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Sabrina Stadler, Forest Plan Revision Team
Blue Mountains National Forests
P.O. Box 907
Baker City, OR 97814

**RE: Draft Environmental Impact Statement - Proposed Revised Land Management Plans
for the Blue Mountains National Forests**

Dear Ms. Stadler and ID Team:

Please accept these as the official comments of the BlueRibbon Coalition (BRC), a national trail-based recreation group, regarding the Draft Environmental Impact Statement Proposed Revised Land Management Plans for the Blue Mountains National Forests (DEIS). BRC appreciates and publicly thanks the various stakeholders who participated in numerous public meetings and webinars to create a collaborative atmosphere whereby public input could be used to craft the Preferred Alternative E which seeks to address both resource and access concerns.

This planning process will provide for the programmatic management of approximately 4.9 million acres administered by the Malheur (MAL), Umatilla (UMA), and Wallowa-Whitman National Forests (WAW).

BRC is a national recreation group that champions responsible recreation and encourages individual environmental stewardship. With members in all 50 states, BRC is focused on building enthusiast involvement with organizational efforts through membership, outreach, education and collaboration among recreationists. BRC has members who recreate throughout the Blue Mountains Forests, including access by all forms of motorized vehicles, horses, mountain bikes and hiking. These members have enjoyed this access in the past and have concrete, future plans to continue such access in the future.

OVERVIEW

In regards to Travel Management the DEIS states (Chapter 1, Vol. 1, page 16) the designation of roads, trails, or areas for motor vehicle use is site-specific. The forest plan does not make the site-specific decisions required by the Travel Management Rule, and it cannot set the rule aside or ignore it. The revised forest plans will provide the framework for future transportation system decisions to be made but will not make decisions that designate roads, trails, or areas for motor vehicle use.

The DEIS (Chapter 1, Vol. 1, page 64) continues to state the forest plan revision process does not include determinations for whether or not specific roads and trails will be constructed, maintained, closed, or decommissioned. The primary ways that the transportation system is managed during a plan period are by goals and desired conditions, including open motor vehicle route density, and the general suitability of an area for motor vehicle use or, conversely, the general suitability of an area for non-motorized use only. Decisions on motor vehicle access are made through individual project planning and are reflected on the individual national forest annual motor vehicle use map (MVUM). We acknowledge and generally concur in this view, but note that “zoning” decisions in the forest planning process can often limit options, and have the practical effect of a prohibition on

certain uses, including motorized/mechanized recreation, where such uses are not allowed under the designation. When the forest plans were approved in 1990, cross-country motor vehicle travel was prohibited within much of the Umatilla National Forest. The remaining area that was open to cross-country motor vehicle travel was closed in 2010. In contrast, the 1990 forest plans for the Malheur and Wallowa-Whitman National Forests did not prohibit cross-country travel, unless specific closures were prescribed by order.

It is assumed that cross-country motor vehicle travel within the Malheur and Wallowa-Whitman National Forests will be limited when their travel management plans are completed and implemented. After implementation of the travel management plans, all three national forests will be in compliance with the 2005 Travel Management Rule (36 CFR 212). The forests are waiting on national direction with regards to how to address over-the-snow motor vehicles.

The DEIS (Vol. 1, Chapter 1, pages 65/66) state the Blue Mountains national forests trail system has remained relatively the same for the past 20 years. Currently, additional trail miles are rarely added to the trails system. Reconstruction of trails depends on funding and ranges from zero to 40 miles a year. Trail systems are rarely decommissioned.

Combining motor vehicle use and non-motorized use at trailheads and along travel routes results in occasional conflicts, and contributes to access issues for each user group. As stated in the Recreation section, some trail maintenance issues have been resolved through project-level activities using American Recovery and Reinvestment Act funds. However, with the continuing shortage of allocated funds for trail maintenance, issues will continue to develop with limited funds to address them. There are relatively limited opportunities for motor vehicle use on system trails throughout the three national forests, a limitation that poses additional challenges considering this type of use is increasing both locally and regionally.

The DEIS (Vol. 1, Chapter 1, page 73) makes the assumption that open motor vehicle route density **desired conditions would be met by reclassifying maintenance level 2 roads to maintenance level 1** (custodial care) roads through individual project planning and decision making. While no road maintenance is expected for maintenance level 1 roads, standard practice indicates that areas with site-specific resource concerns would be treated as necessary.

The DEIS (Vol. 1, Chapter 1, page 80) states that implementation of all alternatives, except for alternative A for the Umatilla National Forest, would affect access over time. In every other alternative, open motor vehicle route density would exceed desired conditions, which makes **it likely that site-specific project level decisions would result in road closure or decommissioning as the Forest Service attempts to achieve or move toward the desired conditions.**

Proposed open route densities for all alternatives are meant to be an upper limit, and all alternatives have many areas that would have open routes at a level that is far below the proposed upper limits. It is not the intent of the plan to increase open route density to that upper limit. Rather, in areas that currently have open route density above the level proposed by desired conditions, **it is expected that open routes would be closed as project level decisions are made and implemented throughout the plan period.** All alternatives, except alternative A for the Umatilla National Forest, propose **management direction that would result in the closure or decommissioning of open motor vehicle routes in order to meet desired conditions.** Minimal new road construction would occur for all alternatives.

Road reconstruction would emphasize user safety and prevention or correction of resource impacts. If maintenance funding decreases, roads determined to be unsafe and of low priority for maintenance would likely have to be closed, and the trend of reductions in road maintenance funds is likely to continue. Current trail maintenance levels would continue.

BRC has reviewed the DEIS and attended the June 26 webinar. BRC appreciates the comments made at the aforementioned webinar by the Forest's planning team regarding their efforts to not close any existing motorized route (road or trail) opportunities in Alternative E, the preferred alternative. BRC also appreciates the Forest's commitment to support the current trail maintenance levels and to limit OHV use to existing routes until site-specific travel management plans are completed.

BRC will not attempt an exhaustive review of the proposed boundary adjustments of current motorized and non-motorized land classifications nor will it focus on the appropriateness or inappropriateness of new non-motorized or motorized land classifications. Instead, BRC will offer environmentally sound travel management strategies that both address resource concerns and enhanced trail-based recreational opportunities for future generations.

RECOMMENDED TRAVEL MANAGEMENT STRATEGY

BRC understands the agency's need to balance the goals and objective-related resource management, access, and trail/road needs with limited fiscal and manpower realities. BRC also notes the agency's acknowledgement of limited trail-based recreational opportunities (Chapter 1, Vol. 1, page 66) where it states, "*There are relatively limited opportunities for motor vehicle use on system trails throughout the three national forests, a limitation that poses additional challenges considering this type of use is increasing both locally and regionally.*"

BRC believes the travel management strategies outlined in the DEIS are too narrowly focused on the closure/decommissioning of ML 2 roads or the reclassification of ML2 roads to ML1 roads. BRC believes the agency should expand its strategy to include the following strategies that could enhance the quantity and quality of trail-based recreational opportunities in the project area.

Roads to Trails – Reclassify ML3 roads to ML2 roads. Reclassify ML2 road to motorized trails or manage appropriate ML2 roads as "roads managed as trails." Manage appropriate ML1 roads as "motorized trail." BRC believes the agency should embrace the aforementioned strategies of converting "roads-to-single track trails" or "roads-to-motorized trails less than 50 inches in width" and "roads managed as motorized trails greater than 50 inches in width" as a tool to help it achieve its budget objectives while still providing a substantive and high quality recreational route network.

Wet Weather Closures –Any TMR-based wet weather closure strategy should allow for native surfaced trails and roads to be open when soil conditions/lack-of-rainfall permits. If a wet weather closure is needed, the implementing Forest Order should be for the shortest period of time rather than a longer time period. In NEPA, it is always easier to extend a short closure versus repealing a longer closure.

Minimization – We expect preservationist interests to demand greater restrictions on motorized access, and to feature their view of the agency's "minimization" duty in that campaign. The "minimization criteria" have been around since 1972 and long received only passing interest, but were included in the 2005 Forest Service Travel Management Rule. See, 36 CFR 212.55(b) (requiring agency to "consider effects...with the objective of minimizing" a variety of factors including damage to soil, watershed, vegetation and other forest resources; harassment of wildlife and significant disruption of wildlife habitats; conflicts between motor vehicle and other uses; and conflicts among different classes of motor vehicle uses).

The minimization criteria have acquired teeth largely through recent litigation. This renewed interest springs in large part from the decision by a U.S. Magistrate declaring invalid the Salmon Challis NF travel decision. This decision was issued in 2011, and is published as *Idaho Conservation League v. Guzman*, 766 F.Supp.2d 1056 (D.Idaho 2011). In short, that decision rejected the Forest Service effort to characterize the minimization criteria as providing broad guidance ("consider with objective of minimizing") and interpreted the language as requiring the agency to show, in its NEPA analysis, how it applied the minimization factors in selecting from decision options for specific routes. There have been several more decisions that have followed similar reasoning, which have only

come from federal district courts. The 9th Circuit has on three (3) occasions heard cases involving the OHV “minimization criteria” and has declined to follow the *Guzman* court’s reasoning in two of those cases, with the third still under advisement following argument on November 7, 2013.

The agency has broad discretion applying the minimization criteria and is certainly not obligated to restrict motorized access, particularly in response to the subjective complaints or other “evidence” provided by self-interested nonmotorized use advocates. Several decisions reflect this important truth, most notably the two (2) 9th Circuit decisions on the topic, both issued in unpublished memorandum dispositions. See, *The Pryors Coalition v. Weldon*, 803 F.Supp.2d 1184 (D.Mont. 2011), *aff’d*, 551 Fed.Appx. 426 (9th Cir. 2014); *The Wilderness Soc’y v. BLM*, 822 F.Supp.2d 933 (D.Ariz. 2011), *aff’d*, 526 Fed.Appx. 790 (9th Cir. 2013). The agency cannot be strong-armed into motorized use closures or restrictions, and a well-reasoned and documented balance affording reasonable opportunities to a spectrum of recreational uses will be upheld by the courts. BRC was a party in the Pryors case, and a copy of the Circuit’s decision can be viewed at:

http://www.sharetrails.org/uploads/54-1-Memorandum_decision_01.07.14.pdf

These principles were forcefully punctuated in the U.S. District of Oregon in *Wild Wilderness v. Allen*, __F.Supp.2d__, 2014 WL 1477398 (D.Or. 2014), in which the court found that “tradeoffs between motorized and nonmotorized users have already occurred and will continue in the future. The record demonstrates that the Forest Service is continuing a long, inclusive process to manage winter recreation use on the Cascade Lakes Highway.” The court’s decision may be viewed at:

<http://www.snowmobilers.org/docs/KAPKA-decision-March-2014.pdf>

We encourage the Forests to stay the course generally charted in the DEIS and to continue to provide for meaningful and diverse recreation opportunities, including motorized and mechanized recreation. As in the above-cited cases, the Forests can exercise its discretion to reject preservationist claims for “minimization” and other theories. BRC is committed, as it has demonstrated on numerous occasions, to assist in defense of such reasonable agency decisions against preservationist attack.

SUMMARY

Based on our review of the preferred alternative, BRC believes that a TMR-related strategy that is expanded to include the aforementioned recommendations will allow the agency to meet current and future goals that address resource and recreation needs of the local community.

BRC appreciates this opportunity to be involved in the public planning process on behalf of its members who enjoy recreation in the project areas. Please contact me if you have questions or wish to discuss any aspect of these comments or the ongoing designation process.

Respectfully submitted,



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