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Additional Scoping Comments on the proposed Lava Rock OHV Project EIS

The Oregon Chapter Sierra Club, American Hiking Society, and the League Of Wilderness Defenders-Blue Mountains Biodiversity Project have reviewed the District's second scoping notice dated April 3, 2009, and the Notice Of Intent (NOI) to conduct an EIS for the proposed Lava Rock OHV Project that was published in the Federal Register on April 10, 2009. Our three organizations jointly submit these revised scoping comments on the proposed Lava Rock OHV project on Bend-Fort Rock Ranger District Deschutes NF lands, in supplement to our previously submitted scoping comments on this same Lava Rock OHV Project.

The Sierra Club represents well over half a million members nationwide, including over 20,000 members throughout Oregon, with over 1,000 Juniper Group members throughout central and eastern Oregon. Sierra Club members feel strongly about nature, wilderness, wildlife and the environment. Our members regularly enjoy hiking, camping, birding, wildlife watching, recreation and ecological study within the national forests, monuments, and public lands of central and eastern Oregon, including the project area and adjoining Newberry National Volcanic Monument.

With a strong membership base of individual hikers and hiking clubs, the American Hiking Society promotes and protects foot trails and the hiking experience. We represent more than half a million outdoors people and serve as the voice of the American hiker. As a long-time advocate and partner of the U.S. Forest Service, American Hiking has a strong interest in the outcome of the proposed Lava Rock OHV Project and its effect on the hiking experience throughout the planning area.

LOWD-Blue Mountains Biodiversity Project has many members and volunteers throughout the Northwest. Members and volunteers of the LOWD-Blue Mountains Biodiversity Project regularly use the Bend-Fort Rock Ranger District Deschutes National Forest, including the proposed project area and the adjoining greater Newberry National Volcanic Monument, for hiking, ecological study, watching wildlife, viewing forest native botanical diversity, and avian species study.

Overview of Significant Issues

We appreciate the Deschutes National Forest's apparent recognition that the significant environmental and legal issues arising from the proposed Lava Rock OHV Project's extensive ORV trail systems requires that an EIS be conducted to begin to adequately address the full impacts of

this proposed action. As appropriate our previous scoping comments have been revised herein to correspond with the planned Lava Rock EIS, and the stated changes in the proposed project actions. Still, the majority of core ecological and legal issues addressed in our previous scoping comments for the Lava Rock OHV Project remain essentially the same.

A key core NEPA legal issue remains the segmented concurrent EIS processes addressing related OHV issues and impacts. The Travel Management Plan EIS is occurring simultaneously, yet on a longer decisional timeline, with at least two separate EIS processes on OHV trail systems in the Bend-Fort Rock and Crescent Ranger Districts. The overarching direct and cumulative impacts analysis and eventual final Record of Decision of the TMP EIS represents essential foundational information requisite for the Lava Rock OHV Project EIS at the onset of this segmented analysis process. Ethically, legally, and environmentally, it is not possible or permissible under the nation's clear environmental policy laws to:

1. Conduct segmented concurrent EIS processes on connected issues and actions (indeed, the legal notice for the Lava Rock OHV Project states that the need for this EIS "results directly from the implementation of the Forest Service Travel Management Rule," and goes on to explain that the Deschutes is in the process of "developing an EIS to display the effects of implementing the rule, which is expected to be completed by 2010");
2. Conduct the legally requisite comprehensive and cumulative impacts analysis for the proposed Lava Rock OHV Project trail systems prior to the completion and final Record of Decision of the as yet barely begun Deschutes-Ochoco Travel Management Plan EIS, upon which the "need" for the Lava Rock EIS is promulgated;
3. Arrive at a legally compliant and environmentally sound decision for the proposed Lava Rock OHV Project prior to the completion of the inextricably related Deschutes-Ochoco Travel Management Plan FEIS and ROD;
4. Segment piecemeal the connected direct and cumulative impacts issues of OHV systems, including user created systems and impacts resulting from enforcement limitations, not only of OHVs throughout the Deschutes National Forest, but resulting from connected designated and user-created OHV systems and use on adjoining public and private lands; including other USFS National Forest, BLM, and State managed public lands.

The extent of OHV use and cumulative impacts across the Deschutes National Forest, including the Lava Rock OHV Project area, will be assessed within the Deschutes-Ochoco TMP EIS, and are dependent in large-part upon the final Record of Decision for that EIS. Absent the completion of that EIS prior to the beginning of the Lava Rock OHV Project EIS, or absent the inclusion of Lava Rock as part of the overarching TMP EIS, it is legally unacceptable arbitrary and capricious conjecture to attempt to reach a decision for Lava Rock, as the full extent of connective roads and trails would not be established, nor would cumulative impacts be other than speculative best-guesstimates. NEPA requires accurate and expert site-specific and cumulative impacts analysis basis for legally acceptable decisions; such a basis is simply not possible prior to the completion of the TMP EIS and ROD. We again strongly recommend the agency abide by the nation's established NEPA legal analysis requirements and process. Either complete the overarching TMP EIS and ROD before beginning Lava Rock Project EIS (and for that matter Three Trails in the Deschutes Crescent District, Big Summit Prairie in the Ochoco, and any other additional OHV system plans); or issue an interim closure on all OHV use outside existent designated systems and incorporate the above proposed OHV systems in one Travel Management EIS for the Deschutes and/or Deschutes-Ochoco.

As expressed in our previous scoping comments, our organizations appreciate the Deschutes National Forest's stated intention to prohibit cross-country travel by OHVs, and limit OHVs to

designated systems only. However, such restrictions on OHVs can be responsibly accomplished by a legally and environmentally warranted expedient Interim Emergency Closure Order for the entire Deschutes.

Indeed, the current situation with widespread largely unregulated cross-country use of OHVs across the forest is analogous to having widespread unregulated logging occurring across the forest unless the agency deemed a specific area closed. Environmental degradation, whether differing by OHVs or logging, has similar significant irreparable harms to the ecological quality of the natural environment, including harms to wildlife species and habitat, natural quiet, soil communities and hydrological functioning, watersystems, and native vegetation. Logging actions must each be assessed and permitted only in designated locations under strictly enforced conditions and environmental restrictions. Similarly, OHV use should only be permitted to occur in those locations that have already undergone legally adequate analysis and been designated as OHV trail systems.

The agency should not delay such a closure order, as the forest's natural resources and recreational values are being irreparably degraded daily, and the advent of spring brings with it an urgent need for curtailment of rampant widespread OHV abuse throughout the forest.

Undertaking a lengthy EIS process for such a closure only circumvents the agency's legal responsibility to protect public lands under its management, allowing yet more damage to occur, and adding to the irresponsible illusion that the agency is obligated in any way to provide play areas for environmentally harmful, resource destroying, intrusive, noisy, disrupting machines and those who operate them.

The Deschutes and BLM already have designated OHV trail systems and play areas that are far greater in acreage extent than the proportional small percentage of the public that uses OHVs, and far greater than the agency's ability to enforce regulations, prevent damaging OHV incursions into treasured natural areas including the Newberry National Volcanic Monument, or restore damaged areas. As such, instead of irresponsibly proposing yet more trail systems beyond the capabilities of agency resources to effectively manage, we recommend an interagency public lands wide Programmatic EIS on Travel Management. The EIS objectives include:

- codifying the forest-wide emergency closure to OHVs – limiting these to currently designated systems only;
- analysis focus on reducing resource damaging roads, removing excess roads to comply with Forest Plan road density standards and wildlife thresholds;
- assessing the impacts of current OHV systems;
- assessing federal agency resource needs, capabilities, and effectiveness in enforcing OHV regulations and preventing OHV harms to the environment;
- assessing impacts from roads and OHVs to natural recreational qualities of serenity, solitude, intact natural conditions, and the ability to view and enjoy wildlife and nature;
- assessing the impacts of road systems and OHVs on wildlife, and native species biodiversity and abundance;
- assessing the impacts of road systems and OHVs on federal and state listed species and species of concern;
- assessing the impacts of road systems and OHVs on waterways, aquatic systems and species, and forest hydrological patterns and functioning;
- assessing the impacts of road systems and OHVs on native plants and the spread and introduction of invasive exotic plants.

These above emergency closure action and follow-up PEIS analysis needs represent just some of the resource issues that need to be implemented and addressed in an EIS well-before additional OHV systems can be legally and ecologically considered.

Violations of Travel Management Working Group Consensus, Recommendations, and NEPA

The following issue was addressed in our previous comments, yet the new scoping notice repeats the same significantly misleading misrepresentation error, again stating in both the April 3 notice and the April 10th Federal Register NOI: “The Lava Rock OHV area is one of three areas identified by the working group of participants representing motorized and non-motorized recreation interests that had potential community support for a designated trail system.” This distortion was addressed in our comments over two months ago, and in subsequent conversations with agency officials. It remains a major legally unacceptable error to significantly exaggerate the hard-won common ground agreements of the working group so as to allude that the Lava Rock Project as proposed is similar in size and scope to the working group recommendations. As such, our prior comments on this are not only appropriate; that these have been largely ignored in the revised second scoping notices calls into serious question the agency’s compliance with NEPA’s requirements on the meaningful incorporation of public comments (in both the prior working group process as well as our previous scoping comments) and compliance with NEPA’s legal accuracy requirements.

The Lava Rock OHV Project as proposed would directly and significantly adversely affect the interests of the members and volunteers of our organizations. The Lava Rock Project as proposed strays far from the recommendations and concerns expressed by conservation and Oregon State representatives to the year-long collaborative working group, violating the intent, spirit, and letter of working group consensus.

The agency previously claimed in their first scoping notice that their OHV trail plans are the result of a year-long collaborative process among “stakeholders” and have the consensus support of all participants of their Travel Management Working Group. Participants included a number of OHV club representatives, current and retired Forest Service employees, an OHV dealer, interested regional residents, and conservation representatives, including a volunteer rep from the Juniper Group Sierra Club.

Our Sierra Club representative recalls quite differently than the Forest Service, saying instead that many members of the working group expressed serious objections to OHVs anywhere near the Monument. They recommended that there be no loop trails or play areas, that OHVs not be permitted in the Western and Northern areas outside the Monument, and that one OHV trail be limited to one existing road far south and east of the Monument. Conservation participants are adamantly opposed to OHV circumnavigation of the Monument, and the proposed trail systems, staging, and loop play areas given the alarming disturbance and environmental harms this would inflict upon both wildlife and the natural qualities of this treasured recreational hiking area.

The Ranger District has taken it upon themselves to “do their own thing” and disregard the hard work of the Travel Management Group. The Travel Management Group discussed the possibility of a long linear trail far to the south of the Monument on an existing Forest Service road, that did not include loops. There is no requirement in the Travel Management Plan to actually create and develop new ORV trails. The Travel Management Plan offers an opportunity to place emphasis on closing existing routes, roads and trails. However, this information and alternative planning are missing entirely from the scoping notice for this project.

Violations of NEPA's Legal Accuracy and Disclosure Requirements

NEPA requires federal agencies to base their project analysis and disclosures on accurate, expert, professional information. The distortions and misrepresentations in the first and second scoping notices claiming the Lava Rock “project area is part of an area identified by the working group as a “Community Support” area for motorized trails” are in violation of the NEPA’s legal accuracy disclosure requirements. Such is not an acceptable foundation upon which to begin an EIS. As presented, this completely misleads trusting members of the American public, who are led to erroneously believe that this project has been derived from a year long collaborative consensus process involving representatives from all sides of this issue. As noted in our previous comments, and reasserted here: the Deschutes Forest Service must withdraw or otherwise responsibly correct this legally deficient misleading assertion and issue a new, accurate, legally compliant notice for the Lava Rock OHV Project that does not mislead the public from the onset of this EIS.

The Purpose and Need Violates the NEPA, NFMA, and Agency Resource Protection Mandates Purpose and Need of the Project is Impermissibly Narrow

The proposed Purpose and Need are unsubstantiable, given the vast extent of existing interconnected OHV trail systems both on the Deschutes National Forest and on adjoining BLM lands, and given the agency’s legal mandates, directives, and responsibilities to protect public lands natural resources from undue degradation. The purpose and need also preclude a thorough analysis of responsible resource actions, including closing all or most of the project area to all OHVs, and reducing road densities to Forest Plan standards.

An agency must not define the purpose and need of a project so narrowly that the proposed action is the only possible course of action. EPIC v. USFS, D.C. No. CV-04-01705-GEB (9th Cir. 2006)(attached). In the recent EPIC case, the Ninth Circuit found that the purpose and need of a timber sale project was so narrow that it was impermissible. The proposed action was the only possible course of action to fulfill the purpose and need, so there was no real analysis of alternatives.

The purpose and need of the proposed Lava Rock OHV Project is also far too narrow. The Forest Service has limited possible actions to only ecologically harmful and largely insupportable OHV trail designation actions which are incongruous with the agency’s legal responsibilities and ecological directives. Under the proposed narrow purpose and need, the Forest Service could only develop and analyze alternatives that expand OHV trail systems in the area, predisposing the decision-maker to either leave the current unacceptable cross-country OHV degradation as is (under a no action alternative) or choose an alternative that designates trails in an area where ecologically they should not be permitted at all.

The Forest Service must withdraw the proposed Lava Rock OHV Project, and develop a comprehensive EIS addressing the direct and cumulative impacts of OHVs across the District and adjoining public lands systems, the scientific research recommendations related to OHVs and affected natural resources, impacts to forest integrity, ecological functioning, wildlife species and habitat, hydrology, and biodiversity.

Purpose and Need for the Project is Unsupported

The purpose and need for the project as described in the Forest’s January 9, 2009, Request for Scoping Comments is based on several unsupported and highly questionable assumptions that, collectively, cast doubt on whether the agency can support the OHV route systems envisioned in its current proposed action. The first scoping notice’s purpose and need statement originally included the following text:

Because the designated road system currently does not provide for a suitable or desirable “off-road” recreational experience, there is a need to provide a variety of challenge levels and trip options in an area where opportunities for local rides and links to other designated riding areas exist. Appropriate options include 20+ mile loops and differing length point-to-point trails of varying difficulties for Class 2 and 3 OHVs in order to meet the desired recreational experience for the motorized user.

The statement fails to define exactly what managerial factors and conditions contribute to the agency’s ability to offer “a variety of challenge levels and trip options.” In making this ambiguous statement, the Forest Service leaves any definition that would aid in a lay person’s understanding of such a need open to broad interpretation. Moreover, the stated objective to “meet the desired recreational experience (of) the motorized user” is misguided and not attainable. Such a statement ignores recent technological advances that have substantially increased the ability of OHVs to conquer terrain or obstacles that just five or ten years ago was thought too difficult to traverse. The recent advent of Class 2 rock crawling is such an example as today’s modified Jeeps and other 4-wheel drive vehicles are capable of surmounting boulders and obstacles that were nearly impossible to traverse only a few years ago. Consequently, the illusion that the Forest Service can adequately “meet the desired recreational experience” of such users, either today or into the near future, is foolish in light of this moving target of what it defines today to be a “challenge” for OHV use. While today some routes may be considered a “challenge,” such routes may indeed be considered a low-level challenge in only a few years. To infer in the project’s purpose and need that the agency can and should provide a range of challenge for the OHV enthusiast represents an erroneous and dangerous fallacy on which to base its proposed action.

The current purpose and need statement in the second scoping notice does not contain as much background information on presumptive “needs” for OHV challenges and trails types. However, it does acknowledge the interconnected/interdependent nature of the concurrent TMP EIS, citing this as its primary foundational need, and it’s purpose as:

“The purpose of the Lava Rock OHV Project is to designate appropriate motorized trails for Class 1, Class 2 and Class 3 OHVs while reducing overall road and trail densities within the project area.”

The notice fails to explain what the different classes represent to the non-motorized majority of the public. The notice fails to explain that it is actually the concurrent TMP EIS that will accomplish the large-part of “reducing overall road and trail densities within (and beyond) the project area,” and that the planned Lava Rock EIS actually will designate new systems increasing OHV use areas beyond that which would exist upon completion of the TMP EIS – essentially negating its misleading claim of reducing OHV use and roads in the project area.

Designating OHV Routes in the Lava Cast Area Not Justified in Light of the Current Abundance of OHV Riding Opportunities in the Area

The Deschutes and Ochoco national forests and Crooked River National Grasslands contain thousands of miles of OHV roads and trails that are expected to remain available for motorized use after a decision is reached on the current Travel Management Plan for these forests. At present, official “system” roads and trails in the planning area exceed 10,000 miles—an amount that is recognized by the Forest Service as “one of the most extensive networks of roads and trails in the

state, if not the Nation.”¹ Data provided by the Forest Service indicate that designated motorized routes on the two forests and grassland breakdown as follows:

Currently Designated Motorized Routes on Deschutes-Ochoco Forests and Crooked River National Grassland²

Road System	
-- NFS Maintenance Level 3-5	700 miles
-- NFS Maintenance Level 2	9,000 miles
Motorized Trail System	
-- 4 designated trail systems	370 miles
TOTAL	10,070 miles

Collectively, these forest units and adjacent Bureau of Land Management-administered lands in central Oregon contain one of the highest densities of OHV trails in the West with over 600 miles of designated OHV trails alone.³ Add to this the existing 9,700 miles of Forest Service Maintenance Level 2 and 3 roads currently available for motorized recreation, and it becomes impossible for the Forest Service to infer there remains unmet regional demand for OHV-related recreation that should be met in the Lava Cast planning area. Without sufficient documentation by the Forest Service to demonstrate what benefits will accrue from designating OHV routes in the Lava Cast area, we believe that the project is unnecessary and unjustified.

A recent study by the Forest Service documents that OHV sales have *decreased* nationally each year since 2003⁴. Moreover, the report notes that the proportion of adults who participated in OHV recreation peaked in fall 2002/summer 2003 and the percentage of the population participating in OHV-related recreation decreased during the period 2005-2007. Thus, the Forest Service is in error when it claims or infers that demand for OHV-related recreation currently is increasing. Nor is it reasonable to assume that demand for OHV-related recreation will increase in the future as OHV manufacturers continue to report dramatic decreases in OHV sales. For example, on October 21, 2008, the Motorcycle Industry Council (MIC) reported that sales of All-Terrain Vehicles (ATVs) for the year to date “declined 25 percent and off-road motorcycle sales have dropped by a similar percentage” compared to one year ago.⁵ These statistics mirror recent sales reports provided to MIC by major United States OHV and manufacturers of all-terrain vehicles including Honda, Yamaha, Kawasaki and Suzuki.

¹ U.S. Forest Service PowerPoint presentation, Traveling in Central Oregon National Forests and Grassland, as presenting during public scoping meeting in Bend, Oregon. July 20, 2006.

² Ibid

³ According to documents distributed by the Forest Service, 370 miles of designated OHV trails currently exist on the Deschutes and Ochoco National Forests and the CRNG; adjacent Bureau of Land Management lands in the Millican Valley contain 230 miles of designated OHV trails.

⁴ Cordell, K, et al. 2008. OHV Recreation in the U.S. and its Regions and States: An Update National Report from the National Survey on Recreation and the Environment (NSRE), USDA Forest Service, February 2008.

⁵ See *Powersports Business* online at: <http://www.powersportsbusiness.com/output.cfm?ID=1836181>

Natural Quiet as a Resource

“Natural quiet” has become increasingly scarce on public lands throughout the Western U.S. Its scarcity is a result of many factors, including the increase in both commercial and military air traffic, and an increase in the use of all-terrain vehicles and other OHVs coupled with advances in engine technologies that have allowed OHV enthusiasts to penetrate deeper into the backcountry each year.⁶ Given the growing scarcity of natural quiet coupled with the beneficial effects of natural quiet to most wildlife populations and the recreational experience of forest visitors, the Lava Cast OHV NEPA documentation must identify natural quiet as a resource worth protecting. One or more alternatives, including the agency’s proposed action, should incorporate an objective of retaining natural quiet (to the extent within the Forest Service’s control) in important landscapes, watersheds, or “soundsheds.”

Motorized Mayhem or Wild Nature?

National forests across Oregon’s eastside are magnificent in natural wonders and beauty. From the tumbled geology of eastern Oregon’s weathered Blue Mountains, to the volcanic wonderlands of the Cascade’s rain-shadow, our forests are home to a wealth of biodiversity. Alive and vibrant with gorgeous wildflowers, birdsongs and canid howls, cascading streams and falls, deep incised canyons, towering weather carved rocks, and Cheshire wildlife, the region’s complex ancient forest mosaics are sculpted by fire, climate, moisture, and time. Many people in the region, from transitory visitors to long-time residents, come to these forest wonderlands to enjoy and experience the serenity and inspiration of untrammelled nature.

In our increasingly mechanized society, public wildlands are among the only remaining places where people can get away from the incessant noise and intrusions of industrial machines. Yet a small percentage of the visitors to our wondrous forests cannot seem to leave their treasured machines behind. Called by a variety of names ranging from Off Highway Vehicles (OHVs), All Terrain Vehicles (ATVs), or “Terrain Annihilating Zehicles” (TAZ – for the mechanized version of the fabled TaZmanian Devil), the widespread intrusion of these machines into our last remaining natural lands destroys the serenity, and severely harms the wildlife, plants, soils, and waterways of our region.

For years public forests have been largely open to OHV travel, including random user-created cross-country routes. As a consequence widespread OHV damage and disturbance has significantly increased. While the Forest Service has basic regulations prohibiting OHV-caused natural resource degradation, and has varied requirements in OHV trail system areas, they lack the enforcement personnel to prevent OHV harms, and lack funding and resources to restore OHV damaged waterways and forests. Currently any adult with an OHV, and children with adult accompaniment, can drive OHVs willy-nilly across our national forests, to the detriment of wildlife, and the natural experience of us all.

In a beginning effort to rectify rampant OHV abuse of public lands, the Deschutes, Ochoco, and Umatilla National Forests are conducting varied environmental analysis, with plans to close the forest to cross country OHV travel by late 2009 or 2010, while unrealistically – given their inability to regulate systems - designating additional OHV trail systems throughout large areas of the region’s forests.

In this Deschutes Lava Rock OHV Project, the agency has proposed expanding outwards from the East Fort Rock OHV systems. Under their proposed new Lava Rock OHV plan, OHVs

⁶ See, for example, Off-Highway Vehicle Trail Impacts on Breeding Songbirds in Northeastern California, *The Journal of Wildlife Management*, 71(5): 1617–1620; 2007.

would nearly circumnavigate Newberry National Volcanic Monument, with a number of play areas and trails that loop around and at the border of the Monument between Lava Cast Forest and Lava Cave, creating play loops at the very edge of the Monument in a number of locations. Slightly revised OHV plans now call for five OHV staging areas surrounding the greater Monument area (down from the original seven staging areas). Given the incompatibility of OHV use and impacts with natural resources, ecological integrity, wildlife habitat, and natural recreational qualities on public lands, the choice presented to the agency and the public really comes down to that of either extending existent “motorized mayhem” even further beyond the agency’s ability to regulate and control impacts, or taking effective management actions to proactively protect and restore “wild nature” qualities throughout the region’s forests, including the greater Newberry Monument, Lava Rock, area. The proposed Lava Rock project however, would only spread OHV harms, in contravention to natural resource needs and the greater public’s natural values and recreational needs and desires.

Cumulative OHV Impacts Across the Greater Project Area

Hikes during the fall of 2008 in the greater Monument area discovered ongoing unchecked violations of East Fort Rock OHV regulations, with harmful OHV incursions well into the Monument. The agency response thus far has been to simply state that the Monument is not well-posted, and OHV riders may have mistakenly crossed its boundary. Yet the responsibility to protect the Monument, and prevent OHV caused resource degradation is the agency’s. It’s current inability to enforce its regulations and protect the region’s natural forests irrefutably evidences that the agency would be even more hard pressed to enforce regulations and prevent widespread OHV harms if their proposed OHV systems were expanded to cover such a large, ecologically treasured area.

Instead of expanding OHV systems, the agency should honestly disclose the full extent of OHV depredations, and acknowledge their resource limitations and enforcement capabilities. If trail systems are to exist at all on public lands forests, these must be reduced in size and extent so the agency can effectively ensure natural resources are protected, and capably enforce regulations. Trails must be kept far from treasured Monument areas, and ecologically significant areas including essential wildlife habitat, watersystems, old growth and roadless areas, and areas treasured by wildlife and recreationists alike for their natural serenity and beauty.

OHV systems are also incompatible with residential areas bordering public lands, whether these be populated communities or remote rural locations. Most people live near public lands forests for the natural qualities and peace inherent in nature. OHV impacts, from incessant loud noise, to airborne dusts, exhaust fumes, and severe environmental damage to soils, waterways and vegetation irrevocably destroy the natural qualities of our forests for all. As OHV abuse continues to grow across the region, Sierra Club led citizen efforts continue to help protect our wildlands forests.

Across Highway 97 to the west of the proposed Lava Rock OHV systems, OHV abuse in the Anne’s Butte area had reached outrageous levels. Working with the Sierra Club, local residents bordering the Deschutes National Forest formed the Friends of Anne’s Buttes to address rampant OHV harms (see Fall 2008 Conifer *Reigning in OHV Abuse*). In January 2009 volunteer conservation efforts succeeded in achieving a closure of Anne’s Butte forests to OHVs.

Yet as of May 2009, the Anne’s Butte closure is still largely ineffectively enforced, with significant ongoing illegal OHV incursions into the closed area resulting in resource degradation and community abuse. However, it is becoming ever-more apparent that high OHV abuse areas such as “Anne’s Butte” exist throughout the forest. Places like Anne’s Butte may receive more complaints, because of the proximity to residential homes. Yet it is places like those in the proposed

Lava Rock OHV project area that provide ecologically essential wildlife habitat and other natural values, including the treasured natural recreational values of the greater Monument area. Our organizations volunteers have been documenting OHV degradations throughout the East Fort Rock systems and into the Monument area. We strongly request the agency begin to responsibly protect this treasured area from rampant OHV intrusions and harms, including issuing an emergency closure order to OHV travel outside of current designated systems.

Cumulative Impacts Issues from Interlocking OHV Trail Systems Across Oregon

Previously, in June of 2008, volunteers in the Ochoco succeeded after two years of efforts in finally closing the McKay Creek area to OHVs due to widespread egregious abuse including mud bogging, erosive user-created trails, severe damage to this steelhead spawning creek at a time when millions were being spent to restore fish to the area, and related shooting, vandalism, fires, and trash dumping. (See the fall 2008 issue of the Conifer *McKay Creek Off-Highway Vehicle Closure*.) However, recent closure monitoring from Friends of the McKay volunteers report that the closure is not being effectively enforced, and that resource damage from ongoing illegal OHV use is “as bad or even worse than before.”

In addition to this proposed Lava Rock OHV project, other agency OHV plans across the region’s forests include Willamette National Forest OHV links to the Deschutes, which cross the Crest trail and use an historic wagon trail; the “Three Trails” system in the Deschutes Crescent District; the East Ochoco OHV trail system around Big Summit Prairie in the Ochoco National Forest; and the Heppner District Umatilla Forest’s West End OHV trail system which would link a county OHV park with forest lands.

OHV proponents are jockeying to create systems that link routes throughout the region’s public National Forests and BLM lands, spanning from the Wallow-Whitman through the Umatilla, Malheur and Ochoco forests, across BLM lands into the Deschutes, and on to the Willamette National Forest in a huge, somewhat disjointed, interconnected system of unenforceable dimensions and unfathomable harms. By designating official trail systems, OHV proponents are attempting to establish their noisy damaging impacts to public forests as both acceptable and somehow “compatible” with natural recreation and environmental values.

. It is imperative that instead of pandering piecemeal in illegal segmented EAs for otherwise interconnected OHV systems, that federal agency’s adhere to their resource protection responsibilities and directives and take effective actions to reign in rampant OHV abuse, protecting the natural serenity and beauty of our public wildlands for those of us here today and the generations yet to come.

Unroaded Areas

We are concerned that the proposed designated OHV trail system will negatively impact non-motorized recreation and values associated with unroaded areas in the vicinity. Unroaded areas of 1,000+ acres in size provide valuable natural resource attributes that must be protected. These include: water quality; healthy soils; fish and wildlife refugia; centers for dispersal and restoration of adjacent disturbed sites; reference sites for research; non-motorized, low-impact recreation; carbon sequestration; refugia that are relatively less at-risk from noxious weeds and other invasive non-native species, and many other significant values. Designating open trails in or adjacent to unroaded areas will have detrimental impacts on water quality, soil health, vegetation, non-motorized recreation, and wildlife habitat.

We herein reference Oregon Wild's current and previous comments and their accompanying maps which show the unroaded areas found in the planning area. We ask you to consider how the proposal will impact these unroaded areas and come up with a plan that will keep OHVs out of these areas, including keeping OHV noise far from these roadless areas and other ecologically significant locations. There must not be designated trails adjacent to these areas as this would likely result in OHV use and harms within them, and the irreparable degradation of the natural resource values described above.

Of particular concern are four different places where proposed OHV trails will negatively impact the roadless values listed above.

1. In section 36, within the West Lava Cast Forest unroaded area, we are concerned about a proposed Class 2 trail that would cross the area.
2. In section 30 within the Lava Cast Forest unroaded area, we are concerned with a proposed Class 3 trail that would cross an arm of this area. Instead of defining new trails in this area, the several spur roads that dissect this "arm" should be decommissioned to improve unroaded values.
3. A proposed Class 3 trail to the south and Class 2 trail to the north surrounds the Surveyor Lava Flow unroaded area. We are concerned with impacts of these proposed trails that in some places appear to border existing roads. While we don't want to see OHV trails bordering unroaded areas at all, we'd be more comfortable if these trails were at least using existing roads and not compounding impacts by paralleling them.
4. Our concern is the proposed Class 2 trail proposed through the Topso Butte and Sand Butte roadless areas, south of the edge of the National Monument in sections 9, 10, 16, 19, 20, 21 of T22S, R13E. This trail would have significant impacts to a relatively pristine area, cutting a new trail where there are no roads. We urge you to consider eliminating this proposed route.
5. While the above concerns may or may not have been initially addressed in changes to the original scoping plans, additional concerns regarding OHV use in proximity to these areas, and the agency's well evidenced inability to enforce OHV restrictions and regulations, are likely to result in significant ongoing degradations and trespass throughout these ecologically significant areas.

In general, the proposed project area, unroaded and roaded included, is largely completely unsuitable for OHV trail systems, other than perhaps – following EIS analysis and cross country emergency closures – the limited single trail on an existent road far south and east of the Monument. Again, we request this proposed project be completely withdrawn, and an ecologically and legally responsible EIS be conducted on travel management and OHV issues.

Need for Travel Management

We are supportive of Forest Service efforts to prevent off-highway vehicle (OHV) use in sensitive areas, effectively regulate where use may occur and prevent harmful impacts, conflicts associated with OHV use, and to close and rehabilitate unnecessary and redundant forest roads and user-created routes. Consistent with Executive Orders 11644 and 11989 and applicable Forest Service regulations, it is our belief that OHV use is appropriate only where it can be demonstrated that such use will be controlled and directed so that it does not adversely affect forest resources or the safety of users of the national forest, and where it can be demonstrated that OHV use will not pose significant conflicts with residences and or other uses on the forest or adjacent public lands.

It is our hope that the greater Lava Rock area and Bend-Fort Rock Ranger District forestlands surrounding the greater Newberry National Volcanic Area - and the variety of recreational experiences this extensive area has to offer - will be managed for the benefit of all visitors and can be shared by all people who respectfully value and appreciate our public lands and national forests.

National forests as a whole experienced a dramatic increase in OHV use during the period 1982 to 2000. While there is no question that OHV use on many Forests increased markedly throughout the 1990s, it is important to note that the rate of OHV growth nationwide peaked in 2003 and no longer is growing. The reasons for the recent reversal of the OHV use growth curve are not well understood but have nonetheless been documented by the Powersports Business/Motorcycle Industry Council, the Outdoor Industry Foundation⁷, and Forest Service personnel associated with the National Survey on Recreation and the Environment.⁸

In light of this documented pattern — a trend likely to be continued and reinforced both by the current economic recession and the fluctuating fuel costs that recently rose and fell from, and may return to, \$4/gallon - the agency's underlying premise of a need to accommodate ever-increasing levels of OHV user demand on the Deschutes National Forest is seriously questionable and largely unsubstantiated. However, the absence of upward pressure for OHV use on the Forest does little, if anything, to mitigate the upward spiral of the power, traction and maneuverability — and associated potential for causing adverse environmental impacts — being built into modern off-road recreational vehicles.⁹

Unmanaged and improperly managed motorized recreation on our National Forests is a serious, intensifying threat to the health and integrity of our National Forests.

⁷ Outdoor Industry Foundation. *Outdoor Recreation Participation Study. Eighth Edition, for Year 2005. Trend Analysis for the United States.* June 2006.

⁸ Schuster, R.; Cordell K.; Mitchell, J.; Betz, C.; Zarnoch, S. OHV Recreational Use in the United States. Paper presented at the 60th annual meeting of the Society for Range Management, February 2007.

⁹ In 2005 Congressional testimony, former USFS Chief Bosworth stated that “[t]oday's [OHV] vehicles are also more powerful and more capable of off-highway travel than those of a decade ago.” Statement of Dale Bosworth concerning motorized recreational use of federal lands before the Subcommittee on Forests and Forest Health and The Subcommittee On National Parks, Recreation, of the United States House of Representatives' Public Lands Committee on Resources, July 13, 2005 at 4. He continued by noting that this new capacity is related to “[d]amage to water quality, erosion, loss of wildlife habitat, and introduction of invasive species jeopardize the health of the land, the sustainability of the use, and the opportunities people come to the national forests to enjoy.” *Id.* at 5.

Moreover, such use increasingly conflicts with our National Forest's quiet-use recreationists, whether hunters, anglers, hikers, kayakers, rafters, or backpackers – many of which are represented by the staff and members of the signatories to these comments. Former Forest Service Chief Dale Bosworth succinctly demonstrated that unmanaged OHVs are a “major threat” affecting our nation's forests and should be “one of the highest priorities for the agency” when he stated:

Each year, the national forests and grasslands get hundreds of miles of unauthorized roads and trails due to repeated cross-country use. We're seeing more erosion, water degradation, and habitat destruction. We're seeing more conflicts between users. We have got to improve our management so we get responsible recreational use based on sound outdoor ethics. How do these threats affect outdoor recreation? As I said, our focus in the Forest Service is on protecting air and water, habitat for wildlife, scenery, and naturalness. That's what people come to the national forests to find—but increasingly they're not finding it. They're not finding it if forests are out of whack and unhealthy. They're not finding it if invasives and loss of open space are driving out our native species. And they're not finding it if stream banks are collapsed, trails eroded, and sensitive meadows degraded because we're not properly managing recreational use.

Dale Bosworth, USFS Chief, “Ensuring the Future of Outdoor Recreation,” Partners Outdoors, Snowbird, UT (Jan. 11, 2004).

As then Chief Bosworth explained above, the rapid expansion of motorized vehicle use damages our National Forests. Motorized vehicle use carves unlawful, unauthorized routes and trails into our National Forests, triggers erosion and water quality degradation, fragments and degrades wildlife habitat, and creates serious conflicts amongst the hunters, anglers, hikers, kayakers, rafters, backpackers, and other users of our National Forests. It is against this background that the Deschutes NF Lava Rock OHV Project must be viewed.

The Forest Service Legally Must Prepare a non-segmented Environmental Impact Statement

As a threshold matter, the Forest Service's current proposed analysis methodology and planning are violating the National Environmental Policy Act (NEPA), and NEPA's implementing regulations promulgated by the Council on Environmental Quality (CEQ). By conducting segmented yet simultaneous NEPA analysis processes, one Travel Management Plan EIS closing the forest to cross-country OHV use, and other localized EAs on designating additional authorized OHV trail systems, the agency is failing to conduct the legally and ecologically requisite Environmental Impact Statement (EIS) addressing overall OHV direct and cumulative impacts across the greater area's public forests and wild lands, and connected impacts on other federal, state, and private lands in the area. Given the complexity of OHV issues, it is essential for the agency to found proposed systems on a thorough understanding of the impacts, resource, and regulation and restoration requirements from existing systems. Understanding of the cumulative impacts to natural forest habitat from OHVs, other recreation, and management disturbances is also requisite for assessing proposed trail systems in proper ecological perspective. Additionally, given the route designation process and the long-

term consequences of designating a huge network of routes to other forest users and the environment, a non-segmented EIS is required.

It is understandable that the agency may desire a separate EIS process for closing the forest to cross-country OHV travel. It may be that two sequential EIS projects are needed, however, if so, the overarching TMP EIS ROD closure process must legally be completed first, as the environmental analysis issues addressed, including cumulative impacts issues and effectiveness of agency trail systems regulation, enforcement capabilities, restoration accomplishments and needs, and overall resource requirements and impacts will establish the necessary foundation for evaluating proposed localized systems such as Lava Rock. Without the prior completion of the TMP EIS and ROD, the Lava Rock EIS would be based largely upon legally unacceptable conjecture rather than actual fact.

However, given the agency's legal mandates to prevent resource degradation, directives to protect natural qualities and resources of our public lands, and to provide quality recreational experiences for all that are compatible with natural qualities; it is clear that the agency legally may issue an emergency closure prohibiting all cross-country OHV travel and all OHV travel on non-designated OHV routes and trails. An EIS is not needed for this urgently necessary legally and environmentally responsible action. Following such closure, an EIS and ROD on Travel Management Planning, addressing environmental impacts from roads, OHVs (including snowmobiles), existing trail systems, and enforcement, regulation, and restoration needs must be conducted well-before proposals such as Lava Rock may legally considered.

The agency has no mandate or requirement to provide OHV systems. It does have the legal responsibility to protect natural resources. Road density levels and impacts are already in excess of Forest Plan standards and wildlife threshold levels. These need to be reduced, with excess and resource damaging roads closed, removed, and restored to natural topography and vegetation. It would be a violation of the Deschutes LRMP, NFMA, and likely the ESA to add the additional significant detrimental impacts that would result from creating a designated OHV trail system as proposed, given that the agency has failed to address and rectify current resource harms and standards violations. Again a non-segmented or at minimum non-concurrent, post TMP-decision, EIS is necessary to adequately address these significant issues.

Again we appreciate the Deschutes recognizing the following when deciding to conduct an EIS instead of an EA: NEPA requires an EIS for all "major Federal actions significantly affecting the . . . human environment." 42 U.S.C. §4332(2)(C). Where an EIS is not categorically required, the agency may prepare an EA to determine whether the proposed action *may* have a significant environmental effect. *See Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001) (*citing* 40 C.F.R. § 1501.4). "If the EA establishes that the agency's action *may* have a significant effect upon the . . . environment, an EIS must be prepared." *Id.* Furthermore, an EIS must be prepared if "substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor." *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998) (quotation omitted). "To trigger this requirement a plaintiff need not show that significant effects will in fact occur, raising substantial questions whether a project may have a significant effect is sufficient." *Id.* at 1150. A decision not to prepare an EIS must be supported by a "convincing statement of reasons"

demonstrating why the project's impacts are insignificant. *Blue Mtns Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

The term "significant" has two components: context and intensity. 40 C.F.R. § 1508.27. These components are considered by the Ninth Circuit in determining whether an EIS should have been prepared. *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004). Context refers to the setting in which the proposed action takes place, in this case a National Forest in Idaho and, in the case of user-created routes that the Forest Service wants to incorporate into the designated route system, the immediate environs, such as watershed, that the route is located within. *Id.* § 1508.27(a). Intensity means "the severity of the impact." *Id.* § 1508.27(b). The Ninth Circuit has held that if an agency's "action is environmentally 'significant' according to any of these criteria," then the agency violated NEPA if it failed to prepare an EIS. *Public Citizen v. Dept. of Transportation*, 316 F.3d 1002, 1023 (9th Cir. 2003) (emphasis original), *rev'd on other grounds*, 540 U.S. 1088, 124 S.Ct. 2204 (2004), *citing National Parks Conservation Assn. v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001).

The very fact that the agency currently is in violation of LRMP road density standards, that the project area contains a world renowned National Monument with a number of treasured ecologically and recreationally important areas: Newberry Monument, East and Paulina Lakes, Paulina Peaks Viewpoint and other popular viewpoints, Crater Rim hiking trail, a number of popular campgrounds, Paulina Creek, Lava Cast Forest, Lava Cave, and Monument lava fields and forests, and a critical migration route for native ungulates and wildlife – all of these represent significant environmental concerns, and clearly undermine any contention that the Forest Service's proposed project actions are not significant. *See, e.g., National Audubon Soc'y v. Hoffman, National Audubon Society v. Hoffman*, 917 F. Supp. 280, 287 (D. Vt. 1995).

The CEQ has stated that "[w]hile the regulations do not contain page limits for EA's [sic], the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages...In most cases...a lengthy EA indicates that an EIS is needed." 46 Fed. Reg. 18,026, 18,037 (1981) (NEPA's Forty Most Asked Questions: 36(a) and (b)). While the Forest Service may argue that the length of the EA should not be held against the agency, such an argument is contrary to CEQ's guidance and should be rejected. Moreover, an agency may not avoid the environmental analysis and public participation requirements simply by preparing a lengthy EA; NEPA and CEQ regulations do not allow it. The federal Court of Appeals for the Ninth Circuit has held:

No matter how thorough, an EA can *never* substitute for preparation of an EIS, if the proposed action could significantly affect the environment. We stress in this regard that an EIS serves different purposes from an EA. An EA simply assesses whether there will be a significant impact on the environment. An EIS weighs any significant negative impacts of the proposed action against the positive objects of the proposal. Preparation of an EIS thus ensures that the decision-makers know there is a significant risk of environmental impact, and take that impact into consideration.

Anderson v. Evans, 371 F.3d 475, 494 (9th Cir. 2004) (emphasis added).

More fundamentally, beyond the length of the EA, it is difficult to understand how the designation of yet another extensive OHV route network, which would link up with existing extensive OHV routes, on the Deschutes National Forest will *not* cause

significant impacts to the environment; the very nature of the proposed project cries out for a non-segmented EIS, or at minimum an EIS begun after the overarching foundational TMP EIS and ROD have been concluded (including after the final resolution of all appeal and/or legal challenges).

Connectivity with Other Proposed or Foreseeable OHV Routes

On a landscape scale, the agency must address and disclose cumulative impacts issues that are likely to result from, or contribute to, the impacts of the proposed Lava Rock OHV proposed action. Thus, the District must also disclose whether regional connective OHV routes are planned or proposed by other federal and state agencies and/or OHV user groups. The baseline for “environmental analysis that is the heart” of the NEPA process must “be accurate and complete.” In summary, the EA as currently planned violates NEPA’s “hard look” requirements by ignoring the existing and potential future use of routes that extend beyond the project boundary.

Federal courts have recognized the significance of increased motorized trail use as a necessary component for environmental analyses relating to trail designations. Specifically, “the environmental significance of [the trail project] cannot be accurately assessed unless the potential for increased use resulting from the cumulative impact of the projected network of [OHV] trails planned for the [Ranger District] is carefully considered.” *Wash. Trails Ass’n v. United States Forest Serv.*;¹⁰ see also *North Cascade Conservation Council v. United States Forest Serv.*¹¹ (“Within the NEPA scheme, however, any proposal adding to this [OHV] system that may adversely affect the environment must be examined in light of the entire existing system”).

Scope of Cumulative Impact Analysis

In conducting a cumulative effects analysis for the Lava Rock OHV Project, the Forest Service must provide detailed information about the present effects of past actions—*whether or not* those actions were subject to NEPA review at the time of the action. As the regulations note, “[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. Thus even a “minor” past action (i.e. one not subject to NEPA review at the time) must be analyzed in the cumulative effects review of a new proposed action.

It follows that the effects of the following past, present, and foreseeable future actions must be considered in the cumulative effects analysis for the Lava Rock OHV Project:

- Road building;
- Creation of unauthorized, user-created routes;
- Siviculture activities;
- Dispersed camping;
- Soil erosion;
- Water quality impacts;
- Wilderness values and unroaded areas

¹⁰ 935 F. Supp. 1117, 1123 (W.D. Wash. 1996).

¹¹ 98 F. Supp. 2d 1193, 1198 (W.D. Wash 1999).

- Effects on listed species; and
- Lack of enforcement of road/route/trail designations, system connections with other systems, and foreseeable creation of illegal, user-created routes.

Minimum Systems Regulations

The proposed action must address the “minimum system” regulation found at 36 CFR § 212.5(b)(1). Should the Lava Rock OHV Project proceed and the Forest Service develop and select an alternative that does not address the “minimum system” regulation, the agency would risk appeal and litigation as the process moves forward. Under the circumstances, we believe that the most appropriate course of action would be for the District to postpone the project NEPA analysis until such time as the requisite travel analysis and the accompanying report is completed and shared with the public. At a minimum, this would include development of an alternative that complies with the “minimum system” regulation, is both ecologically and fiscally sustainable given current and anticipated funding levels, and includes a detailed plan for monitoring, mitigation, and enforcement—including “conditional decisions” which would grant the authority to take effective action to address violations of standards uncovered during subsequent monitoring and enforcement without having to complete additional analysis.

Impacts to Wildlife

The proposed OHV routes traverse throughout a significant extent of public lands that contain habitat for Endangered Species Act (ESA)-listed terrestrial and avian wildlife species, and federal and state regional wildlife and avian species of concern. The analysis must adequately disclose current status information on these and other affected species including other wildlife species that historically have existed, and may presently occur, in the planning area. The analysis must adequately address the likely direct and cumulative impacts from OHVs, related management actions, and other area management projects upon these and other wildlife and avian species.

Conclusion

Thank you for this second opportunity to submit comments on the Lava Rock OHV Project, and for recognizing the need for an EIS for a project of this scale and significance. Unfortunately, notwithstanding clear evidence of the Forest’s good-faith efforts to eventually implement the Travel Management Rule closing the forest to cross-country OHV travel, as we have outlined there are a number of areas where this proposal has fallen short of the substantive mandates imposed by the applicable Executive Orders as well as federal environmental policy laws and their appropriate foundational processes and the Agency’s own regulations. Still legally and ethically alarming, is the fact that the Forest is still seeking to implement additional OHV routes using a segmented EIS that is to be completed before or concurrent with the otherwise legally requisite foundational TMP EIS and ROD. The pre-emptory segmentation of interconnected and foundational NEPA analysis processes effectively renders this process inadequate under NEPA. These deficits would likely prove very vulnerable to reversal in the unfortunate event that judicial review is later required in this matter.

As the Deschutes Forest reviews their plans for a concurrent series of segmented yet inseparably connected EIS processes, we strongly recommend the agency consider that the cumulative impacts of the Forest Service's actions must be viewed as a product of: (1) the baseline impact caused by the pre-existing extensive miles of existing roads; (2) the added impact caused by the creation of unauthorized user-created routes over time; (3) the short and long-term impacts caused by the persistence of all of these routes on the landscape now; (4) the impacts caused by lawful use of the current route system coupled with the potential unlawful use of the undesignated route system; (5) the serious limitations and deficient track record regarding the agency's ability to enforce OHV system regulations and closures; (6) the renowned natural recreational and ecological qualities of the greater Monument area; (7) the legally deficient cart before the horse timing and segmentation of the TMP EIS and Lava Rock EIS; and (8) the impact caused by past, present, and reasonably foreseeable future actions. Simply because the Forest Service is moving to enact positive reforms of its management policies does not thereby erase the past history of motorized recreation use on the Bend-Fort Rock RD. Nor does it enable the Forest Service to proceed on the basis of a legally impermissible segmented EIS that preempts the Deschutes TMP EIS ROD. The "cumulative impact" of motorized recreation to the landscape must be addressed through a thorough Deschutes-wide foundational TMP EIS. 40 C.F.R. § 1508.27(b)(7) (and other applicable requirements including those as per segmentation).

We welcome a meeting with Forest staff to discuss specific planning points or provide clarification of our revised comments and recommendations.

Sincerely,



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