



October 28, 2009

Jennie O'Connor Card
Mount Hood National Forest
OHV EIS
6780 Highway 35
Mount Hood-Parkdale, OR 97041

Re: Draft Environmental Impact Statement, Off-Highway Vehicle Management Plan, including Forest Plan Amendment #17

Dear Ms. Card:

These comments are submitted on behalf of the BlueRibbon Coalition (BRC), a national non-profit trail-based recreation group, and are directed to the Mount Hood National Forest's Draft Environmental Impact Statement (DEIS) for Off-Highway Vehicle (OHV) Management Plan, including Forest Plan Amendment #17. This document shall not supplant the rights of other BRC agents and organizational or individual members from submitting their own comments and the agency should consider and appropriately respond to all comments received. On June 5, 2007, BRC submitted timely comments during the scoping process.

BRC has reviewed the DEIS and appreciates and supports the agency's effort to use the concepts of designating roads-to-trails, inclusion of user (non-system) routes in several of the action alternatives, proposed construction of new trails, and the designation of "areas" for OHV use. BRC understands the current management direction on the Forest which is basically OPEN for OHV use unless specifically prohibited. BRC has been generally supportive of the agency's correct use of Travel Management Rule to help it develop successful management prescriptions for the long-term benefit of both OHV recreation and the resource.

However, BRC strongly objects to the tone and direction in the DEIS of the preferred alternatives and associated new OHV-related land-use "policies."

GENERAL COMMENT

The primary flaw in the DEIS is the imposition of restrictions on all action alternatives through overly-aggressive “filters” in defining the project. Thus, over 2,000 miles of roads are effectively closed to non-street legal OHV use NOT through formal and site-specific evaluation, but through the broad-level determination (e.g. the purpose and need or “guiding principles”) applicable to every alternative. This same broad level guidance reflects a conscious policy to downplay or discourage OHV access to the Forest which is contrary to law and regulation, including the Travel Management Rule (TMR). At a minimum, the Forest must outline this approach and viable alternatives, including active and effective management of the existing OHV route network, so that such alternatives can be subject to meaningful public input and agency analysis before the Forest commits to a management strategy.

ISSUE ONE – New OHV Policies or “Guiding Principles”

NEPA requires that initial public scoping and the subsequent NOI/Proposed Action daylight to the public potential agency direction for the future management of OHV use.

TMR does not allow for the agency to use the travel process to develop programmatic directives or policies which should be appropriately and legally developed in a Forest Plan. However, the DEIS reflects these flaws and improperly restricts the range of management options and public input. BRC’s concern’s are based on the following **Guiding Principles** (DEIS iii)

Guiding Principles

- *The Forest will designate an OHV system that will set the stage for future access management decisions.*
- *The Forest recognizes that honoring relationships with other government agencies is a vital condition for the long-term success of managing OHV recreation on the Forest.*
- *The OHV system designated should reflect that the Mt. Hood National Forest is not a key OHV recreation destination in the Pacific Northwest.*
- *The safety of all visitors to the Forest, including motorized and non-motorized recreationalists, is an important consideration in designating OHV roads, trails and areas.*

Aspects of these **Guiding Principles** violate the TMR, which is designed to foster sustainable yet diverse opportunity for legitimate OHV-facilitated recreation.

ISSUE TWO – Conflict Between the NOI's Proposed Action/Purpose and Need and the DEIS's Purpose and Need/Proposed Action.

In the 2007 public scoping letter, the agency cited the following Purpose and Need:

NOI- Purpose & Need for Action: *“One purpose of this project is to designate routes for off-highway vehicle (OHV) use by class of vehicle (excluding over-snow vehicles) and time of year. Another purpose of this project is to determine where licensed motor vehicles will continue to be allowed*

to drive off roads to access dispersed (undeveloped) camping. By meeting these purposes, the Mt. Hood National Forest will comply with 36 CFR Parts 212, 251, 261, and 295 – Travel Management; Designated Routes and Areas for Motor Vehicle Use; Final Rule [Federal Register Vol. 70, No. 216 (2005)] for off-highway vehicle (OHV) use. The Final Rule states that we “must strike an appropriate balance in managing all types of recreational activities. To this end, a designated system of roads, trails, and areas for motor vehicle use established with public involvement will enhance public enjoyment of National Forests while maintaining other important values and uses of NFS [National Forest Systems] lands” (page 68265). This National Environmental Policy Act (NEPA) process will only address OHV use and motorized access to dispersed camping; subsequent NEPA processes may address broader access and travel management issues.

In order to comply with the OHV and motorized access to dispersed camping portions of the Final Travel Management Rule, there is the underlying need for:

- *Designating and/or constructing OHV routes and areas (as appropriate) within the identified six areas (see enclosed map) to provide recreation opportunities;*
- *Changing the current management direction in the Mt. Hood Land and Resource Management Plan to comply with the Final Travel Management Rule;*
- *Balancing recreation opportunities for OHV use with other recreational uses of the National Forest and resource sustainability; and*
- *Designating areas where licensed vehicles will continue to be allowed to drive off roads for the purpose of accessing dispersed camping.*

Proposed Action: *The Proposed Action will change OHV access through much of the Forest in order to meet the intent of the Final Travel Management Rule. The Proposed Action focuses on travel management within six proposed OHV areas and motorized access to dispersed camping (see enclosed map of overall areas). All National Forest System lands were considered by the Forest Service and members of the public during a two-year long dialogue with the public. The six areas that resulted from this dialogue provide a balance between providing recreational opportunities and protecting natural resources as required by the Final Travel Management Rule.*

Within each area, specific OHV routes are proposed by motor vehicle class, and new trails are proposed for construction where they would create trail loop opportunities. Through the NEPA planning process, the Forest Service will consider alternative OHV routes within each of the six designated OHV areas. OHV use would be allowed only on these designated routes.

The six areas proposed for OHV use are listed below.

- *McCubbins Gulch, Barlow Ranger District*
- *Rock Creek, Barlow Ranger District*
- *Gibson Prairie, Hood River Ranger District*
- *Bear Creek, Hood River Ranger District*
- *Peavine, Clackamas Ranger District*
- *LaDee Flats, Clackamas Ranger*

The enclosed maps represent the Forest Service's Proposed Action and include the following features.

- *Some roads identified in the Roads Analysis – Mt. Hood National Forest (2003) as decision roads (not needed for management purposes) would be converted to OHV trails and removed from the road system in order to improve the safety of all users.*
- *New OHV trails would be constructed within these six areas to connect existing roads and trails and to provide loop routes.*
- *Some decision roads would be proposed to be closed, if designating nearby routes would cause these roads to become a law enforcement or natural resource problem. Approximately 12 miles of roads are proposed to be closed.*
- *Mixed-use routes would be proposed in each area. Mixed-use routes allow OHV and licensed motor vehicles to use the same routes.*
- *Classes of motor vehicles allowed would be designated for all routes.*
- *An area within the Rock Creek OHV area would have some restrictions on camp fires and overnight dispersed camping.*
- *A staging area would be identified within each OHV area. The staging area would be a day-use area that serves as a trailhead for motorized recreation. McCubbins Gulch Campground would continue to be the staging area for this OHV area.”*

Against this backdrop, the DEIS announces a starkly different approach:

DEIS Purpose and Need - ... *Based on the public's input and NVUM data (see Section 3.1.1.), the Forest concluded that the area currently available for OHV recreation is disproportionate to current use and need. This disparity is compounded by the documented incompatibility of OHV and "quiet" recreation uses (Moore 1994). Therefore, the Forest's recreation niche, encapsulated above,*

captures the Forest's desire to offer only a moderate opportunity for OHV recreation in the future. The Forest is not striving to be known as a major provider of OHV recreation, or major OHV destination, even for the Portland/Vancouver Metropolitan area.

Achieving the desired balance between OHV opportunities and other recreation pursuits will be a delicate balancing act. To successfully protect lands and resources, while providing opportunities for the safe use and enjoyment of OHVs on designated roads, trails and areas, the Forest must manage OHV use in partnership with other government agencies, communities, and interest groups. Offering too few OHV route systems, or routes of inferior challenge and quality, could jeopardize the trust relationship that the Forest needs to earn and maintain with OHV interests. Offering route systems that rival or exceed (in length or level of challenge) those offered by the State's premier OHV destinations (for example, the Tillamook State Forest OHV Area or East Fort Rock); however, would not be consistent with the Forest's desired future condition. Therefore, the proposed action and the action alternatives were each designed using the following goals: (1) to provide a set of connected OHV routes, each robust enough to interest and challenge beginning and intermediate OHV users; (2) to not exceed the challenge offered by better-known OHV destinations available to the Portland/Vancouver OHV community; and, (3) to dedicate a majority of the Forest to "quiet" recreation pursuits."

It appears TMR has been illegally used to circumvent the rulemaking process in a Forest Plan by creating new "policies or directives" regarding OHV use outside of the Forest Planning process and that were not submitted for public review during the NOI stage. In comparing the two documents, please note there is no mention in the NOI of the potential closure of 2,000 miles of roads currently available for ATV use, rather, 12 miles of roads are cited that would be closed. In both qualitative and quantitative terms the Forest has dramatically changed the scope and nature of the plan. Assuming each approach is within the range of valid options, each should be presented to the public for input and the Forest should conduct site-specific analysis of each. Instead, by picking one approach over the other behind closed doors under the guise of "policy" or "purpose and need" the Forest has improperly constrained the process.

ISSUE THREE – Regional Road Directives that Close Existing Forest Roads to Historic OHV Use

Just as in Region 5, Forests in Region 6 seem to be restrictively interpreting or creating their own rules and regulations when it comes to the continued use of non-street legal OHVs on non-paved roads. Just as in California, Oregon state law allows for non-street legal OHV use on non-paved roads as cited in the DEIS below (Section 2.7.4)

"Current state law allows OHVs to operate on any road open to the public which is not paved. (For more information on current Oregon State Laws regarding Off-Road Vehicles; Snowmobiles; All-Terrain Vehicles go to:

<http://www.oregon.gov/OPRD/ATV/links.shtml>). Many gravel and native surface roads on the Forest meet these criteria and thus are open to OHV travel. Under this alternative, OHVs would be allowed to continue using all these roads. In addition, to these roads, other OHV trails may be considered as well.”

BRC believes the Forest Service is violating both the spirit and intent of the TMR by issuing travel plans that are essentially a blanket closure on roads used by non-street legal OHVs. These closures have nothing to do with addressing cross-country travel as outlined in the now infamous “4 Threats Speech” and is a disturbing national trend.

2004 - Four Threats Speech - <http://www.fs.fed.us/news/2004/speeches/01/idaho-four-threats.shtml>

BRC believes the agency has created a fatally flawed DEIS that is in conflict with NEPA/APA. It also violates the spirit and intent of TMR.

ISSUE FOUR -- The DEIS Bypasses Legally-Required Site-Specific Analysis in Transitioning to a Designated Route System

The proper relationship between Forest Planning and project planning is a topic of frequent discussion. In fact, the agency has frequently relied upon the “programmatic” or “general” nature of Forest Plan generation in dodging legal challenge to Forest Plan decisions. See, *Ohio Forestry Assoc. v. Sierra Club*, 523 U.S. 726, 737 (1998) (characterizing Forest Plans as “tools for agency planning and management”). A comparable situation was analyzed at length in *Center for Sierra Nevada Conservation v. Berry*, Case No. CV 02-325 (E.D.Cal.). The Court in that case summarized the procedural backdrop, including appeals decisions from the Forest Service Chief, as follows:

In a 1995 decision of an appeal by both the CSNC and ORV users, the Chief of the Forest Service (“Chief”) agreed with the ORV Users’ contention that the Forest Service failed to complete an adequate NEPA analysis before issuing the 1990 ORV Plan. The Chief ruled that the Forest Service had not considered the site specific impacts associated with restricting ORV use to designated routes and directed the Forest Service to complete the required NEPA analysis by November of 1997. AR Vol. 6 at 981. Specifically, the Chief ruled that the LRMP EIS is an inadequate substitute for an independent ORV Plan EIS because: “[T]here was insufficient environmental disclosure to implement a policy of ORV closures on the Forest when the 1990 ORV Plan was completed. This site-specific analysis is required at the point when an irretrievable commitment of resources is made. (*Sierra Club v. Hathaway*, 579 F.2d. 1162, 1168 (9th Cir. 1978)). Implementation with the 1990 ORV Plan was premature without site-specific rationale on the need for and effects of a closed, unless designated as open policy. AR Vol. 6 at 984.” Accordingly, the Chief directed the Forest Supervisor “to supplement the ORV Plan with environmental analysis that addresses reasonable alternatives to the proposed action, including the No Action alternative, for ORV use in General Forest management areas.” *Id.* at 983-84. A similar conclusion was reached in response to the appeal of the California Department of Fish and Game (“CDFG”).

There, the Chief concluded that: "The new ORV Plan incorporated the environmental analysis of the Forest Plan, but no further NEPA documentation was conducted. Because the designation of open travel routes or closed areas is a site-specific decision, the effects and rationale for that decision must be disclosed at the time there is an irretrievable commitment of resources and cannot be deferred. Sierra Club v. Hathaway, 579 F.2d. 1162, 1168 (9th Cir. 1978) However, we find no site-specific analysis to implement the 1990 ORV Plan. Therefore, the Regional Forester (through the Forest Supervisor) is directed to disclose the environmental consequences of the decision in the ORV Plan to restrict use to designated routes in General Forest areas. In particular, the environmental effects of increased concentration of use on open trails and the effect on visitor experiences should be addressed."

Order dated February 15, 2005 at 46-47. Particularly relevant here is the Court's analysis of whether the applicable Forest Plan could serve to support designated-route decisions:

As noted, the Forest Service tiered the 1990 ORV Plan to the LRMP's EIS. The LRMP is a plan that establishes standards and guidelines for the management of the Eldorado National Forest. See 16 U.S.C. § 1604. Such land use plans are "not ordinarily the medium for affirmative decisions that implement the agency's projections," rather, they guide the development of future, more detailed plans. Norton v. SUWA, 124 S.Ct. 2373, 2382 (2004). The LRMP FEIS did not analyze the programmatic environmental impacts of a designated-route-only ORV trail system in Eldorado, nor did it analyze the environmental impacts of any particular ORV routes in the Forest or of permitting travel off of designated routes.

While the LRMP's EIS does discuss the general impacts of the proposed 1990 ORV plan, it does not account for the specific impacts of the plan's actual implementation. As determined by the Forest Chief, the analysis of the proposed ORV plan may have been adequate for the LRMP itself, since, at that point, the closure of ORV areas and designation of trails had not yet occurred. As the Ninth Circuit has explained, "[w]hen a programmatic EIS has . . . been prepared, . . . site-specific impacts need not be fully evaluated until a 'critical decision' has been made to act on site development." California v. Block, 690 F.2d 753, 768 (9th Cir. 1982)(citing Sierra Club v. Hathaway, 579 F.2d 1162, 1168 (9th Cir. 1978)).

When the Forest Service implemented the directive of the LRMP by creating the 1990 ORV Plan, however, it was required to either create a new EIS or supplement the LRMP's programmatic EIS to account for the ORV Plan's specific requirements and procedures. The 1990 ORV plan contains a concrete plan and makes an irreversible and irretrievable commitment of resources throughout the Eldorado. Therefore, the Forest Service's duty under NEPA was not satisfied by tiering the ORV Plan to the LRMP's EIS.

Id. at 51-52. While the procedural context is slightly different here, the Forest seems poised on a similar mistake. The DEIS makes fundamental changes in the available system of routes without even attempting site-specific analysis of the widespread elimination of vehicle access *vis-à-vis* the status quo.

Based on these concerns, as well as those of our member organizations and individual members, we recommend the Forest do one of the following:

Remedy One: Withdraw the DEIS and issue a supplemental DEIS with the appropriate range of alternatives based on the original Purpose and Need/Proposed Action.

Remedy Two: Issue a modified Alternative 3 – based on the original Purpose and Need/Proposed Action - that incorporates the site specific comments of CGORA, OMRA, other OHV organizations and access interests that allows for non-street legal OHV use on a substantive number of roads historically used by recreationists.

BRC appreciates the opportunity to comment on this process and looks forward to working with the agency on a plan that benefits both OHV recreation and the resource.

Sincerely,

A handwritten signature in black ink, appearing to read "Don", with a long horizontal flourish extending to the right.

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