal, public, full-sized vehicle access to these roads from the Saguache District, the high-clearance designation for these routes is unsupported by any rational analysis. An agency's explanation of the basis for its decision must be documented in and supported by an administrative record, which includes a "rational connection between facts found and the choice made."⁵⁰ It is pre-decisional and improper to show a road system as open to a mode of use when there is no legal public access to it. This is problematic in that it may have effects on the closed route on the RGNF in any upcoming travel plan.

Request for Relief

HCCA and the undersigned organizations request that routes 578 and 578.2A not be open to full-sized vehicle use by the public. We ask that they be designated as administrative roads or closed.

III. Conclusion

HCCA and the undersigned wish to reiterate our support of the Forest Service's overall Gunnison Travel Management Plan. Given the complexity of the issues and time and resources committed to this document, we believe that its overall quality should be highlighted. However, for the reasons stated above, HCCA respectfully requests the Forest Service appeal Reviewing Officer to make the specific changes sought in this appeal.

⁴⁹ Appendix X, 120.

⁵⁰ *Bowen v. American Hospital Ass'n*, 476 U.S. 610, 626 (1986).

Respectfully submitted this 10th day of August 2010.

Sincerely,

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ATTACHMENT 1

May 28, 2009

Gunnison Basin Travel Management DEIS
2250 Hwy 50
Delta, Co 81416

Dear Gunnison Basin Travel Management Team:

On May 18th the Town of Crested Butte hosted a one hour work session and invited trail user groups to give presentations regarding the Draft Gunnison Basin Federal Lands Travel Management plan. Presenters included the Gunnison County Trails Commission, the Crested Butte Mountain Bike Association, the Elk Mountain Hikers Club and the High Country Citizens Alliance. A representative of motorized single track users was contacted, but had been out of town and did not attend.

Some of the presenters supported Alternative Three with some revisions, and some supported Alternative Four with some revisions. The purpose of this letter is to present comments from the Town of Crested Butte regarding the Draft Environmental Impact Statement for the Draft Gunnison Basin Federal Lands Travel Management plan.

Underlying all the comments from the Town of Crested Butte are the following principles:

1. The Gunnison National Forest, along with all other governments and agencies of governments, should be taking demonstrable steps to reduce carbon dioxide whenever possible. Therefore, the Town supports the alternatives with the fewest miles of motorized trails and roads and supports muscle powered trail use.
2. To the maximum extent possible, trails should be accessible directly from growth centers such as municipalities and CB South. In support of this principal, the Town contributed to the acquisition of the Lower Loop ten years ago, which accesses the Raggeds Wilderness Area at Oh-be-joyful Creek. Nine years ago the Town worked with a developer to create a trail access, direct from town, to the Upper Loop, now known as Tony's Trail. The Town is currently working to create access from the Town to Baxter Gulch and the Forest Service lands in the Whetstone/Carbon Peak area. We encourage the Forest Service to work with us to create more trails on Forest Service lands that can be accessed directly from town, without getting into an automobile to go to a trail head.
3. The ability to further the potential wilderness area in the vicinity of Whetstone Mountain and Carbon Peak should be preserved.
4. Our comments are limited to the vicinity of Crested Butte.
5. Surveys in the Town of Crested Butte always result in high rankings for trails.

The Town of Crested Butte supports Alternative Three with the following revisions.

1. The following trail should be open to cyclists:
 - a. Old Waterfall Creek trail on Travel Management Plan (TMP) map listed as #UT-7073 and #UT-7164, (This trail crosses a very wet area, and we ask that the Forest Service consider re-aligning the trail to keep it out of the wet area.)
 - b. Eccher Gulch Trail #559/558,
 - c. Green Lake Trail #566,
 - d. Farris Creek Trail #409, and we also ask that the Forest Service consider re-aligning the trail to keep it out of wet areas,
 - e. Old Trail #402 now UT-7736-1B,
 - f. Strand Bonus Trail #407
 - g. Teocalli Ridge Trail #557
 - h. Caves Loop, Trail #409
 - i. Reno Flag/Bear Trail, the section connecting #422 with #415.

2. Future new trails should only be built after a thoughtful process which considers the wildlife and other environmental impacts of proposed trails. Trails suggested by CMBA, which the Town agrees should be considered, include the following:
 - a. Lower Loop extension. This trail is located on the east side of Schuykill ridge from Gunsight Bridge to Pittsburg. As more and more people drive on the Slate River Road, this trail will become a safer route for cyclists and hikers.
 - b. Snodgrass #403. A single track trail from the Washington Gulch side of Snodgrass to #403 would separate automobiles from cyclists and be safer as automobile volumes increase.
 - c. Snodgrass Ridge Trail. This trail is shown on Alternative Four and would be a trail higher up on Snodgrass making it possible to make a loop out of this trail.
 - d. Snodgrass to Gothic. The traffic on the Gothic Road can be intense and the road is dusty. It would be safer to have a separate trail on the west side of the Gothic Road. Such a trail would also create a short loop for people riding from Mt. Crested Butte to Gothic and back on the road, when the road is not busy.
 - e. Ditch Road Trail. This trail would connect existing and proposed trails in the Town of Mt. Crested Butte with the trailhead on Brush Creek Road. We are aware that the existing trail near the trailhead has created some issues for Michele Veltri's ranching operation, specifically crossings of the irrigation ditch, and we ask that prior to creating such a trail around Crested Butte mountain, the issues affecting Mr. Veltri be resolved, first.
 - f. Strand Ridge Trail. This trail would allow riders to go from Strand to Farris easily for another loop.
 - g. The Crested Butte to Gunnison Trail. We support a trail connecting Crested Butte and Gunnison if an alignment can be found that does not affect the potential federal wilderness area in the Whetstone/Carbon Peak area.

3. Last, we generally agree with the Elk Mountain Hikers Club comments concerning dispersed camping. We recommend that designated camping areas be established by the Forest Service at specific sites within 300 feet of motorized roads, including high clearance and jeep routes. Access to these designated sites should also be by designated Forest Service routes, not users created routes.

We appreciate the opportunity to comment on the Draft EIS. If you have any questions please contact me or our Town Planner, John Hess at the above address and telephone number.

Sincerely,

Alan Bernholtz,
Mayor.