



May 29, 2018

Submitted via <https://cara.ecosystem-management.org/Public/CommentInput?Project=45914>

Eli Ilano, Forest Supervisor  
Attn: Joe Chavez  
Tahoe National Forest  
631 Coyote Street  
Nevada City, CA 95959  
Attn: Joe Chavez

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

Dear Forest Supervisor Ilano and Mr. Chavez:

Please accept these comments from the BlueRibbon Coalition/Sharetrails.org (BRC) in regards to the Draft Environmental Impact Statement (DEIS) for the Tahoe National Forest Over-Snow Vehicle (OSV) Use Designation Project. 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 Don Amador at 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.). We remain committed to a leadership role and continuing presence in ongoing OSV management of the Tahoe 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 nonmotorized means to access public lands, specifically including winter use of the Tahoe 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 wish to address media reports of certain individuals in the commenting process allegedly addressing

slurs and threats to non-motorized use advocates. BRC stands strongly and publicly against any such behavior. BRC in 2014 adopted a formal policy position touching on this subject, which states that BRC exists “to channel frustration with the status quo through skillful, strategic efforts within the bounds of the law in administrative, legislative, judicial and media channels. BRC neither participates in nor condones knowingly unlawful activity of any kind.” BRC’s policies can be viewed at <https://sharetrails.org/policies-positions/>. We note that the California Forests receiving OSV use are at various stages of completing OSV designations, with the Tahoe following behind the Lassen, which released a Draft Record of Decision in March, 2018. Where appropriate, we will refer to the Lassen process.

We have reviewed the DEIS and Alternative 2 (Modified Proposed Action), the Preferred Alternative (PA), (Volume 1 – Summary – Table S-2, viii) that would make the following designations:

- 1) 406,895 acres of NFS lands are designated for OSV use, generally above 5,000 feet with 325 miles of trails for OSV use
- 2) 237 miles of designated trails are available for grooming for OSV use
- 3) 14 miles of trails marked, ungroomed for OSV use within OSV Use Areas
- 4) 70 miles of designated trails not available for grooming
- 5) 22 designated crossings on the PCT [with no 1,000 ft. PCT “buffer”]
- 6) Adequate snow depth to prevent impacts to surface and subsurface resources (generally 12 inches for public OSV cross-country use and 6 inches for trail use)
- 7) Follow OHMVR snow depth for grooming, currently 12 to 18 inches of snow

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 Tahoe have been appropriately established and have generally been a successful contributor to an effective winter recreation program.

BRC has reviewed the PA and urges the agency to amend the Final EIS and Record of Decision as needed to reflect our comments and/or concerns.

### **Pacific Crest Trail crossings**

The Pacific Crest Trail (“PCT”) is a non-motorized trail that runs north-south through the western U.S. and along the crest of the Sierra Nevada Mountain Range in California. There are meaningful portions on Forest Service lands including the Tahoe Forest. As highlighted by the public at the March 10, 2015 Tahoe NF’s information meeting at Foresthill, designating only 2 OSV crossings of the PCT as once proposed would functionally eliminate scores of important PCT crossings for OSV users traveling east-west. BRC appreciates the current PA including 22 crossings of the PCT to retain the current form and function of the OSV program.

There has been a call from some special interests for buffers along the PCT which would prohibit OSV travel. We strongly oppose PCT buffers, for the reasons we have previously stated and which were summarized in the Lassen Draft ROD. Specifically, a PCT trail buffer “was largely a solution in search of a

problem.” Lassen Draft ROD at 7. Applicable policy direction is “unclear at best,” and there are “no reported use conflicts along the PCT during the winter months” primarily due to the amount of snow covering the trail and limited, if not nonexistent, winter nonmotorized access along the PCT. The Tahoe should similarly decline any suggestion to add a winter nonmotorized buffer around the PCT.

Recommendation - Designate an appropriate number of PCT crossings for OSV, while avoiding creation of any nonmotorized PCT buffers.

## **Snow Depth Standards**

Snow depth standards represent another significant issue in the California OSV designation processes. The Tahoe DEIS speaks somewhat cryptically on this topic. The above-cited presentation of Alternative 2 includes a prescription for “[a]dequate snow depth...(generally 12 inches for public OSV cross-country use and 6 inches for trail use).” DEIS at viii (Table S-2); but see, DEIS at xvii (Table S-3) (stating a “6-inch minimum snow depth” for trails, and that “effects to the soil is unlikely to be affected with at least 12 inches of snow covering...” for areas designated for OSV use).

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. Similarly, the now revised “Subpart C” of the 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 Tahoe DEIS apparently lacks a dedicated analysis, or even meaningful discussion, of the snow depth issue. This will need to be expanded in a Draft ROD and FEIS. Looking for example to the Lassen Revised FEIS, 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). In fact, “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.” *Id.* 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. 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 Forest 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. Even under uniform or constant snowfall, varying sites will display varying snow depth. It is obvious, but important to note, that owners/operators of today's sophisticated and expensive snowmobiles 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. Relatedly, we are concerned that the Draft ROD suggests the possibility that 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.

Rather than what might be perceived as an inflexible, Forest-wide snow depth prescription, 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.

## **Modification of Area Prohibitions**

BRC remains concerned about the PA's area prohibitions (DEIS, Volume 1, page 80) at Loch Leven and Independence Lake. BRC understands and supports the proposed 1-acre closure at Robinson Flat Cultural Site to protect historic cabins. However, the High Loch Leven closure to increase non-motorized recreation and the closure at Independence Lake (donated trust lands) are a cause for concern. The agency states these closures are consistent with the previous Forest Plan. We believe the 2005 Travel Management Rule, including the amended Subpart C, provides the agency the authority to make adjustments to previous land classifications to provide connectivity or to otherwise enhance functionality to the OSV network of roads, trails, and areas. We do not believe that the asserted impacts to resources or non-motorized recreation needs are appropriately documented to justify these closures.

Recommendation - Designate meaningful OSV use in the High Loch Leven and Independence Lake areas.

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

The PA fails to provide for continuing OSV opportunity on a substantial territory that has historically been available for OSV use. Specifically, the PA designates 406,895 acres for OSV use, a 36 percent decrease from current management. DEIS at x, xi (Table S-3). BRC believes the PA should adopt the designations in Alternative 4 which include 641,105 acres designated for OSV use, a 0.5 percent increase from current management.

It appears that many of these reductions/omissions are of areas below 5,000 feet in 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.

## **Restrictions on Class 2 OSVs**

The PA provides that Class 1 OSVs are allowed on all designated OSV trails and areas. DEIS at vi. Class 2 OSVs are only allowed on designated OSV trails available for grooming. BRC believes the proposed restriction will impose an unwarranted prohibition on legitimate cross-country travel for recreationists using appropriately outfitted UTVs and other motorized vehicles greater than 50 inches in width (see photo below). Uses might include access to ice fishing, scenic vistas, or other prized destinations.



Recommendation - Designate appropriate cross-country travel for Class 2 OSVs.

## **Conflict of Uses**

BRC believes the agency may have based various closure tenets of the PA on the “conflict of uses” issue. This often misapplied concept 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 nonmotorized 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 nonmotorized companion trails along motorized routes or designate/groom nonmotorized only trails to Wilderness or nonmotorized land classification to reduce conflict of uses. Such efforts might be coupled with a targeted information campaign to direct nonmotorized uses to nonmotorized land classifications. Another element might be to consider enhanced staging/parking for nonmotorized users so as to provide better access to nonmotorized 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, authorized cross-country use of Class 2 OSVs, 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 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 or to substitute our judgment for the agency, but to earmark fundamental points.

-OSV Assumptions (DEIS at 51): We appreciate the efficiency of creating certain use assumptions. Some of these are valid, but we caution against relying excessively on this technique, particularly to fill a void on technical subject matter. In many instances, defensible conclusions must turn on specific data/analysis evaluating actual, valid data on use and site/species factors.

-Conflict Indicators (DEIS at 60): The DEIS indicates that “public comment” is the indicator for “displacement” of non-motorized visitors. This does not comport with valid scientific analysis. There are ways to conduct valid social scientific analysis of conflict on the National Forest System. See, e.g., *Wild Wilderness v. Allen*, 12 F.Supp.3d 1309 (D. Or. 2014), *aff’d*, 871 F.3d 719, 728 (9<sup>th</sup> Cir. 2017) (“The anecdotal evidence about snowmobiler preferences that Wild Wilderness marshaled for this factor did not rise to the level of the sorts of scientific controversies that would substantially undermine the reasonableness of the Forest Service’s conclusions.”); *Riverhawks v. Zepeda*, 228 F.Supp.2d 1173, 1884 (D.Or. 2002).

-OSV Use in IRAs (DEIS at 69): We note that OSV use is presently allowed in many IRAs, and appropriately so. There is no inherent incompatibility between OSV use and IRA suitability, particularly given the remoteness of many IRAs and transient nature of any snowmobile impacts.

-User Conflict (DEIS at 74): The cited page is typical of discussion of conflict throughout the DEIS. Again, this discussion lacks scientific rigor and is purely generic, narrative discussion. Particularly troubling is the reliance on “Snowlands” as a technical authority on the nature and prevalence of “conflict” over winter recreation uses. DEIS at 81.

-Air Quality (DEIS at 141): We note that the OSV contribution to pollutants of interest is trivial, 0.43 percent for CO and less than 0.01 percent for NOx and PM.

-Hydrology (DEIS at 152-156): The presentation and discussion of assumptions generally makes clear that OSV use is a trivial factor in any possible hydrologic impacts. We particularly emphasize the standard-setting research in Yellowstone National Park, as reported in the discussion, in which water bodies adjacent to roads far more heavily traveled than any Tahoe site displayed trivial impacts from OSV emissions. This research authoritatively debunked a massive anti-OSV disinformation campaign.

-Terrestrial Wildlife (DEIS at 198-199): The DEIS analysis is generic and of limited value. The discussion notes that “interactions between snowmobile routes and focal wildlife species are poorly documented for many species and these interactions need to be further refined....” DEIS at 198 (citing Gaines et al., 2003). The ensuing discussion is entirely theoretical, speculating that certain OSV uses “could” or “may” have certain types of impacts. This is not the level of scientific integrity that NEPA requires.

-Wolverine (DEIS at 200-204): This exemplifies the shortcomings of the wildlife analysis. The discussion relies heavily on Gaines, who as noted above recognized in 2003 the lack of quality data/research existing at that time. For wolverine, this data gap has been significantly narrowed, based on focused research led by Copeland and others in the Rocky Mountains. See, <https://www.roundriver.org/wolverine>. This ongoing research represents not only the state of the art, but also a unique collaboration between diverse project partners including National Forests, U.S. Fish and Wildlife Service, state wildlife managers, local communities, academicians, conservation organizations, and state snowmobile associations. The Forest would be wise to discontinue further reliance on outdated research and look to the significant work reported at Round River.

-Aquatics (DEIS at 265): Again, the OSV-related impacts are minimal – “water quality is not impaired by the OSV Program.” DEIS at 265.

-Frogs (DEIS at 269-270): This discussion documents and exemplifies some common sense points- that frogs are overwintering underwater during times of OSV operation, that travel on established routes is virtually incapable of creating adverse impacts, and that cross-country OSV use upon any adequate snow cover will not have meaningful impacts to frogs or frog habitat.

-Socioeconomics (DEIS at 343): Winter recreation is a significant factor on the Tahoe, and “changes to over-snow vehicle opportunities on the Tahoe National Forest could measurably affect economic contributions associated with national forest recreation.” DEIS at 343.

-Cultural Resources (DEIS at 361): The discussion is epistemologically flawed, stating the unremarkable premise that 12 inches of snow coverage will “provide adequate protection” of sites, but then opining that under Alternative 1 “sites would continue to be impacted” in the absence of the minimum snow depth requirement. There is no evidence that any site has been impacted by OSV, nor is

there evidence that OSV owners actually ride on “insufficient” snow depths in any relevant fashion on the Forest.

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

## **CONCLUSION**

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 Tahoe 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,

*Don*

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