

Bitterroot Quiet Use Coalition
P.O. Box 802
Hamilton, MT. 59840

February 29th, 2008

Travel Management Planning Team
Bitterroot National Forest
88 Main St.
Stevensville, MT. 59870

Dear Travel Management Planning Team,

On behalf of the Bitterroot Quiet Use Coalition (BQUC), the Center for Biological Diversity (CBD) and Winter Wildlands Alliance (WWA) please accept these scoping comments for the Bitterroot Travel Plan. The BQUC includes the Selway – Pintler Wilderness Backcountry Horseman, Wildlands CPR, the Montana Chapter of the Sierra Club, Friends of the Bitterroot, the Montana Wilderness Association, the Burnt-Ridge Homeowners Association and the Montana Backcountry Alliance. Together these organizations represent hundreds of regional and local residents who regularly recreate within the Bitterroot National Forest and have a vested interest in protecting our public lands from the impacts caused by off-road vehicle¹ use.

First, we would like to commend the Bitterroot National Forest (BNF) for undertaking a long and arduous process by choosing to do a forest-wide travel plan that includes over-snow vehicles. While we have many and varied concerns with the proposed action, we still feel that the BNF is moving in the right direction by limiting off-road vehicle impacts. The BQUC, CBD and WWA supports these efforts while recognizing that travel planning is more than balancing recreational interests; it is about creating an ecologically sustainable transportation system that is enforceable, maintainable and minimizes conflicts among the various multiple-uses on the Bitterroot National Forest.

Public Process and Screening Criteria

The BNF Travel Management Planning scoping document explained that forest officials developed the proposed action based in part on public input gathered through previous forest plan revision meetings. The forest plan revision process undoubtedly provided useful public input while proposing areas available for motorized route designation, and we would not discourage the use of that public input. However, we question the appropriateness of using these comments if they were not informed by site-specific conditions. Also, we understand forest plans are programmatic in nature and do not meet National Environmental Policy Act (NEPA) obligations to take a hard look at the site-specific impacts of motorized route designations. Without the proper analysis, it is premature for the agency to promote areas identified in the forest plan revision process as appropriate for motorized use. Until a Record of Decision for the

¹ As a special note, throughout this document we refer to off-road vehicles (ORVs) and motorized use in a broad context that includes any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

Forest Plan revision is signed, we would expect the agency to look to their previously approved forest plans for relevant guidance.

Public Meetings

Comments collected at the Darby public meeting should not be entered into the record since forest officials did not provide a safe atmosphere for public participation. At the Darby meeting, held 1/9/2008, some participants wrote letters to BNF Supervisor Bull and Regional Forester Tidwell describing that they did not feel safe enough to provide comments. Several motorized advocates used profanity, shouted insults and threatened participants; one even said “put a bullet in her head.” The Darby meeting incident was covered by local press including the Ravalli Republic (Forest travel plan draws ire of Darby citizens By Jenny Harris, 1/11/2008), and the Missoulian (Forest Service cancels meeting on Bitterroot *By Perry Backus, 1/11/2008*). The Forest Service’s inability to provide a safe meeting atmosphere certainly influenced people’s decision to speak at the Darby meeting , and therefore skewed the public participation and led to an under-representation of conservationists’ and quiet recreationists’ input.

Screening Criteria

The scoping document also explained that forest officials used a screening process to arrive at the proposed action. The BQUC submitted comments about this process and we do not feel that they were adequately incorporated, especially in regards to meeting forest plan standards (see Appendix A). Rather than ask BNF officials to redo the screening process, we urge that any future preferred alternative incorporate travel analysis as published in the Federal Register.² Travel analysis is a better model for developing proposed actions and preferred alternatives than the screening process currently used by the BNF. The travel analysis process emphasizes that land managers should consider potential user conflicts, damage to forest resources, and potential for wildlife harassment and habitat disruption all with the objective of minimizing these negative impacts. Rigorous travel analysis would have ensured that land managers were well informed and fully cognizant of resource constraints before they entered into the formal NEPA analysis process. We feel it is not too late to incorporate travel analysis and urge the BNF to do so in the upcoming Draft EIS.

As part of the travel analysis, we urge forest officials to follow a set of Best Management Practices (BMPs) developed by Wildlands CPR and the Wild Utah Project provided here in Appendix B. These BMPs provide a more comprehensive approach to location of ORV routes, in comparison to the screening process used to develop the proposed action. Using these BMPs will help ensure compliance with the Bitterroot Forest Plan, and that any preferred alternative would meet all applicable laws, regulations and directives.

Executive Orders and the Travel Management Rule

While we would expect the agency to follow all applicable legal authorities, we recognize that some of the direction in the 2005 Travel Management Rule is open to interpretation. The

² FR Vol. 72, No. 115, June 15, 2007. These draft directives include proposed language for both the Forest Service Manual and Forest Service Handbook.

following section attempts to clarify our position with regard to these legal authorities and directives.

Executive Order Requirements (E.O. 11644 as amended by 11989)

Executive Order 11644 as amended by E.O. 11989 provides the foundation for travel management and states that route designation procedures “will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.”³ In accomplishing this broad goal, the Executive Orders specifically require that the designation of motorized areas and trails shall be in accordance with the following:

- 1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.
- 2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.
- 3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.
- 4) Areas and trails shall not be located in officially designated Wilderness Areas.⁴

We agree with the strong language above; off-road vehicles should be permitted *only* where they do not excessively interfere with other recreational uses or damage natural resources. Furthermore, as previously stated we believe that travel planning offers the opportunity to consider all recreational uses, and indeed must in order to ensure minimization of conflicts. As it moves forward with the travel planning process, the agency should consider how its process and eventual decision will support the mandates outlined in the Executive Order. Following NEPA procedures does not satisfy the E.O. requirements. The intent of the E.O. is to minimize the impacts of ORV use on forest resources and other recreationists and neighbors. The EIS must not only disclose and compare the impacts of each alternative, it must provide a plausible reasoning that the decision resulting from the disclosures in fact minimizes those impacts. Simply claiming that impacts were considered and providing cursory rationales for choosing an alternative does not meet the E.O. requirements to minimize those impacts.

The Travel Management Rule and Related Regulations

The scoping document explained, in part, that one purpose and need to conduct travel management planning was to comply with 2005 Travel Management Rule (TMR) as published in the Federal Register (Vol. 70, No. 216/Wednesday, November 9, 2005), which made significant changes to 36 CFR 212, 251, 261, and 295. Among these were the requirement to produce a Motor Vehicle Use Map (hereafter MVUM) and a corresponding travel management

³ Executive Order 11644 § 1 (1972) as amended by Exec. Order 11989 (1977) – Use of Off-Road Vehicles on Public Lands.

⁴ Exec. Order 11644 § 3 (1972) as amended by Exec. Order 11989 (1977).

atlas. Unfortunately, there has been a tendency among land managers to look at the TMR as only requiring the publication of an MVUM and travel atlas, while ignoring other relevant direction, specifically 36 CFR 212 Subpart A, “Administration of the Forest Transportation System.” The relevant language is as follows:

Subpart A: 36 CFR 212.5 (b)(1) - Minimum System: For each national forest, national grassland, experimental forest, and any other units of the National Forest System (Sec. 212.1), the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

Subpart A: 36 CFR 212.5 (b)(2) - Identification of unneeded roads and decommissioning: Responsible officials must review the road system on each National Forest and Grassland and identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails. Decommissioning roads involves restoring roads to a more natural state. Activities used to decommission a road include, but are not limited to, the following: reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to the road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders, scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes, or other methods designed to meet the specific conditions associated with the unneeded road. Forest officials should give priority to decommissioning those unneeded roads that pose the greatest risk to public safety or to environmental degradation.

To comply with the TMR, the BNF must address and implement the Rule as a unitary whole; both subparts A, B, and C must be implemented simultaneously. Towards this end, the BNF should include its roads analysis for all levels of roads in the aforementioned travel analysis. The proposed directives state that one objective is to identify the minimum road system needed and establish a complete inventory of all system roads and trails.⁵ The first step towards this end is to “complete an interdisciplinary science-based analysis of road system opportunities.”⁶ Regardless of whether or not the BNF completes travel analysis per the proposed directives, it is crucial that a roads analysis be included in the Draft EIS and roads identified that are no longer necessary to the operation of the BNF.

⁵ Proposed FSH 7709.55 Ch. 20.02(1)(a)

⁶ Proposed FSM 7712.4 (1)

Science Based Roads Analysis

Regulation 36 CFR § 212.5 requires that the minimum road system determination “must incorporate a science-based roads analysis. The science based analysis applies to all system roads, and road management decisions,⁷ “to ensure that the identified system minimizes adverse environmental impacts. *Id.* Science-based assessments are needed to address the specific criteria for roads designation under section 212.55, and are required for the minimum road system determination under section 212.5. In addition, this roads analysis must include all maintenance level roads, not just ML 3, 4 and 5. Any future Draft EIS should provide an appendix or reference a project file that demonstrates how the complete roads analysis was used to determine the minimum road system. We look forward to seeing this information.

In addition, a comprehensive science-based determination of a minimum road system must be implemented in coordination with the motorized use designation process to assure the travel plan meets applicable Forest Plan resource management objectives. The Agency recognizes that the proliferation of un-inventoried and unnecessary roads has damaging environmental implications. 70 Fed. Reg. 68265. Unauthorized user created roads may increase the overall number of roads and increase road density in some areas. Accordingly, a minimum footprint must be identified as required by EO 11644 (which demands that the designation of areas and trails must “minimize damage to soil, watershed, vegetation, or other resources of public lands” and, “minimize harassment of wildlife or significant disruption of wildlife habitats.”). This will assure that designated roads do not exceed the minimum road system pursuant to section 212.5, or conflict with resource and management objectives such as road density standards and habitat protection.

Route Designation Exceptions: Dispersed Camping

In designating routes, the responsible official has some latitude to “include in the designation the limited use of motor vehicles within a specific distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.”⁸ While the 2001 Tri-State OHV ROD eliminated big game retrieval in the region, dispersed camping is still an issue. In former Chief Bosworth’s memo entitled “Implementation of the Travel Management Rule,”⁹ he directed officials to apply the rule “sparingly” rather than issue blanket exceptions. We oppose any broad application of the exceptions that allow cross-country travel to camp or collect firewood. Allowing for these exceptions would make enforcement of authorized routes difficult, if not impossible, and would lead to wide swaths of impact, as motorized use would be authorized off the road and/or trail at any point along the route system. The Forest Service is having difficulty adequately maintaining the route systems currently in place, and allowing users to travel off of a route to access a camping spot would likely result in a proliferation of unauthorized routes and, therefore, create additional management difficulties.

⁷ Including “road construction, reconstruction, decommissioning, and maintenance. 36 CFR 212.5.

⁸ 36 C.F.R. § 212.51 (b)

⁹ referenced in the June 8, 2006 letter “Travel management, Schedule for Implementation”

For these reason we support the decision to abandon the 300 ft. dispersed camping exemption in the proposed action. However, the scoping document states, “[e]xisting motorized routes to dispersed camp sites will be included in the proposed action in the Draft Environmental Impact Statement unless substantial environmental, social or cultural concerns exist” (p. 10). We are concerned that those existing routes may also be user-created and unauthorized. In order to minimize impacts to forest resources, we recommend that the BNF not designate unauthorized routes off of trails to dispersed camping sites and only designate such routes on roads where there is no potential for significant environmental impacts.

Existing Condition

We believe that motorized use is an appropriate use on roads within all applicable laws, and regulations, and when those roads can be adequately monitored and maintained. In fact many roads could appropriately provide a varying range of recreational motorized experiences. However, we have concerns with what the BNF describes as its existing condition, which sets the starting place for environmental analysis and comparison in the upcoming draft EIS. Without an accurate starting place, any future analysis will be inaccurate as well. Specifically, the scoping documents explain that the 2005 BNF Visitor and Travel Plan Maps provide the existing condition for the current travel planning process with three exceptions: the 2001 Tri-State Off-Highway-Vehicle Decision, Trail 313 and Code “90” routes. The BNF bases the existing condition on previous NEPA and administrative decisions, but does so inaccurately as described below.

The 2005 map made changes to road designations without proper environmental analysis, and therefore illustrates many roads as open to vehicles up to 50” in width where those vehicles were in fact prohibited by previous NEPA decisions. The 2005 BNF Visitor and Travel Map appears to incorporate a spreadsheet released by the BNF titled, “Roads Open to OHV’s and Closed Yearlong to Full size Vehicles.” This spreadsheet lists roads with map codes R-4, R-6, R-7, and 90. According to the BNF Visitor and Travel Map, these codes mean:

- R4 – “Reduce soil erosion or protect wildlife, and provide wildlife security during hunting season.”
- R6 – “Reduce soil erosion”
- R7 – “Protect wildlife and provide wildlife security during hunting season.”
- Code “90” roads are not defined and are part of the forest’s internal coding.

It is apparent that the BNF did not comply with NEPA requirements when it updated its Visitor and Travel Map in 2005 as it changed the protections established in prior decision documents that ensured compliance with NEPA, NFMA, and other environmental mandates. For example, The White Stallion Final Environmental Impact Statement (FEIS) noted that road #1392 was constructed and authorized under the Upper Sleeping Child EA in 1983 (White Stallion FEIS at App. A-3). The White Stallion FEIS stated that road #1392 (also called “the burn road”) was closed and that closure means **closed to all vehicles from June 15 through November 30, and open only to snowmobiles from December 1 through June 14** (White Stallion FEIS at II-10 – II-11; IV-21; III-7). Yet the 2005 Visitor and Travel Map indicates that the road is closed to motorcycles and ATVs from Oct. 15th – Dec. 1st. The original reason given for the prohibition against all vehicle use was to reduce open road density because “elk will likely be precluded

from using the high road density areas unless motorized vehicle access is restricted” (White Stallion FEIS at IV-20). More specifically, the Forest Service believed that road closures were “*required* to meet the Forest Plan standard of 50% elk habitat effectiveness in each third order drainage” (White Stallion FEIS at V-12)(emphasis added). When the BNF changed the designation of road #1392 from closed to all motorized vehicle to open to vehicles under 50 inches, no NEPA was done to evaluate how the change in use would impact elk. This one road, provided as an example of many other similar roads, brings into question the rest of the 2005 BNF Visitor and Travel Map. In fact, all R-4, R-6, and R-7 roads listed as open to off-road vehicles may be in violation of previous NEPA decisions. At the very least, these roads have resource concerns related to vehicle use. There is no scientific justification to treat off-road vehicles differently from full sized vehicles. Rather, there is a growing body of scientific literature that demonstrates ORV impacts to a variety of forest resources, very similar to that of full sized vehicles.

Other examples of road changes in conflict with previous NEPA decisions include:

- The Lairdon Gulch Decision Notice, 1987, p.11, Roads are “closed to public use.” This would presumably include public use of off-road vehicles.
- Bare Cone DM and CE 1996 makes no distinction between full sized vehicles and ATVs. “Travel management activities include restricting motorized travel for the purposes of bringing the area into compliance with Forest Plan standards for elk habitat effectiveness and to improve watershed conditions.” “Motorized vehicles access would also be restricted to provide for re-vegetation of the road surfaces.” This clearly indicates all motorized vehicles.
- Buck – Little Boulder Timber Sale ROD and EIS 1993, ROD p. 2, “Approximately 7.3 miles of existing roads would be closed to all motorized vehicles yearlong. An additional 15 miles of road closed seasonally from October 15 to June 15 would be further restricted to no motorized use yearlong.”
- The 1995 Huck Trap and 1996 Fern Creek EAs used planned road restrictions, some yearlong for all motorized vehicles, as well as obliteration of miles of road to bring the project area into compliance with the Forest Plan and federal laws regarding watershed , and/or wildlife protection. These actions were clearly to preclude all motorized use. Much of this work has never been done and the violation of Forest Plan standards still exists on the land.

Furthermore, Wildlands CPR received the BNF road core data in response to a Freedom of Information Act request. Matching this information with the “Roads Open to OHV’s and Closed Yearlong to Full Size Vehicles” spreadsheet provided in the scoping documents shows that 410 roads coded “90”, R-4, R-6 or R-7 were designated and maintained at maintenance level 1 (ML 1). In regards to this maintenance level, the Forest Service Transportation System Maintenance Handbook 7709.58 Chapter 12.3(2)(a) states:

“Level 1. Assigned to intermittent service roads during the time they are closed to vehicular traffic. The closure period must exceed 1 year. Basic custodial

maintenance is performed to keep damage to adjacent resources to an acceptable level and to perpetuate the road to facilitate future management activities. Emphasis is normally given to maintaining drainage facilities and runoff patterns. Planned road deterioration may occur at this level. Appropriate traffic management strategies are ‘prohibit’ and ‘eliminate.’ Roads receiving level 1 maintenance may be of any type, class, or construction standard, and may be managed at any other maintenance level during the time they are open for traffic. However, while being maintained at level 1, they are closed to vehicular traffic, but may be open and suitable for nonmotorized uses.”

The BNF appears to have opened up a large amount of ML 1 roads to ORV use without NEPA and without changing the maintenance level designations. In doing so, the BNF created an existing system that is in violation of NEPA and Forest Service Directives. In order to have an existing system in line with current the Forest Service handbook, the BNF should list all ML 1 roads as closed to vehicular traffic. Of course doing so does not preclude the travel planning team from changing these roads to ML 2 or higher, and reflecting those changes in the proposed action. In fact many of these roads may be suitable for ORV use and we would support those changes as long they meet all applicable laws, regulation and directives.

In our view, the appropriate baseline of existing system routes consists of those routes which have been documented in relevant NEPA analysis. We believe that any routes lacking documentation (including routes which were constructed or came into being before NEPA was enacted) should be analyzed as new unauthorized routes, in recognition of the fact that there is no record of administrative decision or analysis addressing the environmental impacts of motor vehicle use on these routes. Although we recognize the challenges associated with locating adequate supportive documentation given a past history of poor recordkeeping, we fundamentally reject the position that justification for a specific route can be established solely based on a route’s inclusion in the INFRA database. We understand that past travel management decisions should be respected—provided that conditions on the ground have not changed, thus requiring new NEPA analysis—but the Forest Service must be careful not to assume that certain decisions with respect to motorized use have been made and are still valid.

To address this issue, we strongly recommend that the Forest Service develop a “documentation” spreadsheet which would supplement the description of the no action alternative, and would eventually accompany the MVUM. This spreadsheet would summarize the NEPA decisions, together with other relevant documentation (e.g., formal adoption of road/trail objectives for the route; information establishing consistent maintenance expenditures over time, etc.) supporting the inclusion of each route on the authorized system. We have included a sample spreadsheet to serve as an example. (See Appendix C).

Incorporating the Best Available Science

Given the significant threat represented by growing motorized vehicle use on public lands and by the current transportation system, science must play an important role in the planning process. Public agencies may be tempted to approach travel planning solely as a series of social

negotiations between competing user groups. Such an approach, however, neglects the agency's responsibility to use the best available science to manage the natural resources found on public lands for sustainability and use by future generations. The Data Quality Act directs federal agencies in "ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies."¹⁰ Decisions made in minimizing damage to soil, watersheds, vegetation, wildlife, and habitats should incorporate and reference findings of relevant university, government, and other studies regarding the negative or positive impact of motorized vehicle use. The Forest Service must describe what methodology and scientific information they used to determine how motorized routes could potentially impact natural resources on the Forest and how this information guided the project design criteria with respect to soils, watersheds, vegetation, threatened and endangered species, sensitive species, and management indicator species. The agency should provide a complete list of references from peer-reviewed publications from universities, government agencies, and other researchers that support or contradict the basis for their decision. The Forest Service must describe how they used the best available science (or if lacking, how they employed the precautionary principle) to make their decisions.

The Bitterroot Quiet Use Coalition Alternative

The BQUC, CBD, and WWA requests that the Travel Planning Team analyze a suite of alternatives which develop the following themes, including at least one BQUC alternative which includes all four themes:

- Peace & Quiet -- Secure our Roadless and Wilderness Study Areas for quiet recreation, wildlife habitat, and clean water.
- Quality Access -- Designate motorized recreation on roads where off-road vehicles do not damage our streams and wildlife or disturb our neighbors. Identify and decommission unnecessary and harmful roads.
- Balance -- Minimize conflicts among people and forest resources by separating off-road vehicle routes from quiet uses, clean water sources, and critical wildlife habitat.
- Responsibility -- Designate off-road vehicle use only where the agency can afford to monitor, enforce and maintain the use.

Peace & Quiet: Protect Roadless Areas and Wilderness Study Areas

Off road vehicle use often leads to the development of wide routes equivalent in function to roads on the landscape. Because roadless areas (areas with over 1000 contiguous roadless acres) are the last remaining core areas for wildlife and plants, they should be spared the impacts of intense recreation and route proliferation. Therefore, we recommend that all roadless areas be protected from motorized use.

¹⁰ P.L. 106-554 § 515

The Montana Wilderness Study Act states, “Areas shall be administered so as to maintain the presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System” (P.L. 95-150). The courts have established that the existing wilderness character must meet 1977 levels¹¹, and Region 1 Issuance for FSM 2329 further establishes this fact.¹² Activities reducing the potential for wilderness designation should be prohibited in Wilderness Study Areas. Motorized recreation certainly falls within this category and therefore should be excluded. We would also like to emphasize that the scoping document supports this position and states that the reason behind many of the proposed changes is for,

- “Eliminating motorized use on trails that are within a short distance of a designated wilderness.
- Closing trails within selected unroaded areas to protect wilderness characteristics (areas the Forest would like to recommend for wilderness designation),” (p.9).

Given these valid and reasonable rationales, it is unclear why the BNF proposes keeping Trail #313 open to the Anaconda-Pintler Wilderness boundary, why many of the other trails in the Sapphire and Blue Joint WSAs are open to motorized use, and why the BNF proposes a two-track route on Trail #44 and #86. These historic National Recreation Trails are within the Stony Mountain IRA and lead into a proposed Wilderness area on the Beaverhead-Deerlodge National Forest as illustrated in their preferred alternative in their Forest Plan Revision Final EIS. If the BNF keeps these routes open, it will only encourage trespass and further reduce the area’s wilderness character and potential for inclusion into the Wilderness Preservation System.

The Sapphire WSA – A Special Case

Due to the expansion of motorized use in the area, the Sapphire WSA’s wilderness character and potential for Wilderness designation has diminished since 1977 when the Montana Wilderness Study Act passed into law and the Sapphire WSA was established. The MWSA contains two independent parts: 1) maintaining existing wilderness character and 2) maintaining potential inclusion in the Wilderness system. Not only has the wilderness character diminished in the Sapphire WSA, but the actions by the BNF, especially in light of those also taken by the Beaverhead-Deerlodge National Forest, have reduced its chances for Wilderness designation by promoting motorized use.

The diminishing Wilderness character prompted legal action by some BQUC member organizations.¹³ The BNF travel plan proposed action does not provide adequate redress to their claims, and therefore the commenters here support and reiterate their claims as listed in Appendix D, which describes the violations and area's history in detail. The BNF should take the opportunity it now has in the travel planning process to adequately address the issues that are causing the Sapphire WSA’s diminishing wilderness character and harming its potential for inclusion into the Wilderness Preservation System.

¹¹ Montana Wilderness Association v. USFS, 146 F.Supp.2d 1118 (D.Mont.2001)

¹² Interim Directive No. 2320-2006-1 “Manage Montana Wilderness Study Areas (MWSA) to maintain wilderness character as it existed at time of designation (1977) and potential for inclusion of the area in the National Wilderness Preservation System (NWPS).”

¹³ Montana Wilderness Association v. USFS, 146 F.Supp.2d 1118 (D.Mont.2001)

The following table lists the trails not protected in the current proposed action and that we call for being designated and maintained as non-motorized:

Table 1: Wilderness Study and Roadless Areas: Unprotected Trails in the Current Bitterroot National Forest Travel Plan Proposal

IRA/WSA	Total Acres* (Bitterroot NF acres)**	Unprotected Summer Trails	Unprotected Winter Trails
Allen Mt.	153,267 (102,300)	55, 56, 103, 177, 178, 181, 182, 184, 205, 248, 400, 601, 606, 650, 674, 675, 676, tr-ohv-40, tr-ohv-64	55, 95, 103, 177, 178, 182, 184, 205, 218, 248, 400, 404, 601, 606, 650, 673, 674, 675, 676
Blue Joint WSA	65,860 (65,400)	106, 138, 139, 223, 602	106, 138, 139, 223, 602
Lolo Creek	(587)	N/A***	NA***
Needle Creek	(1,100)	Protected	Protected
North Big Hole	(3,700)	171, 172	171, 172
Sapphire WSA	116,530 (44,100)	39, 40, 83, 87, 102, 168, 313.5, 313.6, 332, 503	39, 40, 77, 83, 87, 102, 156, 168, 313, 332, 503
Selway-Bitterroot	(115,100)	208, 125	135 to Nelson Lk., 208 to Ward Mt. 82 along Sheafman Cr.
Sleeping Child	(21,400)	84, 105, 159, 160, 161, 500,	84, 105, 159, 160, 161, 500, 504
Stony Mt	103,266 (43,700)	44, 86 National Recreation Trails, 999A, 88	44, 86 National Recreation Trails, 88
Swift Creek	(700)	170	Protected
Tolan Creek	(7,100)	78, 175,	78, 175, 203
Totals	588,633 (405,187)	49	53

* These are the total acres that include ownership from across forest boundaries as identified in the 1986 Bitterroot Forest Plan FEIS

**These approximate acres are from the 2006 Bitterroot Forest Plan Monitoring and Evaluation report, and represent what the agency recognizes for official inventoried roadless areas.

*** The majority of this IRA is on the Lolo NF and no trails are in the Bitterroot National Forest's portion.

In addition to these trails, the BNF should decommission a few key roads in order to protect these areas from motorized use:

1. #312 - Burnt Fork - above Gold Creek Campground
2. #614 - Gird Point - above junction with road 62521
3. # 62521
4. #044 - Reynolds Lake - beyond State Line
5. # 381 Reynolds Lake area
6. #62594 (Skalkaho Basin)
7. #1135 Weasel Creek

8. # 74151 & 74159 Blue Joint area
- West Mountain Creek

9. # 5770 & 73635 upper Reynolds
Creek

Quality Access: Designate motorized recreation on roads where off-road vehicles do not damage our streams and wildlife or disturb our neighbors.

We believe that roads are for motors and trails are for quiet uses. However, not all roads are appropriate for ORV use, especially on roads where traffic has been closed to full sized vehicles due to resource concerns. We look forward to seeing the Draft EIS and the analysis of all roads with resource concerns. We are particularly interested in those roads on the BNF Visitor and Travel Map coded R-4, R-6, R-7, R-11, R-12 and code “90” roads in regards to their impacts on water quality and wildlife. We urge the BNF not to designate any ORV use on maintenance level 1 roads. If motorized use on these roads is found not to have negative environmental impacts, and deemed appropriate, then the roads should be managed at maintenance level 2 in order to ensure proper road maintenance funding and tracking and to comply with FS guidance regarding ML1 roads.

Finally, the proposed action seeks to designate ORV use on roads previously identified in the Trapper Bunkhouse EIS. The BQUC opposed these designations in this area and we consider such action to be a violation of E.O. 11644 because such use would not be compatible with the populated nature of the area. In fact, the Trapper Bunkhouse DEIS, stated, “[t]he Burnt Ridge Homeowners’ Association, expressed concerns about OHV use including concerns of noise, resource damage and impacts to wildlife,” (Trapper Bunkhouse Land Stewardship Project Draft EIS, 3.11 – 6). These concerns have not changed, and ORV use in this area will lead to numerous conflicts between the BNF and its neighbors.

Balance: Minimize Conflicts

On the Bitterroot as elsewhere, “mixed use” or “dual use” trails (combining non-motorized and motorized users) leads to almost complete elimination or displacement of non-motorized users. A literature review of OHV research found that the numbers of motorized recreationists, and their intensity of use, results in environmental degradation that reduces the pleasure of non-motorized visitors, potentially resulting in displacement of the non-motorized users (Stokowski and LaPointe, 2000)

This displacement of non-motorized users worsens as the cumulative volume of motorized traffic increases on any route, and the routes physically look like motorized routes by the widening of trails and denuding of soils. The exception is where the route is simply the only access route to some special location, where non-motorized users simply cannot avoid motorized use. Belich (1988) describes how public land managers have mistaken the displacement of traditional recreationists by OHV users as a decreased demand for these activities and have allocated more resources to the OHV users. “Shared use, dual use or mixed use” are euphemisms that mislead managers that the public’s non-motorized experiences have not been seriously compromised or eliminated from areas where routes are designated as open to motorized use. Most Forest Service constructed trails now open to motorcycles and ATVs result in nearly complete elimination of most non-motorized users. Displacement and perhaps elimination of non-

motorized users on much of the non-Wilderness portion of the Forest's trails and closed roads must be addressed as a major issue.

When designating routes for ORV use the 2005 Travel Management Rule states, "...the responsible official shall consider effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands..." (36 CFR 212.55). However, E.O. 11644 clearly directs officials to minimize wildlife harassment and conflicts among other recreational uses and that any designations must be compatible with populated areas. Note the difference between "consider" in the 2005 TMR and "minimize" in the executive order. We feel that the BNF must follow the stronger language and minimize conflicts and wildlife disruption.

Appropriate recreation

The BQUC, CBD and WWA support providing unique experiences along the Recreational Opportunity Spectrum, and believe that the BNF should plan for future technologies. However, this does not translate into a Forest Service obligation to accommodate newly designed machines that are larger than a 50 inch wheel base, or that have tracks instead of wheels for summer use. Rather, we recommend that the Forest Service include in the decision document a statement to the effect that uses not listed in the Travel Management Plan will not be allowed on Forest Service lands until the district has had an opportunity to study its effects and plan for it; moreover, if the new type of recreation is determined to cause resource damage or conflicts considerably with other uses, the agency should disallow its use on Forest Service lands altogether.

The need for such a policy is illustrated by an increasing array of new generation thrillcrafts such as amphibious all-terrain vehicles, monster ATVs, UTVs, motorized skateboards, motorized mountain bikes, freeride bikes, etc. Allowing these types of uses without any analysis of their associated impacts is inappropriate. A "no new technology" policy would make clear that the Forest Service will study the impacts of a new form of recreation before allowing it.

Responsibility: Monitoring and Enforcement

Monitoring

The BNF should develop a set of monitoring protocols and adaptive management standards to ensure proper implementation of the travel plan. The travel plan should contain monitoring protocols established for Management Indicator Species (MIS) and overlay these monitoring protocols with a requirement that the Forest Service divide the BNF into ecological subunits (preferably watersheds) wherein the Forest Service would prepare an annual monitoring report for each subunit that compiles and details: (1) illegal intrusions into areas closed to motorized use; (2) conflicts with quiet use and non-motorized recreationists; (3) relevant summaries of monitoring data obtained via Forest Plan-level monitoring protocols (e.g., for MIS); and (4) any considerable adverse impacts suffered in these subunits. Requiring the production of such a report would be a very valuable way to ensure that recreational use is not taking too large a toll on BNF resources.

In order to ensure that resource damage is not at unduly influenced by subjective opinions or local politics, the travel plan should establish defined thresholds that specifically trigger route/area closures or additional review/monitoring processes. Thresholds would include triggers for waterway sedimentation levels, habitat fragmentation, de-vegetation, and indicator species populations. These triggers should be based on the NEPA process itself, as well as the various consultation and certification processes required by federal law (ESA § 7 consultation process with the US Fish and Wildlife Service, the § 106 consultation process required by the National Historic Preservation Act, or the § 401 water quality certification process that may be required by the CWA) that would trigger “conditional decisions.”

Law Enforcement Strategy

The BNF needs to create a travel plan that is realistically enforceable given current and foreseeable constraints. The FS should analyze how many enforcement patrols it can realistically send to each section of motorized route, and whether each proposed alternative route system is practically enforceable given personnel and funding constraints. The Draft EIS and final travel plan should include an analysis of the budget and personnel needed to adequately enforce the preferred system. The travel plan should include a Law Enforcement Strategy, crafted in light of the adaptive management strategy, to ensure that BNF visitors and natural and cultural resource values are protected, and to guide law enforcement activities.¹⁴ As a component of the travel planning and NEPA processes, the BNF should strategize with Forest Service line, law enforcement and forest protection officers, as well as resource specialists, to identify solid, effective strategies to best ensure that motorized use is constrained within the limits defined by the Travel Plan. These strategies could include concentrated enforcement patrols during high-use weekends or at high-use areas. We request that law enforcement violations be linked to temporary or permanent closures if a certain threshold of violations were surpassed. For example, if a user created trail appeared along a specific route, then an automatic trigger would close that route until the illegal trail could be removed; if that specific route were closed three times then the closure would become permanent. We ask that these triggers be part of trail and road management objectives as well as written into the final travel management plan. Doing so would provide an important incentive for the motorized community to self-police its activities. In 2007 Wildlands CPR published a report on successful ORV enforcement strategies, and we would be happy to provide the BNF with additional copies as needed, or to discuss any of the case studies contained therein.

Designing an Enforceable System

Given the FS’ limited budget for enforcement and maintenance, the BNF should take special care to design a route system that is easy to monitor. The most obvious way to do this is to

¹⁴ Within the Forest Service, law enforcement is ‘stovepiped’; that is, it is largely independent of and separate from resource management activities. Given, as a practical matter, that you cannot rationally decouple law enforcement on the BNF from resource management, the Travel Plan should provide guidance to overcome potential problems implicated by the Forest Service’s internal agency structure.

minimize the number of miles designated. However, other strategies can also be helpful, such as designating routes in an easily patrolled or geographically defined area. Any system that is not easily enforceable, such as one with many branching routes over flat terrain that are not near a highway should not be designated. Relatively short spur routes are to be discouraged as well. It will be much more effective if ORV use is restricted to main roads and the short spurs are closed. Short spurs are simply harder to monitor, and encourage illegal “pushing” of the spur further and further into wildlife habitat in an effort to make a longer route. In some instances, loop trails may have advantages over spurs, as they discourage such encroachment into unauthorized areas.

Wildlife biologists have recognized problems with open roads that expose large mammals such as deer, pronghorn, cougar and bighorn sheep to heavy hunting pressure, poaching, and harassment (Forman and Alexander 1998; Trombulak and Frissell 2000; Coffin 2007). Closing primitive dirt roads reduces access to poachers and other land abusers and affords relief to law enforcement official tasked with this perennial law-enforcement headache (Buckley and Pannell 1990).

More Routes = More Enforcement

Opening more routes to ORVs will not reduce enforcement constraints. Many ORV advocates claim that designation of extensive ORV routes will lead directly to greater compliance. Specifically, some assert that ORV riders will stop making unauthorized routes and traveling illegally off-route once more routes are designated open and riders are educated as to where they can and cannot ride.

In 2006, Montana Fish, Wildlife and Parks received survey responses from 446 owners of registered off-road vehicles. Among the full sample of respondents, 23% “always or sometimes” ride cross-country even though off-route riding is against the rules in Montana and has been since 2001. Over 28% “sometimes or never” avoid riparian areas and wetlands, in violation of rules for federal and state public lands in Montana. Sixty-four percent of those surveyed have used an off-road vehicle while hunting. The majority of this hunting subset admits to riding cross-country — over 58% have traveled off of legal routes to retrieve downed game.

A 2001 Colorado study cited the state of Montana’s off-road vehicle public education program as a model to emulate. According to the Colorado study, Montana’s “On the Right Trail” program “provided a list of key behavioral traits that define an ‘ethical hunter’ — with several of these related to proper OHV use.” However, as discussed above, the more recent Montana study revealed a significant disregard for the rules among many off-road vehicle riders, pointing to the ineffectiveness of the state’s education program. This supports the key conclusion of the Colorado study: “information and education per se – will not result in substantial behavioral change” (emphases in original). Monaghan and Associates, a marketing research firm, conducted the 2001 study at the behest of the Colorado Coalition for Responsible OHV Riding, a coalition of off-road vehicle representatives, environmentalists and public officials. Researchers surveyed Colorado off-road vehicle riders through a series of three focus groups. Monaghan and Associates found that the majority of off-roaders understand that staying on designated routes is “fundamental trail etiquette” and that going off trail is not “correct” off-road vehicle behavior. The survey revealed, however, that regardless of this knowledge “as many as two-thirds of adult

users go off the trail occasionally.” A significant percentage of riders, 15-20%, admitted to frequently breaking the rules and riding off of legal routes often. Survey participants also stated that “others” ride off-route and cause most of the damage.

In a separate study, the Utah Division of Parks & Recreation commissioned Utah State University to survey riders to determine their “OHV uses and owner preferences.” The university conducted a telephone survey of 335 riders from a random sample of the 50,676 people who registered off-road vehicles with the state in 2000.

The Utah report reveals that a high percentage of riders prefer to ride “off established trails” and did so on their last outing. Of the ATV riders surveyed, 49.4% prefer to ride off established trails, while 39% did so on their most recent excursion. Of the dirt bike riders surveyed, 38.1% prefer to ride off established trails, while 50% rode off established trails on their most recent excursion.

When surveyed on issues affecting off-road vehicle use in Utah, survey respondents recognized the need for enforcement but not the need for protecting the natural resources where they ride. This questions the assumption that off-road vehicle riders will stay on-route if educated that cross-country travel is illegal or damaging. One-third of the respondents said there should be more law enforcement presence in OHV areas. Only 6% cited “resource management conservation” as the most important issue affecting off-road vehicle use in Utah.

Expectations for NEPA Analysis

In addition to the BQUC alternative, we have recommendations that will help the BNF generate a complete and comprehensive Draft EIS.

Adequate Range of Alternatives

In the upcoming Draft EIS we encourage the BNF to develop a full range of action alternatives. In past instances we have seen the range shrink to include only a no action alternative, the agency’s preferred alternative and two others representing extreme opposing positions. Such a range suggests that the agency has a predetermined decision, and do not offer adequate variations. The BQUC alternative is not the most restrictive in terms of limiting ORV use and we ask the Travel Management Planning Team not to portray it so. We may support some unauthorized routes or new construction that would link maintenance level 2 or greater roads in order to provide the experience some motorized users seek, as long as there are no significant environmental impacts. The following recommendations provide a couple of suggestions for alternatives to be analyzed.

No Unauthorized Routes

In order to provide an adequate range of alternatives, the BNF should develop an alternative that does not add non-system routes to the existing system. These non-system routes may have been created in violation of 36 CFR 261.15(h) which states, “[i]t is prohibited to operate any vehicle off National Forest System, State or County roads: (h) [i]n a manner which damages or

unreasonably disturbs the land, wildlife, or vegetative resources.” Therefore, in instances where operation of a vehicle resulted in damage or unreasonable disturbance of land, wildlife, or vegetative resources, the creation of non-system routes were illegal and in violation of 36 CFR 261.15(h).

Represent Actual Use

Proponents of motorized use often cite the growing number of off-road vehicle users and project that the increase in use will continue into the future. While the number of ORV owners has undoubtedly increased, this does not necessarily translate into an increased need to provide specific recreation opportunities. According to the Montana Dept. of Motor Vehicles, as of July 2007 there were 2,344 registered Off Highway Vehicles and 1,568 snowmobiles in Ravalli County.¹⁵ Though not available at the county level, the report stated that 29,732 OHVs and 74,765 snowmobiles had expired registrations. This suggests that though there has been an increase in ownership, many of these vehicles may no longer be registered in Montana. Furthermore, ownership levels do not communicate the type of use for which these vehicles were purchased. Many rural residents use ORVs for work at home or to haul equipment. Not every ORV owner uses the vehicles for recreation, and even those who do, do not necessarily seek an “extreme” experience. The 2003 Bitterroot National Visitor Use Monitoring Report indicated that only 0.3% of users said their “primary activity” was using wheeled ORVs and 0.0% said snowmobiling; hiking, biking or horseback trails equaled 42.5%. While some claim these numbers do not reflect actual use, a national report indicated that 0.32% of users on the Bitterroot National Forest used wheeled ORVs as their primary activity and 2.61% reported using them as a secondary activity: across Region 1 these numbers are 2.08% and 6.07% respectively (English, et al. 2004). Furthermore, ORV sales have declined in recent years, possibly indicating a decline or stabilization of interest in the activity.¹⁶ The majority of BNF visitors are hikers, horseback riders, hunters and campers that do not use ORVs, and the BNF should develop an action alternative that accurately reflects the small percentage of ORV users.

1976 National Forest Management Act Consistency

Appendix A lists several standards in the 1987 Bitterroot Forest Plan that the Travel Plan must follow. In addition to these standards, the Bitterroot Travel Plan must also ensure consistency with the 1976 National Forest Management Act (NFMA). The following offers key sections and regulations that the BNF is required to follow:

- The BNF must manage the Forests in an ecologically sustainable manner that protects soil and water resources, streams, streambanks, shorelines, wetlands, fish, wildlife, and the diversity of plant and animal communities. 36 CFR219.27(a)(4)(1982)
- FS must show how they are protecting these resources and what species they are using to serve as management indicators of forest health and wildlife viability. 36 CFR 219.19(a)(1982)
- Temporary roads should be closed and revegetated within 10 years of completion of project, per 16 USC 1608(a), unless re-evaluated and determined to be necessary for minimum road system

¹⁵ Report number JMVRB240C, 2007-07 MVSTATS.

¹⁶ This is according to 2006 fiscal year-end reports from Honda, Yamaha and Polaris.

- NFMA planning regulations (pre-2005 rule change attempt) that pertain to ORV use require the FS to:
 - effectively monitor ORV use (36 CFR 295.5)
 - effectively close ORV routes that are causing or will cause user conflicts or considerable adverse impacts to natural resources (36 CFR 295.5)
 - practice adaptive management by periodically reviewing the monitoring results and altering the management of ORVs to ensure that serious user conflicts and natural resource impacts are not occurring (36 CFR 295.5)
 - plan ORV routes to minimize impacts and conflicts (36 CFR 295.2)
 - ensure that ORV use does not result in significant adverse impacts to natural resources or loss of viability to native and desired non-native species. (36 CFR 295.2)

Management Indicator Species/Route Density Standards

The BNF must retain existing Forest Plan standards and guidelines afforded to Management Indicator Species (“MIS”) as per the Forest Service’s 1982 NFMA planning rules. Density standards provide a clear, scientifically credible measurement regarding habitat quality that is easily understood, and prevents problems with differing perceptions of what is acceptable impacts.

The Travel Management Rule requires that the FS minimize route systems to what is necessary for transportation and recreation in order to minimize damage to Forest resources. In general, the FS should eliminate parallel or redundant routes, and take care to follow scientific recommendations on road densities and avoidance zones, analyzing the proposed travel plan for compliance with these scientific standards.

Route Density Standards (RDS) should be at clearly defined, science-based, ecological scales (e.g., watershed, or habitat levels, rather than just vegetative types). This is consistent with the Forest Service’s duty to address impacts, in particular cumulative impacts, in the proper “context” to determine those impacts’ significance (40 C.F.R. § 1508.27). In so doing, the Forest Service has an informed means of determining whether or not agency actions comport with substantive legal obligations, (e.g., to “provide for diversity of plant and animal communities....”) (16 U.S.C. § 1604(g)(3)(B)).

Moreover, route density calculations should include all FS-inventoried motorized routes, published or unpublished – whether classified as a “road” or “trail,” and whether “authorized” or “unauthorized”. (Of course, if the TMP establishes a clear plan to stop unauthorized use on a route or area, and analysis makes a good case that the plan will actually succeed, then a closed route can be eliminated from density calculations). The bureaucratic classification of a route is irrelevant from an ecological perspective. What is relevant is the impact of that route – and that route’s use – to the forest.

Accordingly, designated wilderness and inventoried roadless areas (IRAs) that restrict motorized use should be excluded from RDS calculations. Including these designations in RDS calculations too easily leads to the illusion of low route densities when, in reality, the density of route

networks outside of these protective designations is quite high and likely causing unacceptable degradation. Excluding these protective designations from RDS also helps to de-politicize protective designations relative to motorized recreation. In other words, protective designations should not be used as a pretext for condoning high-density route networks outside of protected areas. Instead, route densities throughout the entire forest, and not just in specially protected areas, must ensure resource protection. In general, RDS measurements should be calculated within meaningful ecological areas such as watersheds or elevation zones, with account taken for large chunks of wilderness or IRA that may skew RDS calculations for non-protected areas.

Additional Factors to Consider in the Environmental Analysis

Clean Water Act Requirements

Where roads and ORV use exist in watersheds, there will be sediment loading to streams. The DEIS must analyze the harm to the waterways of the BNF, including their aquatic and riparian components, or on the downstream systems as a result of implementation of the preferred alternative. The preferred alternative must contain discussion of how the Forest Service will mitigate harm to these watersheds, systems and components.

This is an especially critical consideration in watersheds that contain designated cold water habitat, impaired streams, or municipal water supplies. The DEIS must therefore analyze the cumulative effects of roads, motorized trails, road improvements and ORV use (including dispersed camping) on the water quality of that impaired stream as well as any others.

In the case of a high water quality stream the stream in question should be preserved in that state, in compliance with 33 U.S.C. § 1313(d)(3) of the Clean Water Act. In accordance with the water quality findings of the state water agency, each stream that is not already impaired within the state should be maintained at a high level of water quality and each action taken in that stream should be closely evaluated to determine whether the proposed action will improperly degrade the water quality of the stream. The BNF must show that this evaluation has taken place, and the results of that evaluation.

The Draft EIS must adequately address how the preferred alternative and its direct and cumulative impacts will comply with watershed conservation standards, including section 313 of the Clean Water Act, which requires federal agencies to comply with water quality standards if they are “engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants.” 33 U.S.C. § 1323(a). The BNF must also seek certification from the Montana State officials that route construction, maintenance, and use comports with, *inter alia*, water quality standards. 33 U.S.C. § 1341.

The requirements of Section 313 are mandatory. The Forest Service must satisfy water quality standards and must ensure that it does not engage in any activity that may result in water degradation.

Endangered Species Act Requirements

The FS must plan for the protection of any threatened or endangered species in the BNF. The presence of any listed species in the project area requires that the Agency consult with the Fish and Wildlife Service to determine the possible effects of the travel plan on the listed species before the plan may be approved. The FS must “insure” that travel planning “does not jeopardize the existence of any endangered species or threatened species or result in the destruction or adverse modification” of critical habitat of such species. 16 U.S.C. § 1536(a)(2).

Species that are candidates for listing must also be considered under the ESA. Each federal agency must “confer” on any action “which is likely to jeopardize the continued existence of any species proposed to be listed . . . or result in the adverse modification of critical habitat proposed to be designated for such species.” 16 U.S.C. § 1536(a)(4).

Cumulative impacts of “connector” routes and loops (additional considerations)

The cumulative effects of the Travel Plan must be analyzed, and we would add that this means not only the effects of the physical system as it currently exists or is proposed, but the effects of an increased route system, increased promotion of ORV tourism in the area, and increased visitation to areas managed for ORV recreation. In *Washington Trails Association v. US Forest Service (1996)*, a federal court held that "The environmental significance of the Langille/Juniper Trails project cannot be accurately assessed unless the potential for increased use resulting from the cumulative impact of the projected network of ORV trails planned for the Randle Ranger District is carefully considered."

We are concerned with connector routes in the proposed action though many of these are relatively short, or in already heavily impacted areas, and thus have limited impact in themselves, they can have massive cumulative effects upon the larger system by providing easier ORV travel to distant points around the Forest. When considering any route, NEPA requires that the FS analyze that route’s impact not only on its immediate area, but on the entire system of routes that may be affected by it. These are reasonably foreseeable consequences of designating these “connector” trails. For example, a mile of ATV connector trail near a highway, connecting a town to the Forest road system, might be virtually unnoticeable by itself. However, if the BNF claims a foreseeable increase in ORV use, then the increased use on such a route has the potential to significantly increase the ORV presence in the Forest. The route must be analyzed for these additional impacts.

Although the creation of extensive loop routes by constructing connector loops or upgrading connecting route sections may appear attractive, we are deeply concerned with the ecological and social consequences of new loops. First, the creation of loop routes can result in the opening to recreational uses of large acreages that were once relatively remote. It is not at all clear that approving loop routes will eliminate the desire of motorized users to go off route (see our section on enforcement above), and it is likely that instead, creating these loops will only increase accessibility to sensitive areas for illegal motorized use. Second, looped trail systems isolate habitat within them. Creating smaller loops that allow for adjacent wildlife corridors and that do not cause unacceptable ecological damage or social conflicts, in conjunction with enforcing the

requirement that riders stay on designated routes, may be a useful way to contain motorized recreation.

If such loops are to be created by connecting existing routes, the existing routes must be official system travelways which, by definition, must have been analyzed and approved through the NEPA process. Likewise, the entire resultant network should be analyzed using NEPA. The environmental review should include, but not be limited to, an analysis of habitat fragmentation, edge effects, and the isolating effects on non-mobile wildlife and plant species. Finally, cumulative effects considerations should consider effects on viewsheds, soundscapes, and air pollution.

Noxious Weeds

ORVs are notorious seed-spreaders. The low carriage, rough tires and numerous crevices of ATVs and dirt bikes, when traveling through brush and grasses, catch many more seeds than a normal vehicle. Those seeds are then scattered along any routes the vehicle travels. A study in Montana demonstrated that a single ATV can disperse more than 2,000 invasive knapweed seeds over a 10-mile radius. The research also found that these seeds are more likely to germinate and crowd out native plants in areas where soil has been compacted by off-road vehicles.¹⁷ Additionally, "Off-road vehicles are cited as the key source of the spread of invasive and noxious plants in the western United States, affecting an estimated 4,600 acres of public land daily."¹⁸ Another study on this issue concluded that roads and off-road vehicles are the chief threats to the invasion of exotic weeds in roadless areas that provide refuge to native species.¹⁹

The EIS must analyze the effects of the proposed trail system on noxious weed distribution, and the actions the Forest intends to undertake to mitigate them. If chemical spraying is one of the "solutions," the impact of this spraying upon the local plant, animal, and amphibian populations must be fully analyzed.

Winter Motorized Impacts

The BQUC, CBD and WWA are especially concerned with motorized winter recreation and its impacts on wolverine, mountain goat, and lynx. Wolverines are being evaluated and proposed for listing under the Endangered Species Act. Wolverine track data suggests they almost completely avoid motorized areas, even in summer. Their winter denning habitat is in high spring snow retention areas. Lactating females are very sensitive to human disturbance and will try to relocate their young after a single human encounter. (Copeland, Jeff. 1996). Snowmobile access also subjects them to the possibility of overtrapping. (Squires, John. J. Copeland, T. Ulizio, M. Swartz, L. Ruggiero. 2007).

¹⁷ Montana State University Extension Service Bulletin. 1992. Controlling knapweed on Montana rangeland. Circular 311, February 1992.

¹⁸ U.S. Department of the Interior. Undated. "Partners Against Weeds, An Action Plan for the Bureau of Land Management."

¹⁹ Gelbard, J.L., and S. Harrison, 2003. Roadless habitats as refuges for native grasslands: interactions with soil, aspect, and grazing. *Ecological Applications* 13(2): 404-15.

The increased ability of today's more powerful snowmobiles to reach new and more remote areas has begun to adversely affect what were previously winter sanctuaries necessary for both mountain goats and wolverines. Highmarking may be spelling doom for these species in areas open to OHVs, unless the Forest Service takes decisive steps to insure habitat security. Jerry Brown, MDFWP wildlife biologist in the Libby area, recently expressed his concern about a groomed snowmobile trail near a mountain goat wintering area because snowmobiles will likely leave the trail and disturb wintering goats (Lincoln Sno-Kats Trail Grooming Decision Notice, Kootenai National Forest 9/19/07).

All existing and historic mountain goat habitat should be protected from motorized use. Consider restricting non-motorized use during sensitive winter periods as well. Motorized use within 1/2 mile of historic or existing occupied mountain goat habitat must be relocated or closed. Snowmobiling in landscapes containing mountain goat habitat should be discouraged because of the attractiveness of mountain goat habitat to "high marking" and the near impossibility of enforcing a 1/2 mile distance closure in these likely remote areas.

Noise

The Draft EIS should have a specific section analyzing how noise will impact non-motorized recreation opportunities. Solitude is a valued commodity in today's noisy society, and not all recreationists have the opportunity or ability to travel into remote Wilderness areas to find quiet solitude. The DEIS should recognize quiet recreation opportunities in these terms, delineating the time it takes to reach these areas from local population centers and the degree of difficulty involved with recreating there. Given that hikers and other nonmotorized recreationists make up the majority of users on the BNF, an appropriate amount of nonmotorized "front country" should be designated to fulfill the needs of quiet users.

However, measuring noise impacts purely in recreational terms is problematic since noise from motorized recreation affects more than other people's experiences. It affects wildlife as well. The National Park Service has planned for and modeled natural quiet in some of their units, including the Grand Canyon, Rocky Mountain National Park, Hawaii Volcanoes National Park, and Yosemite National Park. We recommend using the Park Service's approach to measuring noise impacts on wildlife, as well as other users.²⁰

Analyze the importance of landscape linkages and impacts from route densities

Some research has been done to investigate the relationship between route densities and the conditions of natural resources including wildlife and watershed health. Transportation plans and associated NEPA documents should discuss the implications of various route densities on ecological health. In general, densities over 1 mile per square mile are considered deleterious to predators and big game species, (Beazley, et. al., 2004.,Switalski, 2006).

²⁰ See National Park Service. 2005. Acoustics and Soundscape Studies in National Parks. NPS Natural Sound Program, Fort Collins, Co.

Landscape linkages are essential for species to move between feeding, resting, and hiding areas. To maintain viable populations of existing native species in the analysis area, the BNF should analyze, identify, and provide for the existence and maintenance of landscape linkages.

Federal courts have interpreted NEPA to require land management agencies to consider and evaluate impacts to biological corridors. *Marble Mountain Audubon v. Rice* (No. 90-15389, D.C. No. CV89-170-EJG, Sept. 13, 1990). The standard for such a review is the same "hard look" NEPA requires of other environmental effects. The Forest Service therefore must analyze the effects of each of the alternatives on possible biological corridors in the area, including species-specific assessments of corridor location and use. This assessment should place emphasis on the migration corridors for large roaming species and endangered, threatened, and sensitive species.

The Sapphire crest biological corridor needs particular attention. Home to wolverine, lynx, fisher and mountain goat, it also serves as a wildland corridor for grizzly bear coming down out of the Burnt Fork. The 1993 Deerlodge NF Camp Duncie EA reported grizzly bear in the area. Studies by the Craighead Institute documented some of the best grizzly bear feeding habitat on the Bitterroot ecosystem in the Sapphires due to the relative health of whitebark pine. The North – South configuration of the Sapphire crest corridor adds irreplaceable migration value for many species in addition to grizzly bear. Therefore harm to these vitally important values from proposed motorized recreation must be analyzed and accounted for in the DEIS.

Analyze impacts from noncompliant off-road vehicle use

In addition to analyzing the impacts from increased off-road vehicle use on newly established designated routes, the NEPA document must analyze the impacts from likely unauthorized operation of off-road vehicle use on watersheds, soils, vegetation, wildlife, roadless values, and other users. Given the fact that some of the routes under consideration for opening to ORV use were created by off-road vehicle users illegally, it is not unreasonable to assume that the trend of creating unauthorized routes will continue. In fact, the assumption that users will remain on designated routes is without rationale or basis, and the consequences of this arbitrary assumption may be substantial. See *Sierra Club v. US Dept. of Agriculture*, 116 F. 3D 1482, * (TABLE), 1997 WL 295308 (7th CIR. 1997) (Unpublished opinion). It is also important to note that illegal use is exacerbated by inadequate monitoring and enforcement funding. The NEPA document should therefore account for the potential impacts from noncompliant off-road vehicle use in light of predicted budget shortfalls under each alternative.

Analyze impacts to archaeological, paleontological, and cultural resources.

Cultural heritage sites are prone to disturbance from recreational uses. Increased access, vandalism and damage to heritage sites are direct impacts that must be assessed. Motorized recreation has a high potential to adversely impact heritage resources. Motorized vehicles passing through or near prehistoric or historic cultural sites and paleontological sites can damage or destroy their archaeological value by breaking, burying, or scattering artifacts. They can also expose buried sites by accelerating the erosion of soil surface layers. This field review should consider the potential for damage by errant riders.

The American Indian Religious Freedom Act requires federal agencies to implement and evaluate its policies in consultation with native leaders of traditional religions to determine what is necessary to protect and preserve religious sites (42 U.S.C. § 1996). Native American communities with interest in the possible cultural sites in the project area should be contacted to determine whether any of their religious sites will be impacted by the proposed management actions.

Forest Plan Amendment

We oppose the decision to amend the Elk Habitat Effectiveness standard in the current Bitterroot Forest Plan. The proposed Forest Plan Objective to “Cooperate with the States of Idaho and Montana to maintain the current level of big-game hunting ... opportunities”²¹ will not necessarily ensure elk population health as well as the forest plan standard especially given the available research on ORV impacts to elk. The cumulative effect of leaving excessive numbers of motorized routes open is reduction of elk habitat effectiveness. Forest Service sponsored research (Lyon, 1983, et al) has long documented the avoidance of elk to travel routes open to motorized use. Consequently, the BNF has previously committed to reduce open road density to meet a desirable level of elk habitat effectiveness using the Forest Service Elk Habitat Effectiveness Model. This was a contract with the public as part of the current Bitterroot Forest Plan. There has been no new science to indicate that the model is incorrect, or that elk no longer avoid motorized travel routes.

Grigg (2007) recently found in Montana’s Madison Range a “general trend indicated summer home ranges 2 times as large in areas with relatively high levels of motorized access compared to elk summer home ranges occurring in areas with little or no motorized access and 3 times as large in areas with relatively high total access compared to areas with lower amounts of total access.” Obviously, elk were being forced to move more frequently than they would naturally prefer because of motorized access disturbance, and very possibly were moving to less desirable habitat.

Conclusion

The BQUC, CBD and WWA encourages the BNF to take this opportunity to develop a comprehensive transportation and recreation plan. A plan that creates an ecologically sustainable transportation system that is enforceable, maintainable and minimizes conflicts among the various multiple-uses on the Bitterroot National Forest. We stand ready to consult with the Travel Management Planning team to help develop our alternative or to provide additional information as needed.

Sincerely,

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²¹ Bitterroot National Forest Travel Management Planning Proposed Action Scoping Document, p. 10.

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/s/Mary Allard
Burnt Ridge Homeowners Association
183 Hart Bench Road
Darby, MT. 59829

/s/Kathy Hundley
Selway-Pintler Wilderness
Back Country Horsemen
3448 Wright Way
Darby, MT. 59829

/s/Adam Switalski
Montana Backcountry Alliance
P.O. Box 8691
Missoula, MT. 59807

/s/Mark Menlove
Winter Wildlands Alliance
910 Main Street, Suite 235
Boise ID. 83702

/s/Andrew Orahoske
Center for Biological Diversity
P.O. Box 9174
Missoula, MT. 59807

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Appendix A (screening comments submitted 7/23/2007)

Adam Rissien
Montana ORV Coordinator
Wildlands CPR
PO Box 7516
Missoula, MT 59807

7-23-2007

Sandy Mack, Team Leader
Stevensville Ranger District
88 Main
Stevensville, MT 59870

Dear Sandy Mack,

Members of the Quiet Use Coalition would like to provide input on the document titled “Bitterroot National Forest Screening Process for Potential Motorized Recreation Routes.” Realizing this is a draft document we hope there is still an opportunity for changes in the screening process; however, we would like to express our encouragement for such a process and feel the agency is on the right track and just needs to refine the screening process.

Forest Plan Consistency

Though the Bitterroot National Forest is in the forest plan revision process and has received much input related to recreation management, we understand that the 1987 forest plan is in effect. With this in mind we are concerned with the narrow phrasing of the first screen which implies that forest plan considerations are limited to only the ROS classifications. The Quiet Use Coalition supports the use of specific standards in the existing plan except those that have been proven to cause negative environmental impacts and feel that they will be helpful in the screening process. We advise that the forest plan screen include sections for each applicable forest plan standard.

In addition, other parts of the forest plan maintain ambiguities that may need further direction from the planning team to clarify.

While we anticipate all forest plan standards to be met we specifically support the use of the following:

- “Manage roads through the Travel Plan process to attain or maintain 50 percent or higher elk habitat effectiveness (Lyon, 1983) in currently roaded third order drainages. Drainages where more than 25 percent of roads are in place are considered roaded. Maintain 60 percent or higher elk habitat effectiveness in drainages where less than 25 percent of the roads have been built” (BNF Forest Plan, p. II-21).

- The Quiet Use Coalition would like to clarify that though the Bitterroot NF has called the current process “motorized recreation planning,” it is clear that the agency is using regulations 36 CFR 212, 251, and 261 where in the Federal Register Vol. 70, No. 216 published Wednesday November 9, 2005, it titled the final rules as “Travel Management” and where in the Code of Federal Regulations section 212 is titled “Travel Management.” Therefore it is reasonable to expect that the “motorized recreation planning” is the travel planning process referred to in the BNF 1987 Forest Plan.
 - In addition, it would be reasonable to expect that all roads would be part of the official transportation system with the corresponding authorizing decisions made available for each road.
- “The habitat needs of sensitive species, as listed by the Regional Forester, will be considered in all project planning” (BNF 1987 Forest Plan, p. II-21).
 - In the 2nd screen that evaluates resource considerations, some questions relate to threatened, endangered and sensitive species, but the wording limits considerations to individual aquatic species, sensitive plant species or individual denning or nesting sites. It is problematic and an apparent violation of the forest plan standards not to include habitat needs in the screening process.
- “Soil and Water Conservation Practices will be a part of project design and implementation to ensure soil and water resource protection (FSH 2509.22);” and “Plan and conduct land management activities so that reductions of soil productivity potential caused by detrimental compaction, displacement, puddling, and severe burning are minimized;” and “Plan and conduct land management activities so that soil loss, accelerated surface erosion and mass wasting, caused by these activities will not result in an unacceptable reduction in soil productivity and water quality,” (BNF 1987 Forest Plan, p. II-25).
 - While the screening process in section two question six does ask about soil disturbance and erosion, it does so only in the context of the trail grade. We feel this is too narrow as 1) trail grade implies that road grade will not be considered, 2) grade is only one factor affecting soil productivity and all factors affecting soil conditions ought to be considered as described in the forest plan.
- “Actively reduce sediment from existing roads,” (BNF 1987 Forest Plan, p. II-25).
 - While the term “actively” may be interpreted in several ways, the Quiet Use Coalition asserts that travel management planning is an ideal opportunity to authorize the decommissioning of roads causing sedimentation, and doing so under this current process will help reduce time and costs in future decisions to decommission roads.
- Under section “j” of the BNF Forest Plan standards it states that, “Roads will be maintained to design standards,” and “Roads will be closed to public use if adequate road maintenance funds are not available” (BNF 1987 Forest Plan, p. II-27).
 - Regulation 36 CFR 212.5(b)(1) states in part that, “... the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands,” and 36 CFR 212.5(b)(2) states in part that, “Responsible officials must... identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be

decommissioned or considered for other uses, such as for trails.” The screening process is the ideal venue for conducting travel analysis as detailed in the proposed Travel Planning Handbook 7709.55 Chapter 20 in order to determine the minimum road system and opportunities for road decommissioning.

Furthermore, this information will aid in compliance with the forest plan by determining road maintenance funding needs, identifying which roads are not maintained to design standards, and here we would further assert that all roads need to meet their respective Road Management Objectives.²²

- In addition, if roads do not have established design standards with corresponding NEPA authorization, maintenance records and Road Management Objectives they should not be considered system roads.
- Finally, we look forward to seeing this planning team provide an accounting of how road maintenance funds will be allocated in order to meet the forest plan standard.
- In the section outlining road construction standards, 3(b)(1) directs in part that officials are to “Apply practices that encourage revegetation including ripping the road surfaces of closed roads, allowing native plant encroachment, and blading only when necessary; and is section 3(b)(6) it states, “Sections of roads with soils that may become rutted during wet weather should be surfaced, traffic restricted, or otherwise managed to prevent damage” (BNF 1987 Forest Plan, p. II-31-32).
 - These directions support road decommissioning and obliteration for closed roads and we again assert that this travel management process is the ideal venue for authorizing such actions. In addition, those roads that have a high potential for soil damage in wet weather should be restricted or closed. As we previously stated, the only provision in the draft screening process concerning this issue relates only to trail segments and not roads. In order to meet forest plan standards we feel the screening must be expanded to address this discrepancy.
- The forest plan standards provide additional direction for roads within riparian areas that will aid in the identification of the minimum transportation system necessary for safe and efficient travel; we support their application during the travel management process. Specifically, section 3(c)(1) states that officials are to “Plan transportation systems to minimize roads crossing or running parallel to streams;” section 3(c)(2) states, “Avoid beaver habitat and elk wallows;” and section 3(c)(8) states “Closed roads should be revegetated to prevent surface erosion” (BNF 1987 Forest Plan, p. II-32).
- In providing direction for roadless area management (MA5), the ROS designation is semi-primitive motorized and non-motorized deferring to the Travel Plan to make final determinations for each: “The Travel Plan will identify the areas, trails and roads open for motorized vehicle use and the types of vehicles that are permitted. Motorized use will not

²² FSM 7712.5 - Road Management Objectives

Validate, revise, or establish road management objectives for all classified National Forest System roads to be consistent with forest land and resource management plan direction, project decisions, and the results and findings of roads analysis. Road management objectives establish the design criteria (FSM 7720) and operation and maintenance criteria (FSM 7730.3) for each road. The road management objectives require approval by the Responsible Official (usually the District Ranger) and are included in the forest road atlas (FSM 7711.1).

be permitted where wildlife, adjacent wilderness, soil and water resources, or public safety are threatened” (BNF 1987 Forest Plan, p. III-37).

- While it is problematic that the forest plan does not specifically designate semi-primitive non-motorized, it is clear that motorized use should be restricted where there is a **threat** to those forest resources listed. There is a significant difference between actual negative environmental impacts and the threat of their occurrence, we feel that the bar was set low in order to protect roadless areas from motorized impacts and the Quiet Use Coalition would like to see provisions in the screening process that incorporates this fact.
- In providing management direction for recommended wilderness (MA6), the ROS designation is primitive and semi-primitive, but again the forest plan fails to designate motorized and non-motorized within this classification except to maintain existing “settings,” however in the standards section, a(3), it does state, “Continue current uses which do not detract from wilderness values. Transitory uses such as chainsaws, trailbikes and snowmobiles are appropriate if permitted by the Forest's Travel Plan,” (BNF 1987 Forest Plan, III-41). Even more, the wilderness standards state, “Manage visitor use at levels that maintain the presently existing wilderness quality. These are the same limitations as for the adjoining wilderness,” (BNF 1987 Forest Plan, III-42).
 - Clearly the travel management planning is the venue for deciding if these “**transitory**” uses are appropriate and the Quiet Use Coalition asserts that the uses do indeed “detract from wilderness values.” Even more, the Merriam-Webster dictionary defines transitory as “tending to pass away; not persistent.” In order to meet this requirement and to ensure wilderness quality, we feel that recommended wilderness should be managed with a primitive ROS designation.
 - Finally, the standards for applying the Montana Wilderness Study Act state the, “Area shall be administered so as to maintain the presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System (P.L. 95-150),” (BNF 1987 Forest Plan, III-43).
 - The courts have established that the existing wilderness character must meet 1977 levels, and the FSM 2329 further establishes this fact; we feel that the draft screening process should include a section asking if current levels exceed those of 1977. If yes, then the area should be managed with a primitive ROS designation. Even more, looking at the law’s construction, there are two requirements that need to be met: 1) maintaining existing wilderness character and 2) maintaining potential inclusion in the Wilderness system. The Quiet Use Coalition asserts that activities reducing the potential for Wilderness designation should be excluded from Wilderness Study Areas. Established motorized recreation certainly falls within this category and therefore should be excluded.

Resource Considerations

Many additional resource considerations need to be included within the screening process in order to meet the BNF Forest Plan standards as detailed above. In addition to these requirements, we encourage the planning team to include the following screens:

- Where biological corridors exist, motorized use should be excluded.

- Habitat considerations for threatened and endangered species should be included.
- Negative impacts to the area's soundscape should be considered.

Motorized Recreation Opportunity

- An additional screen should ask if the route was engineered for motorized recreation and if not it should be removed from consideration. This will reduce potential environmental impacts while considering user safety.
- Planners should include a law enforcement screen to determine how easily officers can patrol to reduce the potential for user-created routes and other violations.

In conclusion, the Quiet Use Coalition is encouraged that planners are conducting a screening process to determine appropriate places for motorized routes. However, we ask for some clarification on how the point system operates as it is unclear what score is needed to exclude a route for motorized designation. Finally, we again assert that this effort represents one part of the travel planning process. We formally request a response addressing how agency staff meets the requirements in 36 CFR 212 and the Bitterroot National Forest Plan.

Sincerely,

Adam Rissien, for the Bitterroot Quiet Use Coalition

Appendix B: BEST MANAGEMENT PRACTICES FOR OFF-ROAD VEHICLE USE ON FORESTLANDS: *A Guide for Designating and Managing Off-Road Vehicle Routes*, January 2008. Prepared by Wildlands CPR and the Wild Utah Project.

See attachment.

Appendix C:

**Mock Up Simple Spreadsheet
Criteria for Putative System Routes**

Route ID #	Route name	Forest Plan	Visitor Use Map	NEPA Doc	Vehicle Class	RMO/TMO	Maintenance	Other Criteria TBD
102.A	CAMP ROSALIE							
107.A	ROSEDALE							
107.A	ROSEDALE							
108.B	PARADISE							
108.BA	108.BA							
108.C	HOPKINS							
108.D	HIGHLAND							
114	WILLOW CREEK							
114	WILLOW CREEK							
123.B	BEAVER CREEK 4WD							
117	UPPER AG							
117	UPPER AG							
100.A	DEER CREEK CG							
101	CROW CR							
101	CROW CR							
102	ELK CREEK							
102	ELK CREEK							
102	ELK CREEK							
102	ELK CREEK							
105.A	SLAUGHTERHOUSE							
107	LIMBER PINE							
108	HARRIS							
108.A	HARRIS CUTOFF							
111	PAYNE GULCH							
118.A	GENEVA CREEK PG							
118.B	WHITESIDE PG							
118.C	THREEMILE CR TRHD							
118.D	BURNING BEAR CG							
118.E	BUNO GULCH							
119	UPPER GENEVA							
119	UPPER GENEVA							
119	UPPER GENEVA							

- **Forest Plan** - Is the route present on the map included with the most recent Forest Plan ROD? (Answer Y or N)
- **Visitor Use Map** - Is the route displayed on Forest Service Visitor Use Map(s) (Answer Y (and dates) or N)
- **NEPA Doc** - Is the route described in a project level NEPA document? (Answer Y or N)
- **Vehicle Class** - Does the decision specify vehicle classes that can use the route (Answer Y (and specify) or N)
- **RMO/TMO** - Does the route have an approved Road Management Objective or Trail Management Objective? (Answer RMO with date, TMO with date or N)
- **Maintenance** - Is the route currently maintained to its objective level or is it in deferred maintenance status? (Answer Y or D for "Deferred")

Appendix D: Sapphire WSA Letters submitted 7/6/2005 and 6/12/2007

To: Supervisor Dave Bull
Bitterroot N.F.
1801 North First Street
Hamilton, Montana 59840
and,
Supervisor Tom Reilly
Beaverhead-Deerlodge N.F.
420 Barrett Street
Dillon, Montana 59725-3572

From: Montana Wilderness Association
Box 635
Helena, Montana 59624

Friends of the Bitter Root
Box 442
Hamilton, Montana 59840
Bitterroot-Mission Group - Sierra Club

Subject: 6/3/05 Scoping Notice - Portion of Trail 313 Motorized Travel Restriction.

Date: July 6, 2005

Dear Mr. Bull and Mr. Reilly:

We appreciate the opportunity to comment on your June 3, 2005 Scoping Notice - Portion of trail 313 Motorized Travel Restriction.

The Notice states that you are "jointly proposing to restrict approximately 1.3 miles of Trail 313 to motorized travel", from it's junction with Trail #39 to approximately it's junction with Trail #19.

We fully support and encourage your proposal to close the 1.3 miles of Trail #313 to motorized travel, but believe it does not go far enough.

Your Notice further explains that "the restriction is being proposed to protect sensitive resources that are being damaged by motorized vehicles"; that you believe that "no extraordinary circumstances exist"; that "the proposal may be Categorically Excluded from documentation"; and that "this proposal would not affect the motorized travel on Trail #313 from Frog Pond Basin to Trail #39, or motorized travel on Trail #39".

Your 6/3/05 Notice does not disclose that this proposed action takes place within the Sapphire Wilderness Study Act area, and that it has been the subject of ongoing litigation regarding motorized use since 1997.

We believe that the two Forests have knowingly been in violation of the Montana Wilderness Study Act as well as Forest Plan Standards for some time. Your continuing actions fail to adequately comply with P.L. 95-150, Section 3(a) which requires that, "Except as otherwise provided by this section, and subject to existing private rights, the wilderness study areas designated by this Act shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation system".

In a Decision regarding the Forest Service's management of the MWSAs, a Federal District Court ruled that, "The language of the statute commands the United States Forest Service to do two things. It requires the Forest Service to "maintain (the areas') presently existing wilderness character," and it requires the Forest Service to "(maintain their) potential for inclusion in the National Wilderness Preservation System. (MWA, et al. vs USFS, May 21, 2001)

FOREST PLAN STANDARDS HAVE NOT BEEN COMPLIED WITH

In September of 1987 the Bitterroot Forest and the Deerlodge Forest Plan Record of Decision's were signed by Regional Forester Overbay.

The BNF Plan contains specific, enforceable "Standards" for the two WSA's on this Forest: "Subject to existing private rights and pending final action by Congress, wilderness recommendations and Montana Wilderness Study Act areas shall be managed to maintain their existing wilderness character". (BNF Plan, p. II-18; see similar statements in BNF Plan ROD at 8 and 22)

The Deerlodge Forest Plan states, "Administer the Sapphire Montana Wilderness Study Act (MWSA) area to maintain the existing wilderness character and potential for inclusion in the National Wilderness Preservation System". (DNF Plan, p. II-13) Regional Forester Overbay, in the Deerlodge Forest's Plan ROD acknowledged the high wilderness values of the SWSA when he stated, "Of all the Forest's roadless areas, I believe the Sapphire Wilderness Study Area ... has the most support for designation as Wilderness". (DNF ROD, p. 14)

The 1987 Deerlodge Forest Plan contains enforceable Standards for Management Area A4, and they have been deliberately not complied with for the entire 17 years the DNF Plan has now been in effect.

The Sapphire Wilderness Study Act area and the DNF portion of the Stony Mountain Roadless Area are in the DNF Plan MA A4. DNF Plan Standards state that the Forest will, "Permit no motorized vehicle use except for snowmobiles in some cases." Classify some as "primitive"; "Classify the remainder of the [MA A4] area as semi-primitive, non-motorized (SPNM)." (DNF Plan at III-10)

In spite of the clear requirements of the Standards, the DNF has not closed Trail 313 and other trails to motorized use.

The failure to comply with the Standards is a violation of the National Forest Management Act (NFMA) and it's regulations. Under the NFMA (16 U.S.C. 1604), the U.S. Forest Service is

required to prepare land use plans. These plans strictly govern the management of National Forest lands. "Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans." 16 U.S.C. 1604(i).

The regulations require that, "...after approval of the plan, the Forest Supervisor shall ensure that ... all outstanding and future permits, contracts, cooperative agreements, and other instruments for occupancy and use of affected lands are consistent with the plan..." (36 C.F.R. 219.10(e)).

The Forest Supervisors have refused to comply with the mandatory Plan Standards even though Federal Courts have consistently ruled that full compliance with Forest Plan Direction and Standards is required. (see Montana Snowmobile Assoc. et al, vs Wildes, CV99-4-M-DWM, 2/9/2000; Neighbors of Cuddy Mtn. et al v. USFS, 137 F.3d 1372 (1998); FSF et al v. Morrison, 153 F.3d 1059 (1998); and BMBP et al v. Blackwood, No. 98-35783; D.C. No. CV-98-98-AA (1998))

BEAVERHEAD-DEERLODGE FOREST

On May 26, 1989, DNF Acting Supervisor Richard Call issued a statement describing a Forest Plan Appeal "Settlement Agreement", which stated that the Forest would initiate a "Policy for implementing the road restriction objectives of the Forest Plan", and that "decisions on restrictions will be supported by a planning process which starts with the assumption that no motorized access exists".

This legal "Settlement Agreement" was never complied with by the DNF Supervisors, apparently just because of threats of action by the motorized use groups. The motorized groups did not appeal the 1987 DNF Plan; they did not intervene in the appeal(s) that were filed, and they did not take part in the negotiations. The motorized use groups failed to avail themselves of the remedies, yet the DNF Supervisor apparently used their belated "displeasure" with the Settlement Agreement as an excuse not to abide with the terms of Forest Plan Appeal Settlement Agreement.

In a press release of a "Special to Blue Ribbon Magazine", Dated Nov. 17, 1989, Bob Garner (Mt. Trail Vehicle Riders Assoc.), stated that, "A notice of intent to sue was served on the [DNF] ... because of a 'settlement agreement' ... agreeing that future travel planning ... would begin with the assumption that 'no motorized access exists' on the Forest".

ARBITRARY REFUSAL TO COMPLY WITH DNF PLAN A4 STANDARD

The DNF Supervisors were fully aware of their non-compliance with the Plan's MA A4 Standard, and the 1989 legal Settlement Agreement.

The DNF's Monitoring Report (F.Y. 1988-1994), stated that, "Specifically, what is in question by the public is the amount and location of Forest Plan Management Area A4 (semi-primitive non-motorized recreation) ...", and, "Management Area A4 is semi-primitive non-motorized (although some winter snowmobile use may be allowed) ...". (at Findings-3)

"The entire ORV recreation issue needs to be reexamined because of increasing motorized use and public concern for protecting resources and maintaining recreation opportunities", (Summary-3), and, the evaluation identifies that there are "Conflicts from increasing motorized use", (Summary-7).

The Monitoring Report's recreation analysis states that, "The shift from a motorized to a non-motorized ROS classification ... will come mostly from five areas that have a Forest Plan Semi-Primitive Non-motorized prescription (Management Area A4), but as yet have no official summer season long motorized restrictions applied. These A4 Management Areas are located in the Sapphires, ...". "Travel management is an emotional issue. It may not be politically feasible to officially restrict motorized recreation from large acreages in the five A4 Management Areas because of opposition from motorized recreationists, even though little or no motorized use is occurring in those areas at this time". (Report at p.6)

The Monitoring Report was signed by DNF Acting Supervisor Deborah Austin who was aware that this was in violation of the Plan Standards, the NFMA, the NFMA's implementing regulations, and the negotiated Forest Plan Appeal Settlement Agreement of 1989.

In August 1998, the Beaverhead-Deerlodge Supervisor issued a 'Special Order' to comply with Deerlodge Forest Plan Direction for A4 non-motorized areas. That Special Order has not been publicly displayed nor included as addendum's to the Forest Travel Plan maps as was promised at the time to MWA and John Gatchell.

Seven years, (and four Forest Supervisors later), after announcing a closure to all wheeled trails vehicles in the MA A4 areas, the B-DNF Supervisor continues to allow wheeled off-road vehicles to drive through A4 non-motorized areas within the Sapphires WSA and the Stony Mountain Roadless Area.

The Sapphire WSA Trail #313 (just north of Frogpond Basin/Miller Mine claim) leaves the DNF Plan MA A5 and goes into MA A4 (non-motorized). The DNF Supervisor's refusal to comply with their Plan Standards and close Trail #313 north of Frogpond Basin has been an issue in a continuing lawsuit first filed in 1997. This knowing violation of the A4 Plan standard has contributed to a widening of Trail #313 in the SWSA north of it's junction with Trails #39/168. This is in the vicinity of your new proposed closure (6/5/05 Scoping Notice).

NEW MOTORIZED TRAIL BUILT INTO MA A4 IN VIOLATION OF PLAN STANDARD

The DNF has also built a new wheeled motorized trail into the Sapphire WSA that appears to be in violation of the Plan Standards, the NFMA and it's regulations, and P.L.95-150, Sec. 3(a), "... maintain their presently existing wilderness character and potential for inclusion ...".

On November 25, 1991 the Phillipsburg District Ranger signed the Montana Prince Trail Reconstruction Decision Memo for 2.25 miles of new construction/relocation of the Bitterroot Divide Trail #313 from Frogpond Basin to O'Brien Ridge. In the Montana Prince Trail Project Proposal documents accompanying the DM, it states that Capital Investment Funds would be necessary; the 9/23/91 Trail Management Objectives for the Bitterroot Divide Trail #313 would

be for foot and horse use; and the project was identified as being in Forest Plan Management Areas A4 and A5. Ranger Heintz's DM states that he only contacted the "landowners within the area" about the proposed new trail construction, and that no other "interested parties" were identified. It appears there was no attempt whatsoever to notify any conservation group about the proposal to construct a new motorized trail adjacent to, and within the SWSA and Plan MA A4.

The contract was awarded to Trio Construction, Priest River, Idaho October 27, 1993 and included construction of a bridge span 15 feet in length and specified that "A mechanized trail building machine is required to be used". The new bridge called for in the Montana Prince Trail 313 construction replaced a previous narrow bridge in the same location. The new bridge is much wider and now permits 4-wheeled off-road vehicles to access the newly-constructed Trail 313. The new Trail 313 construction was to OHV/ORV width with short log water bars that do not fully drain water off the trail (this was apparently so 4-wheeled ORV riders did not have to 'bump' over the log water bars).

The Montana Prince Trail 313 construction apparently built approximately the last one-quarter mile of new OHV/ORV into the DNF MA A4 (past the O'Brien Mine claim; T3N/R17W/Sec. 13). It appears the new trail construction may have been intended to go further into the MA A4 lands because the new Trail #313's 'ending point' makes no sense - the constructed trail just ends with only a minimal one-vehicle turn-around and no parking room for 4-wheeled OHV/ORVs.

USER-CREATED ORV TRAIL IN MA A4 LEFT OPEN

MWA/FOB members also found another user-built OHV/ORV motorized trail that intersected the newer construction of the Montana Prince Trail #313 to the east of the O'Brien Mine claim. This undocumented motorized route is not shown on any of the B-DNF maps and is located in the Forest Plan's non-motorized Management Area A4.

The linkage of the newly constructed Trail #313 (Montana Prince DM) with the existing illegal user-built OHV-ORV trail means that the Supervisor has created a new motorized trail "loop route" within the SWSA and the Forest Plan's MA A4 non-motorized designation.

The Forest Service had to be aware of the user-built, undocumented motor trail, since the new trail preconstruction surveys had to have crossed it yet no action has been taken to close this illegal motor trail, or even disclose it's presence during the life of the Plan.

The Beaverhead-Deerlodge Supervisor's actions described above have deliberately and knowingly refused to comply with P.L.95-150, the DNF Plan Standards, the NFMA and the NFMA's implementing regulations.

BITTERROOT NATIONAL FOREST TRAIL #39

The Montana Wilderness study Act (P.L. 95-150) was passed by Congress on November 1, 1977. Three years earlier, during August of 1974, a FS all-women trail crew rehabilitated and significantly narrowed the firelines up Trail #39 (Fish Lake Trail - FS Record pictures). The Bitterroot National Forest Supervisors subsequently failed to maintain Trail #39's narrowed

width. The soils are highly erosive and the slopes are steep. By failing to adequately enforce the Code of Federal Regulation's prohibition on over 40 inch vehicles, the illegal off-road vehicle use and resulting erosion eventually over-widened Trail #39 again.

The BNF's 1988 Forest Monitoring Report (dated June 1989) acknowledged adverse impacts from wheeled motorized off-road vehicles using Trail #39 within the SWSA which had been recommended for wilderness designation.

Trail #39: "four-wheel ORV use is increasing", ... potential impacts to lakes, and "This area is included in the most recent Congressional Montana Wilderness proposals", (p. 36).

Trail #39: acknowledges ... "user conflicts" and states that "Proposed trail construction and relocation in this area may close portions of the trail to motorized vehicles. Further closures may be necessary following an appraisal of the situation during the summer of 1989" (p. 37).

Instead of looking at restricting off-road vehicle use in the Trail #39 area due to resource damage, BNF Supervisor Steve Kelly and Ranger Dave Campbell instead decided to "rebuild" Trail #39 especially for off-road vehicle use. This action was decided upon in spite of the BNF Forest Plan Standard and MWSA (Public Law 95-150) requiring them to, "maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation system".

The March 15, 1993 Decision Memo (DM/CE) by Ranger Campbell proposed serious trail construction/reconstruction on Trail #39 (now renamed Chain of Lakes Trail) and on Bitterroot Rock Creek Divide Trail #313.

"Specifically, the proposal includes the use of heavy equipment such as a backhoe to reduce the width of the trail from 10-20 feet to 6 feet". The 3/15/93 Decision was supposedly to provide for increased safety and to correct existing environmental degradation (widening) and erosion.

A year later, BNF Supervisor Kelly's Forest Monitoring Reports described it as an "ORV trail improvement project" that was taking place within the SWSA.

"The Sula Ranger District has initiated a ORV trail improvement project in the Fish Lakes area to ensure that appropriate places are available to this group of forest user". (BNF Plan Monitoring and Evaluation Report, FY 1994 - p. 110)

The next year's BNF FY 1995 Monitoring Report disclosed an increase in motorized trail use, and then bluntly described the Trail #39 construction project as actually being specifically to enhance 4-wheeled motorized use within the SWSA. "... also seen an increase in the number of off-highway vehicles (OHV) users. The Sula Ranger District began a two year renovation and improvement project in the Chain of Lakes area to serve these users." (pg. 123) "... the forest is also working to provide appropriate trail systems for OHV users. The Chain of Lakes trail system ... is being renovated to accommodate OHV use. 1995 was the first year of the two year project to widen, reconstruct and stabilize this trail system specifically for OHV users." (pg. 125)

The difference in the Bitterroot Forest Supervisor's behaviors over time is remarkable. In 1974, the BNF Supervisor had a trail crew narrow the firelines and construct water drainages to prevent

degradation of the Trail #39 area. After it had become a protected Wilderness Study Act area (95-150, 1977), the BNF Supervisor's apparently allowed uncontrolled and illegal off-road vehicle use to continue unabated. Sixteen years after passage of P.L.95-150, when the motorized use damage to the natural resources (and the SWSA) became significant, the Ranger and Supervisor of that time decided to now construct/reconstruct Trail #39 specifically to continue (and increase) the wheeled motorized trail use that had previously degraded it.

The 3/15/93 Decision's construction/reconstruction actions included closing some eroding steep portions of Trail #39, and then constructing entirely new motorized routes within the SWSA to a six foot or more width. That does not comply with the Sec. 3(a) mandate to "... maintain their presently existing wilderness character and potential for inclusion ...". The mid-nineties trail construction activities also constructed ORV-width treated timber bridges and placed plastic culverts in other streams. In 1977 when P.L.95-150 was enacted, treated timber bridges and plastic culverts were not installed in the SWSA either.

The 3/15/93 trail construction/reconstruction Decision resulted in vegetation within the SWSA being removed during the reconstruction which in some places then essentially widened the cleared area. The construction/reconstruction placed numerous "collapsible water bars" (CWBs) along SWSA Trail #39. Collapsible water bars are only used for ORV trails, and collapsible water bars are not needed or required for livestock and hiker width trails.

In spite of the expensive construction/reconstruction efforts within the SWSA, significant erosion is still occurring and will continue to occur because of the old firelines and Trail #39's original location which included steep slopes and highly erosive granitic soils. The FS would likely never build a new ORV use trail in the same location because of these problems, yet Trail #39 within the SWSA was constructed/reconstructed specifically to enhance ORV use.

This mid-nineties construction/reconstruction of a motorized trail vehicle route within the SWSA also took place on the Deerlodge Forest side of the Sapphire Divide on Trail #313. This included areas that the DNF Plan Standard designated as MA A4 (non-motorized) in the 1987 DNF Plan. The actions of constructing/reconstructing a route especially for OHV/ORV use in MA A4 violates the DNF Plan Standard, the NFMA and its implementing regulations.

OLD 1960's FIRELINES BECOME FOREST MOTORIZED SYSTEM TRAILS

In the early 1990's, the BNF quietly added the 1960's unrecovered firelines in the Martin Creek drainage to the Forest's official list of "system trails".

The record file contains an early 1990's hand-written file note (by BNF employee Gina Owens, Recreation/Resources Manager, Sula Ranger Station) that is titled, "Trails To Add To System - D3". This note lists the "Martin Cr. Loop" and the "Martin Cr. Connection", and their "Use" is listed as "ATV" with a width of "6 feet".

These were old firelines that were bulldozed into the roadless area in the early 1960's. After the Sapphires became a Montana Wilderness Study Area in 1977, the Bitterroot Forest apparently did little to rehabilitate or recover the old firelines in the Martin Creek area. The old firelines

had never been shown on any Forest maps nor ever marked as "trails" on any Travel Plan maps, they were not numbered, and they were never official Forest System Trails.

District Ranger Campbell released a scoping notice (dated 10/4/96) titled "Martin Creek Trail Reconstruction", which specifically listed "Martin Creek Loop Trail (#330)", and, "Martin Creek Connection Trail (#331)". The Notice also stated, "These trails are currently open year long to Off Highway Vehicles (OHVs) (motorcycles, 4-wheelers, three wheelers, and snowmobiles)". A notice published in the Ravalli Newspaper (10/4/96) contains the same statements. The 1996 proposed construction/reconstruction of the newer Forest System Trails (#330/#331) within the SWSA was subsequently put on hold because of the filing of the Montana WSA lawsuit.

To be able to legally budget and spend Capital Investment funds for constructing/reconstructing the Martin Creek firelines, the firelines first had to be added to the Forest's official "System Trails". This was to specifically and deliberately upgrade (enhance) the old firelines for 4-wheeled motorized off-road vehicle use, and which would have created a highly desirable type of "loop trail" route for increased motorized trail use within the SWSA.

The BNF's 1999 Revision Travel Plan Map first included the two trails (Trails #331 and #330 - Martin Creek area, Sapphire WSA) that were never previously shown on any earlier editions of the BNF's Travel Maps or other Forest Maps.

In 1977, when P.L.95-150 was enacted, the 1960's era firelines in the SWSA just that - old unrehabilitated firelines. The firelines were not numbered, were not Forest "System Trails", and they were legally closed to ORV's over forty inches in width according to the Bitterroot Forest's 1976 Travel Plan.

The BNF's actions of adding firelines to the official System Trails, thereby creating a "loop route" specifically to enhance and increase motorized trail use within the SWSA violated P.L.95-150's mandate, failed to comply with the BNF Plan Standard, "Montana Wilderness Study Act areas shall be managed to maintain their existing wilderness character", (Plan, p. II-18, ROD at 8 and 22), and failed to comply with the NFMA and its implementing regulations.

MOTORIZED OUTFITTER PERMITS ISSUED WITHIN THE SWSA

During the same period BNF Supervisor Kelly was constructing new motorized ORV routes and adding motorized trails to the Forest's System Trails to "enhance" motorized use, and constructing/reconstructing motorized routes in the Deerlodge Forest's non-motorized MA A4, he was also giving permits to a motorized outfitter to operate within the SWSA.

Motorized outfitter Ray Wells was granted a "Five Year ATV Special Use Permit" by Bitterroot Forest Supervisor Kelly (5/17/96). Previous to that, he apparently had yearly permits to take guided snowmobile trips into the SWSA. The 1996 five year ATV Permit in part states "Guided trips into the Chain-of-Lakes [Sapphire WSA area] ... All terrain vehicles are only allowed on Trails 39, 313, 330, 331, and 332."

Ray Wells filed an affidavit for the Montana WSA lawsuit in which he stated: "I hold a special use permit This permit allows me to conduct snowmobile and all-terrain vehicle ("ATV") trips within specific wilderness study areas" (Aff. at p. 2) "During the appropriate season, guests may also ride ATV's on designated trails within this same area." (Aff. at p. 3) "I gain revenue by conducting guided snowmobile and ATV trips" (Aff. at p. 3)

Mr. Wells was also President of the Bitterroot Ridge Runners, (a motorized recreation group), during some of the 1990's.

This motorized recreation group was very vocal about its anti-wilderness purpose. In a November 11, 1992 article, the Bitterroot Star newspaper reported that the Bitterroot Ridge Runners' claimed their "first reason" for reorganizing the previously defunct snowmobile club was to fight the wilderness issue - and they specifically mentioned the Sapphires WSA and Stony Roadless Area. In their December 1992 issue of 'Grassroots for Multiple Use News', (the organization's newsletter), an article by club officer E. Kemp again bluntly restated that "the first reason for reorganizing the club was to fight the wilderness issue".

Bitterroot Supervisor Kelly rebuilt old firelines specifically to enable, enhance, and increase ORV motorized trail use within the SWSA, he added other old firelines to the Forest System Trails and planned to use capital investment funds to upgrade them and create motorized "loop trails", and he then gave a five year motorized ATV outfitting permit to use those "enhanced" trails to a president and/or member of the local motorized recreation club that was fighting to prevent inclusion of the SWSA into the wilderness system.

Supervisor Kelly's action of allowing commercial motorized outfitting within the SWSA again knowingly violated the Forest Plan Standard, "... Montana Wilderness Study Act areas shall be managed to maintain their existing wilderness character", (Plan, p. II-18 - ROD at 8, 22), and violated other Plan Standards for the SWSA; "Issue no new outfitter permits", and, "Continue current uses which do not detract from wilderness values", (Plan, p. III-41).

GROOMING OF FOREST ROADS INCREASED MOTORIZED USE IN THE SWSA

It appears that the flurry of proposed Montana wilderness bills in the 1980's led the Bitterroot Forest Supervisors and the local snowmobile association to knowingly and deliberately increase their motorized use and presence adjacent to and within the SWSA.

When P.L.95-150 was enacted in 1977, there was no grooming for snowmobile use of the National Forest Roads adjacent to the SWSA. This snowmobile grooming program, conceived in the latter 1980's, enabled snowmobiles to easily access Forest Trails within the Sapphire Wilderness Study Act area and increase motorized trail use within the WSA.

The snowmobile grooming is conducted on an annual basis under a Bitterroot Forest Special Use Permit (SUP). The first Snowmobile Grooming SUP (titled, "Development and Operating Agreement) between the Bitterroot Ridgerunner Snowmobile Club, the BNF, and the Montana DFWP was issued in 1988.

Forest Service documents (dated 4/27/90, and signed by Ranger Forest Hayes) described the roads to be groomed in the 1991 and 1992 seasons. The Skalkaho-Rye Road #75 from Road #720 to Road #5778 was to be groomed for 24 miles. Forest Roads #75 and #5778 are either adjacent to, or close to the western boundary of the Sapphire WSA.

An October, 1991 Bitterroot snowmobile map (produced by the local snowmobile organization and the Montana DFWP indicated multiple trails in the SWSA that were marked and ranked as to their difficulty. The Fish Lake trail (Trail #39) was ranked as "most difficult", the Martin Creek trails (Trails #330/331) were classified as "more difficult", and it ranked the Moose Meadows trails as "most difficult". The Moose Meadows trails connect to the Sapphire Divide main Trail #313.

In 1995, the Bitterroot Forest, the Bitterroot Ridge Runners Snowmobile Club, and the Montana DFWP worked together to issue a snowmobile user map that highlighted areas within the middle of the SWSA as snowmobile "play areas". The 1995 Sapphire Mountains Snowmobile Trail map shows a shaded area described as the "high Sapphires play area", and ranked the "high Sapphires play area" as being "for the experienced rider". The "play Areas" shown on the 1995 Sapphire Mountains Snowmobile Trails Map include the Bitterroot Forest side of the divide from Frogpond Basin on the south to Mosquito Meadows, Moose Meadows, and Coyote Meadows on the north. This is approximately nine to ten miles along or adjacent to the main divide trail and includes Trail #313, Trail #330, Trail #331, Trail #39, Trail #130, Trail #102, and Trail #87.

The 1993-1994 Montana Snowmobile Guide (page 8) advertises that the "Skalkaho Drainage offers 70 miles of groomed trails". Over half of the groomed snowmobile routes are adjacent to or near to the SWSA.

The 1996-1997 Forest Service Northern Region's "Marked Snowmobile Trails" booklet advertises marked and groomed trails that are adjacent to or near to the SWSA.

The grooming of the nearby Forest Roads enabled faster and easier access to the SWSA, thereby increasing the numbers of snowmobile and ORV users. This grooming and ease of access was not available in 1977 when the Montana WSA was created. The following interview of the snowmobile organization's groomer driver illustrates this point very well.

The Ravalli Republic Newspaper (2/6/04, Outdoors section) reported the following:

"For 12 years a member of Bitterroot Ridgerunners snowmobile club has been making winter trails safer for snowmobiles. Dan Meuchel operates the grooming machine for the Ridgerunners that takes him over more than 55 miles of frozen Forest Service roads in the Sapphire Mountains. Since 1997, Meuchel smoothed the snowy trails with a 1987-model machine. 'Back in the 70's you'd be doing good if you ever got back this far', he said. 'It would be just one narrow path'."

The grooming of BNF Roads near or adjacent to the SWSA has directly increased snowmobile use within the SWSA. The grooming (in cooperation with the Bitterroot Ridgerunner's who openly oppose wilderness designation) has enabled snowmobiler's easier and faster access to the SWSA trails. In 1977 when P.L.95-150 was passed, there were no groomed routes to the WSA and there was no "advertising" of the snowmobile routes in the SWSA. The BNF Supervisor's above actions fail to comply with P.L.95-150's mandate, ("maintain their presently existing

wilderness character and potential for inclusion") fails to adequately comply with the Forest Plan Standard, the NFMA and the NFMA implementing regulations.

BNF SUPERVISORS PROMOTE/ADVERTISE MOTORIZED RECREATION IN THE SWSA

In 1977, there were no "snowmobile maps" produced by snowmobile organization and the BNF using gas tax funds that pointedly advertised groomed roads near/adjacent to the SWSA. Nor were there any maps that were prepared by the BNF and the Bitterroot Ridgerunner's snowmobile organization with gas tax funds that advertised marked snowmobile trails and/or "play areas" within the SWSA.

Apparently not content with just advertising/promoting winter motorized recreation within the SWSA, the BNF Supervisor has now produced ORV 4-wheeler handout sheets (dated 10/20/2003) that advertise specific trails within the SWSA. These ORV promotional handouts were released in spite of the fact that the FS had been in litigation since 1997 over their increasing motorized trail use within the WSAs. The BNF provides these ORV 4-wheeler handout description and maps for the public in their Ranger Stations and in the Supervisor's Office. There are only two areas listed on these handouts on the entire Bitterroot Forest; one is in the Alan Mountain Roadless Area and the other is in the SWSA, (Trails #39 and #313).

The BNF's ORV 4-wheeler promotional/advertisement map and description handout for the SWSA area is titled "Chain of Lakes Trail #39", and has a ORV/ATV 4-wheeler symbol at the top. The description states that, "The Chain of Lakes Trail provides the ATV enthusiast a wonderful opportunity to ride through high alpine meadows, subalpine larch stands and rugged rocky terrain", and, "Steep and rocky trail conditions make this a trail for intermediate to advanced riders".

The map on the back shows the route of Trail #39 and Trail #313 from the Trailhead to the Frogpond Basin on the Beaverhead-Deerlodge National Forest.

This ORV 4-wheeler promotional map/description is for specific Trails (#39/#313) that are also referred to in your 6/3/05 Scoping Notice, where you state, "this proposal would not affect the motorized travel on Trail #313 from Frog Pond Basin to Trail #39, or motorized travel on Trail #39".

The ORV 4-wheeler map/description handout advertises and promotes increased motorized use within the Deerlodge Forest Plan's MA A4 area which is subject to a non-motorized Standard, ("Permit no motorized vehicle use except for snowmobiles in some cases"), that has never been enforced as required.

The Supervisor's actions of issuing snowmobile maps and ORV 4-wheeler maps to promote increased motorized recreation use in the SWSA and fails to comply with P.L.95-150, the Forest Plans, the NFMA and the NFMA's implementing regulations.

FOUR-WHEELED ORV/QUADRICYCLES ARE A NEW MOTORIZED USE IN THE WSA

In 1977, there were no 4-wheeler ATV/ORV quadricycles commercially available. Use of

Forest Trails by trail machines over forty inches in width was prohibited by the Code of Federal Regulations (CFR) until about 1991. In the early 1990's the Chief of the Forest Service quietly dropped the CFR prohibition against over forty inch machines with no notice, public involvement, or NEPA process. There was no disclosure or analysis of adverse impacts that could result from the dropping of the prohibition.

4-wheeled ORV trail machines over forty inches in width were knowingly accessing the SWSA trails years before the Chief's dropping of the prohibition. (Trail #39: "four-wheel ORV use is increasing", and "This area is included in the most recent Congressional Montana Wilderness proposals", (BNF 1988 Forest Monitoring Report, p.36)). This was in violation of the existing Code of Federal Regulations, but the BNF/DNF Supervisor's apparently just ignored the illegal use in the SWSA and allowed it to continue, and to increase.

Trail machines under forty inches in width (such as snowmobiles and trail motorcycles) can be operated on Forest single-track trails that were built to hiker/livestock use widths (12 to 24 inches). 4-wheeled ORV quadricycles require a route that is at least forty-eight inches in width. Their use on steep, erosive trails causes still further widening of the trails and rapid down-cutting of the trail's tread. 4-wheeled ORV quadricycles require a trail that is actually more like a small road in width. 4-wheeled ORV quadricycles are essentially miniaturized jeeps and do not require the skills and efforts that are required by riders of trail motorcycles and snowmobiles. 4-wheeled ORV quadricycles can carry hundreds of pounds of gear and their riders have used these capabilities to create illegal user-built trails in the WSAs and other parts of the National Forests. 4-wheeled ORV quadricycles greatly degrade the non-motorized attributes of the WSAs, and have the tendency to drive non-motorized trail users away. 4-wheeled ORV quadricycle trail use quickly becomes the dominant recreational use, and Trail #39 to Trail #313 (Frogpond Basin) is an example.

By allowing new types of motorized use (4-wheeled ORV quadricycles) which were prohibited and not available in 1977 within the SWSA without any NEPA process or analyses of the potential adverse effects, the Supervisors fail to comply with P.L.95-150, the Forest Plan Standards, the NFMA and its C.F.R. regulations.

The Supervisor's have also failed to act in accordance with the requirements of 36 C.F.R. 295, 36 C.F.R. 219.21(g), the Bitterroot and Deerlodge Forest Plans and the MWSA by designating and restricting such trails for uses that maintain the wilderness character and suitability for wilderness designation of the Sapphire WSA as it existed in 1977.

We maintain that the Bitterroot and Beaverhead-Deerlodge Forest Supervisor's must fully comply with P.L.95-150, the NFMA and the Forest Plans by:

- Immediately prohibiting motorized trail vehicles in MA A4.
- Close all illegal user-built ORV trails in the SWSA.
- Restrict SWSA trail use to ORVs under forty inches in width.
- Embark on a program to narrow SWSA trails that have been over-widened by the use of 4-wheeled quadricycles.
- Remove maps and literature advertising and promoting motorized trail use within the SWSA.
- Sign, mark, and fully describe the SWSA boundaries on Forest maps and literature.

- Develop a policy requiring Forest Supervisor's to fully comply with the mandates of P.L.95-150 ("administered ... so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation system" (1977)).

Please keep us on your mailing list for this proposed action (June 3, 2005 Scoping Notice), and please send us a copy of your decision in a timely manner.

Sincerely,

(for) Montana Wilderness Association

(for) Friends of the Bitter Root

(for) Bitterroot-Mission Group, Sierra Club

June 12, 2007
 J. Nicholls
 Box 466
 Stevensville, Mt. 59870

SWSA HISTORY:

In the late 1960's/early 1970's, the FS proposed logging and roading in the roadless area now known as the Sapphire Roadless Area. The Deerlodge NF initiated a sale in the Sand Basin area (Sand Basin I), and there appeared to be a Sand Basin II timber sale under consideration which was later dropped from consideration.

The Montana Wilderness Act (S393) Bill was first proposed in 1974.

The BNF had proposed a timber sale and extensive roading (9+ mi.) in the Moose Creek area (decision signed in 1974). That decision was appealed by Sierra Club and MWA, et al. The Sierra Club subsequently filed a 1975 petition with the FS requesting consideration of a Wilderness Study status for the area.

The Moose Creek timber sale decision was remanded back to the decisionmaker in February 1976 to re-evaluate the wilderness potentials. The FS's 1976 wilderness re-evaluation referred to the "outstanding opportunity for solitude." The 1976 re-evaluation acknowledged that solitude was adversely affected by motorized use.

The Montana Wilderness Study Act S393 was signed into law 11/1/77 (P.L.95-150). To get the bill passed, it permitted existing motorized uses to continue as long as the outstanding wilderness characteristics and potential existing in 1977 were maintained.

It apparently also gave the FS the authority to limit or exclude motorized uses during the normal forest planning/travel planning processes if the motorized uses were found to be causing adverse impacts on the 1977 attributes.

The 1977 Act proposed that the areas would be studied for their wilderness qualifications and assumed a final decision might be made in five years or so. It now appears the FS might have believed that after the five year time frame, the issue would likely be settled.

The DNF and BNF initiated the required wilderness study in the early 1980's (published 1985) which was then incorporated into the two forest plans signed in 1987.

The agency's decision for the SWSA was for non-wilderness status allowing roading, logging and motorized off-road trail uses. This was not a surprising outcome because the forest plans developed in the 1980s have since been termed "timber Plans" because of their heavy focus on the extraction-type goals.

There were also many proposed wilderness bills during the 1980's decade, which could have potentially settled the WSA issues by an act of Congress, but that did not materialize.

It appears that by the late 1980's and early 1990's, (and with new managers and personnel), the FS started to "manage" the WSA's under the forest plan determinations and decisions, (perhaps losing the historical perspective of the requirements of the 1977 MWSA).

As the 2001 Federal Court MWSA ruling stated, "Had Congress acted when it intended to, the [FS] would not face its decades-long management dilemma. Nonetheless, the statutory imperative is not diminished by time", (ruling p.18).

Conservationists filed a lawsuit in 1996 against the FS alleging multiple violations of the requirements of the MWSA (P.L. 95-150). The 1996 MWSA lawsuit was finally settled in an court-sanctioned agreement between the parties in February of 2007.

In May of 2006, (prior to the 2007 settlement) the B-DNF and BNF published a SWSA Wilderness Characteristics Assessment in response to the Court's 2001 ruling, (see Assessment p.1, 2).

CONSERVATIONIST'S CONCERNS:

In it's "Findings", the Assessment states that, "... comparing changes between 1977 and 2005, neither the wilderness character of the area or the potential for inclusion in the [NWPS] has diminished since 1977 when looking at the WSA as a whole. Within the [SWSA], site-specific changes in resource conditions have occurred, but overall the character as defined by the Wilderness Act has not diminished", (Assessment p.2).

Conservationists have concerns with the above Assessment conclusions.

The 2006 Assessment was prepared while the lawsuit was still very active. The agency conclusions of no significant change or harm to the SWSA's 1977 existing conditions somewhat appear to be structured to support the FS's lawsuit contentions.

We can agree that the agency has taken some affirmative positive actions. But, we have grave concerns about whether the positive actions taken have been greatly out-weighted by what we perceive to be harmful agency actions that have significantly impacted the SWSA's 1977 existing outstanding wilderness characteristics, and reduced it's potential for wilderness designation.

Some of these questionable actions include:

- The old firelines (Trails #39/313) 1990's re-construction and re-location to enhance and increase motorized use within the SWSA.

- The attempt to rebuild and turn old firelines in the Martin Creek area into numbered FS system trails to specifically create a motorized "loop" route connecting Trails #39/313, (See 2006 Assessment p. 24, 25).

- The construction of a new ATV bridge over Martin Creek in mid-1990's. (See 2006 Assessment p. 24) Rather than closing old eroding Martin Creek firelines to protect water quality, BNF built new bridge to enable and enhance motorized trail use (loop route) in the SWSA. All previous BNF travel plan maps did not show Martin Creek firelines as a forest system trail. First appeared only on BNF's 1999 Travel Plan Revision map. After issue was raised about non-compliance with P.L. 95-150, Trails 330/331 were dropped from BNF's 2005 Travel Plan maps.

- The Forest's failures to comply with multiple 1987 Forest Plan Standards (maintain their existing wilderness characteristics; no new outfitter permits; Deerlodge failure to enforce the A4 non-motorized Standard for 20 years.

- Relocation and construction of a new motorized OHV trail around the private lands in Frog Pond Basin (DNF). Constructed into Forest Plan A4 closure area and connecting to a previously undisclosed/un-numbered non-system, two-track route creating another "loop" route within the SWSA.

- Permitting the use of newer over 40 inch width 4-wheeled ORVs (quadricycles) in the SWSA without any site-specific NEPA analysis or disclosure. The Chief's "40 Inch Rule Amendment" EA (signed 11/9/89) stated it, "will authorize the Forest Supervisor to issue specific orders under 36 CFR 261.55 to manage ATV use on trails based on vehicle characteristics", (EA at p.2; see also, Fed. Reg. Vol.55, No. 122, June 23, 1990). This was apparently not fully complied with, especially regarding the WSA's 1977 existing conditions.
- The BNF's 1976 Travel Plan EA (in response to a public comment) specifically stated that because of "serious damage" the BNF Area Closure #15, "has been managed this way for the past three years", (EA p. 46; see also 2006 Assessment p. 27).

In other words, the BNF had closed all trails and firelines in the Martin and Moose Creek drainages to use by full-sized four-wheel drive vehicles by approximately 1973.

This would have included Trails #39, #313, Martin Creek firelines (referred to as Trails #330/331 in 2006 Assessment, but not on current maps), as well as all adjoining lands inside Area Closure #15.

In August of 1974, an all woman FS trail crew rehabilitated Trail #39 by installing log waterbars and placing natural debris to narrow the old eroding firelines. In the 1980's, trail vehicles over 40 inches in width illegally started accessing Trail #39 (see BNF 1988 Forest Plan Monitoring Report p. 36).

After the over 40 inch CFR prohibition was dropped in 1990, the BNF apparently embarked on a program to reconstruct and relocate trails and firelines within the SWSA specifically to increase and "enhance" use by the newer generation of over 40 inch width 4-wheeler ATVs (quadricycles).

In 1996, the BNF gave the President of the Bitterroot Ridgerunners (an anti-wilderness group) a 5 year (1996-2001) motorized outfitter permit to use the area's trails.

The BNF also now promotes and advertises this area as a motorized trail use destination area. It is now open to new types of motorized vehicles that were not permitted prior to the enactment of the 1977 P.L.95-150.

- The printing of maps and advertising of SWSA Trails #39/313 as one of two off-road motorized recreation routes on the BNF.
- The grooming of Forest Roads adjacent to the SWSA resulting in increased winter snowmobile use of the SWSA. Printing of snowmobile maps (advertisement of) SWSA area which increased motorized use.

Conservationists have concerns about placing too much reliance on the WARS process. The 2006 Assessment (p.5) states that Judge Molloy's 2001 ruling mentions that the "WARS provides a benchmark" for the FS management and specific criteria. The FS's 2006 Assessment then uses four of the WARS attributes but did not use another four "supplemental" attributes of the WARS, (Assessment p.5, 6).

The Judge Molloy apparently qualified his reference to the WARS, by stating that, "The [WARS] Rating System was introduced in 1967, with the Roadless Area Review and Evaluation. While it might in some instances be too generalized to be useful, see e.g., *California v. Block* ... (9th Cir. 1982) ...", (2001 ruling at p.15).

Page 28 of the 2006 Assessment states that the "1978 WARS rating identifies this trail [#39], trail 330 [which was not a numbered system trail in 1978] and nearby fire roads as 'highly impactful' and 'separable' impacts."

This was done for the FS's RARE II analysis which decided that most roadless areas did not have suitable wilderness qualities. It was overturned by the 1982 *Cal. v. Block* decision (referred to by Judge Molloy).

The term 'separable' impacts apparently means that the FS felt this area should be left out of any potential wilderness bill considerations. It would have severed the SWSA from the AP Wilderness and left it in two or more parcels. Luckily, one year later, the SWSA was protected by the passage of the P.L. 95-150, (which the agency also opposed).

Conservationists believe that one of the WARS attributes, solitude, has been significantly and adversely impacted by agency actions enhancing, increasing, and advertising motorized trail use since 1977.

The FS's 2006 Assessment dismisses this concern about solitude and does not include it in the WARS rating because it "can be changed by [future] management decisions", (2006 Assessment p. 12). The Assessment later states the 1977 solitude rating was "very high", and concludes; "This rating basically has not changed", (Assessment p. 15). Likewise, the 1977 "Opportunity for for Primitive Recreation" was "very high". The 2006 Assessment also concludes that, "This rating basically has not changed", (Assessment p. 15). Conservationists disagree with this conclusion as well. With the increase in motorized trail activities, structures, and numbers of vehicles, the "Opportunity for for Primitive Recreation" has been significantly diminished since 1977.

The FS's 2006 SWSA Assessment (p. 18) claims, "In 1977, almost the entire area was legally open to full size four wheeled vehicles (i.e. Jeeps, trucks, etc.) except for the [BNF] Area Closure #15. Area Closure #15 restricted the use of full sized vehicles only in part of the Martin Creek and Moose Creek drainages."

The above Assessment statement is somewhat misleading because prior to January 1977 the USFS had apparently not fully promulgated regulations as required by E.O. 11644, Sec. 3, (2/8/1972); "(a) Each respective agency head shall develop and issue regulations ... within six months of the date of this order ...".

The Federal Register's publication of the prohibition on use of trail vehicles over 40 inches in width (36 CFR 261.12(e)) was on January 14, 1977.

The Montana Wilderness Study Act (P.L. 95-150) was signed into law on November 1, 1977.

The Bitterroot Forest 1976 Travel Plan EA was signed by Supervisor R. Morgan two months prior to the CFR prohibition on trail vehicles over 40 inches in width being published in the Federal Register.

The BNF Travel Plan EA was signed on November 16, 1976, and defined "Trail Vehicles" as "motorized vehicles of less than 40 inches total width ..."; and "Designated trails are open only to trail vehicles." (EA at p. 4) The "Public Notice" travel plan map included with the 1976 EA also contained the prohibition on trail vehicles over 40 inches in width.

The USFS appears to confuse the 1977 wilderness character/potential which must be "maintained" (P.L. 95-150) with the issuing of their 1977 (and later) travel planning restrictions. Measuring the historic wilderness character has more to do with actual patterns and quantity of

ORV use in 1977, rather than FS travel plan restrictions issued in 1977.

For example, imagine the MWSA was passed in 1950 with the same language. The 1950s-era forest maps would show no FS restrictions whatsoever on ORV use, yet there was likely no ORV use to speak of and there would have been very pristine wilderness character.

Meyers Creek Mining Claim Road:

It is acknowledged as a negative impact to the SWSA's 1977 characteristics in the FS's 2006 Assessment (p.2, 3; see also p.29). The 1978 Deerlodge travel plan maps (1984 forest plan maps also) show it mostly as a trail with a short (approximately 0.5 mile) spur road off FR #1511 (T3N, T4N, R16W, Sec. 35, 2).

In 1977 the un-numbered trail to the Meyers Creek claim was just a narrow jeep track that was rebuilt in early 1980's to a higher standard road for future mineral exploration. The claim does not appear to be a "patented claim" (private property).

It was re-built and substantially upgraded to FS road standards and was numbered as FR #5057 (see 1988 and after travel plan maps), which was gated and closed to public use afterwards. It now is shown on maps as an additional 2.5 mile forest system road in the SWSA (that ends approximately one mile from the AP wilderness).

Copper Creek road system (Tr. #26):

The FS's 2006 Assessment (p. 3, 24) discloses a negative impact from the single-track Trail #26 being converted into a two-track trail for 1.3 miles. This two-track trail apparently now accesses the AP wilderness boundary.

The 2006 Assessment disclosure raises a newer question about other potential significant undisclosed negative impacts to the SWSA's 1977 existing conditions.

All older Deerlodge travel/visitor/plan/SWSA maps (1978 to mid-1980's) apparently do not show any existing FS road system (FR #78388/78399; T3N/R16W Sec. 4, 5, 8, 17) or any FS trailhead located on Copper Creek Trail #26 in Sec. 17, (for example, see the 1984 SWSA map in the 2006 Assessment, p. 3).

The later 1980's and 1996 Deerlodge travel plan maps now all show a FS numbered road system and trailhead apparently within the official 1977 SWSA boundaries.

According to the FS's historical maps, it appears that FR's #78388/78399 were constructed into the SWSA some years after the P.L.95-150 (1977) enactment. If so, this would be a significant impact to the SWSA.

O'Brian Mine (road #78389):

The FS's 2006 Assessment (p. 30) claims it was an 2.1 mile open "road" in 1977, and currently is an open road for 0.8 miles and a 1.3 mile open two-track trail. The 1988 and later maps show it only a short 0.8 mile spur road off the Copper Creek FR #78388. The 1.3 mile section referred to as a two-track trail is not shown as a road or trail (system or otherwise) on the 1988 and 1996 DNF maps.

Like the previous questions regarding when the Copper Creek road was actually built, none of the early forest maps (1978 to mid-1980's) show any road or trail in this location. On-site review indicated that it likely was just a bulldozed track to the O'Brian claim. The upper portion was not constructed to Forest Road System standards. It is very steep in areas and, except during good summer weather, would have likely been impassable for most of the year. Other forest maps indicate there was a road extension off the end of Forest Road #80 accessing the O'Brian claim through the other claims in Frog Pond Basin.

Conservationist's concerns stem from the fact that the DNF constructed 2.7 miles of new two-track trail in the SWSA (see Assessment p. 20; #313.6) in the mid-1990s to avoid crossing patented claims in Frog Pond Basin. The mid-1990s CE/DM did not disclose (nor does the 2006 Assessment) that by also crossing the un-mapped two-track trail now presented as FR #78389 created another motorized two-track loop trail within the SWSA. The last one-quarter mile of the newly built trail #313.6 also is in the DNF Plan's Management Area A4 which has a PLAN Standard that prohibits wheeled motorized trail use.

Attachment – Best Management Practices for Off-Road Vehicle Use on Forestlands