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Submitted to [comments-pacificsouthwest-stanislaus@fs.fed.us](mailto:comments-pacificsouthwest-stanislaus@fs.fed.us)

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**RE: Stanislaus National Forest OSV Designation DEIS Comments**

Dear Forest Supervisor Kuiken and ID Team:

Please accept these comments from the BlueRibbon Coalition/Sharetrails.org (BRC) in regards to the Draft Environmental Impact Statement (DEIS) for the Stanislaus National Forest Over-Snow Vehicle (OSV) Use Designation Project. We will summarize, at the outset, that the Stanislaus should revise its analysis and issue a Draft Record of Decision based on Alternative 4, but without minimum snow depth prescriptions. If you have questions or require further information about this submission or intervenor-defendants' role please contact Paul Turcke ([pat@msbtlaw.com](mailto:pat@msbtlaw.com) or 208-331-1800) and the information listed below.

BRC has a unique perspective and longstanding interest in motorized vehicle use and management of the National Forest System, including for OSV. BRC was a defendant-intervenor in *Snowlands Network et al. v. U.S. Forest Service*, Case No. 11-CV-2921-MCE (E.D. Cal.). BRC submitted comments on this project dated April 20, 2015 and November 16, 2015. We remain committed to a leadership role and continuing presence in ongoing OSV management of all the California Forests, including the Stanislaus National Forest.

BRC is a nonprofit corporation that champions responsible recreation and encourages individual environmental stewardship. BRC has members in all 50 states, including California. BRC members use various motorized and non-motorized means to access public lands, specifically including winter use of the Stanislaus National Forest. BlueRibbon has a long-standing interest in the protection of the values and natural resources addressed in this process, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors. We note that the California Forests receiving OSV use are at various stages of completing OSV designations, with the Stanislaus following the Eldorado/Tahoe, which are each analyzing DEIS

comments, and the Lassen, which recently received an Objection Response dated September 14, 2018, following a Draft Record of Decision in March, 2018. Where appropriate, we will refer to these processes.

We have reviewed the DEIS and Alternative 1 (Proposed Action) (Volume 1 – Summary – Tables S-2 through S-6, xii-xiii) that would make the following designations:

- 1) 140,895 acres of NFS lands are designated for OSV use
- 2) 24.7 miles of groomed trails designated for OSV use
- 3) 76.1 miles of trails will remain ungroomed but be designated for OSV use
- 4) 24 inches would be the minimum snow depth in Stanislaus Meadow and 12 inches would be the minimum snow depth for all other designated areas and trails

The Stanislaus, in contrast to other Forests, includes not only a “Proposed Action” but also Alternative 5 (Preferred Alternative) which would include even further restrictions (Tables S-2 through S-6), as summarized below:

- 1) 97,763 acres of NFS lands are designated for OSV use
- 2) 24.7 miles of groomed trails designated for OSV use
- 3) 48.0 miles of trails will remain ungroomed but be designated for OSV use
- 4) 24 inches would be the minimum snow depth in Stanislaus Meadow and Highland Lakes areas, with 12 inches the minimum snow depth for all other designated areas and trails

While we have significant concerns with the Proposed Action (Alternative 1), we wish to make clear our strong opposition to the Preferred Alternative (Alternative 5). If the Service is intent on a hasty return to the courtroom, Alternative 5 would be an excellent choice. Should the agency wish to consider other scenarios, refinement if not outright rejection of the Preferred Alternative is in order.

BRC maintains that the efforts of OSV recreation opponents to remove the “snowmobile exemption” from the 2005 Travel Management Rule were largely designed to spark more formalized OSV planning rather than to address any purported regulatory void. While adopted through procedures that may be different than those stated in the amended Subpart C, the fact is that OSV use has been specifically considered and regulated by Forest Service units for years. These designations on the Stanislaus have been appropriately established and have generally contributed to an effective winter recreation program.

BRC urges the agency to make changes, including some changes that incorporate elements from Alternative 4, in a Draft Record of Decision and Final EIS as needed to reflect our comments and/or concerns.

## **Pacific Crest Trail**

We note that Pacific Crest Trail (PCT) management is a significant issue for OSV planning in many of the California Forests, but appears a non-issue on the Stanislaus. The Forest contains roughly 10.5 miles of the PCT, of which all but 4 miles lies within designated Wilderness. DEIS at 116. This segment is in a remote area of the Forest at least 15 miles from the nearest access, and the PCT is not realistically

accessible in winter on the Stanislaus except by OSV. *Id.* As such, the questions of buffers and crossings do not arise on the Stanislaus.

## **Snow Depth Standards**

Snow depth standards represent a significant issue in the California OSV designation processes. The Stanislaus DEIS imposes minimum snow depth requirements under every alternative, including the “no action” alternative. DEIS at 48 (Table 12). Alternative 1 contains minimum snow depth prescriptions of 24 inches within the Stanislaus Meadow area, and 12 inches for all other areas and trails designated for OSV travel. *Id.* Alternative 5 would go further and extend the 24 inch depth requirement to the Highland Lakes area. *Id.*

We acknowledge the difficulty of this issue for the Forest Service, but have concluded that there is no defensible legal requirement or basis for snow depth prescriptions. The *Snowlands* settlement does not address the question of snow depth, but only a process by which the agency will evaluate designation of routes for grooming and under Subpart C. Those now revised Subpart C regulations at 36 CFR part 212 provide for OSV designations addressing class of vehicle, seasons of use, and specified designation criteria from Subpart B. Nowhere is snow depth included in this regulatory checklist. In fact, snow depth language was considered by the agency and intentionally left out of Subpart C. See, 80 Fed.Reg. 4507 (Jan. 28, 2015). Instead, the Final Rule carefully settled on addressing this subject by stating that roads, trails and areas for OSV use “shall be designated...where snowfall is adequate for that use to occur, and, if appropriate, shall be designated by class of vehicle and time of year....” *Id.* at 4511; 36 C.F.R. § 212.81(a).

The Stanislaus DEIS does not present a sufficient rationale to impose the stated minimum snow depth prescriptions. This discussion is essentially the same as initially presented in the Lassen process. For example, the Forest Service admits “[i]n multiple reviews of best available scientific data, specialists determined that there is little or no science to support a universal snow depth for protecting multiple resources.” Lassen RFEIS at 85 (emphasis added); Stanislaus DEIS at 18-19. The discussion suggests that the primary basis for the 12 inch depth figure is the SHPO programmatic agreement (“PA”) and the California Parks/Recreation grooming guidance. *Id.* Neither of these would form a defensible rationale. The grooming restrictions have no applicability to cross-country designations. The PA “was developed for heavy equipment, such as loggers and skidders, conducting logging operations.” Lassen RFEIS at 404 (see also “skiers actually may have a greater effect than OSV’s because skis have a greater footload (weight per surface area) in comparison to an OSV track”). The same discussion theorizes that snowmobiles “exert only 0.5 pound of pressure per square inch, versus four-wheel drive vehicles, which exert 30 pounds per square inch.” *Id.* Yet the Lassen openly admits “our monitoring does not differentiate between OHV and OSV impacts.” *Id.* at 856. This approach, characterized as one that “best protects natural and cultural resources,” is euphemistic overkill, not remotely connected to any conceivable impact that snowmobiles might actually have on any site/resource.

There are many practical reasons to avoid inflexible prescriptions. Snow depth is highly variable, depending on numerous weather and site factors. The final Subpart C rule actually reflect a more intelligent choice by employing “adequate” to describe the necessary snowfall, because snow density is a more accurate descriptor of proper conditions than snow depth, yet both terms are subsumed within the term “adequate” snow conditions. Even under uniform or constant snowfall, varying sites will display varying snow depth. It is obvious, but worth noting, that owners/operators of today’s

sophisticated and expensive snowmobiles (and groomers) know they are designed to travel over snow, not dirt and rocks. A snow depth requirement is a solution in search of a problem.

Snow depth is not an effective or necessary means to protect against “resource damage.” Existing practices and common sense address many of the factors that purportedly motivate these prescriptions. For example, groomers are able to raise the grooming apparatus and/or pull in snow from adjacent areas as needed to avoid or enhance grooming over areas with thin snow coverage. Existing regulations provide authority for enforcement officers to take appropriate action should they encounter improper conduct. See, e.g., 36 CFR § 261.15 (prohibiting certain activities in the use of “any vehicle off National Forest System, State or County roads” including in violation of noise standards, creating excessive smoke, carelessly or in a manner that endangers any person/property, or “in a manner which damages or unreasonably disturbs the land, wildlife, or vegetative resources”). Resource damage is amply addressed through officer discretion in the field applying existing regulations, rather than an inflexible snow depth requirement.

The creation of “minimum snow depths” might encourage a “watchdog” culture intent on finding an excuse for closure. The Forest needs to better anticipate and protect against abuse of the possibility that individual or organizational activists will be capturing, even staging, photographic “evidence” of inadequate snow depth or otherwise trying to force the agency into implementing and enforcing snow depth requirements. We are concerned that the possibility of snow depth “violations,” however they might be interpreted, will imply some nondiscretionary duty to cite operators in violation of criminal provisions at 36 CFR part 261. We do not believe that the agency intends such illogical results, or intends to create any constraint on the informed discretion of field personnel conducting law enforcement or monitoring activity. The Lassen Objection Response legitimizes these concerns, including an instruction to “clarify” management strategies and “[e]xplain how the Forest will use education to prevent inconsistent use rather than rely solely on citations.” Lassen Objection Response at 8.

Rather than what might be perceived as inflexible, Forest-wide snow depth prescriptions, the agency should employ a flexible, adaptive management approach to snow depth and snow coverage/quality attributes. The parties most attuned to these issues are state and local grooming administrators, local governments, and affected users, and their input is essential to any workable system. We are concerned that the Forest Service has taken the bait toward becoming unnecessarily involved in this topic. Snow depth should be avoided, and discussed in a final decision in a manner that properly characterizes snow depth considerations, broad agency discretion, and ample ability within that discretion utilizing existing tools/practices to protect against resource damage and fulfill all management responsibilities.

Considering the broad array of potential issues, the best approach would be to avoid any Forest-wide snow depth prescriptions. There is not regulatory basis or compelling practical need to create such requirements. The Forest, in cooperation with partners and engaged users, can properly address management challenges that may arise in flexible and site-specific manner.

Recommendation – Resist the suggestion to create inflexible snow depth prescriptions, offer clarification on interpretation and implementation but formally establish an “adequate snow depth” standard that tracks the applicable standard of Subpart C.

## **Range of Alternatives**

The Stanislaus DEIS improperly includes minimum snow depth prescriptions in every alternative. This violates NEPA in two different ways.

NEPA “is our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. NEPA embodies a Congressional desire “to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of future generations of Americans.” 42 U.S.C. § 4331(a). NEPA’s operative EIS requirement is triggered by federal action which may “significantly affect[ ] the quality of the human environment....” *Id.* at § 4332(2)(C) (emphasis added). The “human environment” “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14. NEPA is a purely procedural statute designed to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b).

### (a) Failure to include an “adequate snow depth” alternative

First, the DEIS omits any consideration of a viable alternative that would eschew inflexible snow depth requirements in favor of tracking the explicit regulatory language requiring “adequate” snow depth. An agency’s compliance with NEPA is subject to judicial review under APA 706(2). Courts generally look to see if the agency took a sufficiently “hard look” and will approve an EIS if “the EIS process fostered informed decision-making and public participation.” *National Parks & Conservation Ass’n v. U.S. Dept. of Transp.*, 222 F.3d 677, 680 (9<sup>th</sup> Cir. 2000). Critical to NEPA’s procedural scheme is the mandatory duty to consider in an EIS a sufficient range of alternatives to the proposed action. 42 U.S.C. § 4332(C). This discussion of alternatives “is the heart” of an EIS. 40 C.F.R. § 1502.14. A reviewing court applies a “rule of reason” to determine if the range of alternatives considered was sufficient. *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9<sup>th</sup> Cir. 2008). The “existence of a viable but unexamined alternative renders the [EIS] inadequate. An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action, and sufficient to permit a reasoned choice.” *Alaska Wilderness Recreation & Tourism Ass’n v. Morrison*, 67 F.3d 723, 729 (9<sup>th</sup> Cir. 1995).

Through the evolution of the California OSV designation projects the topic of snow depth has received particular attention. Again, the snowmobile community supports consideration of the concept of snow depth, and a common sense recognition that snowmobiles and related vehicles like groomers need to be operated on “adequate” snow coverage. Our concern, at this point in the designation process, is that inflexible, Forest-wide minimum depth “requirements” are arbitrary, unsupported by science, yet capable of abuse or misapplication. As discussed above, the wisdom has become more apparent of the agency’s choice in revising Subpart C to focus on “adequate” snow depth. An alternative incorporating that language is not only viable, but should carry some presumptive weight before the very agency that created it.

### (b) Improper “no action” alternative

Additionally, the DEIS “no action” alternative violates NEPA. In an EIS the agency “shall...(d) Include the alternative of no action.” 40 C.F.R. § 1502.14(d). There should be little dispute that the

correct interpretation of “no action” here “is ‘no change’ from current management direction or level of management intensity.” Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, 46 Fed.Reg. 18026 (March 23, 1981).

The “no action” alternative in the Stanislaus DEIS incorrectly states that minimum snow depth “requirements” exist under “current management.” DEIS at 48 (Table 12). This stands in contrast to the no action alternatives in the Tahoe (Tahoe DEIS at xvii) and the Lassen (Lassen RFEIS at xi). In fact, each of these Forests has a different definition of “current management” in its “no action” alternative. We are not aware that any California Forest has issued an order or otherwise formalized a snow depth requirement. There appears a developing tension within the California Forests, with the Lassen/Tahoe concluding that current management lacks a minimum snow depth requirement, while the Eldorado and now Stanislaus have suggested the opposite and specified that a 12 inch minimum snow depth already exists. The discussion fails to explain what actions or decisions have been taken, by which agency(s), such that these conclusions accurately reflect current management direction.

Recommendation – Revise or clarify the range of alternatives, to properly define the “no action” alternative and to provide for a viable alternative that would decline inflexible snow depth requirements in favor of “adequate” snow depth as might be clarified in guidance or through adaptive management.

## **Modification of Area Designations**

BRC appreciates that Alternative 1 would authorize continuing OSV access on 140,895 acres, and Alternative 5 on 97,763 acres, of NFS lands. Some of our earlier suggestions were incorporated into the areas designated for OSV travel, but other areas were not. We note that the percentage of lands authorized for continuing OSV access is much lower on the Stanislaus than for other Forests, with Alternative 1’s proposed 140,895 acres against the 684,505 of non-Wilderness lands reflecting only 20 percent of the “no action” alternative area available for OSV access. BRC would like to see refinements to some of designations, to better reflect practical considerations or historical practice.

Specifically, we would like to changes to allow OSV use in the following areas:

-Inventoried Roadless and Recommended Wilderness- there is no lawful basis to categorically restrict OSV travel, or other motorized/mechanized transport, in these areas. We urge the Stanislaus and Region 5 to avoid joining what has become an ideological but completely avoidable battle over imposition of Wilderness management in non-wilderness areas. The rationale for designations must be tied to proper factors including resource issues and the Subpart B designation criteria.

-“Near Natural, Non-Motorized” areas- The 1991 creation of this status near Eagle Meadows, Pacific Valley and Sonora Pass was never implemented, and the areas have received and continue to receive OSV travel, which should be reflected in the current process and FEIS.

-Highway 108- The DEIS boundaries are poorly depicted and will cause confusion. The east side of Highway 108 should be designated for OSV use, extending from Strawberry to Dardanelle and Kennedy Meadow to the south, and norther to Emigrant Wilderness boundary.

- The area within and adjacent to Herring Creek Loop should be open to continuing OSV travel, including Willow Meadow, Hammil Canyon and surrounding areas.
- High alpine terrain should be included in OSV use designations, including Eagle Peak, Bull Run Rock, and the Eagle Meadows area outside the well-defined Wilderness boundary.
- Both sides of Eagle Creek from Highway 108 should be designated for cross-country OSV use, to allow riding from the vicinity of Dardanelle to Eagle Meadow.
- A route should be authorized for grooming from Kennedy Meadows to Sonora Pass, to facilitate riding in suitable conditions and reduce demand/impact on other Highway 108 riding areas.
- Highway 4- the entire Pacific Valley to Highland Lakes should be designated as open for OSV travel, as outlined in the 2015 proposed action.
- The Preferred Alternative closures of portions of Jelmini and Beartrap Basins are confusing, unrealistic, and unnecessary. Travel in this area is limited and self-regulating due to terrain.
- Bear Valley Ski Area- need not be closed, but can be cooperatively accessed as has happened for years, including OSV use after the ski area closes.
- The area west of the Whittakers Dardanelles should be designated for OSV travel, as depicted in Alternative 4.

Recommendation – Modify the areas designated for OSV use to include the above-described prescriptions and as clarified in Alternative 4.

### **Restore Loss of Historic OSV Opportunity**

The Proposed Action and Preferred Alternative would both fail to provide for continuing OSV opportunity on a substantial territory that has historically been available for OSV use. BRC believes the Stanislaus should adopt the designations in Alternative 4 which would allow presently-available acreage to be designated for continuing OSV use.

Reductions or omissions of OSV use should not be based on predictions, such as for areas of lower elevation. We understand that snowfall is light or sporadic in these areas. Still, the Forest Service doesn't need to create rules to address this situation. The fact is there are times, if only occasional instances, where sufficient snow falls for OSV use in these areas. Any resulting OSV use is uniquely prized by local enthusiasts. There is no harm in allowing for the possibility of this occasional use to continue.

Recommendation – To the maximum extent possible, the Final EIS and Record of Decision should reflect current or historical use as identified in Alternative 4.

## **Conflict of Uses**

BRC believes the agency may have based various closure tenets of the Preferred Alternative on the “conflict of uses” issue. We appreciate the agency’s apparent intent to address many potential “conflict” issues through management presence and better outreach/signage. See, e.g., DEIS at 38-41 (Table 7). We note, however, that the DEIS speaks only to “potential conflicts” or where it asserts conflicts are occurring fails to disclose any evidence or basis for the conclusions. DEIS at 118-119.

“User conflict” is an inappropriate and often misapplied concept that has generally been created and emphasized by anti-OSV advocates who are looking for any opportunity to restrict or eliminate OSV use. Despite their aggressive litigation efforts, there are few, if any, court decisions that have forced an agency to restrict any motorized recreation based on alleged “conflict.” Rather, the courts have generally upheld a reasoned agency conclusion designed to address any alleged “conflict.” See, e.g., *Wild Wilderness v. Allen*, 871 F.3d 719, 728-729 (9<sup>th</sup> Cir. 2017); *Pryors Coalition v. Weldon*, 803 F.Supp.2d 1184 (D. Mont. 2011), *aff’d*, 551 Fed. Appx. 426 (9<sup>th</sup> Cir. 2013). There are many strategies that can be employed to manage the ever-growing human population that desires to recreate in the National Forest System. We generally support the concept of “shared use.” As long as overall visitation numbers are appropriate for the affected resources, motorized and non-motorized users can be compatible with one another so long as individual users understand designations and plan their activities accordingly. There will always be a handful of pathologically disgruntled individuals seeking their own private rejuvenation in the National Forests. These outliers should not dictate policy or use designations, and should be handled in a similar way as children testing parental boundaries.

Contrasted to those using “conflict” in a transparent effort to put a thumb on the scales of management balance, there are legitimate concerns that usually reflect the simple fact there are too many people trying to enjoy the same areas at the same time. These “conflicts” can occur within user groups or modalities as often as they occur between them. The agency should consider strategies to publicize and manage these situations. One option might be to designate non-motorized companion trails along motorized routes or designate/groom non-motorized only trails to Wilderness or non-motorized land classification to reduce conflict of uses. Such efforts might be coupled with a targeted information campaign to direct non-motorized uses to non-motorized land classifications. Another element might be to consider enhanced staging/parking for non-motorized users so as to provide better access to non-motorized areas. Finally, we have always been and remain strong advocates of an active and effective enforcement program, so that users who violate or choose to remain criminally ignorant of management prescriptions suffer meaningful adverse consequences. All users need to understand and respect the fact that their use of our National Forests is a privilege to be shared with others under the terms established by applicable law.

Recommendation – Agency review of the aforementioned aspects of Conflicts of Uses and Shared Use should allow for additional acres being designated for OSV use, and related management actions.

## **Encourage Robust Stakeholder Involvement**

BRC believes it is important to encourage ongoing engagement with local OSV clubs, concessionaires, and OSV rental companies to review functionality of the OSV program for issues such as needs for seasonal or permanent stream crossings (e.g. installing half culverts, OSV bridges), connectivity, trails for both beginner and skilled riders, looped opportunities, and adequate open or play

areas where new OSV users can practice and improve their skills. The best program elements or concepts are only as good as their tailored application to the needs of a particular area or user community.

BRC also encourages the agency, along with all stakeholders, to review and update the outreach and signing as needed for route identification, Wilderness boundaries, painted parking lines and vehicle circulation at staging areas, notification of users entering a fee area, and related issues. Recreation management, and particularly OSV/winter management, is often more of an exercise in social engineering than addressing physical resource impacts. Many “impacts” to the human environment could be avoided if users were better informed and given a range of recreation options.

Recommendation – Include a narrative in the Record of Decision and/or subsequent documents about the Forest’s commitment to collaboration.

### **Specific Comments on Affected Resources**

We wish to amplify our above-stated comments through attention to particular discussions in chapter 3 of the DEIS. These are not intended to provide exhaustive analysis, but to earmark fundamental points.

-Minimization (DEIS at 22-24): We appreciate the effort at a more complete explanation of the manner in which the “minimization criteria” were considered and applied in making OSV designations. This seems a more robust treatment than some past agency efforts which have done little more than make occasional reference to minimizing effects, without sufficient detail clarifying how the minimization criteria were considered and applied to specific designations for specific sites. See, e.g., *WildEarth Guardians v. Montana Snowmobile Ass’n*, 790 F.3d 920 (9<sup>th</sup> Cir. 2015); *Idaho Conservation League v. Guzman*, 766 F.Supp.2d 1056 (D. Idaho 2011).

-Cultural Resources (DEIS at 55-56): We appreciate and concur in the brief discussion and conclusion that oversnow travel on adequate snow cover creates virtually no prospect of direct, indirect or cumulative effects under the NHPA or to cultural resources.

-Hydrology (DEIS at 57-58): We take it as a positive sign that hydrology is included as an “other resource” rather than a “significant issue” but are concerned that the cursory analysis could invite scrutiny while overstating impacts and creating the impression that Alternative 5 is a superior alternative because it will theoretically have the least impact among alternatives with nearly zero impact. In reality, OSV use is a negligible factor in any possible hydrologic impacts. For example, the analysis hints at a supposition that hydrocarbon emissions from OSVs can have an impact on water quality. DEIS at 57. More detailed discussions in other CA Forest EISs better describes, and debunks, this model, which was thoroughly tested during a massive anti-OSV disinformation campaign in Yellowstone National Park. See, e.g., Eldorado DEIS at 95-96 (recognizing that Yellowstone water bodies adjacent to roads far more heavily traveled than any Eldorado site displayed trivial impacts from OSV emissions).

-Socioeconomics (DEIS at 59-61): The socioeconomic analysis is cursory, undocumented and misleading. For example, the suggestion that Alternatives 1, 3, 4, and 5 will have “major beneficial effect on non-motorized snow-dependent recreation opportunities” (DEIS at 60, Table 15) is

undocumented and overlooks the fact, recognized in other Forests, that these “non-motorized snow-dependent recreation” uses have relatively little socioeconomic contribution compared to OSV recreation. The cursory analysis overlooks any rational connection to specific management prescriptions, particularly including the potential effect of an inflexible and/or aggressively enforced snow depth limitation. The socioeconomic analysis must be revamped and/or the Stanislaus needs to make clear that fears are unjustified that snow depth requirements will be vigorously implemented in a manner that significantly restricts present OSV use.

-Soil Resources (DEIS at 62-63): We appreciate that the discussion of soils occurs outside of the “significant issues” group. We understand that NEPA creates an “err on the side of disclosure” model but believe the soils analysis generally overstates potential impacts that can be reasonably predicted from OSV use over snow cover.

-Aquatic Wildlife (DEIS at 64-107): This is treated as a “significant issue” as a theoretical result of direct contact/crushing or disturbance, or habitat modification (e.g. rutting, sedimentation, compaction of subnivean space). DEIS at 64. These impacts are highly speculative. These statements seem highly dependent, in some unquantified manner, on the assumption that there will be cross-country OSV travel over “inadequate snow cover.” *Id.* Perhaps the structure and content of the discussion is designed to err on the side of disclosing even potential impacts in order to protect against preservationist challenge, which is a plausible strategy. However, aquatic wildlife resource impacts cannot form a rational basis to restrict presently-occurring OSV travel over adequate snow cover.

-OSV Use in Recommended Wilderness (DEIS at 114): The DEIS erroneously states that “[a]ll National Forest System lands within congressionally designated Wilderness and areas recommended for Wilderness will be managed in accordance with the Wilderness Act of 1964...” DEIS at 114 (emphasis added). This unfortunate oversight confirms what we have sadly known for years – that certain Forest Service employees consider it their personal mission to advocate for and advance Wilderness designation and management. The agency has admitted in multiple lawsuits that the relevant guidance for recommended wilderness management is contained in the Forest Service Manual, which provides “[a] roadless area being evaluated and ultimately recommended for wilderness or wilderness study is not available for any use or activity which may reduce the area’s wilderness potential. Activities currently permitted may continue, pending designation, if the activities do not compromise wilderness values of the roadless area.” FSM 1923.03 (emphasis added). Thus, some assessment of the area’s “wilderness values” must occur, along with analysis of the effect of “activities currently permitted” on that baseline wilderness character. The Stanislaus should correct this misstatement of law and make any necessary adjustments/additions to the designation analysis.

-User Conflict (DEIS at 118-119): The cited pages unfortunately reflect typical discussion of conflict throughout the California Forests OSV designation processes thus far. Again, this discussion lacks scientific rigor and is purely generic, narrative discussion.

-Terrestrial Wildlife (DEIS at 162-198): We object to reliance on any of the conclusory “direct and indirect effects” analysis “common to all alternatives” (DEIS at 166) to restrict OSV access as this discussion generalizes across species/families, habitat types, and promotes an unsophisticated conclusion that OSV use generally has negative impacts on any form of wildlife. Based on our experience in other Forests, we believe anti-OSV activists will focus on species like fisher and marten, which are illustrative of (1) the negligible impacts that could possibly be attributed to recreational OSV travel; (2) the fact that any of the action alternatives will dramatically reduce the area capable of

receiving OSV travel within the Forest. For fisher, the discussion is entirely theoretical and hopefully reflects procedural caution, as the Forest is outside distribution models and over 20 years of sampling has “failed to return positive evidence of fisher occurrence.” DEIS at 167. Similarly, marten may very well be actually present on the Forest, but the mere discussion of theoretical marten/OSV collisions or attacks by marauding coyotes upon marten paralyzed by fear within the 24.7 mile network of possible groomed trails reveals caution to the point of straining credulity. Ultimately, we are cognizant of the end game, and understand the value in preempting preservationist attack through overly cautious determinations that reductions in historical OSV use as outlined in the action alternatives “may impact individuals, but [are] not likely to lead to a loss of viability or a trend toward Federal listing.” DEIS at 199 (Table 55).

Recommendation(s) – Improve upon and/or expand the noted topics.

## **CONCLUSION**

We ask that appropriate changes be made to address our concerns, and recommend the agency issue a Draft Record of Decision based upon Alternative 4. We appreciate this opportunity to participate in the management process and to work alongside the Forest Service to improve the winter recreation program on the Stanislaus National Forest. Please consider our comments, and do not hesitate to contact us in this designation process as well as the ongoing management effort.

Respectfully submitted,



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