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VIA E-MAIL AND U.S. MAIL

Re: Comments on the Draft EIS, Ocala National Forest Access Designation Process, Roads and Trail Systems Development, Implementation

Dear Forest Supervisor Kearney:

These comments are on your above proposal and are submitted on behalf of Wild South, a non-profit organization working on public land protection issues throughout the South. Wild South has deep concerns about motorized vehicle use, including 4x4 cars and trucks, all-terrain vehicles (ATV) and motorcycles [collectively “off-highway vehicles” (OHVs) or “off-road vehicles” (ORVs)], as well as general public access to public lands in Florida.

Wild South supports the Forest Service’s efforts to control ORV use on our National Forests. This current proposal is appears to be a good step forward in preventing further ORV damage in the Restricted Areas of the Ocala National Forest and it is obvious that a great deal of time has gone into the proposal and the preparation of the Draft Environmental Impact Statement (EIS). Nonetheless, there is certainly room for improvement and specific changes required to comply with existing legal mandates. Please consider the follow comments while improving the Access Designation and its Final EIS for the Ocala National Forest.

I. GENERAL ISSUES

Unregulated ORV use is one of the largest and the fastest growing threat to the natural and ecological integrity of our National Forests in general and the National Forests in Florida in particular. The negative impacts of ORV use on soil, water quality, vegetation and wildlife and their habitat have been well documented. *See, e.g.,* WILDLANDS CENTER FOR PREVENTING ROADS, THE WILDERNESS SOCIETY, *ET AL.*, *Petition to Enhance and Expand the Regulations Governing the Administration of Off-road Vehicle Use on Lands Managed by the U.S. Forest Service* (Dec. 1999) (a true and correct copy of which is attached hereto as Exhibit 1 and incorporated herein by reference); DEFENDERS OF WILDLIFE, *Out of Control: The Impacts of Off-Road Vehicles and Roads on Wildlife Habitat in Florida's National Forests* (Aug. 2002) (a true and correct copy of which is attached hereto as Exhibit 2 and incorporated herein by reference); David Haflick, *Roaring from the Past: Off-Road Vehicles on America's National Forests* (Nov. 1999) (a true and correct copy of which is attached hereto as Exhibit 3 and incorporated herein by reference).

The U.S. Forest Service has made the improved control of ORVs on National Forest System Lands one of the agency's top priorities. Dale Bosworth, U.S. Forest Service Chief, has identified unmanaged recreation as one of the four major threats currently facing our National Forests.

Off-highway vehicles, or OHVs, are a great way to experience the outdoors. But the number of OHV users has just gotten huge. It grew from about 5 million in 1972 to almost 36 million in 2000. That's a 600-percent increase.

With all those tens of millions of users, even a tiny percentage of problem use becomes relatively huge. 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 streambanks are collapsed, trails eroded, and sensitive meadows degraded because we're not properly managing recreational use.

Dale Bosworth, *Ensuring the Future of Outdoor Recreation* (Snowbird, UT, January 11, 2004) (available on the Forest Service's Web site (visited on Apr. 22, 2004) <<http://www.fs.fed.us/news/2004/speeches/01/future-recreation.shtml>>). As a result, the

regulations concerning OHV use on National Forest System Lands are in the process of being strengthened and re-written.

In addition to the National Forests in Florida's Access Designation Planning process, National Forest around the country are implementing ORV control plans. For example, the Calcasieu Ranger District, Kisatchie National Forest issued a Draft EA for Providing ORV Management in December 2003. USDA FOREST SERVICE, *Environmental Assessment: Providing Off-Road Vehicle Management, Calcasieu Ranger District, Kisatchie National Forest, Rapides and Vernon Parishes, Louisiana* (Dec. 2003) (a true and correct copy of which is attached hereto as Exhibit 4 and incorporated herein by reference). The National Forests in Florida's Access Standards are now more than 3 years overdue. LRMP at 3-2 (1999) (prior to LRMP Amendment 2, 2004). With 5 years to work on the Access Standards, Wild South expected an extremely detailed and well-defined plan. While the physical "designation" of routes is well-defined, other aspects of the "plan" (e.g., monitoring and enforcement) are extremely vague. Without a detailed monitoring plan and assurances of adequate enforcement, it is extremely difficult for the Forest Service – and the public – to adequately assess the potential environmental impacts of this proposal.

II. NEPA ISSUES

A. RANGE OF ALTERNATIVES

The Council on Environmental Quality (CEQ) describes the alternatives section is described as "the heart of the environmental impact statement." 40 C.F.R. § 1502.14. The CEQ regulations require you to "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14. Of the alternatives that were evaluated, all received objective and unbiased analysis and evaluation, more so than many NEPA documents produced by the Forest Service. However, there are several alternatives that need to be fully analyzed in order to fully assess the environmental impacts of this proposal. As stated in *Idaho Conservation League v. Mumma*, 956 F. 2d 1508 (9th Cir. 1992), the existence of a single viable but unexamined alternative renders an environmental impact analysis inadequate. Most of these alternatives were mentioned in the DEIS but eliminated from detailed study. The inclusion of these alternatives in the Final EIS would make the document much stronger and would allow the Forest Service and the public to better assess the potential impacts from motorized access in the Ocala National Forest. The following is a list of reasonable alternatives that you need to fully analyze in the Final EIS.

1. Expand the proposal to consider the entire forest, not just restricted areas

This alternative was not considered in detail because it "would broaden the scope of the proposed action beyond the decision made in the Forest Plan." Draft EIS at 2-7. It would not be very difficult for you to amend the Forest Plan to include these areas. This is especially the case since it is anticipated that new ORV regulations will make this distinction invalid. On that matter, the current "unrestricted" designation for a majority

of the Osceola National Forest is not a valid designation. Under existing Forest Service policy, you are required to “[d]esignate all National Forest System lands for off-road vehicle use in one of three categories: open, restricted, or closed.” FSM 2355.03(3). Furthermore, you are required to

Designate National Forest System lands to allow, restrict, or prohibit specific types of off-road vehicle use as follows:

1. Open. Areas and trails on which all types of motorized vehicles may be operated off roads without restriction.
2. Restricted. Areas and trails on which motorized vehicle use is restricted by times or season of use, types of vehicles, vehicle equipment, designated areas or trails, or types of activity specified in orders issued under the authority of 36 CFR 261.
3. Closed. Areas and trails on which all motorized vehicle use is prohibited, except by permit, under authority of 36 CFR 261 or by law.

FSM 2355.13.

The areas not covered by this EA are not “open”, other than the Wilderness Area they are not “closed”, thus, they must be “restricted”. Since you are supposed to be creating a plan for restricted areas, the entire Forest should be included in this plan.

Another reason to consider the entire Forest is to better understand how the limitations in the LRMP’s restricted areas will cause more use and thus impacts to the LRMP’s unrestricted areas. Without considering an alternative applying to the entire Forest, and not just the restricted areas, the Forest Service could not begin to analyze the cumulative impacts of this proposal. How will these proposed restrictions in the Restricted Areas effect ORV usage in the Unrestricted Areas? Will there be an increase in usage, to avoid these new restrictions in the Restricted Areas? Will the increased usage in the Unrestricted Areas lead to increased usage of user-created travelways, which have never undergone any NEPA analysis? These are important questions that you have not considered by eliminating this alternative from detailed analysis.

Furthermore, in effect, the “unrestricted” designation is essentially an “open” policy. All it takes is one or two illegal users to create an unclassified travelway. After that, it is perfectly acceptable, under the unrestricted status, for law-abiding and conscientious ORV users to use those travelways.

2. Ban ORVs from the Forest. Only licensed vehicles would be permitted on existing Forest Service classified roads.

The Draft EIS is a little unclear on this matter. This is essentially Alternative E, the so-called No Action Alternative. Since most dirt-bike motorcycles and ATVs are not licensed, they are not authorized to travel on classified, numbered roads. As the DEIS states under the description of Alternative E, “There are currently no designated

motorcycle, ATV, or jeep trails, and this condition would remain. ***These users would have no access in the restricted areas.*** DEIS at 2-5 (emphasis added). It seems that you may be trying to hide the actual implications of this alternative. If motorcycles and ATVs are allowed to travel on classified, numbered roads that have not been designated as “mixed-use”, this needs to be clarified in the Final EIS.

The DIES states that an alternative banning ORVs from the Forest was not considered in detail based on an incorrect reading of Executive Order (“E.O.”) 11644 (Feb. 8, 1972); 37 Fed. Reg. 2,877; 3 C.F.R., 1971-1975 Comp., p. 666; as amended by E.O. 12608 (Sept. 9, 1987); 52 Fed. Reg. 34,617; 3 C.F.R., 1987 Comp., p. 245; and E.O. 11989 (May 24, 1977); 42 Fed. Reg. 26,959; 3 C.F.R., 1977 Comp., p. 120. . The purpose of this executive order is

to establish policies and provide for procedures that 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.

E.O. 11644, Sec. 1. Further, “Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use.” *Id.* § (9)(b).

Thus, if banning the use of ORVs on the Ocala National Forest is necessary to protect the resources of those lands, it would be perfectly permissible to do so. Although you do not have to implement such an alternative, and Wild South are not necessarily even advocating the adoption of such a plan unless it is necessary (which is highly dependent on the monitoring and enforcement plans), NEPA still requires you to analyze it. Without analyzing the impacts to the Forest with no ORV use, you have no “best case scenario” against which to compare the other alternatives.

An agency cannot reject an alternative because it is “not within the jurisdiction of the lead agency” or outside the bounds of congressional authorization. 40 C.F.R. § 1502.14(c). An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered.

Regardless, alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA’s goals and policies.

CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, answer to question 2b, 46 Fed. Reg. 18,026 (1981); accord *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 836 (D.C. Cir. 1972) (“The mere fact that an alternative requires

legislative implementation does not automatically establish that it beyond the domain of what it required for discussion, particularly since NEPA was intended to provide a basis for consideration and choice by the decisionmakers in the legislative as well as executive branch.”); *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 814 (9th Cir. 1999); *City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986). Moreover, an agency may not decline to evaluate an alternative simply on the grounds that it is not a “complete solution” to the agency's goals. *NRDC v. Morton*, 458 F.2d at 836 (agency should not “disregard alternatives merely because they do not offer a complete solution to the problem.”); *Citizens Against Toxic Sprays v. Bergland*, 428 F. Supp. 908, 933 (D. Or. 1977).

3. Register or Permit unlicensed vehicles

In order to better control ORV access to the restricted areas, and curb illegal use, you should consider an alternative that allows ORV access to the restricted area only by permit. Forest Service policy allows the Forest Supervisor to “[a]uthorize, in writing or **through the permit process**, vehicle entry into closed or restricted areas or trails.” FSM 2355.04d(5) (emphasis added). This would allow you to determine a carrying capacity for ORVs and issue a maximum number of permits. Furthermore, it would likely prevent the limited, but growing number, of irresponsible ORV users that cause most of the damage to forest resources.

However, it may be more appropriate to permit individual riders rather than vehicles. Just because a motorcycle or ATV is permitted or registered does not mean the specific riders on those permitted vehicles are aware or familiar with the restrictions of the access plan.

This “alternative” may better be considered as mitigation common to all alternatives, rather than being analyzed as a separate alternative in itself.

4. Seasonal Closures and Restrictions

While we understand that wet seasons vary from year to year, hunting season do not. The DEIS states that “increasing or decreasing hunting access can result in administrative complexities.” DEIS at 2-8. While this may be the case, it is not the alternative that you should analyze. A smaller system of designated trails and routes for most of the year but an expanded system during the hunting season would not result in “increasing or decreasing hunting access.” Hunting access would be the same year after year, but motorized vehicle access would be different throughout the year. People who use ORVs for hunting have different objectives and interests than those who use ORVs for recreational riding, and are less likely to cause resource damage through mud bogging or other ORV activities. Many of the routes, especially the mixed-use roads, in the proposed alternative could remain closed during most of the year and be opened during the hunting season. In fact, this system would provide easier enforcement and monitoring for the Forest Service, as there would be less miles of open routes to enforce and monitor for most of the year.

5. Vehicle Equipment Restrictions

You have not considered limiting the type of ORV allowed on the Forest, either for safety or resource protection issues. Today's average ATV weighs 550 pounds and can travel at speeds of 75 miles per hour. In order to minimize impacts to soils, ATV tires should be restricted to those no larger than 25 X 12 with a maximum 1" lug height and a maximum allowable tire pressure of 7 psi. as indicated on the tire by the manufacturer. Restricting ORV tires to a maximum 1-inch lug height regulations would help reduce resource damage and safety concerns from holes from "mudding", tires destroying trail tread, and help lessen erosion impacts. Such a limitation is used by the State of Louisiana in their Wildlife Management Areas, the U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service, and the U.S. Forest Service, in the Kisatchie National Forest. However, these types of restrictions are probably better suited as mitigation common to all alternatives, rather than a separate alternative. Furthermore, if you do not select such restrictions or analyze such an alternative, this should be part of your monitoring program to see if such limitations are indeed necessary to increase safety and prevent resource damage.

B. DESIGNATION OF UNCLASSIFIED TRAVELWAYS

For the preferred alternative, "Site-specific field surveys were completed for all proposed road and trail segments on unclassified roads." DEIS at 2-1. The DEIS does not describe with much detail what these site-specific surveys actually entailed. While Wild South does not doubt that this work was done, it is difficult to provide feedback when we do not know what went into these surveys, and thus, why some routes were kept/added and others weren't. While we understand that it might not be practical to include the survey notes from every route in the FEIS, please include the survey protocols, guidelines, etc., so that we may have a better idea of why certain routes were included in the Proposed Alternative and why certain routes were excluded.

C. NEPA REQUIRES THE USE OF PLAIN LANGUAGE AND APPROPRIATE GRAPHICS

The CEQ regulations implementing NEPA require you to write an EIS in a manner so that both the agency and public can understand what you are saying. "Environmental impact statements shall be written in plain language and may *use appropriate graphics* so that decisionmakers and the public can readily understand them." 40 C.F.R. § 1508.2 (emphasis added). The Ninth Circuit has held "that § 1502.8 imposes a requirement that an EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS." *Oregon Environmental Conference v. Kunzman*, 817 F.2d 484, 494 (1987).

The lack of maps containing biological, ecological and other information severely reduces the ability of the public to comprehend, and thus comment, on exactly what type of impacts the designations of ORV travel routes will have. The maps accompanying the Draft EA are useful for showing the physical location of the trails, but nothing else. For

example, how is the public supposed to make suggestions about re-locating or closing access to travelways that cross wetlands or riparian areas if they are not indicated on any map? What about seasonal closing of trails near RCW clusters during RCW nesting season when the clusters are not indicated on map? What about known locations of invasive, exotic plants?

Wild South understands that maps containing this level of detail need to be quite large in order to be useful, thus making them somewhat difficult to include in a typical EIS publication. However, the maps for the Kisatchie NF ORV management plan (*see* Exhibit 4) are quite useful. Were larger maps of the Ocala Access Plan, containing ecological information, made available at the public meetings on the Draft EIS? If so, can these maps be made available electronically on the web site with the rest of the NEPA documents? Hard copies could then be made available at the District Offices for the public that does not have internet access.

D. CUMULATIVE IMPACTS

In conducting its NEPA analysis, the Forest Service must consider “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.” 40 CFR § 1508.27(b)(7). A cumulative impact is defined as:

[T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7.

In *City of Carmel-by-the-Sea v. U.S. Dep't of Trans.*, 123 F.3d 1142, 1160 (9th Cir. 1997), the Ninth Circuit held that an NEPA document must “catalogue adequately the relevant past projects in the area.” It must also include a “useful analysis of the cumulative impacts of past, present, and future projects [which] requires a discussion of how [future] projects together with the proposed . . . project will affect the environment.” *Id.* The NEPA document must analyze the combined effects of the actions in sufficient detail to be “useful to the decision-maker in deciding whether, or how, to alter the program to lessen cumulative impacts.” *Id.* Detail is therefore required in describing the cumulative effects of a proposed action with other proposed actions. *Neighbors of Cuddy Mountain v. USFS*, 137 F.3d at 1379 (9th Cir. 1998); *see also Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-15 (9th Cir. 1998).

The Draft EIS contains very little information on past ORV damage to forest resources. Furthermore, it does not include a discussion of “reasonably foreseeable future actions,” i.e., discussion of restrictions in the unrestricted areas. Since you are

obviously aware that such restrictions will be required in the near future, you must analyze the impacts of those actions. As such, it makes no sense for you to not include the unrestricted portions of the Forest in this analysis, because without including that area you cannot adequately address the cumulative impacts of this project.

In the Draft EIS, there is no mention of ORV use on adjacent State or private lands, other than frustration may lead to trespass on private lands. Will these restrictions cause an increase in ORV use on those lands? What other ORV options are there in the general vicinity for ORV users? You cannot effectively analyze the environmental and economic impacts of this decision without a discussion of this. Furthermore, Forest Service policy requires you to

Coordinate off-road vehicle use with adjacent National Forests; Federal, State, and local agencies; and interested individuals and groups to increase user understanding and compliance with off-road vehicle rules and regulations when moving between jurisdictional areas and to improve the user's experience by providing a range of compatible off-road vehicle use opportunities between jurisdictions, recognizing some types of activities are not appropriate on National Forests.

FSM 2355.15. This coordination can not be effectively analyzed without a complete discussion of the cumulative impacts of this access plan.

E. OTHER ISSUES THAT NEED TO BE CONSIDERED

1. Compliance and Enforcement

“Compliance” was one of the issues eliminated from detailed analysis. “Compliance” was eliminated because “[m]easurement of this issue would be speculative due to the unpredictable nature of the issue.” DEIS at 1-15. This is simply not the case. In fact, this Access Plan “is needed because motorized access on the forest has grown at such a rate over the last few decades that some heavily used areas of the forest reached road densities of 17 miles per square mile, *growing by 10 percent in just 10 months.*” DEIS at 1-8 (emphasis added).

You seem to recognize that “[s]uccessful limitation of vehicle use to legal activities is paramount in avoiding adverse impacts to forest resources such as wildlife, wetland areas, prairies, longleaf pine wiregrass systems, and other ecologically and culturally sensitive areas.” DEIS at 1-15. However, your assumption that “that public education and enforcement of regulations will successfully limit public travel to designated routes,” *id.*, may be overly optimistic. While we realize some of this is based on the compliance with the 2002 closure orders in Lake Delancy and one in Paisley Woods, the overall history of ORV abuse in the Ocala National Forest may be a stronger indicator of what to expect with regards to compliance.

Furthermore, you are required by Forest Service policy to address “control methods, law enforcement programs, and monitoring techniques.” FSM 2355.15. Furthermore, the Forest Supervisor must “[s]olicit involvement and cooperation of

interested individuals and groups, adjacent National Forests, and other Federal, State, and local agencies in planning, implementing and *obtaining compliance* with off-road vehicle use regulations.” FSM 2355.04d(6).

You should have some idea of how many ORV users have been visiting the Ocala National Forest and how many will be expected to use the Forest in the future – an indirect effect to analyze under the Recreation section of the EIS. Problems from the past and the fact that there are six Forest Protection Officers (FPO’s) and two fully qualified Law Enforcement Officers (LEO’s) assigned to the Ocala National Forest, Draft EIS at 3-24, can be used to draw conclusions about future compliance after implementation of this plan.

If such an analysis reveals the one law enforcement officer on the Ocala will not be able to ensure adequate compliance, then the plan will have to be revised. Furthermore, the Forest Supervisor *shall* “[e]stablish monitoring intervals and criteria, practices, sampling basis, and standards against which the effects of off-road vehicle use shall be evaluated and reported through the Forest planning and management review procedures.” FSM 2355.04d(4).

“The effects of use by specific types of vehicles off roads on National Forest System lands will be monitored. If the results of monitoring, *including public input*, indicate that the use of one or more vehicle types off roads is causing or will cause considerable adverse effects on the factors and resource values referred to in Sec. 295.2, *the area or trail suffering adverse effects will be immediately closed* to the responsible vehicle type or types until the adverse effects have been eliminated and measures have been implemented to prevent future recurrence as provided in 36 CFR part 261. ... Designations, use restrictions, and operating conditions will be revised as needed to meet changing conditions.”

36 C.F.R. § 295.5 (*emphasis added*). Please describe how all of these requirements will be developed and implemented.

E.O. 11,644 also requires the Forest Service to “prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations.” E.O. 11,644 § 6. Please include enforcement procedures and penalties for access violations. An access designation plan is nothing but a piece of paper without adequate enforcement. Thus, ORV use on the Ocala National Forest should only be permitted if monitoring of impacts and enforcement of restrictions are fully funded and implemented.

2. Safety

“Safety problems from off-road vehicle use may arise from the user’s lack of familiarity concerning dangers of back-country travel, from inexperienced vehicle operators, and from conflicts among user groups.” FSM 2355.22. The public safety sections of the Draft EA, Sections 3.13 and 3.14, are scant with information. Please see

the *Environmental Assessment: Providing Off-Road Vehicle Management, Calcasieu Ranger District, Kisatchie National Forest, Rapides and Vernon Parishes, Louisiana* (Dec. 2003) (Exhibit 4), for a more detailed discussion of safety issues and an example of the level of analysis of safety issues required to satisfy NEPA's "hard look" requirements.

III. EXECUTIVE ORDER 11644 AND 36 CFR PART 295 ISSUES

The major regulatory guidance for ORV use on National Forest System lands is found in Executive Order 11644. The Forest Service codified this Executive Order in 36 C.F.R. Part 295 more than 25 years ago. 43 Fed. Reg. 20,006 (May 10, 1978). Since Richard Nixon signed the original Executive Order, the number of ORV users in the country has increased by 600 percent, from 5 million in to more than 36 million in 2000. Dale Bosworth, *Ensuring the Future of Outdoor Recreation* (Snowbird, UT, January 11, 2004) (available on the Forest Service's Web site (visited on Apr. 22, 2004) <<http://www.fs.fed.us/news/2004/speeches/01/future-recreation.shtml>>). As such, the Forest Service is expected to release draft revised regulations of 36 C.F.R. Part 295 by June 2004. Until these new regulations are finalized and implemented, this Access Plan must comply with the regulations adopted in 1978.

As a general rule, "Off-road vehicle management plans shall provide vehicle management direction aimed at resource protection, public safety of all users, minimizing conflicts among users, and provide for diverse use and benefits of the National Forests." 36 C.F.R. § 295.2(b). Furthermore, the "[d]esignation of areas and trails shall be in accordance with" three requirements. These requirements are mandatory, non-discretionary duties, not suggestions.

A. AREAS AND TRAILS SHALL BE LOCATED TO MINIMIZE DAMAGE TO SOIL, WATERSHED, VEGETATION, OR OTHER RESOURCES OF THE PUBLIC LANDS

"Areas and trails *shall* be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands." 36 C.F.R. § 295.2(b)(1); E.O. 11644 § (3)(1) (emphasis added). By eliminating all of the stream crossings on unclassified roads, Alternative D appears to be the alternative that best minimizes impacts to soils and watersheds, slightly better than Alternative C or E. However, there are more miles of routes in the Ocala Eolian Sandy Hills and Pondered Scrub, where topographic "relief is likely to makes these areas more prone to erosion," DEIS at 4-22, in Alternative D and Alternatives C or E.

Furthermore, impacts or damage to vegetation, does not appear to be minimized by the Proposed Alternative, where Alternatives C and E are stronger. With regards to the proximity of known occurrences of noxious weeds within 10 and 50 feet of unclassified roads, both Alternatives C and E minimize these occurrences more so than the Proposed Alternative. Is it possible to treat the known occurrences of noxious weeds in the proposed alternative prior to the implementation of Access Plan? Is it possible to treat at least the 3 known occurrences within 10 feet of unclassified roads before opening them to

ORV use? While a staggered opening of these unclassified roads might not be ideal, it should help minimize damage to vegetation.

Alternatives C and E also fewer number of known occurrences of threatened and endangered plants within 200 feet of all roads and trails as well as unclassified roads. Without having site-specific biological information in the form of maps, *see* discussion *supra* Part II.C, it is difficult to make suggestions on how to further minimize damage to these rare plant species. Is it possible to close a few small sections of the unclassified roads to avoid these areas? We assume that making changes to specific routes would not make sense, because those routes were probably dropped for other, if not the same, resource issues.

Nuisance Seed Removal Stations

Since trailheads would be developed for the ORV and motorcycle trails (on FR 88, 75, 77, and 538, for example), a tire/vehicle washing station at the developed trail heads may help prevent the spread of exotics. A kiosk explaining the problem with exotic, invasive plant species and how they are spread at these areas could help encourage users to utilize these cleaning stations before and after rides to help prevent the spread of non-native plants.

As for hiking trails, trailheads at parking areas could have similar educational kiosks along with boot scrapers so hikers would not spread exotics as well. Some states have used this method in hiking trails in their state parks (e.g., Wisconsin).

B. AREAS AND TRAILS SHALL BE LOCATED TO MINIMIZE HARASSMENT OF WILDLIFE OR SIGNIFICANT DISRUPTION OF WILDLIFE HABITATS

“Areas and trails *shall* be located to minimize harassment of wildlife or significant disruption of wildlife habitats.” 36 C.F.R. § 295.2(b)(2); E.O. 11644 § (3)(2) (emphasis added). Alternatives C and E both have lower road densities (i.e., cause less habitat fragmentation) in all habitat types than the Proposed Alternative. Thus, fragmentation has not been minimized by your proposal.

Wild South is also concerned about potential impacts to RCWs. Alternatives C and E both impact fewer RCW clusters than the Proposed Alternative, though not by many. However, the real concern is the impact to the goal to increase the Ocala National Forest’s RCW population. The DEIS recognizes that “[a]ccess decisions may affect where new RCW sites can be established in the future and the success of the groups.” DEIS at 4-33. With a road density of 4.4 miles/sq. mile in the Ocala National Forest’s Sandhill communities, where are the 138 new RCW groups supposed to be located? While you recognize that “Alternative B may preclude attainment of the long-term goal in the RCW Recovery Plan,” DEIS at 4-35, you make no assurances that Alternative D will not preclude such attainment. What is the maximum road density in Sandhills that will allow you to meet the long-term goal in the RCW Recovery Plan? It will be better to close some roads and trails now than to try to close them in the future.

C. AREAS AND TRAILS SHALL BE LOCATED TO MINIMIZE CONFLICTS BETWEEN ORV 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

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.

36 C.F.R. § 295.2(b)(3); E.O. 11644 § (3)(3) (emphasis added). This seems to be one of the largest short-comings of the proposal. The number of motorized intersections with hiking trails – 63 with the Florida National Scenic Trail (FNST) and 18 with other hiking trails – seems extremely excessive. Of the nearly 74 miles of the FNST in the Ocala National Forest, approximately 64 miles are within the Restricted Areas. Thus, individuals making the through hike on the FNST through the Ocala National Forest will encounter a motorized trail crossing nearly every mile on average in the Restricted Areas alone. If you exclude the 6.5 miles of the FNST within the Juniper Prairie Wilderness Area, that means there are 63 motorized trail crossings on 58 miles of trails. Moreover, these motorized trail intersections with the FNST do not include classified road crossings that are not also motorized trails.

The DEIS states: “For a discussion of noise relating to the recreation experience, it is most useful to focus on those areas greater than ¼ mile from a road or trail.” DEIS at 4-57. However, a large majority of people seeking solitude in the Ocala National Forest will do so on established trails. Very few people will seek out the 74 areas larger than 200 acres that are more than ¼ mile from a road or motorized trail if there is not an established trail through the areas. Thus, the way this plan is designed, nearly everyone seeking solitude in the Ocala National Forest will be forced to use the 6.5 miles of the FNST and few other trails (e.g., Yearling Trail) in the Juniper Prairie Wilderness Area if they want to avoid the sounds associated with motorized vehicles. On most weekends at least, this will make it extremely unlikely that people using this portion of the FNST will not encounter a number of other hikers.

Another major problem with user conflict in the plan is the definition of some trails. An “Equestrian Trail” is defined as having “[o]ther allowable uses [that] include ATV’s, motorcycles, bicycling and hiking.” DEIS at 1-6. We cannot imagine more user conflict for horse riders than allowing ATV’s, motorcycles and bicycles to share their designated trails. Moreover, this is completely contradictory to the Forest Service’s Trails Management Handbook, FSH 2309.18. The Trail Construction and Maintenance Guides (FSH 2309.18, 2) is broken into three sections: Nonmotorized Trails (2.31), Motorized Trails (2.32) and Special Trails (2.33). The “Pack and Saddle Trail Guide” falls under the Nonmotorized Trails section, 2.31b. Pack and Saddle Trails are supposed to “accommodate[] a wide variety of pack and saddle animals, including horses, mules,

donkeys, burros, and others.” FSH 2309.18, 2.31b(1). Nowhere in the description is the inclusion of motorized vehicles. The Trails Management Handbook requires you to

Give special consideration to the care and safety of live-stock and their riders when locating pack and saddle trails... Avoid locations near campgrounds or other concentrated-use areas where dogs or loud noises could startle pack animals. If the trail must cross highways or railroads, select sites with adequate sight distance.

Id.

One of the objectives of the Forest Service’s recreation program is to “[p]rovide opportunities for a variety of recreation pursuits ***with emphasis on activities that are in harmony with the natural environment*** and consistent with the recreation role of the National Forest.” FSM 2350.2(2) (emphasis added). However, the current proposal emphasizes motorized recreation *over* other pursuits that are more in harmony with the natural environment, such as hiking and horseback riding. Please correct these deficiencies in the final plan.

IV. MONITORING

“The effects of use by specific types of vehicles off roads on National Forest System lands will be monitored.” 36 C.F.R. § 295.5. The DEIS simply reiterates the three access related monitoring items identified in the Forest Plan, but provides no other detail. The only monitoring item (again required by the LRMP) is that “[p]hoto points will be established in sensitive areas to track effectiveness of road closures over time.” DEIS at 2-7.

More details must be provided. Monitoring is one of the most important aspects on the ORV Access Plan. It is impossible to effectively evaluate the potential impacts of this Access Plan without any more details on how you intend to monitor the impacts of ORV use. Please answer the following questions in the Final EA or EIS:

- How many photo points will be established?
- At what frequency will photo points be monitored?
- How will you monitor the spread of exotic, invasive plant species?
- How will you monitor impacts of ORVs on RCW and other rare and/or sensitive species?
- How will you monitor the number of road kills, e.g., snakes, gopher tortoise, black bear?
- How will you monitor the rehabilitation of closed roads?
- How will you monitor user conflict or recreational experiences?

- How will you monitor the number of users, both motorized and non-motorized?
- How will you monitor the number and type of violations?

Monitoring does not consist of periodic visits to the field or simply looking at photographs. Monitoring requires the establishment of procedures for quantitative measurement of impacts to vegetation, soil, wildlife, habitats, recreational/visitor experience, etc., that can be compared with the natural, or baseline, conditions in the Ocala National Forest. It is imperative that the monitoring plan is included in the Final EIS. The budget plans for implementing the monitoring should also be included.

Furthermore, the results of monitoring need to be tied to action plans that are activated when monitoring indicates there is a problem.

If the results of monitoring, including public input, indicate that the use of one or more vehicle types off roads is causing or will cause considerable adverse effects on the factors and resource values... , the area or trail suffering adverse effects will be immediately closed to the responsible vehicle type or types until the adverse effects have been eliminated and measures have been implemented to prevent future recurrence

36 C.F.R. § 295.5

The Record of Decision for the Access Plan should contain an express delegation of authority allowing the District Rangers to close specific areas. 36 C.F.R. § 295.5 (“Forest Supervisors may delegate immediate closure authority to District Rangers or other forest officers in order to facilitate timely actions to meet these objectives). If practical, closures may be limited to specific areas of trails or routes where resource damage is occurring. There are enough mixed-used roads in the vicinity of designated motorcycle and ATV trails to close off sections that have been determined to be locations of resource damage without closing off entire trails. While Wild South believes that entire areas may need to be closed if there is resource damage, we also see how deciding to close an entire area if the resource damage is limited to a few specific locations may be a difficult decision for a District Ranger to make.

The Forest Service regulations also currently expressly provide for public input in monitoring ORV use. 36 C.F.R. § 295.5 (“If the results of monitoring, *including public input*, indicate that the use of one or more vehicle types off roads is causing or will cause considerable adverse effects on the factors and resource values”) (emphasis added). How will you help facilitate public input in the monitoring plan? The new trail maps could include phone numbers to report concerns. The Forest Service should also make monitoring forms available (and accessible) to the public.

V. ENFORCEMENT AND PROHIBITION ISSUES

Monitoring and enforcement are two of the most important aspects of the Access Plan. Wild South wants to see the budget for enforcement in writing as part of this

decision. Furthermore, we want to see contingency plans in the event of budgetary shortfalls. The DEIS does not discuss whether or not local law enforcement officials will be involved in the enforcement of access violations. What type of coordination is planned with county sheriff's offices?

How will you enforce closure orders? If you plan to only use signs to announce closures, Wild South wants to see *effective* physical barriers at the first indication that signs alone have not been effective, along with efforts to increase law enforcement patrols in the closed areas.

VI. REHABILITATION OF CLOSED ROADS

While most closed classified and unclassified roads will continue to be used by the Forest Service for administration and prescribed fire fuel breaks, those roads that are causing resource damage should be rehabilitated. How many of these closed roads have you identified that should be rehabilitated?

CONCLUSION

Thank you for the opportunity to comment. Please place these comments and attachments – including all of the documents listed on the document, “Scientific Studies, Reports and Other Relevant Documents,” and included on the CD-ROM with these comments – in the administrative record for this project. Also, please send me at the above address all future notices, announcements, draft and final EISs, Records of Decisions or any other materials for this project.

Sincerely,



Brett M. Paben
Attorney for Wild South

cc: Jim Thorsen, District Ranger, Seminole Ranger District, jthorsen@fs.fed.us
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