

LASSEN FOREST PRESERVATION GROUP



Forest Issues Group



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By Electronic and U.S. Mail

Re: Comments on Lassen OSV Designation Revised Draft EIS

Dear Supervisor Hays,

Thank you for the opportunity to comment on the Lassen National Forest's Over-Snow Vehicle (OSV) Use Designation Revised Draft Environmental Impact Statement (RDEIS). We sincerely appreciate the significant work that the Forest Service has put into the RDEIS following the objection process in late 2016. As the first forest in the nation to conduct winter travel management planning under subpart C of the Travel Management Rule, the Lassen's plan and corresponding environmental analysis will likely serve as a model for other forests throughout the Pacific Southwest Region and the nation.

Overall, we believe that the RDEIS provides a relatively thorough discussion of the impacts associated with OSV use. We are also pleased to see a broader range of alternatives and the identification of more discrete open areas that better reflect the paradigm shift – from a default open unless designated closed approach, to a closed unless designated open approach – that subpart C requires. Nevertheless, Alternatives 1-4, in particular, continue to suffer from a number of deficiencies, including questions about whether the Forest Service has adequately minimized impacts to sensitive wildlife, roadless and wilderness values, non-motorized uses, and other forest resources. We believe that Alternative 5 best satisfies governing legal requirements, including the minimization criteria, and provides for balanced and sustainable recreation opportunities for both motorized and non-motorized users.

We encourage the Forest to adopt Alternative 5, as well as to remedy the following deficiencies, which are described in more detail below:

1. Better articulate how the boundaries of open areas were delineated to minimize impacts to natural resources and conflicts with other recreational uses.
2. Ensure that all areas identified as “not conducive to OSV use” are eliminated from open areas.
3. Ensure that all OSV trails – including those located within open areas – that are maintained, marked on the ground, and/or displayed on any winter recreation guides or use maps are analyzed and designated according to the minimization criteria.
4. Ensure that OSV designation decisions minimize impacts to roadless and wilderness values and do not prejudice the mandatory wilderness recommendation process in the upcoming forest plan revision by excluding Inventoried Roadless Areas that receive little or no OSV use from open area designations.

We believe that making these changes in the final EIS will result in a defensible and sustainable winter travel management plan that provides for quality winter recreation and access, adequately protects wildlife, wilderness values, and other sensitive resources, reflects the requirements and intent of subpart C, and can serve as a model for other forests in the Sierra Nevada and beyond.

I. Application of the Minimization Criteria

Executive Orders 11644 and 11989 and the Travel Management Rule, 36 C.F.R. §§ 212.55 & 212.81(d), impose a substantive legal obligation to locate areas and trails designated for OSV use to *minimize* impacts to natural resources and conflicts with other recreational uses. We agree with the Forest Service that compliance with the minimization criteria does not require prevention of all adverse impacts. See RDEIS at 7. Nevertheless, the Forest Service must demonstrate at a “granular” level how each area and route was located to minimize impacts. *WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 929-32 (9th Cir. 2015). Recognizing that compliance with the minimization criteria has been a significant stumbling block in many travel management decisions, The Wilderness Society and BlueRibbon Coalition/Sharetrails.org recently released a set of joint recommendations designed to assist federal land management agencies with compliance (attached). We encourage the Forest Service to review and integrate these recommendations into its OSV designation decisions. We also encourage the

Forest Service to review and integrate the best management practices for OSV planning published in a 2016 article by Adam Switalski in the Journal of Conservation Planning (attached).

We appreciate the additional effort that the Forest Service has put into applying the minimization criteria. See RDEIS at 7 & Appendices C & D. Overall, Alternative 5 would best minimize impacts to various resources. For instance, it would exclude deer winter range, consistent with best management practices and best available science for minimizing impacts to that species. See, e.g., Switalski BMPs at 17-18 (motorized routes and areas should be located outside critical ungulate wintering habitat). It also properly excludes low-elevation areas that receive little snow and low-to-no OSV use – including the Shasta and Fall River areas – and imposes a consistent 12-inch minimum snow depth for OSV use on designated snow trails and within areas designated for cross-country OSV use. These important elements of Alternative 5 help ensure that OSV use occurs only where there is adequate snowpack to minimize impacts to soils, vegetation, wildlife, and other resources. Alternative 5 would also minimize impacts to the Pacific Crest Trail by locating open areas away from the trail to preserve a quality non-motorized experience and ensure consistency with the Comprehensive Management Plan and governing legal requirements. Nevertheless, even with the addition of Alternative 5, the RDEIS continues to suffer from a number of deficiencies related to minimization criteria compliance.

First, the Forest Service continues to rely too heavily on potential future mitigation actions, many of which rely on uncertain future monitoring, lack specificity and clear triggers for implementation, are unenforceable, and/or lack demonstrated effectiveness in reducing impacts. The Forest Service may not rely on potential future mitigation measures and other generalized statements to demonstrate compliance with the minimization criteria.

While establishing site-specific management actions and mitigation measures is an important part of the overall effort to designate a motorized system that minimizes impacts, it does not satisfy the obligation to apply relevant data to *locate* areas and trails to minimize impacts in the first instance. While we are pleased to see the Forest Service delineate more discrete open areas, the RDEIS still lacks necessary information about how and why the agency located the boundaries of those open areas where it did. For instance, it is unclear how area boundaries were located to minimize impacts to wildlife habitat, as described in detail in the comments submitted by Darca Morgan on behalf of The Wilderness Society and other groups. It is also not clear if/how area boundaries were delineated to minimize conflicts with other recreational uses and to ease enforcement, by, for instance, corresponding to ridgelines or drainages. Similarly, the RDEIS lacks information on how and why specific snow trails were located to minimize impacts. Indeed, the mileage of designated snow trails barely varies across the alternatives, demonstrating that the agency did not seriously consider the location of designated trails. In short, a second deficiency is that the Forest Service has not demonstrated how areas and trails have been located to minimize impacts.

Third, the RDEIS fails to apply the minimization criteria on a route-by-route basis. Appendix D appears to broadly apply the selected indicators to all trails located within each of the 8 open areas. There is no granular analysis of individual trails across the large open areas – some of which span hundreds of thousands of acres and includes dozens of miles of designated trails.

A related and fourth deficiency is the failure to analyze or apply the minimization criteria to between 544 and 2,545 miles (depending on the alternative) of existing, ungroomed snow trails within open areas. Most of these “undesigned” trails appear on the forest’s 2005 Winter Recreation Guide and many are signed on the ground and provide a clear or level path through dense vegetation or other inaccessible terrain (see photographs at pp. 8-10 of The Wilderness Society et al.’s October 7, 2016 objection to the draft ROD for the Lassen National Forest’s OSV Use Designation Project), meaning that OSV use is likely to remain concentrated on those undesigned and unanalyzed routes. Indeed, the RDEIS suggests that OSV use within areas designated as open for cross-country travel will remain concentrated on and around existing trails. *See, e.g.*, RDEIS at 98. Not including these routes on the OSV Use Map will likely create confusion – and potential safety concerns – among OSV users who may rely on the OSV Use Map for navigational purposes. At a minimum, the Forest Service must analyze and demonstrate compliance with the minimization criteria for ungroomed snow trails located within open areas that receive regular use and are marked on the ground or on agency maps or guides.

Finally, the RDEIS does not adequately demonstrate how impacts to roadless and wilderness values have been minimized under each alternative. While the RDEIS includes a relatively robust discussion of the myriad social and ecological benefits of roadless areas, RDEIS at 125, it fails to demonstrate how open areas – which encompass tens of thousands of acres of Inventoried Roadless Areas (IRAs) – were delineated to minimize impacts to those roadless values. The RDEIS acknowledges that most of the IRA acreage that would be designated open receives low-to-no OSV use, RDEIS at 126, but provides no explanation for why such areas should be designated open, which could prejudice the mandatory wilderness recommendation process in the upcoming forest plan revision. 36 C.F.R. § 219.7(c)(2)(v); Forest Service Handbook 1909.12, ch. 70. IRAs will be among the areas considered for potential wilderness recommendation or other protective management in the upcoming forest plan revision. Designating them as open to OSV use degrades their naturalness and other ecological values, diminishes opportunities for solitude and primitive recreation, and vastly reduces the likelihood that the Forest Service would recommend the areas or that Congress would eventually designate them as wilderness.

A more defensible approach would be not to include IRAs that receive little use within open areas. This would ensure a robust forest planning process that can fairly evaluate and determine the appropriate balance of sustainable winter recreation opportunities and protection of wilderness-quality lands. To the extent that the revised forest plan determines that certain roadless areas do not warrant protection as recommended wilderness and may be appropriate for motorized uses, OSV designation decisions can be revisited accordingly.¹ To the extent that IRAs are included in areas designated as open to cross-country OSV use, the final plan should clarify that OSV designation decisions may be revisited in the future to ensure consistency with the revised forest plan. This will help set public expectations and ensure that implementation-level winter travel planning decisions being made now do not have the practical effect of constraining the agency’s decision space in the upcoming comprehensive forest plan revision process.

¹ *See* 36 C.F.R. § 219.15(e) (travel plan management plans developed prior to forest plan revision may be amended as necessary to ensure consistency); 36 C.F.R. § 212.54 (travel designations “may be revised as needed to meet changing conditions”).

While Alternative 5 appears to best protect roadless lands and wilderness values, important elements of the impacts analysis appear to be missing, incomplete, or inaccurate. For instance, the analysis under Alternative 5 of “areas designated non-motorized under existing law or policy” is missing. See RDEIS at 153. The RDEIS also appears to have an error in the calculation of IRA acres open to OSV use under Alternative 5. See RDEIS at 155 (listing 83,411 acres of IRA open, the most of any alternative). Based on our calculations, 30,917 acres of IRAs would be open to OSV use under Alternative 5. In short, Alternative 5 would result in a majority of IRA acreage being closed to OSV use and avoid potential prejudice to consideration of those areas in the mandatory wilderness recommendation process.

II. Adequate Snowpack

Subpart C of the Travel Management Rule requires designation of areas and routes for OSV use “where snowfall is adequate for that use to occur.” 36 C.F.R. § 212.81(a). Particularly with climate change leading to reduced and less reliable snowpack, low-elevation and other areas that lack regular and consistent snowfall should not be designated for OSV use. We are pleased to see the RDEIS identify areas that are “not conducive to OSV use” (i.e., with low-to-no use). RDEIS Appx. G. To comply with the plain language of the subpart C regulations and the minimization criteria, areas that are “not conducive to OSV use” should be eliminated from areas designated as open to cross-country OSV use. Alternative 5 appears to be largely consistent with that approach and should be adopted in the final plan.

We also support Alternative 5’s consistent 12-inch minimum snow depth restrictions for both designated areas and routes. We believe this restriction would largely provide an adequate buffer against soil compaction, crushing of vegetation and subnivean spaces, and other adverse impacts, and help account for variable snowpack. As opposed to other alternatives that would permit travel on designated routes with only 6 inches of snow, Alternative 5 would provide consistency to ease enforcement and ensure that users do not leave designated routes in low-snow conditions and travel cross-country. We also believe that the final plan should incorporate language from Alternative 4 that the 12-inch minimum snow depth restriction will be implemented and enforced using a combination of weather station data, Forest Service staff judgment, and trailhead observations, with restrictions clearly posted on information kiosks at trailheads and on the forest website. We believe this language would provide flexibility to implement the results of ongoing scientific work in the Sierra Nevada to provide empirical data on minimum snow depths and associated soil compaction impacts and to associate remote weather station data with trailhead measurements of snow depth and density. See May 2017 Report by Dr. Benjamin Hatchett on Observed and Simulated Snow Depths for Commencing Over Snow Vehicle Operation in the Sierra Nevada (attached).

III. National Environmental Policy Act

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, is designed to facilitate informed decision-making and public transparency by requiring federal agencies to take a “hard look” at the direct, indirect, and cumulative impacts of their proposed actions and reasonable alternatives. We appreciate the significant improvements in the RDEIS. Nevertheless, the RDEIS still suffers from a number of NEPA deficiencies.

First, while the addition of Alternative 5 (which would designate 633,360 acres, or approximately 56% of the forest as open to OSV use) represents a significant improvement in the range of alternatives, the range is still inadequate. NEPA requires agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives” to a proposed action – an analysis that is considered the “heart” of an EIS. 40 C.F.R. § 1502.14. Here, the bottom 55% of the range is missing, with the RDEIS assuming that a substantial portion of the areas currently open to OSV travel should be designated and considering only those alternatives with that end result. A reasonable range, by contrast, would include one or more alternatives designating between 0 and 633,360 acres of the forest as open to OSV use. The story is similar with respect to proposed trail designations, with each of the alternatives designating between 334 and 393 miles of snow trails for OSV use (and between 349 and 350 miles for mechanical grooming) and no alternatives designating substantially less than the status quo.

To facilitate adequate NEPA analysis, the EIS also must include an alternative under which no areas or routes would be designated as open to recreational OSV use. Unlike in a typical NEPA analysis where the no action alternative provides that baseline for comparison, the no action alternative for most winter travel planning efforts, including on the Lassen, reflects the current management status quo allowing cross-country OSV travel by default across the vast majority of the forest. 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. 719 F.3d 1035, 1050-53 (9th Cir. 2013). 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. The same is true here, where an alternative that designates no areas or trails open to OSV use is necessary to facilitate a fully informed decision about the impacts of the action alternatives.

Second, the RDEIS fails to take the required hard look at certain impacts. While the RDEIS provides a relatively thorough discussion of many of the impacts associated with OSV use, it fails to adequately analyze impacts to certain resources, including wildlife (see comments submitted by Darca Morgan on behalf of The Wilderness Society and other groups), wilderness values, and impacts associated with “undesignated” OSV routes located in open areas. For instance, the RDEIS continues to rely on what appear to be significant reductions in route density for purposes of analyzing and minimizing impacts to various resources. Yet, the project will not affect continued use of those snow trails or the status quo on the ground, making any reliance on decreases in route density highly misleading.

Finally, as described above, the RDEIS relies on uncertain mitigation measures and fails to assess their effectiveness, in violation of NEPA. See 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.25(b); *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998) (quotations and citation omitted).

Thank you for your consideration, and please contact us with any questions.

Sincerely,



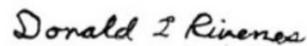
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