

September 28, 2020

Mark Foster, Shoshone Environmental Coordinator
Attention: Shoshone NF Travel Management Planning Project
Shoshone National Forest
808 Meadow Lane Avenue
Cody, Wyoming 82414
Via email: SM.FS.shonfcomment@usda.gov

Re: Comments on Shoshone National Forest Travel Management Plan Preliminary Environmental Assessment

Dear Mr. Foster,

Greater Yellowstone Coalition, Sierra Club, Winter Wildlands Alliance, Wyoming Wilderness Association, Wyoming Back Country Horsemen, WildEarth Guardians, Center for Biological Diversity, The Wilderness Society, Yellowstone to Yukon Conservation Initiative, and Defenders of Wildlife submit these comments on the Shoshone National Forest Travel Management Plan Preliminary Environmental Assessment (preliminary EA) that was released for public review and comment in July 2020. Our organizations have a long history of working with the Shoshone National Forest (SNF). Many of our organizations have been engaged in the Shoshone travel management planning process since 2015 and submitted scoping comments in 2016 and 2017. Prior to travel planning, many of our organizations also participated in the lengthy process that led to the 2015 Revised Land Management Plan (LMP). Our thousands of members in Wyoming and millions from across the country visit the SNF to recreate in all seasons, and they deeply value the wild character of this backcountry forest and the wildlife it supports. When it is completed, the Travel Management Plan (TMP) will directly affect our members' experiences on the SNF and the conservation values that our organizations work to support.

During the project's scoping phase, many of our organizations sent SNF officials letters outlining the Forest Service's (FS) responsibilities under the 2005 Travel Management Rule (as amended in 2015), including properly identifying the minimum road system under Subpart A and application of the minimization criteria required per Subparts B and C. These letters were intended to provide FS personnel with important information fundamental to travel management planning.

We strongly encourage you to acknowledge the many problems that have arisen, carefully review **all** of the many pre-scoping and scoping comments received from 2015-2017 and the preliminary EA comments you receive, and reconsider your approach. An Environmental Impact Statement (EIS) should be drafted that fully considers **all** of the very significant issues the public has

previously raised during pre-scoping and scoping, and that draft EIS should only be published for the public to review once the pandemic is behind us and it is safe to hold meetings and otherwise fully engage with people.

I. INADEQUATE OPPORTUNITIES FOR PUBLIC ENGAGEMENT AND COMMENT DURING THE COVID-19 PANDEMIC

On August 6, 2020, several of our organizations sent SNF Supervisor Lisa Timchak a letter requesting that the forest delay publication of the Preliminary Environmental Assessment (EA) due to the Covid-19 pandemic. This letter followed a virtual zoom meeting held earlier this summer with SNF Supervisor Timchak, Environmental Coordinator Mark Foster, and Resources Staff Officer Casey McQuiston, when we raised serious concerns about whether the public would be able to participate meaningfully in this comment period.

We were - and remain - deeply concerned that the public has not had adequate opportunities to engage in the comment period at this time. The last time the public engaged with travel management was at the end of 2017. People need time and dialogue to recall what was proposed during scoping two and a half years ago, and then translate that into fully understanding what is now being proposed in each of the three alternatives presented in the preliminary EA. Meeting in-person, looking closely at big maps, listening to other people's questions and answers, and having on the spot discussions is the most effective way for the public to conceptualize the many details and nuances of each alternative. Even with an extension of the comment period, Covid-19 made it unsafe for the FS to host such public interactions. Other hiccups complicated the public's ability to review and understand the preliminary EA and its supporting documents. For example, Appendix B table was misaligned leaving the public to either misunderstand, do extra leg work to understand, or give up trying. Appendix B is supposed to help explain the *where*, *what* and *why* of each alternative. Had the FS been able to hold public meetings in which staff themselves were referencing the document in real time as they tried to guide the public's understanding, this mistake could perhaps have been quickly rectified. Unfortunately, Appendix B was never updated with a correct version, nor was the public informed of the current version's inadequacies on the FS's website.

We do appreciate that forest officials attempted to provide a forum for public engagement through a series of webinars, in place of in-person public meetings. However, having participated in all three webinars, we concluded that these webinars did not offer a meaningful opportunity for public education or engagement, solidifying the concerns we have already discussed. It was difficult to ask questions and nearly impossible to clarify or follow up on points made or questions asked. There was no opportunity for meaningful back and forth discussion, which of course is a critical component of any effective public meeting. While we credit the FS for being

creative, we also hope the agency can admit this effort was not effective and acknowledge that the webinars were not an adequate substitute for in-person public meetings. Furthermore, those of us who requested follow-up meetings to get more information about issues that couldn't be addressed through the webinar format were denied this opportunity. In our previous experiences working with the FS, it has been extremely rare for the FS to deny reasonable meeting requests, especially during a public comment period. We also note that at least one of our groups was denied a request for a hard copy of the preliminary EA, although subsequent requests by others were granted. We are puzzled by and quite disappointed in this response from SNF officials.

It has been six years since this travel management planning process started, and as much as we would like to see the TMP completed, we are more convinced than ever that 2020 is not the year to do so.

II. LACK OF MEANINGFUL TRIBAL CONSULTATION

The FS is legally required to initiate formal consultation with Native American Tribes that are associated with these lands, including but not limited to the Apsaalooké (Crow), Arapaho, Bannock, Eastern Shoshone, Očeti Šakówiŋ (Sioux), Só'taeo'o, Tsétséhéstáhese, and Tsistsistas (Cheyenne). In addition to this profound legal duty, it is imperative that the FS go above and beyond normal public outreach activities to ensure that tribal members are aware of this project, are provided with meaningful access to all project materials, and are provided meaningful opportunities to engage. Neither of these essential duties - formal consultation with the tribes or robust outreach to individual tribal members - appears to have happened at all. The preliminary EA makes one statement that tribes were consulted (EA 4.1.1 p. 300), but no tribes are included in the list of key federal, state, and local entities that were consulted (EA 4.1.3 pp. 301-302). There is one claim of tribal consultation in Section 3.12, Cultural Resources, where the preliminary EA states:

The Shoshone National Forest regularly consults with tribal governments regarding projects authorized under the NHPA and the NEPA. Eleven different tribes from seven states have expressed traditional cultural, spiritual, or geographical interests in the Shoshone National Forest in the past. Each tribe will be sent a copy of the Shoshone National Forest Travel Management Plan Preliminary Environmental Assessment contemporaneous with its publication, with an invitation to comment and a Forest Service contact. (Preliminary EA p. 201)

Otherwise, no explanation is provided of how, when, or to what extent supposed consultation took place, and we were unable to discover any other mention of any interaction whatsoever with any tribal entity or individual in the preliminary EA.

We raised specific concerns, both during our June meeting and in our August follow-up letter, about the FS's ability to engage with the residents of the Wind River Reservation given the particularly difficult challenges that the Covid-19 pandemic has brought to tribal communities, Supervisor Timchak assured us that she had a plan for public outreach, one which included sharing thumb drives of the documents, providing hard copies of the preliminary EA to reservation communities, possible in-person meetings in Lander or Thermopolis, and perhaps other strategies. Concerned that Supervisor Timchak didn't fully appreciate the dire situation on the ground in Fremont County, we highlighted several realities facing reservation residents, including the strict stay-at-home order in effect, the lack of internet access and computer access for many residents, and frequent crowded living situations with multiple generations sharing homes. Meetings in Thermopolis or Lander (or even anywhere on the reservation, which neither of these towns are) would be impossible for reservation residents under stay-at-home orders to attend, and would be dangerous even if possible during the Covid-19 epidemic. As we have continued to speak with tribal members since that meeting in June, we have yet to find anybody contacted by Forest Service personnel, who was aware that hard copies of the preliminary EA were available, or how to get them. We have seen no evidence that outreach to reservation communities, individuals, or tribal leaders was accomplished.

Simply notifying tribes that the preliminary EA is available for public comment is not meaningful consultation. Presenting a one-time invitation to participate in government-to-government consultation (if the FS even did that, which is not known) without providing financial resources or other support that would help tribes participate, nor providing sufficient time for internal tribal decision-making related to the consultation, is not even remotely adequate for meaningful consultation. Given the federal government's track record with other large projects on public lands¹, it seems likely that this project's tribal consultation process, if it occurred at all, was superficial and did not offer any opportunity to meaningfully influence the outcome of the FS's National Environmental Policy Act (NEPA) decision-making, but instead merely ticked a box on a checklist. However, without meaningful tribal consultation, it will be virtually impossible for the FS to include traditional ecological knowledge that could help the FS achieve more sustainable land management practices on the SNF. Improving the sustainability of the FS's land management practices would benefit not only tribes, but also the American people as a whole. Therefore, the FS should explain how government-to-government consultation for

¹ Comments of the Northern Arapaho Tribal Historic Preservation Office Regarding Federal Consultation on Decision Making for Infrastructure. November 7, 2016.
<https://www.bia.gov/sites/bia.gov/files/assets/as-ia/raca/pdf/idc2-055440.pdf>.

this project was meaningful, and if meaningful consultation did not occur (as seems likely), then the FS must step back and accomplish this essential step of the process before proceeding further.

III. INCOMPLETE STATEMENT OF PURPOSE & NEED

Statement of Need

The preliminary EA (pp. 11-12) describes the need for travel planning as:

- **To achieve multi-use goals for a discrete population of recreationalists.** The Travel Management Planning Project intends to address the increasing demand for motorized routes for a growing recreational group on the Forest, including providing opportunities for motorized loop routes.
- **To ensure a fiscally sustainable motorized route system.** Budgets over the past decade have caused the Forest Service to evaluate how it can safely, efficiently, and sustainably manage a road and trail system on the Shoshone National Forest that meets the diverse needs of the public. Ensuring a safe and efficient travel system remains a central focus of this planning project, and any outcome will incorporate these considerations.
- **To reduce adverse impacts to resources.** Existing use of some system routes can raise resource issues. These resource issues can involve hydrologic resources, wildlife resources, and potential user conflict. This process intends to address these issues to arrive at a motorized route system that provides access and opportunity for use while minimizing adverse environmental impacts, consistent with 36 C.F.R. part 212.
- **To meet direction from the 2015 Revision to the Land Management Plan.** The Record of Decision from the 2015 Revision to the Land Management Plan directed the Forest Service to conduct a Travel Management analysis for the Shoshone National Forest. This process will fulfill this direction.

Need 1

The preliminary EA's first Statement of Need should be modified as follows:

- **To achieve multi-use goals for a discrete population of recreationalists.** The Travel Management Planning Project intends to address the increasing demand for motorized routes for a growing recreational group on the Forest.

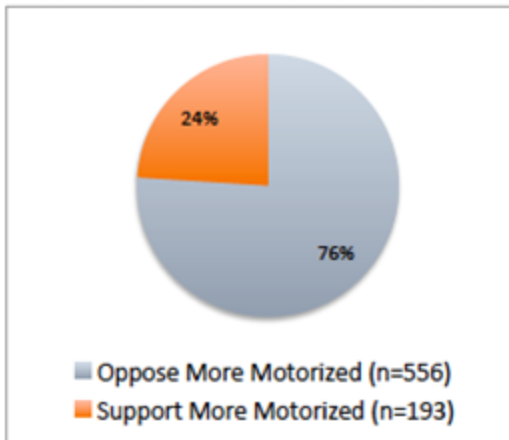
The final phrase, "including providing opportunities for motorized loop routes" should be eliminated. While we agree that addressing "the increasing demand for motorized routes for a growing recreational group on the Forest" is an essential component to designing and implementing a successful TMP and is correctly identified as a need for this project, we strongly contend that an expressed desire by some users for additional motorized loop opportunities can

be appropriately characterized by the FS as an actual need for this project. Although the draft EA (p. 9, Table 57 and 58 p. 86) points to the 2015 Revised LMP goal, “A variety of wheeled motorized trail loops are provided for riders of different abilities. (RDTR-GOAL-04)”, and objective, “At least three new, wheeled motorized trail loop opportunities are available. (RDTR-Obj-05)”, it is disingenuous to suggest that the outcome of the 10-year process to revise the Management Plan provides rationale for including more motorized loop opportunities as a true need of the SNF.

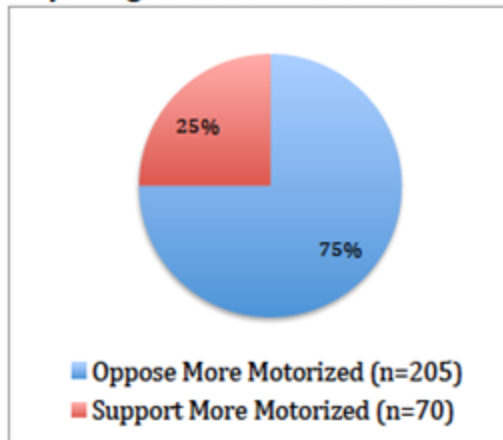
Careful analysis of public comments on the LMP Draft EIS demonstrated just the opposite. The SNF LMP revision took nearly 10 years to complete, and throughout that long process discussions about motorized use dominated the public discourse. Analysis of the more than 1,000 unique comments submitted to the FS during public comment periods showed that the large majority (70%) of comments submitted on the LMP specifically addressed the topic of motorized use. Of those comments, three-quarters opposed any more motorized access on the SNF. The following table, pulled directly from Wyoming Wilderness Association’s 2012 comment analysis² highlights the overall opposition to additional motorized use expressed by the public.

3. Motorized Access. 749 letters, or 70% of the total comment letters specifically addressed motorized access on the Shoshone. Only one-quarter of the total and Wyoming letters favored maintaining or increasing motorized access on the Shoshone.

Total Letters on Motorized Access



Wyoming Letters on Motorized Access



The 2009 Wyoming Statewide Comprehensive Outdoor Recreation Plan identified the most common concern expressed by Wyoming residents as excessive motorized use (SNF LMP Final EIS pp 497). The LMP further identifies the Shoshone as filling a unique niche as a backcountry forest. The FS should also consider its Recreation Niche Statement that was developed with public involvement during the plan revision in May 2006. For additional examples of evidence

² [Wyoming Wilderness Association 2012 comment analysis.](#)

of the public's preference on this topic, please reference the full record of all of our organizations' pre-scoping and scoping comments from 2015 through 2017.

Overwhelmingly, the FS's planning process for the SNF LMP identified **the need for responsibly managed motorized recreation**, not additional motorized loops. Although the FS included an objective for three new motorized loops in its final LMP, many of our groups strenuously objected to its inclusion, and maintain that its final inclusion in the LMP is inappropriate. Organizations and agencies, including the Wyoming Game and Fish Department, repeatedly identified the need to address illegal, user created trails and roads and the negative impacts of unregulated motorized use at every iteration of the LMP revision process.

Throughout the revision process for the LMP, the FS punted to the TMP planning process as the time to discuss the motorized road and trail system. When travel planning started in 2015, the FS emphasized the objective of three new loop opportunities. Claiming a forest-wide need for more miles of motorized loop opportunity is explicitly contrary to the need identified and expressed by the public and by on-the-ground data. The appropriate place to include additional proposed loops is in one or more of the alternatives that undergo environmental evaluation during the travel management planning process. Each loop must be analyzed for its "effects on National Forest System natural (wildlife, soundscape, watershed, soil, ect.) and cultural resources, public safety, provision of recreational 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."³. Once impacts are identified and analyzed, the minimization criteria must be applied to address identified impacts. In other words, additional motorized loops could be an outcome of the travel management planning process, but they are not a predecisional need that drives the process and that must be fulfilled.

Need 3

The preliminary EA's third Statement of Need should be modified as follows (additions italicized):

To reduce adverse impacts to resources *in full compliance with the minimization criteria in subparts B and C of Forest Service travel management regulations*⁴. Existing use of some system routes, *addition of new routes, relocation of existing routes, and conversion of routes to different route classifications* can increase or cause new resource issues, including adverse impacts to resources. These resource issues can involve hydrologic, wildlife, and habitat

³ 36 C.F.R. §212.55.

⁴ 36 C.F.R. §§ 212.55, 212.81(d).

resources, and potential conflicts *between uses*. This process *will apply and implement minimization criteria when designating each road and trail within the motorized route system* that provides access and opportunity for use while *meaningfully* minimizing adverse environmental impacts *and use conflicts*, consistent with 36 C.F.R. part 212.

Because provisions to fully comply with travel management minimization criteria have not been incorporated into the preliminary EA, and because the SNF is required to adopt a TMP that complies with FS regulations in all respects, this clearly qualifies as a need for a legally compliant TMP. Incorporating this additional language into this Statement of Need is entirely appropriate and should be done.

Statement of Purpose

The preliminary EA (p.12) identifies the purpose for travel planning as to:

- identify a minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands (36 C.F.R. § 212.5);
- provide a system of designated public roads and trails for wheeled vehicle use consistent with the Forest Plan, Executive Orders 11644 and 11989, and subpart B of the travel management regulations (36 C.F.R. § 212.51); and
- provide a system of designated public trails and areas for OSV use consistent with the Forest Plan, Executive Orders 11644 and 11989, and subpart C of the travel management regulations (36 C.F.R. § 212.81).

We strongly recommend the addition of an additional Statement of Purpose, inserted between the first and second statements in the above list, as follows:

- identify potential environmental impacts (including to wildlife, wildlife habitat, soils, hydrological, water quality, and flora including sensitive species and invasive species) and potential use and user conflicts, and meaningfully apply and implement minimization criteria for each proposed new road and trail as required by Subparts B and C of the travel management regulations⁵.

We make this recommendation because a fundamental purpose of this planning process must be to produce a TMP that is in full compliance with travel management requirements. The FS cannot properly or legally achieve purposes 3 and 4 in the draft EA list without first achieving the additional purpose we recommend.

⁵ 36 C.F.R. §§ 212.55, 212.81(d).

IV. LACK OF APPROPRIATE RANGE OF ALTERNATIVES

NEPA requires agencies to “present the environmental impacts of the proposal and the alternatives in comparative form, thus **sharply defining the issues and providing a clear basis for choice among options** by the decision maker and the public.”⁶ In taking the “hard look” at impacts that NEPA requires, an EA must “study, develop, and describe” reasonable alternatives to the proposed action.⁷ The Tenth Circuit explains that this mandate extends to EAs as well as EISs. “A properly-drafted EA must include a discussion of appropriate alternatives to the proposed project.”⁸ This alternatives analysis “is at the heart of the NEPA process, and is ‘operative even if the agency finds no significant environmental impact.’”⁹ Reasonable alternatives must be analyzed for an EA even where a Finding of No Significant Impact is issued because “nonsignificant impact does not equal no impact. Thus, if an even less harmful alternative is feasible, it ought to be considered.”¹⁰ When an agency considers reasonable alternatives, it “ensures that it has considered all possible approaches to, and potential environmental impacts of, a particular project; as a result, NEPA ensures that the most intelligent, optimally beneficial decision will ultimately be made.”¹¹

An agency violates NEPA’s mandate to analyze a range of reasonable alternatives where it considers “essentially identical” alternatives.¹² The draft EA repeatedly and openly admits throughout the document that Alternatives B and C are virtually identical, and in many cases, are also nearly indistinguishable from the No Action alternative 1.

Just a few excerpts will serve to illustrate this point.

Section 2.3 (p. 26): Many of the proposals carried forward for analysis are common to Alternatives 2 and 3. Proposals also may have very slight changes between the alternatives.

⁶ 40 C.F.R. § 1502.14 (emphasis added).

⁷ 42 U.S.C. § 4332(2)(C) & (E); 40 C.F.R. § 1508.9(b) (an EA “[s]hall include brief discussions . . . of alternatives”).

⁸ *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002) (granting injunction where EA failed to consider reasonable alternatives).

⁹ *Diné Citizens Against Ruining Our Env’t v. Klein*, 747 F. Supp. 2d 1234, 1254 (D. Colo. 2010) (quoting *Greater Yellowstone Coal. v. Flowers*, 359 F.3d 1257, 1277 (10th Cir. 2004)). See also *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (in preparing EA, “an agency must still give full and meaningful consideration to *all* reasonable alternatives” (emphasis added) (internal quotation and citation omitted)); 40 C.F.R. § 1502.14 (describing alternatives analysis as the “heart of the environmental impact statement”).

¹⁰ *Ayers v. Espy*, 873 F. Supp. 455, 473 (D. Colo. 1994) (internal citation omitted).

¹¹ *Wilderness Soc’y v. Wisely*, 524 F. Supp. 2d 1285, 1309 (D. Colo. 2007) (quotations & citation omitted).

¹² *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1039 (9th Cir. 2008).

Section 2.3.1.1 (p. 28): At the landscape level, the total changes in mileage (and for OSV use, acreage, are relatively minor. For example, the designated (open) system of motorized routes, which encompasses roads and motorized trails open to the public, increases by 1.70% under Alternative 2 (when compared with the current system) and decreases by 0.17% under Alternative 3. Similarly minor are the changes to the OSV systems proposed under Alternatives 2 and 3 when viewed at the landscape scale.

Section 3.3.2.5 (p. 80): Environmental Consequences of Alternative 3. This section discloses the environmental impacts of Alternative 3. Alternative 3 proposes minor changes that differ from current use under Alternative 1 and from proposals under Alternative 2.

And regarding proposed management (or more accurately, benign non-management) of illegal, user-created roads and trails, the alternatives are literally identical:

Alternative 1, Section 3.3.2.3.1 (p. 74): Management of unauthorized routes. It would be anticipated that unauthorized wheeled vehicle use would continue into the future, with enforcement as appropriate to deter use of unauthorized roads and trails.

Alternative 2, Section 1.3.3.2.4.1 (p. 79): Management of unauthorized routes. Effects are similar to those analyzed under Alternative 1.

Alternative 3, Section 1/3/3/2/5/1 (p. 84): Management of unauthorized routes. Effects are similar to those analyzed under Alternative 1.

These and innumerable other examples throughout the document clearly illustrate that the alternatives presented in the preliminary EA do not represent a range of reasonable alternatives.

Furthermore, using the No Action alternative 1 as a baseline against which to compare other proposed alternatives and evaluate their impacts accurately is misleading, inappropriate and a violation of NEPA. In previous comments we explained the Ninth Circuit has emphasized the importance of adequate baselines to satisfy NEPA's "hard look" standard. *Northern Plains Resource Council v. Surface Transp. Bd.*, 668 F3d 1067, 1083-1087 (9th Cir. 2011) (explaining that "NEPA requires that the agency provide the data on which it bases its environmental analysis"). The Oregon Federal District Court in *Central Oregon LandWatch v. Connaughton*, 905 F. Supp. 1192, 1197 (Or. 2012), stated:

To comply with NEPA's 'hard look' mandate, courts have held that agencies are obligated to maintain a current inventory of resources so that an adequate baseline

exists to evaluate the environmental impacts of a proposed action. It is against baseline information that environmental impacts are measured and evaluated; therefore, it is critical that the baseline be accurate and complete.

In the context of travel management planning, the current and accurate baseline condition is one that includes only system roads and motorized trails, and where motorized use adheres to existing designations. Such a baseline differs from the No Action alternative that includes unauthorized routes and use. A comparison between the legal baseline and the No Action alternative would demonstrate the environmental consequences from non-system roads and trail, and unauthorized motorized use. It would also provide the requisite analysis for the action alternatives, and better demonstrate impacts from the current motorized system, which the FS's own data clearly shows is unsustainable and deteriorating (with more than \$25 million in deferred maintenance).

Using the appropriate legal baseline is also necessary to develop an alternative that defines a truly minimum motorized system with significantly fewer miles of roads and trails than currently exist on the ground, which is necessary to ensure Travel Management Rule compliance, and to appropriately measure and analyze impacts of the motorized system to other resources. For instance, such an alternative could include increasing restrictions on dispersed camping in key habitats or conflict areas; removing all motorized use from inventoried roadless areas, the High Lakes Wilderness Study Area, the Clarks Fork of Yellowstone Wild and Scenic River designated corridor, Line Creek Plateau Research Natural Area, proposed Little Popo Agie Geologic Area, proposed Sawtooth Peatbed Geological Area, and all designated big game crucial winter ranges. Using an appropriate legal baseline would support an action alternative that decommissions all roads and trails without legal access or easement; all roads identified as likely not needed in Table 6-2 of the Travel Analysis Report (TAR); and all illegal, user-created (i.e., unauthorized) roads and trails either grandfathered into the system decades ago or those that the FS has documented or the public has reported in more recent years. In addition, the FS should use the 2015/2017 TAR to build an action alternative that retains only those roads defined as having high benefit with medium or low risks (eliminating all trails as they have not undergone the scrutiny of a risk/benefit analysis). The FS should propose and evaluate actually exceeding SNF maintenance objectives by defining a minimum system that enables 80% of all roads and trails to be maintained annually with an estimated budget to monitor, enforce, and preserve a high quality and well functioning system, and roads and trails that didn't meet these criteria would be decommissioned. Including an action alternative that identifies a true minimum system would allow the FS to compare impacts of the entire proposed road system under a full spectrum of scenarios ranging from the smallest possible system to more expansively roaded and trailed ones. Impacts of motorized use including wildlife harassment and displacement, soil erosion, air and water quality, and use conflicts could be much more accurately assessed with a legal baseline for

comparison. Assuming the existing motorized footprint as a baseline fails to fully capture the significant and ongoing impacts to natural resources or other forest uses under the existing condition, and prevents the agency from complying with NEPA.¹³

V. FAILURE OF THE PRELIMINARY EA TO COMPLY WITH THE TRAVEL MANAGEMENT RULE

In response to the growing use of dirt bikes, snowmobiles, all-terrain vehicles, and other off-road vehicles (ORVs) and corresponding environmental damage, social conflicts, and public safety concerns, Presidents Nixon and Carter issued Executive Orders 11644 and 11989 in 1972 and 1977, respectively, requiring federal land management agencies to plan for ORV use based on protecting resources and other uses.¹⁴ When designating areas or trails available for ORV use, including over-snow vehicle (OSV) use, agencies must locate them to:

1. minimize damage to soil, watershed, vegetation, or other resources of the public lands;
2. minimize harassment of wildlife or significant disruption of wildlife habitats; and
3. minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands.
4. Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.¹⁵

The FS codified these “minimization criteria” in Subparts B and C of its travel management regulations.¹⁶ The agency has struggled, however, to properly apply the criteria in its travel management decisions, leading to a suite of federal court cases invalidating FS travel management plans.¹⁷ Collectively, these cases confirm the FS’s substantive legal obligation to meaningfully apply and implement – not just identify or consider – the minimization criteria when designating *each* area and trail, and to show in the administrative record how it did so.

¹³ Even if the Forest Service declines to adopt the minimum system alternative as its baseline, the agency should still consider such an alternative as it represents a reasonable balancing of motorized vs. other uses.

¹⁴ Exec. Order No. 11,644, 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended by* Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977).

¹⁵ *Id.* § 3(a).

¹⁶ 36 C.F.R. §§ 212.55, 212.81(d).

¹⁷ See *Friends of the Clearwater v. U.S. Forest Serv.*, No. 3:13-CV-00515-EJL, slip op. at 30-38 (D. Idaho Mar. 11, 2015); *Cent. Sierra Envtl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1094-98 (E.D. Cal. 2012); *Wildlands CPR v. U.S. Forest Serv.*, 872 F. Supp. 2d 1064, 1081-82 (D. Mont. 2012); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1071-74 (D. Idaho 2011); *The Wilderness Soc’y v. U.S. Forest Serv.*, No. CV08-363-E-EJL, 2013 U.S. Dist. LEXIS 153036, at *22-32 (D. Idaho Oct. 22, 2013).

It has been over four decades since President Nixon first obligated the FS to minimize impacts associated with ORV use. Yet the agency has systematically failed to do so. In the meantime, irresponsible and mismanaged ORV use continues to degrade soil, air, and water quality, threaten imperiled wildlife species, and diminish the experience of the majority of national forest visitors who enjoy the natural landscape through quiet, non-motorized forms of recreation.

In this TMP, it is essential that the FS properly apply the minimization criteria to designate areas and trails for ORV use that minimize impacts to vulnerable wildlife and the majority of national forest visitors seeking to enjoy nature free from noise and pollution.

The executive orders require the FS to *minimize* impacts – not just identify or consider them – when designating areas or trails for ORV use, and to demonstrate in the administrative record how it did so.¹⁸ To satisfy its substantive duty to minimize impacts, the FS must apply a transparent and common-sense methodology for meaningful application of *each* minimization criterion to *each* trail or area being considered for designation. That methodology must include several key elements, none of which appear to be fully or properly implemented in the preliminary EA.

First, proper application of minimization criteria is not solely an office exercise. Rather, the FS must get out on the ground, gather site-specific information, and actually apply the criteria to minimize resource damage and use/user conflict associated with each designated road, trail, and area.¹⁹ Unfortunately, it appears that, at best, the preliminary EA approaches minimization as a GIS exercise, and at worse it completely ignores the minimization criteria. The reliance on electronic data gathered in February and March of 2020 to evaluate the state of the current summer motorized system is completely inappropriate given the degree of snow cover on the SNF at this time. The current system of roads and trails must be accurately ground-truthed when FS personnel can actually get out on the ground and evaluate conditions. In addition, the preliminary EA does not address, much less take steps to minimize use conflicts or conflict among different classes of motor vehicles, and barely touches on minimizing impacts to natural

¹⁸ Importantly, efforts to *mitigate* impacts associated with a designated ORV/OSV system are insufficient to fully satisfy the duty to *minimize* impacts, as specified in the executive orders. See Exec. Order 11,644, § 3(a) (“Areas and trails shall be *located* to minimize” impacts and conflicts.). Thus, application of the minimization criteria should be approached in two steps: first, the agency locates areas and routes to minimize impacts, and second, the agency establishes site-specific management actions to further reduce impacts. Similarly, the Forest Service may not rely on compliance with the relevant forest plan as a proxy for application of the minimization criteria because doing so conflates separate and distinct legal obligations. See *Friends of the Clearwater*, slip op. at 34 (“Merely concluding that the proposed action is consistent with the Forest Plan does not . . . satisfy the requirement that the Forest Service provide some explanation or analysis showing that it considered the minimizing criteria and took some action to minimize environmental damage when designating routes.”).

¹⁹ See, e.g., *Idaho Conservation League*, 766 F. Supp. 2d at 1074-77 (invalidating travel management plan that failed to utilize monitoring and other site-specific data showing resource damage).

resources or wildlife. Indeed, even where the public clearly articulated issues during scoping that should have been addressed in this preliminary EA (or, more appropriately, a draft EIS) relative to the minimization criteria, the preliminary EA either dismisses or ignores these concerns. For example, resource damage is repeatedly dismissed as insignificant without justification or explanation, and use conflict is not even mentioned.

Second, effective application of the minimization criteria must include meaningful opportunities for public participation and input early in the planning process. In many cases, public lands users and other stakeholders are the best source of information for identifying resource and recreational use conflicts. The FS did an admirable job of soliciting public input earlier in this process, but that input is not fully reflected in the preliminary EA. And, by holding this comment period in the midst of a global pandemic, the FS has completely failed to provide meaningful opportunities for public participation at this stage in the planning process.

Third, application of the minimization criteria should be informed by the best available scientific information and associated strategies and methodologies for minimizing impacts to particular resources. The Journal of Conservation Planning has published Best Management Practices (BMPs) for travel management planning, for both summer²⁰ and winter,²¹ and the FS has published relevant BMPs related to water quality.²² The BMPs provide guidelines, based on peer-reviewed science, for ORV designation decisions that are intended to minimize conflicts with other winter recreational uses and impacts to wildlife, water quality, soils, and vegetation. The FS failed to incorporate these BMPs into the preliminary EA. In addition to applying BMPs, application of the minimization criteria should incorporate all available site- or resource-specific scientific information or analyses. For example, to effectively minimize the significant noise impacts associated with ORV use, the FS should conduct soundscape modeling and incorporate the results of that modeling into its decision-making.²³ Other site- or resource-specific

²⁰ Switalski and Jones. 2012. *Off-road vehicle best management practices for forestlands: A review of scientific literature and guidance for managers*. Journal of Conservation Planning Vol 8: 12 – 24. Available at https://www.researchgate.net/publication/340209735_Off-road_vehicle_best_management_practices_for_forestlands_A_review_of_scientific_literature_and_guidance_for_managers.

²¹ See Switalski 2016: *Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – Introduction to Snowmobile Management and Policy*; *Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management - Water Quality, Soils, and Vegetation*; *Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – Wildlife*; and *Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – Winter Recreational Use Conflict* all available at <https://winterwildlands.org/resources/>.

²² Available at <https://www.fs.fed.us/naturalresources/watershed/bmp.shtml>.

²³ See, e.g., *Snowmobile Best Management Practices*, pp. 6-7 (describing noise simulation modeling used in Yellowstone National Park).

information might include, for example, air quality modeling or monitoring; wildlife population, habitat, migration, and other monitoring data; or visitor use data. The preliminary EA fails to incorporate much of this data. An EIS is necessary to fully analyze all of the relevant data in relation to travel management designations.

Fourth, proper application of the minimization criteria must address both site-specific and larger-scale impacts. For example, the FS must assess and minimize landscape-scale impacts such as habitat fragmentation; cumulative noise, and air and water quality impacts; and degradation of wilderness-quality lands and associated opportunities for primitive forms of recreation. The agency also must assess and minimize site-specific impacts to soils, vegetation, water, and other public lands resources, sensitive wildlife habitat, and important areas for non-motorized recreation. Unfortunately, the preliminary EA dismisses landscape-scale impacts under the false pretense that the SNF is a large, predominantly wilderness forest, that travel management decisions will not impact most of the forest, and that non-motorized recreationists and wildlife can go elsewhere if they want to avoid motor vehicles.

Fifth, the FS must account for predicted climate change impacts in its application of the minimization criteria and designation decisions. Climate change already is leading to measurably changing seasons with reduced and less reliable snowpack, diminishing stream flows, hotter and drier summer temperatures, and other measurable changes. These changes will increase the vulnerability of wildlife, soils, vegetation, and water resources to disturbance, compaction, and pollution impacts associated with ORV, including OSV, use. The preliminary EA mentions climate change in a few places (pp. 163, 177, 207, 282, 299, 300), but these minimal statements consist of simple observations that predicted climate change may impact various resources including aquatic species and habitats, hydrology, air quality, and wildlife habitat. The preliminary EA does not offer any analysis whatsoever of the potential interplay between predicted climate change and changes in the motorized road and trail system, instead simply falling back on a weak statement about needing to be adaptable. Given the likely impacts of climate change on many resource values of the SNF, it is essential that the FS include a robust analysis of the additive impacts that changes to the motorized road and trail system may have on wildlife, water quality, vegetation, wildlife and wildlife habitat, etc.

Sixth, application of the minimization criteria must take into account available resources for monitoring and enforcement of the designated system.²⁴ To ease enforcement obligations and ensure user compliance in the first place, OHV and OSV designation decisions should establish simple, consistent restrictions designed to minimize resource damage and user conflicts and OSV area boundaries should have clear and enforceable boundaries. Not only does the preliminary EA

²⁴ See *Sierra Club v. USFS*, 857 F.Supp.2d 1167, 1176-78 (D. Utah 2012) (discussing the forest's responsibility under NEPA to take a hard look at the impacts of illegal motorized use on forest resources and the likelihood of illegal use continuing under each alternative).

fail to discuss how or whether the FS considered monitoring and enforcement in deciding on route and area designations in the alternatives, the preliminary EA does not include any direction for how the FS intends to implement the final travel plan or monitor its effectiveness.

Finally, the FS should consider whether to designate areas or trails by “class of vehicle” in addition to “time of year,” as provided for in the Travel Management rule.²⁵ While we appreciate that the preliminary EA includes season dates for certain aspects of the travel plan, the OSV season dates in Alternative 2 are not grounded in information previously discussed during this project, and the preliminary EA fails to provide rationale (resource or wildlife protection, mitigation of potential road/trail damage, etc.) for the proposed open use dates for wheeled vehicles presented in Appendix B: Supplement.

Application of the minimization criteria under the executive orders and analysis of the direct, indirect, and cumulative impacts of a range of reasonable alternatives under NEPA should complement and reinforce one another. As discussed above, the executive orders require application of the minimization criteria to *each* designated route and area, and the corresponding NEPA analysis should analyze impacts associated with the *entire* system proposed for designation under each alternative – regardless of the extent to which that system is already reflected in current management.

Across the SNF there are numerous ORV roads and trails that have never been subjected to a thorough NEPA analysis or application of the minimization criteria. Likewise, OSV travel has been allowed by default across most non-wilderness areas of the forest. The NEPA analysis for the travel plan must analyze – and *minimize* – impacts associated with designating existing routes that have not previously been subject to NEPA or the minimization criteria. Similarly, the FS must analyze and minimize the impacts of designations that allow continued cross-country OSV travel in any area of the forest. This is, of course, in addition to analyzing and minimizing impacts associated with designating any new or presently illegal, user-created trails.

To facilitate this required analysis and comply with NEPA, the EIS must include an alternative under which no areas, roads, or trails would be designated as open to recreational ORV use.²⁶ This alternative is necessary to provide an accurate comparison for analysis of the impacts associated with all the area and route designations made in the travel plan – including those that allow continued ORV travel in existing areas or on existing routes. Unlike in a typical NEPA analysis where the no action alternative provides that baseline for comparison, the no action alternative for most travel planning efforts, including on the SNF, reflects the current management status quo where ORV routes and areas exist but have not previously been

²⁵ 36 C.F.R. § 212.81(a).

²⁶ Specially authorized or permitted ORV uses to, for example, access valid existing rights would still be allowed. See 36 C.F.R. § 212.81(a) (describing exempted uses).

subjected to NEPA. This is similar to the situation in *Western Watersheds Project v. Abbey*, where the Ninth Circuit overturned a BLM NEPA analysis that failed to analyze an alternative that would eliminate grazing in the Missouri Breaks National Monument.²⁷ Absent such an alternative, and where both the no action and action alternatives permitted continued grazing, the court found that the agency was “operating with limited information on grazing impacts,” in violation of NEPA.²⁸ The same is true here, where an alternative that designates no areas or trails open to recreational ORV use is necessary to facilitate a fully informed decision about the impacts of the action alternatives.

In addition to designating motorized routes, OSV area designations are an important part of this travel planning process. Minimization of impacts associated with OSV area allocations is particularly important because Subpart C permits the FS to designate larger areas open to cross-country travel than in Subpart B travel planning. It is highly problematic that the alternatives in the preliminary EA identify discrete and specifically delineated areas where OSV use is prohibited and designate the rest of the planning area for OSV use. This conflicts with the plain language of the Travel Management Rule, which **requires** the FS to follow a “closed unless designated open” approach and that areas be discrete, specifically delineated, and smaller than a ranger district.²⁹ The environmental analysis supporting OSV area designations must show that these areas receive sufficient snowfall to support winter recreation, have boundaries that will be realistic to enforce, and that OSV use within these areas will comply with the minimization criteria.

Subpart A of the Travel Management Rule

In previous comments we explained the need and requirements for identifying an appropriate minimum road system. Specifically, we discussed how the Roads Rule created two important obligations for the agency. One obligation is to identify unneeded roads to prioritize for decommissioning or to be considered for other uses. 36 C.F.R. § 212.5(b)(2). Another obligation is to identify the Minimum Road System (MRS) needed for safe and efficient travel and for the protection, management, and use of National Forest system lands. *Id.* §212.5(b)(1). In order to meet these obligations the Forest Service’s Washington Office issued a series of directive memoranda that outlined how the agency expects forests to comply with subpart A.³⁰ First, each forest was required to submit its TAR by September 30, 2015. Next, pursuant to its own

²⁷ 719 F.3d 1035, 1050-53 (9th Cir. 2013).

²⁸ See also, e.g., *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 708-11 (10th Cir. 2009) (invalidating NEPA analysis that failed to analyze an alternative that would close the entire area to oil and gas development because, “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded”).

²⁹ 36 C.F.R. § 212.1.

³⁰ See WildEarth Guardians July 2016 scoping comments.

regulations and directive memoranda, the Forest Service must consider the valid portions of its TAR and begin to determine the MRS in its analysis of projects of the appropriate geographic size, subject to review under NEPA.

The Shoshone NF completed its requisite analysis in 2015 and released a TAR. Yet, in 2017 the Forest Service convened a 3-day workshop where the planning team reviewed the 2015 TAR and arbitrarily changed specific road recommendations: “[d]uring the three-day workshops it was determined that identifying roads as needed or not needed based on the benefit and risk did not represent access needs for forest management.”³¹ During this workshop, the IDT changed recommendations in the 2015 TAR. For example, where roads with low benefits and high risks had been identified as likely not needed, the IDT arbitrarily changed the recommendation to retain these roads with additional mitigation and maintenance.³² The Travel Analysis Process is meant to support a science-based process required for Travel Management Rule Subpart A compliance. Yet, the three day workshop supplanted the science-based process for one that relied on individual IDT opinions in direct conflict with previous 2015 TAR recommendations and methods. The results of the workshop appear to be reflected in a new 2017 TAR and it is unclear how individual road scores changed, if at all, from those calculated in the 2015 TAR. Equally concerning are the methods and assumptions in the 2017 TAR. For example, the Forest Service states that during the three day workshop, “...existing roads that are currently not on the system were identified as potentially needed for land management activities.”³³ The result is that 79.2 miles of unauthorized roads were recommended for addition to the forest road system. Yet, the 2017 TAR failed to determine or disclose the risks and benefits associated with each unauthorized road segment. The Forest Service repeats this omission for the few roads (51.6 mi) it identified as likely not needed, with the result being that it is unclear how many high, moderate or low risk roads were included.³⁴ However, for roads that the IDT recommended as likely needed, the 2017 TAR included 203.7 miles of low benefit roads, which should be ideal candidates for decommissioning in order to create a more fiscally sustainable road system.³⁵ Further, the very methods for assigning risk and benefit scores appears skewed: “[t]he Total Benefit factors ranged from 0 to 15, and the Total Risk factors ranged from 0 to 10.”³⁶ It is unclear if the larger benefit range resulted in more roads receiving high or moderate scores, but the Forest Service failed to demonstrate how its scoring system was science-based.

³¹ Preliminary EA p. 47-48.

³² Preliminary EA p. 48.

³³ 2017 Travel Analysis Report p. 5, Table 6-3.

³⁴ *Id.* p. 24-25, Table 6-2.

³⁵ *Id.* p. 24, Table 6-1.

³⁶ *Id.* p. 20.

More glaring still is the omission within the 2017 TAR and preliminary EA that demonstrates the Forest Service can adequately maintain the identified minimum road system. The Forest Service acknowledges:

Appropriated funding is below that needed to annually maintain the entire road system at operational maintenance level standards. On average, the Shoshone physically maintains approximately 17 percent of the open road system on an annual basis...The trend for the majority of the Shoshone's roads is toward declining condition and service level due to the reduction in overall funding and increases in traffic volume and use.³⁷

Overall, the trend for the majority of the Shoshone's roads is toward declining condition due to the reduction in overall funding and increases in traffic volume and use. As a result, deferred maintenance funding needs have increased to an estimated \$25 million.³⁸

Given this admission it is clear that the IDT acted arbitrarily when deciding to change previous 2015 TAR recommendations and retain low benefit roads in addition to adding unauthorized roads to the system. Further, looking at Tables 31 and 32 in the preliminary EA it is apparent the identified minimum road system under Alternative 2 does not reflect long-term funding expectations and it is nowhere close to being economically sustainable. Specifically, the road system under Alternative 2 would cost \$394,190 in annual maintenance, but “[i]t is projected that approximately \$275,000 will be available for road maintenance in FY21.³⁹ This means an additional \$119,190 in deferred maintenance on top of the estimated \$25 million. The result is further ecological degradation, and as such it is nonsensical for the Forest Service to assert that adding unauthorized roads to the system will improve resource conditions.⁴⁰ The Forest Service failed to compare or disclose the resource benefits from fully removing these unauthorized roads in addition to low benefit system roads.

In sum, the Forest Service has completely failed to demonstrate how the identified minimum road system under Alternative 2 complies with the Travel Management Rule Subpart A requirements. Not only does it fail to reflect long term funding expectations, it fails to provide for the protection of National Forest System lands by relying on arbitrary IDT recommendations in place of a science-based process, and by retaining high and medium risk roads it cannot afford to maintain. Below we provided further explanation of how the identified minimum road system will result in unacceptable resource impacts. In addition, the 2017 TAR relied on an arbitrary scoring method the IDT then used to inform its determinations, and the TAR failed to score

³⁷ *Id.* p. 12.

³⁸ Preliminary EA p. 51.

³⁹ *Id.*

⁴⁰ Preliminary EA p. 54 (stating, “The conversion of non-NFS routes to ML 1 (68 miles) and ML 2 (10 miles) NFSRs will result in improved resource conditions.”).

unauthorized roads recommended for the minimum road system. Such actions constitute a violation not only of the Travel Management Rule, but NEPA as well.

VI. FAILURE TO ASSESS SIGNIFICANT THREATS TO ENDANGERED AND THREATENED SPECIES

Grizzly Bears

As a threatened species in the contiguous lower 48 states under the U.S. Endangered Species Act (ESA), grizzly bears should be recovered and managed as a large well-connected Northern Rockies meta-population.⁴¹ The SNF is required by the National Forest Management Act to manage for diverse plant and animal communities and maintain viable populations.⁴² Section 7 of the ESA also requires that the Forest Service consider effects of travel plan components on the viability of GYE grizzly bears within a broader context, beyond the boundaries of the Conservation Strategy or Primary Conservation Area (PCA).⁴³

The SNF LMP set this standard for grizzly bear management:

Inside the primary conservation area, maintain the percent of secure habitat in bear management unit subunits at or above 1998 levels. Projects that change secure habitat must follow the application rules.⁴⁴ (TES-STAND-04, LMP p. 39)

The *Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area*, states, "... secure habitat, defined as those areas more than 500 meters (550 yards) from a motorized access route during the non-denning period, are especially important to the survival and reproductive success of grizzly bears, especially adult female grizzly bears."⁴⁵ As stated in the 1993 Grizzly Bear Recovery Plan, "Roads probably pose the most imminent threat to grizzly habitat today....the presence of open roads in grizzly habitat often leads to increased bear-human contact and conflict, and can ultimately end in grizzly mortality."⁴⁶ The FS must consider that roads (permanent or temporary, open or closed) and site development will increase human-bear conflicts and grizzly bear mortality and affect the potential for connectivity through this important linkage area. Both roads and development significantly contribute to habitat deterioration and fragmentation and are the two strongest predictors of grizzly bear

⁴¹ 40 Fed. Reg. 31,734 (July 28, 1975).

⁴² 16 U.S.C. § 1604(g)(3)(B).

⁴³ 16 U.S.C. §§1531-1544.

⁴⁴ The Application Rules are outlined in the Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area (Interagency Conservation Strategy Team 2007).

⁴⁵ http://igbconline.org/wp-content/uploads/2016/03/161216_Final-Conservation-Strategy_signed.pdf.

⁴⁶ US Fish and Wildlife Service. 1993. Grizzly bear recovery plan. Missoula, MT.

survival/mortality on the landscape.⁴⁷ Road density is also strongly related to secure habitat, which is critical to the survival and reproductive success of grizzly bears⁴⁸ and is primarily achieved through motorized access management. As such, connectivity and secure habitat are often described in terms of open road density and large non-motorized habitat blocks. Managing the landscape to reduce hazards to bears requires balancing road density standards with the amount of secure habitat available;⁴⁹ “[I]f road densities become too great, secure areas become isolated islands surrounded by heavily roaded areas. Travel among secure islands then becomes more hazardous, effectively fragmenting the landscape.”⁵⁰ Open road densities above 1.0 mi/mi² and total road densities above 2.0 mi/mi² have been shown to suppress local habitat use by grizzly bears.⁵¹

The GYE grizzly bear population has expanded its distribution far beyond the boundaries of the PCA where habitat standards apply. The PCA only makes up approximately 41% of the estimated population range.⁵² However, the Final 2016 Conservation Strategy includes language, and the FS agreed to this language in a signed memorandum of understanding, to manage for a stable population of grizzly bears within the Demographic Monitoring Area (DMA) for the foreseeable future, per Demographic Recovery Criterion 3.⁵³ Therefore, the TMP must consider whether the impacts of forest road density on the current distribution of grizzly bears on SNF lands within the DMA (not exclusively the PCA as the stated standard above) to ensure secure habitat is available to maintain a stable population of bears into the foreseeable future. In analyzing these impacts, it is critical that the FS include not only designated system trails, but also stored, as well as, any new or presently illegal, user-created trails.

The preliminary EA also fails to analyze the growing intensity of motorized dispersed camping and its attendant impacts along motorized trails and roads on grizzly bears and other wildlife.

⁴⁷ Mace, R. D., and J. S. Waller, T. L. Manley, L. J. Lyon, and H. Zuuring. 1996. Relationships among grizzly bears, roads and habitat in the Swan Mountains, Montana. *Journal of Applied Ecology* 33:1395–1404. Schwartz, C. C., M. A. Haroldson, G.C. White. 2010. Hazards Affecting Grizzly Bear Survival in the Greater Yellowstone Ecosystem. *Journal of Wildlife Management* 74(4):654-667.

⁴⁸ Mattson, D. J., R. R. Knight, and B. M. Blanchard. 1987. The effects of developments and primary roads on grizzly bear habitat use in Yellowstone National Park, Wyoming. Pages 259-273 in *Bears: their biology and management*. Proceedings of the 7th International Conference on Bear Research and Management, Williamsburg, Virginia, USA. & Interagency Grizzly Bear Committee. 1994. Interagency grizzly bear committee task force report: grizzly bear/motorized access management. Missoula, Montana, USA. & Schwartz, C. C., M. A. Haroldson, G.C. White. 2010. Hazards Affecting Grizzly Bear Survival in the Greater Yellowstone Ecosystem. *Journal of Wildlife Management* 74(4):654-667.

⁴⁹ Summerfield, B., W. Johnson, and D. Roberts. 2004. Trends in road development and access management in the Cabinet–Yaak and Selkirk grizzly bear Recovery Zones. *Ursus* 15:115–122.

⁵⁰ Schwartz, C. C., M. A. Haroldson, G.C. White. 2010. Hazards Affecting Grizzly Bear Survival in the Greater Yellowstone Ecosystem. *Journal of Wildlife Management* 74(4):pg.661.

⁵¹ Mace, R. D, and T. L. Manley. 1993. South Fork Grizzly Study; Progress Report. Montana Department of Fish, Wildlife and Parks, Kalispell, Montana.

⁵² https://www.fws.gov/mountain-prairie/es/FINALCS.DRAFT_Feb_19_2016_FINAL.pdf; pg. 56.

⁵³ https://www.fws.gov/mountain-prairie/es/FINALCS.DRAFT_Feb_19_2016_FINAL.pdf; pg. 35.

This is especially important within the PCA and in other known high quality grizzly bear habitats including the East Fork, Bear Creek, and Wiggins Fork drainages in the Wind River District. Not all roads and trails are appropriate for motorized dispersed camping, and not all of them should be open for motorized dispersed camping. Furthermore, within the PCA and in other areas of prime grizzly habitat like the East Fork, Bear Creek, and Wiggins Fork drainages on the Wind River District, unmanaged motorized dispersed camping has the potential to dramatically impact grizzly bears either by displacing them farther than 500 meters from motorized roads and trails or increasing potential bear-human encounters and conflicts with unsavvy recreational campers, pulling off the roads in bear country. While the Forest maintains a developed site standard in accordance with the 1998 baseline, motorized dispersed camping goes unchecked. Motorized dispersed camping is clearly a cumulative effect of roads and TMP that should be analyzed under a full EIS. We urge the FS to evaluate and adopt minimization strategies including (but not necessarily limited to) eliminating motorized dispersed camping along key routes and designating specific motorized dispersed camping areas and installing bear boxes or food hanging poles to limit camper concentration in unsuitable places and minimizing the attraction of bears to campsites that have a higher likelihood of creating human-bear conflicts.

In addition to the well known and documented impacts of roads and summer motorized recreation to grizzly bears, the FS must fully analyze the impacts of OSV use for this threatened species. Typically in the Greater Yellowstone Ecosystem, grizzly bears hibernate for about five months at elevations ranging up to 10,000 feet or higher.⁵⁴ Male bears begin emerging in March while females start later with the last to emerge being females with new-born cubs who usually are out by early May. Males, subadults, solitary females, and females with yearlings or two-year-olds usually leave the vicinity of their den within a week of emergence.⁵⁵

Since much OSV use on the SNF occurs off-trail and cannot easily be categorized by a 500 meter disturbance distance, this expands the potential range of impact on habitat where OSV use occurs during the spring (March-May). The interplay between grizzly bears and OSV use was captured well in the Biological Opinion supporting the 2016 Flathead Forest Plan Amendment:

Female grizzlies with cubs have high energetic needs, and cubs have limited mobility for several weeks after leaving the den. Females and their cubs remain in the den site area for several weeks after emergence (Haroldson et al. 2002, Mace and Waller 1997). ...

Disturbance levels that cause a female to prematurely leave the den in spring or move from the den area could impair the fitness of the female and safety of the cubs. If cubs attempt to follow their mother, they would likely experience decreased fitness and the

⁵⁴ Judd, S. L., R. R. Knight, and B. M. Blanchard. 1986. Denning of grizzly bears in the Yellowstone National Park area. *Int. Conf. Bear Res. and Manage.* 6:111-117.

⁵⁵ Haroldson, M.A., M.A. Terner, K.A. Gunther, and C.C. Schwartz. 2002. Grizzly bear denning chronology and movements in the Greater Yellowstone Ecosystem. *Ursus* 13:19-37.

family unit may be pushed to less suitable habitat. ... [T]he potential of snowmobile use impacting an individual grizzly bear's breeding, feeding, or sheltering to the extent that harm or harassment occurs cannot be eliminated. The incidental take is expected to be in the form of harm or harassment to individual female grizzly bears and/or cubs caused by premature den emergence or premature displacement from the den site, resulting in reduced fitness of females and cubs, ultimately resulting in injury and possibly death.⁵⁶

Based on this research, the conservation strategy, the SNF LMP Standard 4, and the travel rule obligation of the FS to minimize harassment of wildlife or significant disruption of wildlife habitats when designating motorized areas and trails, further analysis and demonstration of minimization measures is required. The FS failed to analyze the effects of allowing OSV use through May when denning animals, including grizzly bears, are emerging from light or true hibernation. The potential for risks of displacement or harassment of bears and other denning animals is further increased by off-trail, cross country OSV use that creates a vast footprint. Given that female bears with newborn cubs don't emerge from hibernation until late April or early May, we strongly encourage the FS to implement an earlier, April 15, closure of the OSV season especially within the PCA and on the Wind River District's East Fork, Bear Creek, and Wiggins Fork areas, where bear hibernacula are well documented.

Canada Lynx

Canada lynx were listed as a threatened species under the ESA in March 2000.⁵⁷ In the final listing rule, the U.S. Fish and Wildlife Service concluded that the factor threatening the contiguous U.S. Distinct Population Segment of lynx is the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in national forest land and resource management plans and in BLM land use plans. This lack of guidance may allow or direct actions that cumulatively adversely affect lynx.

Scientists have documented increased avoidance of areas preferred by motorized winter recreationists (snowmobiling off-trail), compared to increased use of areas shared with non-motorized winter recreationists.⁵⁸ Winter motorized sports may be particularly invasive to sensitive wildlife such as lynx due to the noise and speed associated with snowmobilers.

⁵⁶ U.S. Fish and Wildlife Service, Biological Opinion on the Effects of the Divide Travel Plan on Grizzly Bears (Feb. 29, 2016).

⁵⁷ 65 Fed. Reg. 16052 (Mar. 24, 2000).

⁵⁸ Ruediger, Bill, Jim Claar, Steve Gniadek, Bryon Holt, Lyle Lewis, Steve Mighton, Bob Naney, Gary Patton, Tony Rinaldi, Joel Trick, Anne Vandehey, Fred Wahl, Nancy Warren, Dick Wenger, and Al Williamson. 2000. Canada lynx conservation assessment and strategy. USDA Forest Service, USDI Fish and Wildlife Service, USDI Bureau of Land Management, and USDI National Park Service. Missoula, MT.

The preliminary EA asserts that lynx do not avoid forest roads with low traffic volumes and speeds and so are unlikely to be displaced from important habitat, and it restricts its discussion of potential impacts from wheeled motorized use to lynx to the likelihood of direct mortality from vehicle strikes, non-target trapping kills, and illegal shooting (p. 220). For potential impacts from winter OSV activity, the EA limits its discussion to direct impacts of packed snowmobile trails that could increase competition from other carnivores that could access deep snow terrain more easily by using snowmobile-packed tracks and trails. These minimalist discussions with no actual analysis are completely inadequate to evaluate significance of possible impacts of motorized use on Canada lynx.

During summer, areas with high ORV use on roads and trails often have high traffic volumes, with ATVs running back and forth nearly continuously all day long on busy days, causing continual commotion and extreme noise levels. Simply asserting that lynx don't mind low traffic volume roads and trails completely ignores this reality. Likewise, the EA's assertion that accidental trapping or illegal shooting aren't a problem because there have been no recent records of lynx mortality from such causes completely ignores the fact that recreational trappers in Wyoming are not required to report accidental trapping of non-target species, and they certainly don't do it voluntarily. It is nonsensical to suggest that someone who illegally shoots a lynx would report it. The lack of records of lynx mortality from illegal shooting or accidental trapping means nothing.

During winter, there is no discussion whatsoever of displacement of lynx from high quality habitat due to general snowmobile noise and commotion, which can be nearly constant in popular areas. The preliminary EA completely fails to consider recent research that has documented increased avoidance of areas heavily used by off-trail snowmobiling.⁵⁹ Winter motorized sports may be particularly invasive to sensitive wildlife such as lynx due to the noise, speed, and near constant use of many areas associated with snowmobilers.

The preliminary EA admits that mapped lynx foraging habitat on the SNF is naturally highly fragmented, especially on the eastern side of the Greater Yellowstone Ecosystem (p. 221), but fails to analyze the cumulative effects of adding additional impacts from summer and winter motorized recreation use.

⁵⁹ Olson LE, Squires JR, Roberts EK, Ivan JS, Hebblewhite M. Sharing the same slope: Behavioral responses of a threatened mesocarnivore to motorized and nonmotorized winter recreation. *Ecol Evol.* 2018;8(16):8555-8572. Published 2018 Jul 30. doi:10.1002/ece3.4382.

Ruedigger 2000⁶⁰ evaluated risks to Canada lynx and identified recreational use, non-target trapping, fragmentation and degradation of lynx refugia (ie, secure habitat), and degradation of habitat quality from invasive non-native plant species as key risks to lynx productivity and survival. The FS must do a complete analysis of the cumulative and potentially significant impacts of these risk factors coupled with motorized recreational use on the SNF.

Wolverine

Heinemeyer 2019⁶¹ – the best available science concerning winter recreation and wolverines – shows that human activity leads to indirect habitat loss for wolverines. While both motorized and non-motorized winter recreation have a significant negative impact on wolverines, the impact of OSV use on female wolverines is of particular concern. It is critically important to protect females in order to ensure the survival of the species and OSV use plays an outsized role in this story. Heinemeyer et al. demonstrated that female wolverines exhibited stronger avoidance of snowmobile use and experienced higher indirect habitat loss than male wolverines and that avoidance of OSV use was one of the strongest factors influencing female wolverine habitat selection. While the study showed that wolverines are not fully displaced from their home ranges because of winter recreation, it also showed this use has a significant impact by functionally reducing the habitat available to an animal within its home range. One can infer that OSV use is currently impacting the available habitat available to wolverines on the SNF. The analysis associated with this travel plan should examine the current impact as well as options to lessen this impact, and the final plan should ensure that future OSV use on the forest has a minimal impact on wolverines.

Home range is defined by wildlife biologists as “That area traversed by an individual in its normal activities of food gathering, mating, and caring for young. Occasional sallies outside the area, perhaps exploratory in nature, should not be considered part of the home range.”⁶² It is, essentially, the minimal amount of habitat an individual needs to survive and reproduce. Any loss of this habitat is a threat, and for a species that is as rare as the wolverine, a threat to one individual can be a threat to the entire population. If even one female wolverine on the SNF is unable to reproduce because she has lost habitat to winter recreation, this would be a loss of a

⁶⁰ Ruediger, Bill, Jim Claar, Steve Gniadek, Bryon Holt, Lyle Lewis, Steve Mighton, Bob Naney, Gary Patton, Tony Rinaldi, Joel Trick, Anne Vandehey, Fred Wahl, Nancy Warren, Dick Wenger, and Al Williamson. 2000. Canada lynx conservation assessment and strategy. USDA Forest Service, USDI Fish and Wildlife Service, USDI Bureau of Land Management, and USDI National Park Service. Missoula, MT.

⁶¹ Heinemeyer, K., J. Squires, M. Hebblewhite, J. J. O’Keefe, J. D. Holbrook, and J. Copeland. 2019. *Wolverines in winter: indirect habitat loss and functional responses to backcountry recreation*. *Ecosphere* 10(2):e02611. 10.1002/ecs2.2611.

⁶² Burt W. H. 1943. Territoriality and home range concepts as applied to mammals. *Journal of Mammalogy* 24:346–352.

significant percentage of the total breeding population of the species in the continental United States.

Although wolverines are rare and few in number, it could be assumed that all suitable habitat on the SNF is currently occupied, as each individual has an extremely large home range. This does not mean that wolverines have habitat to spare on the SNF. Wolverine are extremely territorial and it is unlikely that an individual would be able to establish a new home range, or shift the boundaries of its current territory, on the SNF to compensate for habitat loss from winter recreation. The preliminary EA describes overlap between concentrated OSV use and wolverine maternal and primary habitat across several areas of the forest, yet dismisses the impact of this overlap because “these areas are small relative to mapped wolverine home ranges across the GYE [and] despite these areas of concentrated use, large areas of habitat not subject to OSV use remain available.”⁶³ However, the preliminary EA does not provide enough information for the reader to know whether this is a significant impact - and concern - or not. While wolverines can clearly tolerate some level of winter recreation use within their home ranges - even high levels - it is critically important to ensure that this use is not occurring in particularly high-value wolverine habitat, particularly habitat utilized by females during the denning season.

To minimize impacts to wolverines, the FS should ensure that designated OSV areas do not comprise a majority of a single female wolverine’s home range and that OSV areas and trails are not located in or near denning habitat. Appendix C tells us that every OSV area *except* Wapiti North occurs within ½ mile of a wolverine den site (Table 7), but it is not clear what exactly this means (does it mean there are wolverine den sites within each of these areas, or less than ½ mile away from their boundaries?), there’s no explanation of how the FS shaped the alternatives in response to this information, and it doesn’t tell us anything about other aspects of wolverine habitat that will be impacted by OSV use. Therefore, we have no way of understanding what actions that SNF has taken to minimize impacts to wolverines, nor can we evaluate whether any of the Alternatives *do* truly minimize impacts to wolverines. For additional information on how the SNF should manage OSV use wolverine habitat to minimize impacts to this species, please see Attachment 1, *Winter Recreation Planning Recommendations for Wolverine Conservation*.

VII. FAILURE TO ASSESS SIGNIFICANT THREATS TO WILDLIFE SPECIES OF LOCAL CONCERN

When making decisions about motorized roads and trails, the FS must identify and analyze impacts to high quality wildlife habitats and identify specific strategies for how to minimize impacts as part of the decision process in deciding which specific roads and trails will be

⁶³ Preliminary EA page 229.

designated and where to avoid motorized use. The preliminary EA does not sufficiently consider sensitivity of wildlife to disturbance sensitivity and probable or possible therefore displacement that could result from to the range of motorized use classes and the intensity of use along each proposed segment of the class of use; the effects of each class of use on wildlife habitat integrity such as susceptibility of noxious weed infiltration based on each class of vehicle associated with each motorized segment, particularly those suggested as trails; the seasonal needs of key species and effects of the proposed spectrum of motorized use footprint; and the fragmentation of habitat affecting wildlife's ability to safely access and connect to habitat throughout the forest and neighboring lands.

In the preliminary EA, the FS relies on the analysis of ungulate crucial winter range in the SNF LMP, analysis that created exemption areas for OSV use (preliminary EA p. 255). But the FS still must clearly demonstrate how the LMP analysis justifies designating areas as open for OSV use that SNF LMP determined were suitable for OSV use. The FS now must explain and justify the decision to open crucial winter range exemption areas to OSV use. Unlike forest land management planning, winter travel planning is site-specific and requires the FS to locate OSV area boundaries and trails in a manner that minimize disturbance to wildlife and impacts to wildlife habitat. It is not as simple as assuring the reader that the Wyoming Game and Fish Department approved of a similar decision five years earlier. The FS must demonstrate in the administrative record how the boundaries of OSV areas, or trails, within crucial winter range have been located in a manner that complies with the minimization criteria. For example, the SNF may be able to argue that OSV use on a designated trail within a crucial winter range exemption area meets the minimization criteria because there is scientific evidence showing that ungulates can habituate to predictable disturbances, such as motorized use on a linear route, but we are unaware of any literature that would support an assertion that cross-country OSV travel has a minimal impact on wintering ungulates.

The SNF LMP identifies moose as a species of local concern. A number of comments during scoping and prescoping expressed concerns with an increase of off-trail use by snowmobiling in riparian areas where a trail/road exists. One example from the Clarks Fork District is between the Beartooth parking lot and the Pilot Creek parking lot, where documented increases in off-trail exploration has raised concern that this is adding stress, harassing, and potentially displacing moose (and other wildlife) that use (and perhaps depend on) the riparian corridor. Neither action alternative in the preliminary EA analyzes this impact or provides any solution or minimization strategy to the issue of OSV trails within riparian zones that also provide critical habitat for wintering moose and other wildlife. The FS should analyze off-trail restrictions within specific riparian corridors to decrease surprise encounters with moose and other wildlife and to minimize harassment that may cause unnecessary energy loss, elevated heart rates, other physiological stress factors, and potential displacement from critical habitat. Moose are known to move away

from areas of high snowmobile trail density and use when they can.⁶⁴ In some riparian corridors, the FS should also analyze curtailing OSV use altogether. By keeping OSV use only on designated trails in narrow riparian corridors, wildlife may be more likely to become accustomed to more predictable and constrained OSV use which could reduce negative impacts. And obviously, curtailing OSV use in highest impact corridors would minimize impacts to zero.

VIII. FAILURE TO ASSESS SIGNIFICANT THREATS TO MIGRATING UNGULATES

Many new studies of wildlife migration have been completed and published in the last decade, ranging from understanding the ecological function of “surfing the green wave”⁶⁵ to the impacts that development and artificial obstacles⁶⁶ have on successful ungulate migration between seasonal habitats. The SNF provides critical migratory habitat for elk and mule deer⁶⁷ moving between summer and winter ranges, including the Clarks Fork, Shoshone, Meeteetse, Dubois and Lander mule deer herds; and the Clarks Fork, Cody, Wiggins Fork, and Muddy Creek elk herds.

Previously, the FS has emphasized protecting ungulate winter range and parturition areas in the forest. New emerging science, however, is clearly showing that the migration corridors over which ungulates seasonally move to reach winter or summer habitats are also critically important.⁶⁸ Stopover areas along the migration corridors provide the highest quality forage during migration, and the ability of the animals to time their migration to reach stopover areas when they offer peak nutritional value and to linger there as long as needed is essential for the ungulates’ ability to survive and thrive during migration. One study revealed that mule deer spent 95% of their migrating time on stopover areas along their path.⁶⁹ Although the SNF LMP identified management areas that could be suitable for motorized use, elk, mule deer, moose, bighorn sheep, and pronghorn use these habitats including for migration. Suitability does not pertain to every square meter, and during travel management planning the FS is required to

⁶⁴ Colescott, J. H., and M. P. Gillingham. 1998. Reaction of moose (*Alces alces*) to snowmobile traffic in the Greys River Valley, Wyoming. *Alces* 34:329–338.

⁶⁵ Merkle, J.A., K.L. Monteith, E.O. Aikens, M.M. Hayes, K.R. Hershey, A.D. Middleton, B.A. Oates, H. Sawyer, B.M. Scurlock, M.J. Kauffman. 2016. Large herbivores surf waves of green-up in spring. *Proceedings of the Royal Society B* 283:20160456.

⁶⁶ Sawyer, H., M.J. Kauffman, A.D. Middleton, T.A. Morrison, R.M. Nielson, and T.B. Wyckoff. 2013. A framework for understanding semi-permeable barrier effects on migratory ungulates. *Journal of Applied Ecology* 50:68-78.

⁶⁷ Kauffman, M.J., J.E. Meachan, H. Sawyer, A.Y. Steingisser, W.J. Rudd and E. Ostlind. 2018. *Wild Migrations: Atlas of Wyoming's Ungulates*. 10-11.

⁶⁸ Aikens E.O., M.J. Kauffman, J.A. Merkle, S.P.H. Dwinell, G.L. Fralick and K.L. Monteith. 2017. The greenscape shapes surfing of resource waves in large migratory herbivore. *Ecology Letters* 20:741-750.

⁶⁹ Sawyer, H.S. and M.J. Kauffman. 2011. Stopover ecology of a migratory ungulate. *Journal of Animal Ecology* 80:1078-87.

assess any significant disruption of wildlife use of habitats, including migration corridors and stopover areas.

The preliminary EA does acknowledge migration corridors as important wildlife habitat, and identifies them as an issue that must receive detailed analysis:

Issue 4: Whether and to what extent wheeled vehicle and OSV use within the Shoshone National Forest will affect elk and mule deer migration corridors. (p. 253)

But unfortunately, the preliminary EA fails to actually accomplish the necessary detailed analysis. The document incorrectly states that migration corridors for elk and mule deer herds have not been identified on the SNF (p. 254-255), which is simply not true. Migration corridors have not been formally designated, but extensive research assuredly has documented migration routes on the SNF.⁷⁰ The FS must identify where motorized road and trail segments may impact elk and mule deer migrations on the SNF, perform a detailed analysis of what impacts those roads and trails may have on animals ability to successfully migrate, and identify specific strategies to minimize impacts, including the option of not designating or closing existing roads or trails where impacts may be too high.

The preliminary EA acknowledges that migratory Clarks Fork and Cody elk herds are already experiencing low calf recruitment that is reducing herd numbers (p. 255). For migratory elk, calving may occur during the early stages of spring migration, when elk begin to move from lower elevation habitat toward distant summer range. Adding stress and displacement of elk from motorized activity to already vulnerable cows with tiny calves, coupled with other factors like predation, clearly rises to the level of potential significant impacts on short- and long-term elk survival.

The preliminary EA acknowledges that mule deer in the Clarks Fork, Shoshone, Meeteetse, Dubois, and Lander (South Wind River) herds are all below population objectives due to low fawn recruitment (p. 256) and that they all make long distance migrations seasonally. Again, adding stress and displacement of mule deer from motorized activity to already vulnerable does and fawns, clearly rises to the level of potential significant impacts on short- and long-term mule deer survival. Cumulative impact analysis should also include growing threats of chronic wasting disease to mule deer survival.

⁷⁰ Kauffman, M.J., J.E. Meachan, H. Sawyer, A.Y. Steingisser, W.J. Rudd and E. Ostlind. 2018, Wild Migrations: Atlas of Wyoming/s Ungulates. 10-11, 16, 20-21.

Research shows that "...elk avoid trail-based recreation (**with the greatest distance being from ATV riding**), similarly to their avoidance of roads open to motorized traffic on public forests."⁷¹ This research also identifies multiple other studies with similar conclusions:

Our review of the literature revealed displacement of elk from forest roads open to motorized traffic that often exceeded 0.5–1.5 km. Avoidance responses by elk distance to open roads, or to open road density, have been documented consistently and overwhelmingly by > 30 studies conducted during the past 5 decades in forested areas of western North America. Examples from each decade are Perry and Overly (1977), Lyon (1983), Cole et al. (1997), Rowland et al. (2000), and Prokopenko et al. (2016).⁷²

When determining whether or not impacts may be significant, both context and intensity of a proposed action must be considered. The FS must consider both short- and long-term effects for site specific actions in each locale - in other words, for each proposed road or trail segment. The FS must also consider the intensity, or severity, of potential impacts, including the potential cumulative significant impact of the proposed action coupled with other actions and circumstances. Even if an action is individually insignificant, it may be collectively significant when coupled with other actions or activities.⁷³ None of this detailed analysis has occurred for impacts of motorized roads and trails on ungulate migration corridors. The potential significance of impacts to migration corridors cannot be denied by simple omission. Travel planning must incorporate relevant ungulate migration science, evaluate the risks of each alternative to the security of migratory habitat for ungulates, and include assessment of the cumulative significance of impacts of all activities and actions that affect every migratory herd of elk and mule deer on the SNF. The FS must assess the impacts and effects of each road and trail segment plus the intensity of use by each class across all alternatives.

IX. FAILURE TO ADEQUATELY ADDRESS WINTER USE CONFLICT

Rather than comply with the Travel Management Rule requirement to manage OSV use under a "closed unless designated open" framework,⁷⁴ the alternatives in this preliminary EA identify discrete and specifically delineated areas where OSV use is prohibited, presumably leaving the rest of the planning area open to OSV use. The preliminary EA repeatedly refers to specific OSV

⁷¹ Wisdom M.J., H.K. Preisler, L.M. Naylor, R.G. Anthony, B.K. Johnson, M.M. Rowland. 2018. Elk response to trail-based recreation on public forests. *Elsevier B.V.: Forest Ecology and Management*. 411(2018)223-233. Emphasis added.

⁷² Wisdom M.J., H.K. Preisler, L.M. Naylor, R.G. Anthony, B.K. Johnson, M.M. Rowland. 2018. Elk response to trail-based recreation on public forests. *Elsevier B.V.: Forest Ecology and Management*. 411(2018)223-233.

⁷³ 40 CFR § 1508.27, see <https://www.law.cornell.edu/cfr/text/40/1508.27>.

⁷⁴ 36 C.F.R. § 261.14.

closures and the maps in Appendix A identify areas where OSV use is *prohibited* rather than which areas are *designated* for OSV use. In the three areas of the SNF where the preliminary EA proposes to change OSV management from the status quo (beyond simply enacting LMP closures), the focus in the preliminary EA is on justifying why these areas should be closed to OSVs. In contrast, the FS should have drafted alternatives that described designated OSV areas, with the preliminary EA focusing on justifying the boundaries of these designated areas and explaining how they were located to comply with the minimization criteria.

The result of the backwards approach taken in this preliminary EA is that the FS has not designated OSV areas in a manner that reflects where OSV use actually occurs, where it's feasible for OSV use to occur, or which areas of the forest provide quality OSV recreation opportunities. There is no discussion of how the boundaries of these areas have been located to minimize impacts to other forest resources or uses, and there is no discussion of why these areas are or should be open to OSVs. This violates the 2015 OSV Rule (Subpart C of the Travel Management Rule), which requires the Forest Service to designate OSV open areas that are "*discrete, specifically delineated space[s] that [are] smaller . . . than a Ranger District*"⁷⁵ and with the objective of minimizing "*Damage to soil, watershed, vegetation and other forest resources,*" and "*Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands.*"⁷⁶ This violation is a fundamental flaw in the EA and the only way the FS can remedy this mistake is to draft new alternatives that designate discrete areas for OSV use, located in accordance with the minimization criteria.

In considering how to manage OSVs in this travel plan, the FS *must* consider and minimize conflict between OSV use and other recreational uses. This is a significant issue that was brought to the FS's attention during both scoping periods (2016 and 2017). In particular, there is extensive and growing use conflict associated with spring snowmobile use (starting around Memorial Day) on the Beartooth Pass and there is a long history of use conflict on Togwotee Pass. Current snowmobile management in these areas is not in compliance with the Travel Management Plan in other ways as well.

Beartooth Pass - Clarks Fork Ranger District

In late May, when Highway 212 is open to wheeled vehicles, the Beartooth Pass becomes a beacon for backcountry and cross-country skiers from Montana, Wyoming, and beyond. Memorial Day weekend traditionally kicks off the Beartooth Pass ski season as well as the summer tourist season. Most ski activity occurs between Memorial Day and the end of June and occurs in the Gardner Lakes basin and the slopes north of the switchbacks on the west side of the Pass, as well as within the Beartooth Basin special use permit area in the Twin Lakes basin. In

⁷⁵ 36 C.F.R. §§ 212.1.

⁷⁶ 36 C.F.R. § 212.55(b).

recent years there has been a significant increase in spring snowmobile use on the Beartooth Pass, leading to extreme conflict and safety issues between OSV users and skiers, as documented by Winter Wildlands Alliance and other commenters, and also conflicts with safe operation of the Beartooth Basin summer ski area. Spring snowmobile use poses a public safety hazard for families playing in the snow, is a public nuisance (people come to the Beartooth Pass to breathe clean mountain air, not snowmobile exhaust), and creates conflict by reducing parking opportunities (snowmobile trailers take up substantial excess parking). Recreational OSV use when Beartooth Pass is open for the summer season contradicts Area 3.3b Management Approach in the Forest Plan, negatively impacting the experience of spring and summer visitors.

Spring snowmobile use on the Beartooth Pass also causes resource damage, which Winter Wildlands Alliance documented in their scoping comments. During scoping, several commenters also raised concerns about spring snowmobile impacts to grizzly bears, subnivean mammals, migratory and ground-nesting birds, native red foxes, and vegetation. The preliminary EA makes no mention of how the spring snowpack differs from midwinter snowpack and how these differences influence OSV impacts to wildlife and vegetation. For example, the preliminary EA does not consider resource damage from OSV use when snow is patchy and rapidly melting.

Wyoming State Trails historically has advertised the grooming season for the Beartooth Mountains from mid-December through mid-March on its printed maps and lists the state's snowmobiling season as "typically mid-December through April 1" on its website.⁷⁷ The neighboring Cooke City Snowmobile Area on the Custer Gallatin National Forest (Custer Gallatin NF) has two classes of trails: one opens on Dec 2, the other opens on Jan 1, and both close on April 15.⁷⁸ Yellowstone National Park winter travel ends Mid-March.⁷⁹ Annually, Yellowstone National Park begins plowing the Beartooth Highway from Cooke City the first weekend of May to have it open for scenic driving beginning Memorial Day Weekend.⁸⁰ Meanwhile the Montana Department of Transportation begins plowing Highway 212 from Red Lodge to the Wyoming-Montana border in April.⁸¹

The FS can minimize use conflict on the Beartooth Pass, comply with the Area 3.3b Management Approach, and minimize impacts to wildlife and natural resources plus minimize use conflict by ending the public OSV season by April 30 each year. Because it is necessary to use OSVs in order to prepare and operate the Beartooth Basin summer ski area, these restrictions should not apply to administrative uses, including those associated with the Beartooth Basin Summer Ski Area Special Use Permit.

⁷⁷ <https://wyoparks.wyo.gov/index.php/snowmobile>.

⁷⁸ <https://www.fs.usda.gov/detail/custergallatin/maps-pubs/?cid=fseprd557678> (click on PDF).

⁷⁹ <https://www.nps.gov/yell/planyourvisit/visiting-yellowstone-in-winter.htm>.

⁸⁰ <http://beartoothhighway.com/beartooth-trip-planning/>.

⁸¹ <http://beartoothhighway.com/plowing-videos-available-on-line/>.

Togwotee Pass - Wind River Ranger District

The analysis associated with this plan must acknowledge the longstanding winter recreation use conflicts on Togwotee Pass and how conflict has shaped current use patterns on Togwotee, and the plan must take steps to address and remedy this conflict. For example, the Sublette Pass trail is a historic ski trail that was marked as a ski trail before unmanaged OSV use displaced skiers. The FS cannot pretend that this is a longstanding OSV trail, nor is it appropriate to designate this trail as an OSV trail. We appreciate that the Alternatives 2 and 3 do not authorize OSV use around the Deception and Pinnacles cross-country ski trails. This will help to minimize conflicts between OSV use and cross-country skiing on Togwotee Pass. However, this alone is not sufficient for minimizing winter use conflict on the Shoshone as a whole, or even sufficient to minimizing winter use conflict on Togwotee Pass. The boundaries of the Togwotee OSV area must be located in a manner that complies with the minimization criteria in all respects. This includes taking steps to minimize incursions into designated wilderness areas and separate uses. For example, the SNF should not designate the Breccia Cliffs area for OSV use. Not only is this an area where OSVs frequently cross into designated wilderness, not designating this area for OSV use would allow skiers access to the wilderness without having to contend with OSVs. Currently, there is nowhere on Togwotee Pass where skiers can have an entirely non-motorized experience, as even trips into the Teton Wilderness require navigating OSV terrain before reaching the wilderness boundary.

Togwotee is a very popular winter recreation destination for motorized and non-motorized users, and as a result there is a long history of use conflict. This conflict, which is felt most acutely by skiers, centers around safety (especially in avalanche terrain) and competition for untracked snow. To minimize this conflict, the final TMP must include elements that will minimize use conflict across Togwotee and commit to working with user groups to educate the recreating public about how to share the backcountry. Winter Wildlands Alliance and Togwotee Pass Backcountry Alliance have provided suggestions for how to reduce use conflict on Togwotee, including plowing a new, non-motorized, parking area at Wind River Lake to separate skiers and snowshoers from the OSV staging area and directing the District to support and encourage education efforts aimed at resolving conflict between motorized and non-motorized uses.

The final plan should also establish an OSV use season on Togwotee Pass that matches the Bridger-Teton National Forest. The Bridger-Teton NF authorizes OSV use on Togwotee Pass from December 1 through April 30. In addition to providing consistent management across the landscape, not allowing OSV use until December 1 and prohibiting it after April 30 minimizes impacts to wildlife and hunters during hunting season and protects forest resources such as soils and low growing vegetation during the spring melt. It also ensures that there is plenty of snow on the ground when OSVs are allowed. It is unclear why the FS on the SNF did not consult with the Bridger-Teton NF in developing the season dates for the Wind River District in Alternative 2, as

we have previously brought these date inconsistencies to the FS's attention. To ensure coordinated management of OSV use on Togwotee Pass and help to comply with the minimization criteria, the OSV season on the Wind River District must be December 1 – April 30.

Finally, we note that the preliminary EA talks about *user* conflict but the Travel Management Rule requires the SNF minimize *use* conflict. Use conflict is not exactly about people-people interactions, but how FS management of motorized use causes, or doesn't cause, conflict with other uses. For example, on page 80, the preliminary EA states that "This proposal would close 1,354 acres to OSV use in the Wind River Ranger District. This closure would prohibit OSV use in a cross-country ski area, thereby reducing potential user conflict between motorized and non-motorized use." While it's true that this closure will reduce conflict between skiers and snowmobilers - users - what is important for the purposes of travel management is that it also reduces conflict between *uses*. Allowing OSV use on a trail that is specifically groomed for cross-country skiing presents a conflict because the OSV use damages the groomed trail surface and brings exhaust, noise, and high-speed motorized activity to a pedestrian trail. The actual individuals involved may get along just fine but that does not negate the fact that there is a conflict of uses. Most times, use conflict is accompanied by user conflict, but simply considering this issue in terms of user conflict fails to capture all of the issues at hand.

X. FAILURE TO ADEQUATELY ADDRESS SUMMER (WHEELED) MOTORIZED USE CONFLICT AND IMPACTS

Given the FS's difficulty in enforcing the existing system to date, there is a need for a comprehensive TMP that includes a detailed Action/Implementation Plan and an adaptive management strategy. This is especially important since the existing transportation system was grandfathered in through the white-arrow program of the mid-80s. Now is the time for the FS to take a close look at the direct and cumulative effects of its entire road and trail system since travel planning requires the FS to evaluate and address the environmental, social, and cultural impacts associated with illegal user-created routes, non-system roads and currently designated roads, trails, and areas.

According to the Travel Management Rule, the effects on the provision of recreational opportunities, access needs, and conflicts among uses of National Forest System lands - associated with both roads and trails - should be considered during this process. These three aspects are very important and often intertwined. Yet, if mentioned, they are merely glossed over or worse assumed as status quo without consequence. Nowhere in this preliminary EA does the FS attempt to analyze the effects of different classes of motorized use combined with measurement of known or predicted volume of use by those classes of motorized use on the

existing or proposed trails or roads within any of the alternatives. Nowhere does the FS attempt to clearly articulate any assessment of the use value/contribution of the roads and trails with regard to their primary/secondary/multiple use - driving for pleasure, trailhead access, grazing allotment management, inholding access, general public transportation, hunting access, dispersed camping, wood cutting harvest, recreational off-road riding, and so forth. By not doing so, the FS has failed to acknowledge, articulate and address the conflicts among uses that may occur on the road or trail segments. These are all significant shortcomings within this analysis.

On the subject of converting NFSR into NFST, a clear assessment of the need for and finances required to maintain and administer trails is absent in the preliminary EA. However, there is an assumption mentioned that the maintenance burden of converting NFSR into NFST will be reduced in part because of grant funding from the Wyoming State Trails. In looking at the 2017 and 2018 RTP Funded Projects for Wyoming State Trails, grants that specifically went to summer motorized trail maintenance respectively totaled \$48,000 and \$140,000,⁸² which seems insufficient and therefore financially irresponsible of the FS to rely on potential grant funding as a justification for a sustainable system of motorized trails.

Beyond the lack of a viable financial and capacity justification, the FS failed to analyze the potential consequences of each segment of NFSR that would be converted to NFST within Alternatives 2 and 3. Some of the trail sections would have mixed use including unlicensed drivers, in many cases a youth driving an ORV, in the same section that a licensed driver piloting a full size truck would be, and yet the preliminary EA fails to evaluate the effects of a broad range of users on any existing or proposed motorized trail segment. Nor does the preliminary EA discuss the effects of the volume of traffic on any segment of trail or road, which directly impacts the effects of safety and the need for maintenance and administration.

In deciding where, or if, to locate any motorized roads and trails, the FS must identify all significant impacts to natural resources (soil, watershed, vegetation, and other forest resources), wildlife including (but not limited to) endangered and threatened species, and other uses and conflicts. The FS must analyze all significant impacts for every proposed change to the motorized system, and must determine how they will minimize those impacts.

Courts have clearly explained what it means to “minimize”:

“Minimize” as used in the regulation does not refer to the number of roads or trails, nor their overall mileage. It refers to the effects of road and trail designations, i.e. the [FS] is

⁸² <https://wyoparks.wyo.gov/index.php/rtp-grant-information-trails>.

required to place routes specifically to minimize “damage” to public resources, “harassment” and “disruption” of wildlife and its habitat, and minimize “conflicts” of uses.⁸³

“ORV use (including four-wheel drive trucks, all-terrain vehicles, dirt bikes and snowmobiles) can take an enormous toll on the landscape by tearing up soil, damaging plants, scaring wildlife, fragmenting habitat, and introducing harmful invasive plant species, among other impacts. ... Collectively, these {court} cases demonstrate that agencies must take affirmative steps to minimize ORV impacts on the lands that they manage. It is clear that the minimization criteria have a substantive and a procedural component. When they implement the minimization criteria through specific procedural tools, agencies must ensure that the minimization criteria are applied in a thoughtful manner throughout a comprehensive process. ... Additionally, agencies must actively demonstrate more than mere data collection. They must specify the methods used to actively minimize impacts from ORV use. The explanations must connect designation decisions with the minimization goal. ... If agencies can demonstrate they have conducted route-by-route field investigations to identify and limit ORV effects, they are more likely in compliance with the minimization criteria. Similarly, effective monitoring and adaptive management that curtails adverse ORV impacts will also help an agency achieve minimization.”⁸⁴

Underlying our following comments on specific proposed actions, and as previously stated throughout this document and in every possible previous opportunity for public comment, our organizations strongly believe the SNF TMP must include a concrete, detailed plan to effectively stop illegal use on the SNF, prevent new illegal use, and identify how the resources necessary to accomplish this task will be secured, **before any new roads or motorized trails are allowed, forest-wide**. In addition, we note that preserving natural values in inventoried roadless areas, important wildlife habitats, and easily accessible areas for non-motorized recreational activities (hiking, horseback riding, foot and horseback hunting, wildlife watching, etc.) should be a tight screen for any additional motorized roads or trails.

Our members collectively have spent thousands of hours walking, riding, and driving on the existing SNF motorized route system. This effort, as well as our members combined several lifetimes of experience using the SNF road system, has provided us with on-the-ground knowledge of many of the specific proposals put forward in the preliminary EA, and a clear understanding of the significant impacts that would result from implementation of many of them.

⁸³ Idaho Conservation League v. Guzman, 2011 WL 447456, *16 (D. Idaho Feb. 4, 2011) (quoting Center for Biological Diversity v. U.S. Dept. of Interior, 2009 U.S. Dist. LEXIS 90016 (N.D. Cal. 2009)).

⁸⁴ Louisa S. Eberle, Minimization Criteria for Off-Road Vehicle Use, 5 MICH. J. ENVTL. & ADMIN. L. 257 (2015). Available at: <https://repository.law.umich.edu/mjeal/vol5/iss1/5>.

The following specific comments on selected proposals in the preliminary EA serve to highlight significant impacts that must be identified, analyzed, and minimized or avoided altogether for each.

Wind River District Proposals

WR-07 – Warm Springs Mountain

WR-13 – Warm Springs Mountain and Canyon

WR-18 - Warm Springs Mountain

WR-07 and WR-13 are proposed new NFST in Alternative 2 that would significantly impact traditional non-motorized access, increase conflict between uses, and negatively impact soil surface stability and water quality. The justification for these proposals, claiming that they are needed to “provide legal access to an area currently without it” is factually incorrect, as we repeatedly noted in scoping comments. Legal access currently exists and has been used for generations by hikers, foot hunters, birders, photographers, and others to walk and ride stock into this area. Existing illegal roads 529, 5291A, and 5292A should be removed from the FS road and trail system, effectively closed at the SNF boundary, and fully reclaimed because they cannot be legally accessed by motor vehicle and so cannot be part of the legal road system. **How is it that segments of road that have no legal access were not flagged as problematic in either the TAR or within the preliminary EA? What justification is there to choose to build onto legally inaccessible road segments, rather than choosing to decommission the illegally accessed segments of road?** The new road construction that would be required to provide new legal motorized access to these existing illegal roads would cause irreparable harm to multiple other resources. The new road that is proposed to connect illegal road 529 (and its subunits) with and 5282D would require crossing Warm Springs Creek and climbing a steep slope above the creek to the ridge. Clearly, new road construction of this magnitude would cause significant impacts to soil stability, riparian vegetation, water quality, and wildlife, and would require a substantial level of funding for which the FS has failed to identify a source. None of these factors have been appropriately disclosed or analyzed in the preliminary EA.

WR-11 – Bachelor Creek

This proposed new NSFT in Alternative 2 bisects an inventoried roadless area and would fragment wildlife habitat, negatively impact wildlife by increasing the likelihood of harassment and displacement, diminish the values of the inventoried roadless area, create significant use conflict, and significantly reduce recreational opportunities for non-motorized users. The FS has improperly claimed that decommissioning WR-20 and WR-55 would offset impacts of building WR-11. As noted above, multiple recent court cases have clearly determined that minimization

requirements cannot be legally met on the basis of the number of roads or trails, nor their overall mileage. The impacts resulting from bisecting an inventoried roadless area with a motorized road or trail cannot be dismissed by claiming that decommissioning other roads or trails elsewhere in the forest will offset the impacts of this trail through the roadless area.

WR-86 - New Roads (Closed)

The proposed addition of more than 60 miles of new roads and classifying them as ML1 closed roads in Alternative 2 would lead to significant impacts across the board, and potential impacts of designating each of these proposed new roads must be fully and individually analyzed. Potential significant impacts that would occur if these roads were opened for any use include impacts to secure wildlife habitat, increased use conflicts, wildlife harassment and displacement, significant loss of non-motorized recreational opportunity, and detrimental changes to particular locales on the forest. Furthermore, claiming that these new roads are based on prior road footprints is incorrect and misleading. Claiming that a road footprint still exists today for completely naturally reclaimed old logging roads that have seen absolutely no motorized use or maintenance of any sort for 60 or more years is preposterous. In many places, natural vegetation regrowth is so advanced that the old tracks are not even discernable. Any proposal to identify and add roads in these areas, under any classification (closed or otherwise), absolutely requires a full analysis of potential impacts of future opening on every single proposal. Because Alternative 3 does not propose adding any new roads and classifying them as ML1 in the Wind River District, there would be no significant impacts and no requirement for additional analysis under Alternative 3.

WR-90 - WR District-Wide Trail Conversions

The proposal to open many miles of NFSTs to wheeled vehicles up to 64 inches wide in Alternative 2 could create significant impacts related to use conflicts between different classes of vehicles, public safety impacts resulting from increased traffic with more unlicensed drivers in larger vehicles traveling at higher speeds, and increased impacts to wildlife from increased traffic with larger vehicles traveling at higher speeds. Both positive and negative impacts for each proposed road to trail conversion must be identified, analyzed, and explicitly minimized with specific strategies that are connected to minimization goals.

WR-26, 27a, and 29 - Bear Creek and Long Creek various proposals

These proposals in Alternative 3 are impossible for the public to evaluate, because the rationales described in Appendix B, Table 3, p. 16 are nonsensical, perhaps due to cut and paste haste. WR-26 is a decommissioning proposal that will provide opportunities for youth operators and

looping opportunities? WR-27 is a decommissioning proposal for a dead-end road that will provide a large effective loop following an existing road template? WR-29 provides seasonal restrictions for a short, dead end route with compliance issues that ends in a meadow and is not needed?

Bypassing Table 3 and looking at the maps, the proposed decommissioning of WR-26 in Alternative 3 is an appropriate strategy to minimize (by elimination) damage to riparian and wetland habitats. WR-27a, described in Table 3 as decommissioning of a dead end road, is not identified for decommissioning on the map, so the public has no way to know what the FS is actually proposing here. WR-29, proposed seasonal restrictions for a number of existing roads, seems to be an appropriate strategy to minimize impacts to wildlife and to seasonal physical damage to the road surface, although the FS must explicitly describe the analysis that led to this minimization strategy.

WR-83a - Brent to Burroughs Creeks

This proposed conversion of roads to trails open to all wheeled vehicles in Alternative 3 does not appear on the map, and so is impossible for the public to evaluate. Based on the minimal description available in Table 3 (Appendix 2, p. 16), this proposal would create significant impacts related to use conflicts between different classes of vehicles, public safety impacts resulting from increased traffic with more unlicensed drivers in larger vehicles traveling at higher speeds, and increased impacts to wildlife resulting from increased traffic with larger vehicles traveling at higher speeds and some unknown percentage of unlicensed drivers who may be inexperienced, impaired by factors that disqualify them from obtaining a drivers license, etc. Both positive and negative impacts for each proposed road to trail conversion must be identified, analyzed, and explicitly minimized with specific strategies that are connected to minimization goals.

Washakie District Proposals

Once again, we encountered serious disconnects between Appendix B maps and Tables 1 and 3 (more cut and paste haste?) that, when coupled with the difficulty to use the maps and the minimal information provided in the tables, make it nearly impossible for the public to interpret what the FS has actually done and provide meaningful comments.

WK-27 - Pete Lake to mid NFST01

Information in Table 2 (p. 4) does not match the map for Alternative 2, which proposes decommissioning of WK-27 along the boundary of the Washakie Wilderness Area and

reconstruction of a new trail away from the wilderness boundary and which, on the map, is labelled WK-23. WK-23, according to Table 1, is in the vicinity of the Blue Ridge Road but in reality is a district wide proposal to adopt seasonal use restrictions. Table 1 does not contain any entry that describes the permanent closure and decommissioning of the existing trail along the wilderness boundary, whatever number it may be assigned (which is anybody's guess). About all we can say definitively is that decommissioning the wilderness boundary trail and reconstructing a whole new trail most assuredly confers significant environmental and use impacts, both positive and negative, and most assuredly requires a full analysis and explicit minimization measures. We also, as noted elsewhere in this document, request that the FS evaluate an alternative that includes decommissioning of the existing trail from the southern tip of Shoshone Lake running south and southeast to Pete Lake, including but not limited to the section that lies along the wilderness boundary and **does not replace it with any motorized road or trail**. Such a proposal would maintain current motorized access to both lakes, completely remove impacts to the Washakie Wilderness, minimize impacts to wildlife and other non-motorized uses, and avoid impacts of building an entirely new trail away from the wilderness boundary.

WK-36 - District Wide Addition of New Administrative Roads

A number of road segments are labeled WK-36 on the map, but the explanation in Table 1 describes this as one single proposal, a new road from FSR 302 to Sheep Bridge Trail. What is the explanation for the other segments, and where is the analysis for all of them? It's left to the reader to search the nearly-impossible-to-read maps to discover additional WK-36 segments and then to ponder their value and impacts.

WK-40 - District Wide Conversion of Existing Roads to Trails Open to All Vehicle Classes

The proposal to convert many miles of existing roads to all classes of wheeled vehicles throughout the Washakie District in Alternative 2 would create significant impacts related to use conflicts between different classes of vehicles and public safety impacts resulting from increased traffic with more unlicensed drivers in larger vehicles traveling at higher speeds, increased impacts to wildlife from increased traffic with larger vehicles traveling at higher speeds. Both positive and negative impacts for each proposed road to trail conversion must be identified, analyzed, and explicitly minimized with specific strategies that are connected to minimization goals.

Clarks Fork, Greybull & Wapiti District Proposals

NZ-50 - District Wide Adding New Administrative Road.

In many of our organizations' previous engagements with forest timber sale projects, we have opposed FS proposals from adopting old closed logging roads into the SNF road system. In looking at numerous proposals scattered all over these districts (as well as the two southern districts) to do exactly that, the rationale for classifying these old (in many cases so old they are essentially nonexistent) logging roads as administrative road additions is completely absent. Appendix B, states "proposed reconstruction" which suggests an additional cost. Yet the FS estimates it already has \$25 million in deferred maintenance, a figure it readily admits is growing every year.⁸⁵ Without justifying a need for administrative use in these varied areas of the forest, it is fiscally irresponsible to add to an already underfunded, undermanaged, underenforced motorized system.

NZ-57 - District Wide Seasonal Use Restriction

We support efforts to minimize negative impacts to wildlife and the habitat provided by crucial winter range, which is what some of these seasonal restrictions attempt to do. We also support proposal seasonal use restrictions that are aimed not only at protecting crucial winter range but also protecting partition areas; minimizing impacts to soils, water quality, and watersheds more broadly; and preventing other resource damage, as in NZ-19, NZ-30, NZ-41, NA-43, and NZ-56. However, we don't understand why roads or trails within known elk parturition habitat are proposed to open just as calving is about to begin, as in Sunlight Basin. According to Appendix B Supplement, roads 127, 113, 112, 105, and 104 plus its segments would all open on May 1. Most of these roads penetrate inventoried roadless areas. Elk calves are typically born in late May through early June.⁸⁶ Essentially, motorized use would begin in otherwise protected areas right when elk are calving and highly vulnerable to disturbance. This clearly has the potential to cause significant impact to elk, as documented by scientific studies previously referenced in these comments regarding the impacts of motorized recreation on elk and other wildlife. The FS should re-evaluate these and other seasonal restriction dates on motorized roads and trails throughout the SNF to ensure the health and long-term viability of migrating elk herds and other wildlife species. Seasonal use restrictions must be based on on-the-ground conditions that are area specific and based on reliable, field-gathered data.

The rationale supporting seasonal restrictions must be clearly articulated. This is not only for our benefit - the general public is more likely to accept and comply with restrictions if they

⁸⁵ Preliminary EA p. 51.

⁸⁶ <https://www.rmef.org/elk-facts/>

understand the reasons behind the rules. Most people who recreate on the SNF care deeply about wildlife. If the public understands how a particular restriction benefits wildlife, they will be more likely to support and comply with seasonal use restrictions.

NZ-01a and NZ-01b - Line Creek

As another example of the FS publishing incompatible information between Appendix B tables and Appendix A maps, Table 1 breaks NZ-01 into two categories, a and b, with category NZ-01a proposing conversion of existing roads to trails open to all vehicle classes and category b proposing new construction of trails open to vehicles up to 64" in width. In contrast, the map displays only one overall category of NZ-01, so it is impossible to tell where new trails are proposed versus conversion of existing roads to trails. To add further confusion, both Alternative 2 and Alternative 3 use NZ-01(a and b) as proposal numbers, while the actions differ considerably between alternatives.

It is discouraging to see NZ-01 a and b in the preferred alternative, for several reasons. First, local motorized recreationists aren't enthusiastic about the proposal. The FS hosted a field trip with stakeholders to discuss this option, which was developed to provide additional opportunity for OHV Use. During the field trip, it became clear that members of the OHV group were lukewarm at best about the proposal, because they were more interested in a different kind of experience than being hot and dry in such exposed terrain. Second, many concerns were raised about the potential for illegal activity by some riders coupled with the challenges and potential inability of the FS to enforce compliance with this section of new routes due to the open terrain. The group on the field trip observed evidence of prior illegal off-road use.⁸⁷ Third, neighboring landowners submitted scoping comments opposing this proposal based on concerns about use conflict between OHV recreation, grazing allotment management, and other aspects of the cattle operation on adjacent private land. Fourth, multiple concerns regarding significant potential harassment of wildlife, degradation of forage for wildlife, loss of habitat connectivity, and displacement of elk and other wildlife were expressed during the field trip and through public scoping comments. The significance of transforming what is now an undeveloped wildlife safe haven with minimal motorized use restricted to administrative roads for grazing allotment management and the occasional fall hunter retrieving game into a populated motorized recreational trail system would have profoundly significant impacts on a multitude of other values as described above.

The preliminary EA fails to offer justification for adding NZ-01 trail in Alternative 2 to the system, nor does it explain how these concerns would be mitigated. The FS must clearly explain

⁸⁷ See Attachment 3: Line Creek Field Trip Notes (2015) *stelprd3852703*

how previous comments, stakeholder feedback, and adjacent landowner concerns were evaluated and incorporated into developing draft alternatives, particularly the proposed action.

Pertaining to Alternative 3 roads 122 and 140, as long as these continue to serve a purpose for grazing management, keeping them open for administrative use only makes sense. If they are no longer needed for grazing management, decommissioning should be evaluated as a strategy to prevent illegal motorized trespass that is currently a problem in the area. Also, road 140 should be blocked off before it turns south toward the Tolman property to increase the likelihood that recreational users will stay on the designated road that is open for public use.

NZ-20 - Line Creek

NZ-20 from Alternative 2 in Table 1, a proposed decommission, does not appear on the map, making it impossible to cross-reference. The table description conflictingly states that this proposal would decommission FSR 123.1B, leaving the reader to guess that the rationale might be because of the duplication that parallel FSR 123.1A appears to offer. The rationale in Table 1 actually reads exactly the same as for the two routes listed below, which are both new roads in a completely different geographic area.

NZ-23 and NZ46 - Sulphur Creek, Sunlight and NZ-29 - Upper Sunlight

All three of these proposals are in both Alternatives 2 and 3 in part because they are required solutions to resolve illegal trespass onto private land inholdings, as well as prevent further resource damage caused by illegal motorized pirating beyond the private land inholdings. The gate near Winona Camp is well thought out by allowing space for turning a vehicle around and likely to succeed in maintaining compliance. Hopefully the gate on FSR 101.3 where the road meets the private property is as effective. Safety and potential conflict on upper FSR 101 becoming FSR 101.3 between motorized vehicles and people walking, leading stock animals, or riding horseback (who must use the upper section to access non-motorized trail 606) raise serious concerns that must be acknowledged, analyzed, and resolved.

NZ-07 - Sweetwater, North Fork

NZ-07 is a two-part proposal in both Alternatives 2 and 3. In Alternative 2, the upper 0.8 mile would be permanently closed and decommissioned, and the remaining three plus miles would be limited to vehicles up to 64 inches in width. In Alternative 3, the same decommissioning is proposed, and the remainder of the road would be converted to administrative use only and closed to public use. Decommissioning the upper section of the road is a small step in the right direction but not adequate to effectively minimize the significant impacts of this road. Coupling

the decommission with conversion to administrative use only as proposed in Alternative 3 would effectively minimize the very significant impacts this road has on terrestrial and aquatic wildlife, highly erosive soils. Converting most of the existing road to a motorized trail for vehicles up to 64 inches wide as proposed in Alternative 2 would not diminish the erosion problems, and in fact may exacerbate them, causing even more resource damage than is already occurring.

NZ-47 - Elk Fork, North Fork

NZ-08 - Elk Fork, FSR 424

These two proposals both deal with Elk Fork Creek. Alternative 2 proposed to realign and rebuild the existing road. Alternative 3 proposes to convert all but the bottom one third to one half mile of the road to administrative use, closed to public use, and to realign the lowermost approximately third of a mile as specified in Alternative 2. Closing most of this road to public use, as proposed in Alternative 3, would effectively meet minimization criteria to minimize significant harassment of wildlife, displacement of wildlife from important habitats, soil erosion, and impacts to water quality. Simply realigning it as proposed in Alternative 2 would minimize at least to some extent soil and water impacts, but it would not reduce significant impacts to wildlife and wildlife habitat at all, and might even make them worse if vehicles could travel at higher speeds. Additional analysis and development of minimization strategies for all significant impacts is required.

NZ-28 - Blackjack Road, Dick Creek

Unfortunately, the preliminary EA offers little detail about the need or justification for maintaining this road in the legal system. Currently this road is closed for safety and resource protection, so it seems prudent to remove it from public use. But the FS hasn't provided a clear or defensible justification for converting it to an administrative road instead of permanently closing and decommissioning it.

Include Electric Bicycles within Glossary of TMP

We request the FS clearly address the issue of electric bicycles (e-bikes) in this TMP. The FS Washington Office published draft directives for managing e-bike use on September 24, 2020⁸⁸. These directives clarify that e-bikes are a class of motorized vehicle subject to the Travel Management Rule and are only allowed on designated motorized roads and trails. The directives give the Forest Service the authority to limit motorized designations to e-bikes as a particular

⁸⁸ Federal Register notice: <https://www.govinfo.gov/content/pkg/FR-2020-09-24/pdf/2020-21128.pdf> and proposed directives: <https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2619>.

class and type of motorized vehicle, similar to how the agency can designate singletrack dirt bike trails. Failure to specifically address e-bikes in this TMP will lead to more issues and conflict in the future that will only intensify and be more difficult to resolve as time passes. We recommend the travel plan glossary include a definition of a motorized vehicle that specifically includes bikes possessing electric motors, as defined in the new directives. The term e-bikes should also be included in the listing of motorized vehicles allowed on the various types of trails defined in the glossary. Without a clear and concise definition on how e-bikes are characterized and where they are allowed, there will be confusion by those users.

XI. SPECIAL DESIGNATION AREAS

High Lakes Wilderness Study Area

Snowmobiling is allowed within the High Lakes Wilderness Study Area (WSA) under the 1984 Wyoming Wilderness Act “in the same manner and degree as was occurring prior to” 1984. The SNF LMP upholds this language, making it clear that the WSA is to be managed to prevent long-term impairment of wilderness characteristics until its WSA designation is changed by the U.S. Congress, and that snowmobiling may continue to the same manner and degree as was occurring prior to the 1984 Wyoming Wilderness Act. The SNF has made an effort to consider the impact of OSV use on wilderness character in the WSA in this preliminary EA, and we appreciate this. However, there are shortcomings within the data used, and we do not believe the FS has fulfilled its legal responsibility to determine baseline OSV use in 1984 or hold subsequent use up to the present to that level. We do not believe the FS has based its assertion that OSV use levels and patterns are not significantly different than they were in the early 1980s on reliable or accurate data.

Our groups understand that data documenting the “manner and degree” of snowmobiling that was occurring in the High Lakes WSA in 1984 is difficult to find. However, this preliminary EA does not completely acknowledge the limitations of the data it used related to the High Lakes WSA, and the conclusions it draws from inaccurate data conflict with our understanding of how OSV should be managed in the WSA today. The long term implications of not making the data limitations explicit in this assessment could be profound and long lasting. The information presented in this EA could be used as inaccurate evidence to come to erroneous conclusions in future assessments. Continuing to perpetuate misconceptions and misinformation will only undermine future efforts to correct the FS’s failure to determine the amount of snowmobiling that was occurring in 1984. Every passing year that the FS does not take meaningful action to establish a factually based 1984 baseline for OSV use determination of 1984 OSV use levels will

only make it more difficult. These limitations aside, there are other considerations not included in the preliminary EA that we will also highlight to inform your work moving forward.

Resource Condition Indicators and Measures for Assessing Effects (preliminary EA Table 83 p. 137).

Although it is reassuring to see that the SNF has tracked OSV usage in and near the WSA to some degree, we are fully in line with this sentence from page 140 of the EA: “These usage statistics can inform decision-making, but should not drive decision-making.” Traffic counters are not adequate on their own in defining the “manner and degree” that OSV use was occurring prior to 1984. The EA states, “documented frequency, intensity, and duration of OSV use within the HLWSA is largely unavailable. Places traveled to, routes taken, and other information is not available.” The “manner and degree” is difficult to understand without data on these critical variables, but trying to stretch data regarding traffic counters to explain such variables is flawed.

1982 Clarks Fork Snowmobile Trail EA (preliminary EA Table 84 p. 138).

These data include counts that occurred from the junction of Highways 212 and 296 east toward Island Lake and the main entry point to the High Lakes, and apparently also northwest to the Wyoming/Montana state line near Cooke City. The preliminary EA assessment needs to better describe this data, both by qualifying it and presenting its limitations. These combined data are not adequate to determine what percentage of the observations were collected on each segment. Seemingly, these data suggest that Cooke City and other well-publicized snowmobiling areas in that region were a bigger draw for snowmobilers and therefore likely comprised a larger percentage of the counts. This is an assumption however, and the true meaning of this data is unclear. Limitations of all data you present should be clearly acknowledged in the preliminary EA, however time and time again it is not. This is just one example.

The 1980 – 1981 data line at the top of p. 139 seems to be a continuation of Table 84, but this is unclear. The footnote to these 1980-1981 data is misleading and not defensible due to the lack of supporting information. The increased count in OSV use during the 1980-81 period may be associated with more days of grooming (no data available) or an extended period of grooming (no data available), but this is questionable based on what is provided within this EA. Please provide “days grooming” and “period of grooming” data in this assessment to better explain the situation. To say that the trends observed resulted from an increase in snowmobilers traveling to the higher elevation area of the High Lakes WSA is a big stretch, and does not respect the limitations of these data. This is a good example of how this EA references poor quality data and draws conclusions from it. This practice stands to misinform future efforts to manage OSV use in the High Lakes WSA.

Upper Yellowstone Snowmobile Club Data (preliminary EA p. 138).

We appreciate that you report on data limitations presented in the original study, but additional discussion is warranted on how these data pertain to the High Lakes WSA, if at all. The High Lakes WSA is accessed regularly by OSVs via Island Lake, which is approximately 25 trail miles from Cooke City. A traffic counter set on the edge of Cooke City captures everybody coming and going from Cooke City, most of whom are not going to the WSA. We understand that snowmobile trends pertaining to an area nearby can inform a general understanding of possible use trends of the WSA, but a direct correlation as you insinuate cannot be justified. Consider an area on the Custer Gallatin NF that has always been a more popular destination for OSV users than the WSA, the Daisy/Lulu area; snowmobilers riding within this area are not going to also ride through the WSA on the same trip. It is not clear why this data was included in the current EA, especially as it does not appear to be included in Table 83. This data limitation needs to be explicitly acknowledged to avoid misinterpretations within this planning process and in future discussions concerning the WSA management.

Forest Service OSV Counter Data 2018 (preliminary EA Table 85 p. 139).

Inconsistencies between the Beartooth Lake and Island Lake counters are not well defined within this assessment regarding the validity of these data. These limitations aside, data were collected at both Beartooth Lake and Island Lake over the course of four days. The brevity of these observations is immediately concerning, but if we do consider the results, only 20 percent of the snowmobile traffic passing the Beartooth Lake counter continued on to Island Lake. This leads to two possible explanations: either Beartooth Lake or the Top of the World resort are major destinations, or OSVs tend to access the open, non-WSA country south of Highway 212, and never make it to Island Lake. Regardless of which explanation is actually more accurate, the data does suggest that traffic to Island Lake was often limited, and therefore OSV use within the WSA was also the minority when compared with other nearby areas.

Snowmobile Counts by Day and Year (preliminary EA Table 86 p. 139).

This table should be removed from this assessment due to glaring limitations within the utilized data. These limitations include different sampling methods, inconsistent sampling efforts, drastically varying applicability of the sample locations to the High Lakes area, and inadequate sample sizes. We ask that due to concerns regarding validity and probability of misinterpretation, it be removed altogether from the assessment.

Change in Snowmobile Use and Technology from 1984 to 2020.

We recommend this assessment include a detailed discussion of factors related to OSV use that have changed since 1984 and provide discussion on how these changes may relate to changes in

OSV use within the High Lakes WSA since 1984. These factors could include things like general levels of snowmobile use, changes in snowmobile technology since 1984, changes in ease of access to the area, winter visitor use information from surrounding communities, etc. A full evaluation of these types of factors would provide a better understanding of general snowmobile use trends over the past 35 years, which would inform a collected understanding of the probable snowmobile use occurring in 1984, and how that compares to the use today. These three considerations to follow support that winter use more than likely has increased since 1984.

INCREASED SNOWMOBILE USE. Government surveys cited by the Winter Wildlands Alliance (2015) estimated that 10.7 million people in the U.S. snowmobiled in 2010, compared with 5.3 million in 1982-83. It can be assumed that this trend of increasing use following 1983 seen nationally, was also seen in the State of Wyoming and in the SNF.

CHANGES IN SNOWMOBILE TECHNOLOGY. Since 1984, snowmobile technology has changed. Today, OSVs are hardly comparable to snowmobiles of the early 1980s. Until more recently, the machines were not capable of navigating deep snow, snowmobilers generally sought only groomed or packed trails and roads. The “powder sled” that was introduced in the mid 1990s, evolved what snowmobiles were capable of, changing the sport forever. OSV technology, as to be expected, has continued to evolve resulting in more powerful, lighter, and more versatile machines. Modern snowmobiles, like the mountain sled, that is common among Beartooth riders, can easily travel up steep terrain and through very deep snow. The newest type of OSV is known as the timber sled. This sled can navigate through tight trees and around other obstacles that were once out of reach for snowmobiles. This sled is able to travel almost anywhere a skier can travel. Due to advancement in technology, as is evident within the high-powered mountain sleds and timber sleds, limitations are no longer posed by the machine itself. Both of these sleds are common within the High Lakes WSA, which means OSV use could be occurring in every corner of the landscape.

If snowmobiles in 1984 could only travel off-trail in very specific conditions, how is it assumed that snowmobiles ventured far from the groomed Beartooth Highway when the High Lakes WSA was established? Wouldn't this information suggest instead that in 1984 there was limited, if any, snowmobile use within the WSA? Yet fast forwarding to 2020, current OSV use within the WSA is common and wide-ranging. How does this comply with the clear language from the 1984 Wyoming Wilderness Act that snowmobiling within the WSA would occur “in the same manner and degree as was occurring prior to” 1984? How does this comply with the conclusions of the preliminary EA that use has remained largely unchanged since the 1970s?

CHANGES TO ACCESS. Paving can result in an increase of use, and we question whether this is true of winter access to Highway 212 after the gravel section of Chief Joseph Highway over Dead Indian Pass was paved in 1995. We understand that many OSV users who visit the High

Lakes WSA today access the area from the Chief Joseph Highway (not Cooke City). The FS should seek vehicle use data that would help determine if winter use has increased on Chief Joseph Highway from the Wyoming Department of Transportation.

Section 3.7.2.1. Assessment of Wilderness Characteristics (preliminary EA p. 140).

This section of the preliminary EA provides incomplete and inaccurate information that should be corrected. The EA accurately states that the 1974 FS wilderness proposal excluded the Wyoming High Lakes from a recommended 542,437-acre Beartooth Wilderness on the Custer Gallatin National Forest. However, both the Administration and the FS subsequently supported including Wyoming High Lakes in another proposed wilderness designation. In 1977, Montana Senator Lee Metcalf's Senate bill S. 1671 proposed a 913,500-acre Absaroka-Beartooth Wilderness Area that included the High Lakes area on the SNF. During a Congressional hearing, USDA Assistant Secretary Dr. James Neilson made the following statements⁸⁹:

“The Administration strongly recommends almost the entire area proposed in S.1671 plus adjacent lands in Wyoming for wilderness designation.”

“We recommend the addition to the area proposed in S. 1671, of a 41,800-acre tract in northern Wyoming known as the Wyoming High Lakes. This High Lakes country has outstanding wilderness qualities.”

The 1977 proposed 960,000-acre Absaroka-Beartooth Wilderness including the Wyoming High Lakes area was also included in Arizona Congressman Udall's House Bill H.R. 1907. Public support for including the Wyoming High Lakes into the Absaroka-Beartooth Wilderness bill during joint congressional hearings was strong. The major reason the High Lakes were excluded from the final wilderness bill was not due to public, agency, or administrative opposition - rather, it was a result of Congressional courtesy to legislators from a neighboring state, since the High Lakes were located in Wyoming. As a result of deference to Wyoming legislators, the Wyoming High Lakes were not included in the Absaroka-Beartooth Wilderness bill and further consideration for wilderness designation had to await action by Wyoming legislators in the early 1980s.

We see value in presenting a history of consideration for wilderness designation as part of the assessment of wilderness characteristics of the High Lakes WSA, but if the SNF presents a

⁸⁹ Joint Hearing of the Subcommittee on Parks and Recreation of the Committee on Energy and Natural Resources United States Senate and the Subcommittee on Indian Affairs and Public Lands of the Committee of Interior Insular Affairs House of Representatives. August 10, 1977. Pp. 20, 269, 270. Committee hearing record at: [Absaroka Beartooth Wilderness Bill 1977](https://babel.hathitrust.org/cgi/pt?id=mdp.39015078076455&view=1up&seq=5) (https://babel.hathitrust.org/cgi/pt?id=mdp.39015078076455&view=1up&seq=5).

history, it must be complete, unbiased, and not misleading. A thorough history must include the facts we presented above and other relevant historical information.

Finally, the statement found at the end of Section 3.7.2.1 of the preliminary EA - “Congress did not expressly prohibit or limit OSV use within the area;” is simply not accurate and must be removed. The Wyoming Wilderness Act approved by Congress specifically limits snowmobile use in the High Lakes WSA to “the same manner and degree as was occurring prior to the date of enactment of this Act.”

Section 3.7.2.2. Environmental Consequences Across All Alternatives (preliminary EA p. 140).

The SNF TMP must establish an OSV closure area within the High Lakes WSA where OSV use in 1984 likely did not occur, as mandated by the Wyoming Wilderness Act. The FS did not collect the necessary baseline data characterizing OSV use of the WSA immediately after the passage of the bill, which has made the task today more difficult. Regardless, establishing this baseline is still entirely necessary. As we have already acknowledged, the data is not easy to find, however the data this EA presents wrongly suggests that Alternative 1 (no action) or Alternative 2 are legally justified with respect to the mandated management of the WSA. These conclusions are not supportable by the data presented.

We appreciate that the SNF incorporated some suggested High Lakes WSA management practices from some 2017 scoping comments into Alternative 3. This is one of the few examples from the EA where it is evident that the FS considered any of our groups’ scoping comments. But the discussion of this alternative within the EA is inaccurate and misleading. The changes proposed in Alternative 3 would not substantially decrease opportunities for primitive recreation and solitude for OSV users as you claim (preliminary EA p. 156). To be clear, OSV use is not a form of primitive recreation and it is not known for creating a sense of solitude. This discussion also leaves out any mention of the ample terrain on the south side of Highway 212 on the Beartooth Plateau, which provides the same type of riding experience as within the WSA. Over 58,000 acres would still be available for OSV use on the Beartooth Plateau, from Muddy Creek to the state line. Creating an OSV closure of 15,224 acres does not substantially decrease opportunities for OSV users on the Beartooth Plateau.

The EA mentions the value the WSA holds for non-motorized users, and that Alternative 3 would increase opportunities for solitude and primitive recreation for non-motorized users. While winters in the WSA are long, the ski season is short, only a few weeks as it does not begin until the Beartooth Highway is plowed. A growth in spring OSV use in the WSA, especially in the easternmost portions, already conflicts with the use of the area by backcountry skiers, and this significantly detracts from the character and recreation opportunities within the WSA for this

user group. This use conflict is directly tied to our earlier suggestion regarding the OSV season dates on the Beartooth plateau.

The SNF must complete full and proper analysis of the many issues we have already discussed regarding 1984 use levels, as well as a detailed discussion of the limitations of all data utilized, and must meet the legal requirement conferred by the Wyoming Wilderness Act of 1984 to establish a fact based 1984 OSV use level, both in terms of use intensity and use location. In determining 1984 location and intensity of use of OSVs, the FS should adopt a conservative standard of basing the determination on affirmative proof that use was occurring in a particular location and at a specified intensity rather than requiring proof that it was not occurring.

We argue that another alternative is also necessary. Additional closure of those lands east of Beartooth Creek and west of Beauty Lake would be an appropriate additional area to analyze for closure, in addition to the closure outlined in Alternative 3. This area's terrain is clearly too rugged for the available OSV technologies of 1984. Further research into when the Class 2 OSV trails in the High Lakes WSA first were identified by the Wyoming State Trails Program is also necessary for this analysis. Without proof that these trails were present during the winter of 1983-84, those routes should be removed from the State of Wyoming inventory. The FS must ensure this to be in compliance with the Wyoming Wilderness Act.

Compliance with Travel Management Rule

Throughout the preliminary EA, the FS has missed an important and clear directive of travel planning, and their analysis of OSV use in the WSA is no exception. We are referring to the Travel Management Rule's requirement to manage motorized use under a closed unless designated open paradigm. The SNF carried out a full exploration of the consequences of closing the area mapped in Alternative 3, as referenced above, while ignoring the impacts of opening areas to OSV use. Why is there no discussion around the issue of OSV incursions into the Absaroka Beartooth Wilderness? Or how opening these areas within the WSA to OSV use might change future wilderness management? We already know that wilderness incursions are a longstanding problem on the Beartooth Plateau, yet this EA fails to mention this management concern at all. The total disregard for an issue as significant as this is just one more reason the SNF must complete further analysis through an EIS.

Research Natural Areas

The final TMP should not designate any part of any of the SNF's proposed or designated Research Natural Areas (RNAs) for motorized use. According to the SNF LMP (p. 146), the guidelines for management of recreation on the eight proposed RNAs on the SNF (Beartooth

Butte, Lake Creek, Grizzly Creek, Sheep Mesa, Arrow Mountain, Roaring Fork, Bald Ridge, and Pat O'Hara) clearly state:

- Recreation trails should be located to avoid impacting the ecological conditions and processes that led to establishment of the research natural area.(MA2.3-GUIDE-05)
- Manage for an adopted recreation opportunity **class of semi-primitive non-motorized**.(MA2.3-GUIDE-06, emphasis added)

Line Creek Plateau RNA. The Custer Gallatin NF and SNF share management of the designated Line Creek Plateau RNA, with the SNF managing only 3,053 acres of the RNA. Applicable management standards laid out in the SNF LMP (pp. 141-143) are as follows:

- Recreation use is not prohibited, but shall not be encouraged. However, recreation use can be prohibited or restricted by special orders if such use threatens or interferes with the objectives or purposes for which the research natural area was established. (MA2.2A-STAND-11)
- Do not permit new roads, trails, fences, structures, or signs unless they contribute to the desired conditions or to the protection of the research natural area, except within the highway easement.(MA2.2A-STAND-16)
- Manage for an adopted recreation opportunity spectrum **class of semi-primitive non-motorized**.(MA2.2A-GUIDE-30, emphasis added)

In all three alternatives presented in the preliminary EA, the SNF designates OSV use within the Line Creek Plateau RNA. Designating OSV use within the RNA violates the above mentioned SNF LMP standards, particularly the one directing “manage(ment) for an adopted recreation opportunity spectrum **class of semi-primitive non-motorized**. (MA2.2A-GUIDE-30, emphasis added).” Allowing OSV use also violates FS policy. Section 4063 of FSM 4000 states the purpose of RNAs as follows:

Research Natural Areas are part of a national network of ecological areas designated in perpetuity for research and education and/or to maintain biological diversity on National Forest System lands. Research Natural Areas are principally for nonmanipulative research, observation, and study. They may also assist in implementing special acts, such as the Endangered Species Act.

FSM 4000 describes the objectives for establishing RNAs to:

1. *Maintain a wide spectrum of high-quality representative areas that represent the major forms of variability found in forest, shrubland, grassland, alpine, and natural situations that have scientific interest and importance that, in combination, form a national network of ecological areas for research, education, and maintenance of biological diversity.*

2. *Preserve and maintain genetic diversity including threatened, endangered, and sensitive species.*
3. *Protect against human-caused environmental disruptions.*
4. *Serve as reference areas for study of natural ecological processes including disturbance.*
5. *Provide onsite and extension education activities.*
6. *Serve as baseline areas for comparing results from manipulative research.*
7. *Monitor effects of resource management techniques and practices.*⁹⁰

Furthermore, FSM 4000 describes FS policy for managing RNAs as:

*Research Natural Areas may be used only for Research and Development, study, observation, monitoring, and those educational activities that do not modify the conditions for which the Research Natural Area was established.*⁹¹

The desired condition for the Line Creek Plateau RNA in the LMP is to provide “an opportunity for research, study, observation, monitoring, and educational activities that maintain the natural conditions for which the area was established (p. 140).” OSV use that damages the fragile tundra vegetation and soils interferes with these opportunities. The preliminary EA acknowledges that “localized damage to vegetation and soils may occur from OSV use, particularly during shoulder seasons when windswept and exposed ridges with little snow cover become exposed due to melting and wind scour (p. 111).” Damage has already occurred and scientists have reported it to FS. The preliminary EA suggests that since damage is not “widespread” it does not “affect the integrity of biological functions,” which is absurd to conclude when a research project can be obliterated if as little as a part of a transect or unit experiences *human-caused environmental disruptions*. Current evidence of damage should lead to proactive management and mitigation before the damage becomes widespread, not after the site is fully compromised and the integrity of the Line Creek Plateau RNA to serve science is lost, perhaps permanently.

In addition, the LMP calls for this RNA to provide opportunities for solitude, primitive recreation and summer non-motorized recreation - early summer OSV use within the RNA significantly impacts and interferes with skiers and others engaging in non-motorized recreation in the RNA. The LMP also states that “Recreation use is not prohibited, but shall not be encouraged” in the Line Creek Plateau RNA.⁹² Designating any part of the RNA for OSV use and showing this designation on the OSV Use Map encourages motorized recreational use, conflict with non-motorized use, and resource damage. Furthermore, enforcement in this area is particularly challenging as it is a long trip to access and the SNF has limited enforcement staff to cover an enormous area of designated use under any of the alternatives. The SNF should

⁹⁰ FSM 4063-2.

⁹¹ FSM 4063-3.

⁹² Shoshone Forest Plan MA2.2A-STAND-11.

consider and analyze using Highway 212 from Beartooth Pass summit north to the state line as a boundary to protect the Line Creek Plateau RNA from future motorized use encroachment by omitting the area north and west of the highway from the open designation.

The SNF LMP only identifies polygons of suitability, before further analysis, which should be occurring at this project level of designating open areas. The EA fails to consider how OSV use within the Line Creek Plateau RNA will impact ground nesting birds or small wildlife species that rely on subnivean spaces, nor does it explain why documented damage is not believed to be “affecting the integrity of ecological functions of the RNA as a whole” or how the FS reached this conclusion. The EA also fails to address obvious inconsistencies between designating OSV use within the Line Creek Plateau RNA and SNF LMP direction, as well as FS policy. Because all of the alternatives in the EA authorize some portion of the RNA for OSV use, the SNF must develop and adopt another alternative where OSV use is prohibited in all of this RNA. Since a myriad of significant issues related to the Line Creek Plateau RNA exist, especially if the SNF persists with attempting to designate any part of the RNA for motorized use, an EIS is required.

To align protection of the Line Creek Plateau RNA with protective management practices of the Custer Gallatin NF for its portion of the RNA and to comply with the SNF LMP, the SNF cannot designate any part of the RNA for motorized use, including OSV use. This can be enforced with signage, coupled with patrolling and legal enforcement as needed, just as is done on the Custer Gallatin National Forest. Not designating any OSV use north of Highway 212 on the east side of the Beartooth Pass summit would protect the RNA and reduce incursions into the Absaroka-Beartooth Wilderness, and provide a clear and enforceable boundary. The small section of the RNA south of Highway 212 could be signed to show that it is not designated for OSV use.

Proposed Sawtooth Peatbed Geological Area

The management guidance for the proposed Sawtooth Peatbed Geological Area is to “Manage for an adopted recreation opportunity spectrum class of non-motorized.(MA3.1C-GUIDE-03)”⁹³ Hence, one of the alternatives needs to remove all motorized use from this site, particularly OSV use, and that option must be analyzed for environmental impacts measured against the desired condition of “Ecological processes prevail, with minimal human intervention, providing natural conditions.”⁹⁴ We also request that the FS analyze the environmental impacts and use conflicts of allowing summer motorized dispersed camping from roads and trails near this area. Exploring and implementing minimization options such as designated dispersed campsites or eliminating the practice from nearby roads is required.

⁹³ Land Management Plan, 2015 Revision, Shoshone National Forest; USDA, May 2015, Pg. 151.

⁹⁴ Land Management Plan, 2015 Revision, Shoshone National Forest; USDA, May 2015, Pg. 151.

XII. ENFORCEMENT, COMPLIANCE, AND ILLEGAL (UNAUTHORIZED) ROADS AND TRAILS

Enforcement

The SNF must consider the effects of proposed actions on its ability to enforce the entire existing and proposed system of roads and trails on the forest. NEPA requires the agency to take a hard look at the impacts of illegal motorized use on forest resources and the likelihood of illegal use continuing or expanding under each alternative⁹⁵. Instead, the FS shared during one of their virtual information meetings (August 2020) a belief that their responsibility is limited during travel management planning to the system of roads and trails provided on their current MVUM, and so far have refused to create an effective enforcement plans or to analyze the miles and miles of illegal trails and roads currently being used across the SNF. Lack of enforcement is a pervasive problem that concerns both motorized and non-motorized users. Although there is brief mention of enforcing illegal use of these trails and roads in the preliminary EA, there is no detail provided for how the FS will do so. The FS does not share any plan to increase law enforcement officer (LEO) or Forest Protection Officer (FPO) staff or presence, but does cite them as the silver bullet for ensuring that theoretical control of illegal use will be accomplished. Some proposed actions clearly would increase the enforcement burden on the FS, a fact that is completely unacknowledged in the preliminary EA. Examples include designating open OSV terrain in areas we know get little to no snow like the mouth of Clarks Fork Canyon, and erroneous seasonal closure dates that will do nothing but exacerbate impacts to vegetation and wildlife in shoulder seasons.

Off-roading violations account for the majority of law enforcement problems on federal lands despite the fact that less than 5% of visitors to national forests and grasslands use off-road vehicles⁹⁶. Has the SNF closely consulted with their current LEOs on the proposed actions? Have the LEOs, already charged with single-handedly patrolling millions of acres, confirmed that they can adequately enforce additional miles of roads and trails? The Forest Supervisor should work closely and transparently with LEOs to propose and analyze an alternative that will best meet their law enforcement capacity, and the results of this collaboration should be transparent to the public. There are solutions that can make enforcement easier e.g. not having roads dead-end at Wilderness boundaries, or creating seasonal closures that correlate with when there is sufficient snow coverage on areas designated for OSV use. The current EA does not evaluate how to lighten the load of these enforcement officers, and instead increases the burden on them. The Shoshone's obligation to enforce the existing system and effectively close non-system routes is defined in the Travel Management Rule, LMP, and previous NEPA decisions, and therefore

⁹⁵ 27 See *Sierra Club v. U.S. Forest Serv.*, 857 F. Supp. 2d 1167, 1176-78 (D. Utah 2012).

⁹⁶ <http://www.fs.fed.us/publications/policy-analysis/unmanaged-recreation-position-paper.pdf>; PEER 2007.

needs not be included within this planning process. However, the Shoshone's struggle to effectively enforce the designated system and close unauthorized routes is a reality that underlies all of the current Travel Planning efforts, has on-the-ground direct, indirect, and cumulative impacts and must be analyzed.

Illegal Roads and Trails

Central to our travel planning concerns is the prevalence of "closed" non-system roads and trails that have not been signed, barricaded or decommissioned and still allow motorized use. Wyoming Wilderness Association's Travel Management Report⁹⁷ and many of our organizations comments during pre-scoping and scoping periods concluded that dozens of these "closed roads not closed (CRNC)" are the greatest source of illegal motorized use on the SNF, yet the FS has effectively totally ignored them by simply proposing to delete them from the MVUM but refusing to disclose their prevalence, locations, or conditions in its planning analysis to date. The majority of documented CRNC are not typical illegal user-created two-tracks; they are well-established non-system temporary or logging roads that the FS has never properly closed, decommissioned, or reclaimed, leading to current illegal use (Attachment 2). Several of our organizations submitted extensive data and information gathered by forest users showing that the majority of illegal motorized use on the SNF stems from these non-system roads that are not effectively closed. The impacts of these CRNC and other illegal trails and roads on enforcement resources, infrastructure resources, and the environment (particularly grizzly bears) must be analyzed, and the FS must develop a realistic comprehensive plan for how it intends to effectively eliminate illegal motorized use of all types, eliminate resource impacts that have resulted from illegal use, and eliminate illegal roads and trails, per LMP Road and Trail Goal 9.

Illegal roads and trails have an undeniable effect on the ecosystem health, existing motorized and non-motorized users, hunting opportunities and the backcountry character of the Shoshone. By not effectively closing and clearly signing as closed all illegal roads, the FS will continue to allow illegal motorized use to occur, unmonitored and unmanaged. Resource damage will continue unmitigated. Non-motorized hunter opportunities will continue to be negatively impacted. The FS must disclose the prevalence of illegal roads and trails during the planning process so they can know and accurately describe the baseline situation as it exists on the ground, assess cumulative impacts, and comply with related Travel Management Rule and NEPA requirements. Negative impacts caused by closed or illegal user-created roads and trails that haven't been obliterated and restored are significant, inextricably intertwined components of road and trail designation decisions and their cumulative impacts. These impacts must be identified and addressed as part of the current travel planning process.

⁹⁷ [Wyoming Wilderness Association. Travel Management Report.](#)

Implementation Plan after TMP Approved

The travel plan should include direction for developing a monitoring and implementation plan. One of the SNF's fellow Region 2 forests – the White River – provides a good model to follow for this.

The White River travel plan covers both summer and winter uses and defines modes of travel across the forest by area and by route. To ensure the travel plan was successfully implemented, the Forest Service drafted a Travel Management Implementation Plan (TMIP)⁹⁸ to accompany the travel plan. The TMIP was specifically focused on the 3 year period immediately following the publication of the travel plan: 2012-2015.

The White River emphasized the “4Es” throughout travel planning and implementation – Education, Engineering, Enforcement, and Evaluation (monitoring). Recognizing that “without appropriate and adequate information and education materials available for the public, and personnel to create and distribute them, the designation process alone will not provide the change in awareness and behavior necessary to ensure that the desired positive effects of the new travel rule are realized”⁹⁹, the implementation initially focused on education. Education materials included up-to-date information posted on the forest website, public information kiosks, digital brochures and interactive maps, motor vehicle and over-snow vehicle use maps, visitor use maps, brochures on responsible use, specific brochures for high-use areas, brochures on safety in mixed-use areas, and talking points for forest staff. These talking points (and other materials) focus on positive messaging and were developed with partners who had participated in the travel planning process. Partner organizations – including state agencies – provide funding, volunteer and staff time, and materials to develop and post information about the travel plan.

The goal of the education component of the White River TMIP was to provide sufficient information to the public so that enforcement would not need to be the primary focus for travel plan implementation. At the start of the enforcement phase of the TMIP, the FS increased the number of staff who were trained and certified as FPOs and encouraged all staff to spend more time in the field, to increase FS visibility and presence, as District staff are primarily responsible for enforcing the TMP. The TMIP also calls for close coordination between forest LEOs and district staff, with districts identifying priority or problem areas and LEOs coordinating with FPOs to carry out enforcement. Today, many years into implementation, the FS continues to conduct routine patrols at identified “hot spots” where compliance is an ongoing issue – such as where wilderness boundaries are near OSV routes.

⁹⁸ Available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5365835.pdf.

⁹⁹ White River TMIP, page 6.

Another example the SNF should look to for understanding the monitoring and implementation piece of travel management is the Custer Gallatin NF. The Custer Gallatin NF immediately launched into implementation once its 2006 TMP was complete. While the Custer Gallatin NF's Travel Plan Implementation Strategy¹⁰⁰ is not as detailed as the White River TMIP, it provides a basic outline for how the forest intended to implement its new travel plan. The 3-phase implementation plan sets the stage by thoroughly educating the public about the new plan, identifying grants and volunteers to help with plan implementation, initiating monitoring, developing maps, and putting up new signs/removing obsolete signs. The second phase, 1 to 5 years after the TMP decision was signed, focused on implementing the site-specific projects necessary to open the motorized routes approved in the TMP, increasing enforcement through saturation patrols, formalizing relationships with partners through user group agreements, and designating and managing major forest access corridors. Finally, phase three of plan implementation, 5-10 years after finalizing the TMP, focused on implementing the site-specific projects necessary to provide for the non-motorized opportunities in the TMP, improving or creating new parking areas where needed, decommissioning roads and trails as called for in the TMP, and conducting routine maintenance and improvements for roads, trails, trailheads, and parking areas.

In addition to creating maps, signs, and educational materials related to the new travel plan, the Gallatin Custer Gallatin NF made several major on-the-ground changes to implement the plan. This included constructing some new trailheads and building a few small connector trails to link new trailheads into the designated motorized system. Because the TMP designated routes for different uses but did not authorize "dirt moving" such as building new parking areas or trail construction, the Custer Gallatin NF prioritized completing related site-specific NEPA for project implementation as soon as the TMP Record of Decision was signed.¹⁰¹ Not only did this subsequent Environmental Analysis approve travel management-related projects, it helped the FS identify priorities and create an annual program of work to guide the forest in implementing the plan.

We suggest the SNF follow the lead of both the White River and Custer Gallatin National Forests and develop an implementation plan to complement this travel management plan.

¹⁰⁰ Available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5130759.pdf.

¹⁰¹ Road and Trail Work Environmental Assessment, Decision Notice signed April 15, 2009. Available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd591527.pdf.

XIII. AN ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED

This project may have a significant impact on the environment and thus the FS must prepare an EIS. The Council for Environmental Quality's (CEQ) regulations require agencies to prepare an EIS if a project may significantly affect the human environment. CEQ's regulations define significance in terms of context and intensity, which necessitates identification and analysis of the scope of beneficial and adverse impacts, unique characteristics of the geographic area, degree of likely controversy, degree of uncertainty, degree to which an action may affect species listed or critical habitat designated under the ESA, degree to which an action affects public health and safety, and cumulative impacts including other actions that may be individually insignificant but collectively significant.¹⁰² This project may significantly affect the human environment because it:

- Will have a significant impact in context of the affected region, affected interests, and locality. As the first major project considered following the completion of the 2015 Shoshone LMP revision, the effects of site-specific proposed actions will significantly impact the locale of the SNF and the people who visit it in a myriad of ways. For example, this project will significantly affect the locale including important big game migration routes between summer habitat in Yellowstone National Park and winter ranges along the Beartooth and Absaroka Fronts.
- Will have a severe impact in terms of intensity, in light of the impacts listed below.
- Will cause significant impacts, both beneficial and adverse. The proposed actions will provide additional motorized recreational opportunities for a relatively small segment of forest users, while diminishing value for many other users. Potential beneficial impacts may include less resource damage from motorized recreation, if the FS can effectively enforce user compliance with the legal system of roads and trails. Significant potential adverse impacts include harassment of wildlife and displacement from critical habitats, diminished quality of wildlife habitat, increased resource damage from uncontrolled illegal motorized use and inability of the FS to properly maintain the road and trail system, and many others described throughout this entire document.
- Involves a geographic area with unique characteristics. The project area is uniquely situated on the eastern edge of the Greater Yellowstone Ecosystem. It provides essential wildlife corridors and connectivity for numerous wildlife species. The diverse and unique geography and remote nature of the Shoshone National Forest is one reason many people

¹⁰² 40 C.F.R. § 1508.27 (defining "significantly").

visit Wyoming. This project proposes to increase motorized recreation in ways that will diminish the value of the wild backcountry forest that the public values.

- Will result in effects on the human environment that are likely to be highly controversial. This includes designating OSV use areas that have historic and ongoing value for non-motorized recreationists, widening motorized trails to the detriment of dirt bike users, and constructing new motorized trails in important wildlife habitat. The volume of public comment related to motorized recreation, mostly opposed to motorized expansion, that was received by the FS during the LMP revision process and the pre-scoping and two scoping periods for travel management planning are a clear indication of the controversial nature of the effects of proposed actions
- May establish a precedent for future actions with significant effects, given that it is the first major project considered under the new direction in the SNF LMP 2015 revision.
- Is related to other actions and factors that may have individually insignificant but cumulatively significant impacts, including factors ranging from climate change to human-caused wildfire (which is more likely to occur in areas open to motorized use) to indirect impacts from invasive weeds that will be introduced by motorized recreation, and many others.
- Will significantly affect species listed or critical habitat designated under the ESA, including grizzly bear, Canada lynx, and wolverine (proposed for listing).¹⁰³
- Has the potential to increase risk to human health and safety, under the proposal to transform many miles of existing roads into a motorized trail designation that would be open to all unlicensed drivers. This raises many questions about potentially significant safety and liability issues. For example, drivers who have been disqualified from holding a driver's license for disqualifying health issues, poor eyesight, or drunk driving convictions may be sharing the road with other unlicensed (and inexperienced) young children who are allowed to drive.

For these reasons the FS must prepare an EIS. An EA is defined as a concise public document used to briefly provide sufficient evidence and analysis to the agency to determine whether to prepare an EIS or finding of no significant impact.¹⁰⁴ At more than 300 pages plus appendices,

¹⁰³ After a district court vacated the U.S. Fish and Wildlife Service's 2014 withdrawal of its proposal to list the wolverine as threatened, in 2016 the Service reopened the public comment period on its proposal to list the distinct population segment of wolverine occurring in the contiguous United States as threatened under the Endangered Species Act. 81 Fed. Reg. 71670 (Oct. 18, 2016).

¹⁰⁴ 40 C.F.R. § 1508.9.

this EA falls far short of a concise public document in its attempt to justify why the impacts from this project will not be significant. The amount of description necessary to try to justify not preparing an EIS should signal to the FS that something is amiss. The FS may not sidestep the more stringent legal requirements that clearly demand an EIS by trying to default to an EA.

In conclusion, thank you for considering our comments. We appreciate the opportunity to share our grave and extensive concerns about the preliminary EA for the SNF's TMP, and we look forward to seeing an EIS that corrects the many deficiencies we have pointed out in the EA. Please do not hesitate to contact any of us if you have any questions about our concerns, or would like more information.

Sincerely,

Jenny DeSarro
Wyoming Conservation Coordinator
Greater Yellowstone Coalition
jdesarro@greateryellowstone.org; 307-527-6233

Connie Wilbert
Director, Wyoming Chapter
Sierra Club
connie.wilbert@sierraclub.org; 307-460-8046

Hilary Eisen
Policy Director
Winter Wildlands Alliance
heisen@winterwildlands.org; 208-629-1986

Peggie dePasquale
Associate Director
Wyoming Wilderness Association
peggie@wildwyo.org; 631-871-3707

Barry Reiswig
Chairman
Wyoming Back Country Horsemen
ThePacker@tctwest.net; 307-690-9713

Adam Rissien
ReWilding Advocate
WildEarth Guardians
arissien@wildearthguardians.org; 406-370-3147

Edward B. (Ted) Zukoski
Senior Attorney
Center for Biological Diversity
tzukoski@biologicaldiversity.org; 303-641-3149

Dan Smitherman
Wyoming Manager
The Wilderness Society
dan_smitherman@twc.org; 307-690-1737

Kimberly Goodman Trotter
US Program Director
Yellowstone to Yukon Conservation Initiative
Kim@y2y.net; 208-709-114

Jonathan Proctor
Rockies and Plains Program Director
Defenders of Wildlife
jproctor@defenders.org; 720-943-0451

APPENDIX of Attachments

Attachment 1: *Winter Recreation Planning Recommendations for Wolverine Conservation*

Attachment 2: *Examples of Infrastructure Priorities on the Wind River Ranger District*

Attachment 3: *Line Creek Field Trip Notes (2015) stelprd3852703*