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Steve E. Williams, Forest Supervisor  
Attn. Doug Epperly, Project Coordinator  
Custer National Forest  
1310 Main Street  
Billings, MT 59105

Dear Supervisor Williams,

On behalf of Wildlands CPR, please accept these comments on the Beartooth Ranger District's Travel Management Plan Draft Environmental Impact Statement ("DEIS"). The Beartooth Ranger District is a unit of the Custer National Forest ("NF").

Wildlands CPR works to revive and protect wild places by promoting watershed restoration through road removal, preventing new road construction, and stopping off-road vehicle abuse. We work cooperatively with diverse communities to protect and restore our remaining wild places, fostering a growing citizenry that supports our goals. Wildlands CPR has more than 450 members nationwide, and over eighty members in Montana. Wildlands CPR routinely comments on numerous forest management decisions in this region and across the nation.

Wildlands CPR supports the efforts of the Pryors Coalition, which formally submitted comments on the Beartooth Ranger District Travel Management Plan DEIS. The Pryors Coalition outlined a plan for achieving a balance between recreation and ecosystem health in the Pryors area of the Beartooth District. Wildlands CPR has specific comments that go beyond the issues identified by the Pryors Coalition, but we would like to incorporate by reference their comments to improve Alternative C. As developed by the Custer NF, Alternative C does not represent the Pryors Coalition's vision for the area and we support their comments asking for this to be rectified.

## **I. Compliance with Executive Orders**

All current direction and authorities that allow, restrict, and prohibit vehicle use off roads on National Forest lands are tiered from Executive Order (E.O.) 11644, signed by President Nixon in 1972, and modified by President Carter's E.O. 11989 in 1977. These executive orders should be the guiding principles for all decisions related to OHVs. The orders state that the route designation procedures "will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands."<sup>1</sup> In

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

accomplishing this broad goal, the executive orders specifically require that the designation of motorized areas and trails shall be in accordance with the following:

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

We agree with the strong language above; off-road vehicles should be permitted *only* where they do not excessively interfere with other recreational uses or damage natural resources.

It appears the Custer NF has a flawed understanding of the Executive Order requirements and implementing regulations. A mere mention of the Executive Order does not constitute compliance; the DEIS must also acknowledge the Forest's duty to minimize those impacts and explain how that will be accomplished, and by what standards such minimization is measured.

The DEIS examined relative impacts of the alternatives, in deference to the National Environmental Policy Act ("NEPA"). However, NEPA alone does not satisfy the E.O. requirements. If that was the case, the Travel Management Rule would be redundant and unnecessary. The intent of the E.O. is to minimize the impacts of ORV use on forest resources and other recreationists and neighbors. The EIS must not only disclose and compare the impacts of each alternative, it must provide a plausible reasoning that the decision resulting from the disclosures in fact minimizes those impacts. Simply claiming that impacts were considered and providing cursory rationales for choosing an alternative does not meet the E.O. requirements to minimize those impacts.

#### Trail Management in Violation of the Executive Orders

Of particular concern is the proposal to designate system and non-system routes as trails open to all vehicle types. We challenge how these designations can be construed to minimize impacts, as directed by the E.O., and we also challenge that a "trail" that can accommodate vehicles over 50" is really anything other than a road. We are aware that the definition of a trail under the Travel Management Rule allows vehicles over 50" in width on trails. However, this designation ignores the impacts of motorized use and blurs the line that should be maintained between roads and trails. Instead, motorized trails that are designated for vehicles over 50" should be called what they are - Maintenance Level (ML) 2 roads - and maintained as such.

The definition of "road" in the travel management directives is carried forward from the definition contained in the final Roads Rule, Roads Policy, and Roadless Rule, with minor

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<sup>2</sup> Exec. Order 11644 § 3 (1972) as amended by Exec. Order 11989 (1977).

modifications. The new definition is as follows: “Road. A motor vehicle route over 50 inches wide, unless identified and managed as a trail” (36 CFR 212.1).

There is a long history regarding the definitions of “road” and “trail” as related to Forest Service management. The new definitions of road and trail provide very little information about the characteristics of these different types of routes and what the real differences in on-the-ground impacts are between a road and a motorized trail. One might say that the principle difference between a road and trail is “what the Forest Service chooses to call it.” One of our concerns stems from the fact that once a road is reclassified as a trail, it is no longer considered in road density analyses and it no longer receives the same maintenance. Furthermore, it increases the likelihood that such a route would be allowed to remain in a roadless area, when closure and/or decommissioning may be a preferable option.

At a minimum, we recommend that the Forest Service provide detailed guidance on what “trail character” means. Otherwise, the Forest Service can indiscriminately convert roads to trails and the ecological impacts of a decaying road will remain unaddressed, and definitely not minimized, as required by the E.O. Second, if the Forest Service insists upon designating any motorized trails open to all vehicles, the effects of these trails should be evaluated the same way a road would be during wildlife and other environmental analysis. To make this process easier and simpler for the Forest Service and to minimize future environmental impacts of these motorized trails, it would make more sense to designate motorized trails that are open to vehicles over 50” as ML 2 roads, which would receive more regular and more stringent maintenance.

Finally, since non-system routes were never constructed to any standard, their environmental impacts could be, and likely are, greater than system routes. Therefore, the designation of any non-system route as a motorized trail should also include an assessment of current compliance with trail construction standards and how any areas of non-compliance will be addressed.

## **II. NEPA Compliance**

Regulations guiding NEPA requirements are clearly stated in the Code of Federal Regulations and have been clarified through several court rulings. Three of NEPA’s key features are to “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated” (40 CFR 1502.14(a)); provide “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action” (40 CFR 1501.7); and to take a “hard look” at potential impacts.<sup>3</sup> Unfortunately, this DEIS fails to meet these requirements and in several places the objectivity of the evaluation is questionable.

### Public Input

The DEIS explains that the initial scoping document was sent out in February, 2004 containing the proposed action, purpose and need, and that legal advertisement inviting comments was placed in the Billings Gazette (Billings, MT) in February 2, 2004, (DEIS p. 2-1). A series of public meetings were held during that month and then no action was taken until a new round of

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<sup>3</sup> 40 C.F.R. § 1502.14; *Montana Wilderness Ass’n v. Fry*, 310 F.Supp.2d 1127, 1143 (D.Mont. 2004)

public meetings began in July, 2006. Another series of collaborative meetings were held from January through April 2007. All of these meetings were presumably part of the scoping process beginning in 2004, so it is reasonable to assume that the public was commenting on the *Beartooth Ranger District Travel Management Proposal* from 2004.

After the meetings in 2007, the Custer NF published a Notice of Intent (hereafter “NOI”) to prepare an environmental impact statement in the Federal Register on July 25, 2007 (Volume 72, Number 142). The NOI stated “[g]iven that scoping has been conducted and that numerous public meetings have been conducted, comments are not being requested at this time.” It is Wildlands CPR’s opinion that 40 CFR 1501.7 applies which states that “[a]s soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).” This rule clearly states that the scoping period will begin **after** the publication of an NOI to prepare an EIS, and that the agency shall invite the participation of interested parties; the process leading up to the NOI’s publication can be considered pre-scoping.

Furthermore, the DEIS explains that, “[t]o comply with the 2005 Motorized Travel Rule, the original proposed action has been re-formatted,” and “[a] limited number of actions were dropped because conditions or use had changed, or the original basis for the proposal was not clear,” (DEIS p. 1-4). More than a limited number of actions were dropped from the action proposed in 2004, including the discussion of snowmobile use and the specific type of use appropriate for roads and trails. In other words, the proposed action changed significantly from 2004 to 2007, yet there was no official scoping conducted on the new proposed action and the agency instead went right to publishing a DEIS. The general public did not have an opportunity to comment on the proposed action since it was not released prior to the publication of this DEIS. This is in violation of the regulations stated above.

### Dispersed Camping

With regard to the dispersed camping exemption found in 36 CFR 212.51(b), the Travel Management Rule as published in the Federal Register states: “The Department expects the Forest Service to apply this provision sparingly, on a local or State-wide basis, to avoid undermining the purposes of the final rule and to promote consistency in implementation” (68285 FR Vol. 20 No.216). Guidance from the Regional Forester further states that, “Supervisors will follow national direction and apply this provision sparingly and on a route by route basis. You are also encouraged to consider alternatives to this provision such as individual route designation.” (Regional Forester Kimball letter, file code 2350/7700).

While the interpretation of the word “sparingly” allows for some discretion, we feel that the Beartooth DEIS went well beyond its common definition of “marked by or practicing careful restraint (as in the use of resources).”<sup>4</sup> The DEIS itself references the Regional Guidance when speaking about big game retrieval, and it is unclear why it would follow regional guidance for one exception, and not for the other. (See p. 1-6, stating that “...for Region One of the Forest Service, Gail Kimball, provided guidance that stated, ‘Travel off route for big game retrieval is not recommended and must have Regional Forester approval prior to initiating any proposals that

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<sup>4</sup> Merriam Webster’s On-line Dictionary, <http://www.m-w.com/dictionary/Sparingly> (last accessed Dec. 10, 2007).

consider off route use for this purpose.”). The preferred alternative would allow the Dispersed Camping exemption for all but two routes: “This alternative allows for off-route travel to access dispersed campsites up to 300 feet off of designated routes except along system road #2421 (Main Fork of Rock Creek) and system road #2071 (West Fork of Rock Creek)” (DEIS p. 3-33).” This cannot be considered “sparingly” applied, nor designated route by route. The decision to allow such a blanket exemption could be interpreted as a violation of the travel management rule, the executive orders, and made arbitrarily in violation of NEPA. Any preferred alternative needs to have the Dispersed Camping exemption applied sparingly, with route-by-route analysis that takes a hard look at potential impacts to each resource identified in the DEIS – Affected Environment chapter.

### Range of Alternatives

In this DEIS, the Custer NF has not provided an adequate range of alternatives. Unfortunately, each action alternative adds non-system routes to the existing system. These non-system routes may have been created in violation of 36 CFR 261.15(h) which states, “[i]t is prohibited to operate any vehicle off National Forest System, State or County roads: (h) [i]n a manner which damages or unreasonably disturbs the land, wildlife, or vegetative resources.” Therefore, in instances where operation of a vehicle resulted in damage or unreasonable disturbance of land, wildlife, or vegetative resources, the creation of non-system routes were illegal. In order to have an adequate range of alternatives, the DEIS should have developed an alternative that does not add non-system routes to the existing system.

We feel there should be one or more alternatives that meets the requirements of 36 CFR 212.5(b)(1) that responsible officials “must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands;” and also meets the requirements of 36 CFR 212.5(b)(2) that responsible officials “identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for non-motorized trails.”

We also believe that there should be one or more alternatives that meets the requirements under EO 11644, as amended by EO 11989, to minimize effects and conflicts. The DEIS states that “[t]he 2005 Motorized Travel Rule is the agency’s implementation of these executive orders,” (DEIS p. 1-10). Simply considering the potential negative impacts for each alternative is not minimizing effects or conflicts, and the Custer NF must provide an alternative that meets the E.O. requirements (see discussion above).

Finally, while Alternative C represents some of the Pryors Coalition’s vision for the Pryors Unit, it does not fully incorporate its proposals to create non-motorized zones, or protect route #2088 from motorized use. We provide more comments on this in our discussion of the Affected Environment- Human Environment discussion below.

### No Action / Baseline Issues

The No Action Alternative inaccurately labels non-system routes as existing system roads; this error needs to be corrected. Specifically, the DEIS states, “[t]his No Action Alternative largely reflects the set of system roads identified in the 1987 Travel Plan along with modifications that have been made to the system since 1987.” However some roads tabulated and mapped in the No Action Alternative were not in the 1987 Travel Plan and no records exist demonstrating that they have since been officially added to the system. Specifically, in the 1987 Travel Plan, Rd. #2088 ends at Crater Ice Cave, but the No Action Alternative shows this road extending an additional 5 miles to the west. Route 2095A does not appear in the 1987 Travel plan, but it is currently in the No Action Alternative. Finally, the 1987 Travel Plan does not include the approximately 2 mile Bear Canyon Ridge #2814, but it also appears in the No Action Alternative.

In our view, the appropriate baseline of existing system routes consists of those routes which have been documented in relevant NEPA analysis. We believe that any routes lacking documentation (including routes which were constructed or came into being before NEPA was enacted) should be analyzed as new unauthorized routes, in recognition of that fact that there is no record of administrative decision or analysis addressing the environmental impacts of motor vehicle use on these routes. Although we recognize the challenges associated with locating adequate supportive documentation given a past history of poor recordkeeping, we fundamentally reject the position that justification for a specific route can be established solely based on a route’s inclusion in the INFRA database. We understand that past travel management decisions should be respected—provided that conditions on the ground resulting from these decisions do not trigger the emergency closure provisions of the EO 11644—but the Forest Service must be careful not to assume that certain decisions with respect to motorized use have been made, when in fact they haven’t.

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

### Inadequate NEPA Analysis

We have identified numerous instances of inadequate analysis in our comments on the DEIS’s Affected Environment section. However, in general, the effects of each alternative on the character of Inventoried Roadless Areas (“IRA”) were never adequately analyzed. These areas are mentioned generally in chapter 1 where it states that there will be no road construction in these areas and that, “The designation of an existing road in an Inventoried Roadless Area is not in conflict with current guidance,” (DEIS p. 1-10). Table 1-2 summarizes the road segments for motorized use in the IRAs for each alternative, but there is no further analysis of potential impacts to IRAs in any other section of the DEIS. This is especially troubling since the preferred alternative allows 300 ft dispersed camping off all motorized routes except two. No information was provided on how enforcement will be directed to ensure prevention of illegal use. This lack

of analysis and the decision not to include a section evaluating potential impacts to IRAs is arbitrary and capricious, and in violation of NEPA.

We were especially disappointed not to see any resource maps associated with each section of the Affected Environment, or maps that show the existing system routes versus existing non-system routes and which of the non-system routes are being proposed for additions. We would like to have seen a correlation between these additions with resource data and engineering data that illustrates how these routes meet design criteria for safety and resource protection. Without these specific maps, it is difficult to adequately comment on the alternatives.

### **Affected Environment**

**Below are our specific comments on the analysis, organized by issue numbers from the “Affected Environment” section of the DEIS.**

#### **Issue #2 - Human Environment**

This section looked at the potential for conflict among the different expectations of forest users with a primary focus on recreation. The DEIS pointed out that conflicts are usually centered around personal values rather than direct user-conflicts recreationists experience on a specific route. The DEIS states, “It is difficult to say to what degree the conflict may be increased or decreased by alternative, because individuals will respond differently to each alternative. However, none of the alternatives wholly eliminate either motorized or non-motorized use, so the alternatives are not expected to increase the conflict to the degree that some users feel they have been entirely precluded from having opportunities compatible with their personal values.” (DEIS p. 3-16).

The threshold established with this reasoning is flawed in that the determination of an unacceptable degree of conflict would only occur in the event that one user was entirely precluded from opportunities in line with their values across the whole planning area. This all or nothing delineation is artificial as there are many ways to minimize user-conflicts route-by-route and in discrete areas. Unfortunately, the DEIS failed to show a route-by-route analysis of the potential for user conflicts, and instead gave a listing in Appendix C of each route with a column for specific rationales. Providing a rationale does not substitute for a hard look analysis that is required under NEPA.

During public meetings attendees were asked to identify routes that everyone could agree to designate for motorized use; these are included in each action alternative. Yet there is no corresponding list of routes where people identified the potential for user conflicts or where exclusive nonmotorized use could be agreed upon. It would be reasonable to assume that those routes not agreed to for designated motorized use would have the potential for user-conflicts. However, there is no alternative analyzed that measures or even describes the potential for user conflict on these routes. Nowhere in the DEIS does the Forest Service demonstrate that each proposed route change was analyzed in order to minimize user conflicts as required by EO 11644 as amended by EO 11989.

Furthermore, the Custer NF had the opportunity to reduce user conflicts within the Pryors Unit if it had incorporated a zoning approach. The DEIS states, “The public proposed concepts for zoning motorized and non-motorized use on the Beartooth Ranger District to reduce user conflicts. One proposal suggested designating the area south (East) of Highway 212 for motorized use and designating the area north (West) of Highway 212 for non-motorized use. A second proposal suggested identifying Riding and Hiking areas, “quiet areas”, or non-motorized enclaves in the Pryor Unit,” (DEIS p. 2-10). This approach was arbitrarily dropped from consideration with the following rationale: “This analysis is largely focused on the designation and use of routes (roads and trails), rather than prescriptive land use direction that would require amending current Forest Plan land use direction which is beyond the scope of this analysis.” (DEIS p. 2-10).

Evidence that this is an arbitrary and capricious elimination of an alternative can be found in Appendix B of this DEIS, which is devoted entirely to Custer Forest Plan amendments that would be needed to implement each action alternative. In fact, Table 2-2 states in part, “All action alternatives will vary somewhat from current Forest Plan direction. An amendment to the Forest Plan will occur once a decision is made to reflect the decision to the EIS.” See Appendix B,” (DEIS p. 2-12). By not incorporating the zoning approach, the DEIS failed to adequately analyze a full range of alternatives in violation of NEPA, and by not analyzing each route for potential user conflicts the DEIS failed to take a hard look at potential negative impacts in violation of NEPA. Finally, these failures ensure that any action alternative chosen will be in violation of EO 11644 as amended by EO 11989.

### **Issue #3 - Recreation**

#### Inadequate NEPA Analysis

Much of the analysis in this section is based upon the National ROS Inventory Mapping Protocol which is meant to implement the ROS guidelines found in 1982 ROS Users Guide as directed by Forest Service Manual 2310 and 2330. When delineating ROS classes, the 1982 Users Guide directs land managers to “[d]istinguish between two levels of roads, ‘primitive roads,’ and ‘better than primitive roads’.” (p.16). In its description of semi-primitive, the Forest Service Manual includes “primitive roads.” (FSM 2330.3, Exhibit 1). Even more, the Forest Service Handbook 7709.55 Chapter 33.2 states, “As a part of the consideration of off-highway vehicle management, the transportation planner needs to recognize the potential for OHV (including all terrain vehicles (ATV)) use on forest development roads.”

The importance of these excerpts is to demonstrate that the semi-primitive motorized ROS classification includes primitive or forest development roads in its determination. Forest Service roads have specific classifications for maintenance levels (ML) that help inform management activities, as issue #11 “Maintenance and Administration of Roads and Trails” of this DEIS demonstrates. In describing the different maintenance levels the Forest Service Handbook 7709.58 Chapter 12.3 describes ML 2 level roads as appropriate for high clearance vehicles. In fact, when estimating costs for maintaining a motorized route system, Table 3-79 places ML 2 roads within the section of routes appropriate for high-clearance vehicles, along with Trail Class

2 and 3 (DEIS p. 3-200). Table 3-77 lists ML 2 roads by alternative with the preferred alternative containing 135 miles.

Yet in the Affected Environment – Recreation section, ML 2 roads are left out of the semi-primitive motorized ROS classification even though the guidelines stated above clearly provide for their inclusion. In fact, the definition provided in the Beartooth DEIS states, “Semi-Primitive Motorized settings extend about one-half mile on each side of a **trail** where motorized OHVs are legal to be used.” (emphasis added) (DEIS, p.3-21). With this definition the Forest Service arbitrarily excluded all roads from the semi-primitive motorized ROS classification, thereby providing an artificial evaluation of effects for the entire recreation analysis in violation of NEPA. At the very least, each ML 2 road should be identified, and an explanation given why it does not fall within the semi-primitive motorized ROS classification. Until these corrections are made, the Custer NF cannot adequately determine the cumulative impacts of the alternatives.

We are concerned that the DEIS did not adequately analyze the negative impacts to the quiet recreationists’ experience from motorized use. The Beartooth DEIS states “Resource damage directly attributable to OHV use is readily apparent on certain trails and in some areas, but has not been quantified for the analysis area. Forest road and trail condition information in the INFRA database and Forest Roads Analysis primarily concerns the infrastructure itself rather than its effect on other resources.” (DEIS 3-20). This statement raises concerns about the adequacy of the analysis and the ability to evaluate the cumulative effects of each alternative. If the resource damage is apparent on specific routes, then it should at least be qualified, if not quantified, in order to adequately analyze any already occurring and future potential impacts. This is important because trail conditions directly influence the recreation experience; hiking a rutted-out, two track trail is a very different experience than hiking a single track trail in good condition. The Forest Service uses Trail Classes for determining maintenance needs, and the DEIS should identify any trails that have resource damage. Such information is not provided in the DEIS or illustrated on any maps, and in order to properly comment and for the decision maker to make a well-informed decision, this problem needs to be corrected.

### Visitor Use

Table 3-15 shows that OHV use was 2.9% versus 47.8% for hiking/walking in the Custer National Forest’s 2003 National Visitor Use Monitoring Report. The table also projected OHV use to increase 7.9% by 2018 while hiking/walking would increase 8.0%. In regard to these projections, the DEIS states, “The information also suggests that there is possibly a greater volume of users seeking non-motorized activities than motorized activities, but that the projected rate of increase in volume is anticipated to be nearly the same for both activities. This suggests that there may not necessarily be an obvious, dominant future demand for one or the other types of activities.” (DEIS 3-31). This conclusion is not supported by the accompanying statistics, considering that not only do the visitor use numbers show that far more visitors engage in hiking than in OHV use in the present, but also that an 8% increase of 271,866 hiking/walking visits (an additional 21,749 hikers/walkers) is significantly larger than a 7.9% increase of 16,494 OHV visits (an additional 1303 OHV visits). Looking at the projections for non-motorized use, it is clear that such activities will continue to dominate future use, and in order to minimize user conflicts, the preferred alternative should reflect this fact.

We have particular concerns that the preferred alternative does not adequately meet the visitor use projections in the Pryors Unit. The current preferred alternative, Alternative B, designates 63 percent of the unit for motorized use in the ROS classification system. The more protective Alternative C still designates 53 percent of the unit for motorized recreation, dedicating over half of the unit to motorized users who will still constitute a significantly smaller percent of visitors by 2018. No alternative was developed that accurately reflects the visitor use projections; comparing two alternatives that are only 10 percent apart in motorized use designations is not meeting NEPA's requirement to analyze a full range of alternatives.

### Noise

The DEIS states that the "Recreation Opportunity Spectrum (ROS) settings are used in this analysis to address effects from noise by Alternative." (DEIS p. 3-38). Obviously, since there are problems with how the Semi-Primitive Motorized ROS classification was determined, as explained in the section above, then the noise analysis based upon that ROS classification is suspect as well.

In addition, the DEIS should have a more specific analysis that evaluates how noise will impact non-motorized recreation opportunities outside of the Wilderness areas and IRAs. The DEIS states that "The Semi-Primitive Non Motorized and Primitive category predominates because of the Wilderness, Inventoried Roadless Areas and the topographic constraints inherent to the landscape of the analysis area." (DEIS p. 3-39). Lumping the Primitive and Semi-Primitive Non-Motorized ROS classes together obscures the fact that recreation opportunities are different between Wilderness, IRAs, and other areas. Not all recreationists have the opportunity or ability to travel into the Wilderness area or IRAs. The DEIS should recognize quiet recreation opportunities in these terms, delineating the time it takes to reach these areas from local population centers and the degree of difficulty involved with recreating there. Just stating that non-motorized recreation opportunities represent a specific percent of each alternative does not adequately illustrate these variables, and therefore the DEIS does not adequately analyze the noise impacts on non-motorized recreation opportunities.

Finally, measuring noise impacts purely in recreational terms is problematic since noise from motorized recreation affects more than other people's experiences. It affects wildlife as well. In the above quote, the DEIS mentions topographic features, but the documents does not illustrate or describe these features and how they affect noise distribution in the planning unit. In fact, the DEIS provides some detail for noise and distance in relation to open or forested terrain (DEIS p. 3-37), but it does not apply this data in its analysis methodology. Without adequate analysis the DEIS cannot determine the cumulative impacts from other activities. The National Park Service has planned for and modeled natural quiet in some of their units, including the Grand Canyon, Rocky Mountain National Park, Hawaii Volcanoes National Park, and Yosemite National Park. We recommend using the Park Service's approach to measuring noise impacts.<sup>5</sup>

### **Issue #4 – Cultural Resources**

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<sup>5</sup> See National Park Service. 2005. Acoustics and Soundscape Studies in National Parks. NPS Natural Sound Program, Fort Collins, Co.

## Consultation with Montana State Historic Preservation Office

As admitted in the Draft EIS, “[m]otorized use, and to a lesser degree, non-motorized use, of public lands is an activity that has disturbed or damaged cultural sites in the past and, in many instances, continues today.” The National Historic Preservation Act (NHPA) requires consultation with the appropriate State Historic Preservation Office (SHPO). There is no indication in the DEIS that the SHPO was consulted. In fact, in the Appendix that lists consulting entities, the SHPO is conspicuously absent. The “MT Programmatic Agreement” also requires that all properties which may be affected by the undertaking be evaluated and SHPO consulted or that the Forest Service make a “no inventory decision” that determines that an inventory is not necessary for the proposed project.

There is no indication that a formal “no inventory decision” was made. Instead, inventory has been delayed until a final decision is made, if ever (“additional inventory may be required”). (DEIS p. 3-48). It is not clear how a decision on the impacts of the proposed action can be determined without having this information up front. Even Forest Service guidance on implementation of the NHPA states that “Designations of new or unclassified routes must be based on appropriate inventory of historic properties within the Area of Potential Effect (APE), considering local conditions and inventory protocols, the degree to which designation of a route will change existing use patterns, and the probability of finding historic properties.” *USDA Forest Service Policy for Section 106 of the NHPA Compliance in Travel Management: Designated Routes for Motor Vehicle Use* at 3. A final problem with the lack of inventory prior to making a decision is that there is no process for determining the need for a future inventory, no listing of measures to be taken if a cultural resource is discovered in the APE of a trail, and no indication as to whether an inventory or decision on an inventory is required before the MVUM is published.

The consultation requirements under the NHPA have not been met and should be fulfilled before the final EIS and decision are issued. At a minimum, any route that has not been properly inventoried should not be placed upon the MVUM until such inventory occurs and the effects of the route and increased access to an area are determined and minimized.

## Range of Alternatives

In this DEIS, the Custer NF has not provided an adequate range of alternatives. There is no alternative that fully evaluates the existing cultural resources and protects those resources from damage caused by motorized vehicles and increased access. The draft EIS acknowledges that increased motorized access to remote areas “has increased vandalism of the cultural resource and general degradation of the historic and natural landscape” (DEIS p. 3-48) and yet there is no alternative that limits motorized access to these vulnerable areas. An alternative that fully protects cultural and archaeological resources should be fully evaluated and the likely environmental consequences of not limiting motorized access should be fully disclosed.

Cultural resources do not receive sufficient protection in any of the proposed alternatives and the proposed alternatives do not comply with the requirements of the National Historic Preservation

Act, 16 USCS § 470f or the direction in EO 11644, as amended by EO 11989, to “minimize impacts” to cultural resources. These deficiencies should be remedied before the final EIS and decision notice is issued.

#### Inadequate NEPA Analysis

We commend you for your decisions to close road #20952 to public access and loop routes #2308B and 2308B1 to motorized use in Alternative B. However, we are concerned that there is no discussion in the environmental consequences section on p. 3-50 of how these areas will be closed and how closures will be enforced. No mitigation or enforcement plan has been disclosed, and without such plans it is highly unlikely that public motorized use will stop of its own volition. The statement that “hopefully no further vandalism” does not carry the strength of conviction. (DEIS p. 3-50). The only reference to monitoring of archaeological resources was found in the cumulative effects section, where reference was made that “[m]onitoring site conditions will continue in support of travel management as well as other Forest undertakings such as range development, fuels and timber management. Mitigation of these effects and site protective measures will continue to be employed in consultation with SHPO.” (DEIS p. 3-52).

This general reference cannot be described as sufficient disclosure of the monitoring or mitigation that will occur to protect these resources. What methods will be used to minimize impacts? How frequent will monitoring rotations be? What actions will be taken when damage to resources occurs? An adaptive management plan should be put in place with specific thresholds for what constitutes damage and when those thresholds are met, the area is automatically closed until the damage and the source of the damage is eliminated, as is required by EO 11644, as amended by EO 11989.

Simply acknowledging that resource inventories have not been completed on the 44.62 miles of motorized trails proposed in Alternative B and that more inventories should be done on dispersed camping areas does not satisfy the “hard look” provisions of NEPA.

Until a baseline of resources is established, it is impossible to ascertain what the true effects of a proposed action will be. The draft EIS frequently states that Alternative B “may reduce” or “may threaten” certain cultural resources. These uncertainties should be more fully disclosed and alternatives suggested for reducing the uncertainty that appears to dominate the future protection of these irreplaceable resources. If additional public access in the Beartooth Christen Ranch road “may threaten” the preservation of these resources, then additional public access should not be allowed until it is certain what the threat is and that the threat has been eliminated. If it is absolutely necessary that this road remain open to motorized access, then an Adaptive Management Plan should be put into place, as described above. A similar problem exists in the analysis of access to the Dryhead Overlook (DEIS p. 3-64; seasonal access “may reduce” existing problems; changes “may ensure” use of the area for traditional religious activities).

Within the Pryor Unit, why is seasonal use of 20972 allowed when it provides access to a remote area of the unit and exposes a traditional cultural property (TCP) to potential vandalism? As admitted in the DEIS, “including this route could lead to the loss of this irreplaceable cultural resource.” (DEIS p. 3-64). This is an unacceptable consequence and this route should be closed.

Motorized access to the Shriver Peak area should not be allowed, based upon the statement that “Any increase in access to this area threatens the pristine site setting and introduces the likelihood of vandalism, much as is occurring to the Dryhead Overlook TCP features.” (DEIS p. 3-65). Traditional cultural properties suffer a similar fate as the archaeological resources discussed above. There is no real discussion of how these resources will be benefited or protected from degradation by the proposed alternatives. There is insufficient discussion of mitigation and monitoring, and no plan of action if resources are continued to be damaged. Even though the DEIS acknowledges that the importance of the Pryor Mountain Unit to the Crow tribe cannot “be overemphasized” (DEIS p. 3-54) there is little indication that the effects of motorized access to the resources of the Pryors were fully assessed.

These deficiencies in information and analysis should be remedied before a final EIS and decision are issued.

### Dispersed Camping

The “no action” alternative environmental consequences admits that “[t]he allowable motorized travel up to 300 feet off existing roads, in order to access dispersed camping areas, continues to result in damage to sites.” (DEIS p. 3-51). However, the environmental consequences section for Alternative B, which allows a dispersed camping buffer of 600 feet, does not directly address or admit to the damage that is already caused by dispersed camping. There is no rational reason to believe that this damage will stop on its own in the near future. Instead, the discussion of effects in all alternatives is dismissed by stating that “additional cultural resource inventories within the 600 foot wide corridor centered along road and trails” are needed and by identifying “the possible need for designating site-specific dispersed camping locations in order to prevent disturbance to cultural sites.” (DEIS p. 3-50). Damage to cultural sites is currently occurring due to unregulated dispersed camping and the alternative adopted should greatly limit the access to dispersed camping by designating sites “sparingly” as directed in the 2005 Travel Management Rule.

Why is dispersed camping along the West Fork of Rock Creek, Main Fork of Rock Creek, and the West Fork of the Stillwater allowed if it will “continue to affect cairn features concentrated along these routes” (DEIS p. 3-64)? Further damage should be prevented to these features by allowing dispersed camping only at designated camping facilities along the West Fork of Rock Creek and the West Fork of the Stillwater that have been fully reviewed for their effects on cultural resources. Sites should only be designated on the Main Fork of Rock Creek if they will not “continue to affect cairn features.” In addition, dispersed camping at the end of the Shriver Peak Road should not be allowed unless it can be assured that damage to resources will not occur from that access (“Dispersed vehicle camping at the end of the route may begin to affect cairn locations much the same as is occurring in the areas of the Beartooth unit,” DEIS 3-65). It is also unclear why a loop that is projected to be quite popular to motorized use is being designated in this sensitive area. It is unrealistic to believe that damage will not occur in one area that is already occurring at many others.

### **Issue #5 – Soils**

“Route construction and use eliminates the protective vegetative cover, compacts the exposed soil surface, generates and concentrates runoff, and causes accelerated soil erosion,” (DEIS p. 3-69). The DEIS goes on to explain, “These impacts are normally accepted as a necessary measure to provide access to and within public lands, as long as most impacts are limited to the immediate area of disturbance, the road or trail can be maintained at a reasonable cost, and permits use as long as it’s needed,” (DEIS p. 3-39). The DEIS further explains that applying Best Management Practices (hereafter “BMPs”) will ensure that these objectives are met.

### Inadequate NEPA Analysis

We are concerned about how designating roads and trails for motorized use will impact the soil productivity in the planning area given that Regional Soil Standards do not apply to dedicated uses, and the BMPs are the only method for ensuring soil productivity in relation to roads and trails. The DEIS states, “There are a number of miles of unclassified roads and trails that are not on the transportation system, as well as those that are on the system that are causing soil impacts beyond what is normally accepted because they fail to meet the standards of BMPs.” (DEIS p. 3-69). We feel that in order for the Custer NF to ensure meeting the Executive Order mandate to minimize damage to soils, it should provide a plan and implementation schedule for removing any non-system routes after the release of the Beartooth District MVUM. Without such a plan the Custer NF’s environmental analysis of soils in the planning area would be inaccurate since these non-system routes were not included in the current cumulative impacts analysis.

The DEIS provided a good list of the Erosion Risk Ratings for the Land Type Associations across the planning area. Table 3-28 titled, “Route Miles by Erosion Hazard Rating by Alternative” lists the erosion ranking for each alternative. The table did not differentiate between trails and roads, or provide a listing of the different trail classes and road maintenance levels. This information is necessary to adequately analyze the effects of the different alternatives. Finally, in order to adequately analyze soil impacts among the alternatives, the DEIS needs to identify cryptobiotic soils in the planning area and detail how these fragile soils will be protected.

In addition, the DEIS did not analyze the impacts to soil productivity in relation to the broad use of the Dispersed Camping exemption, which allows for use within 300 ft of a road or motorized trail, potentially creating a 600 ft impact corridor along each route. We would like to see a map illustrating this impact zone in relation to soil types and erosion rankings.

Of particular concern is the preferred alternative’s designation of non-system routes to motorized trails open to all motor vehicles. In order to meet NEPA’s requirement to take a hard look at potential impacts, a site specific analysis for how each of these additions will impact the planning unit soil productivity is necessary. In order to adequately comment on all non-system additions, they should be illustrated on a map with the soil types and erosion rankings.

Since all roads and trail were treated the same, the DEIS failed to adequately analyze the impacts to soil productivity among the different alternatives. For example it states for Alternative B, “Off-site deposition of eroded material, soil erosion from roads and trails, and concentrated runoff would be reduced over time as more of the road and trail system is brought up to standard

and BMPs are implemented. These effects would occur on both the motorized and non-motorized routes in the system,” (DEIS p. 3-75). Given that the DEIS already stated that non-motorized trails have less impacts than motorized routes, the DEIS should provide a breakdown of each trail class type and road maintenance level with information on what mitigation needs would be necessary for each. The DEIS should provide evidence that the BMPs adequately minimize soil impacts before making a blanket statement that there will be no significant impacts from the preferred alternative. We would like to point out that reduced impacts does not necessarily equal adequate mitigation, or meet the E.O. requirement to minimize impacts.

### Range of Alternatives

All of the action alternatives include some motorized route designations in the high erosion soil category. (See Table 3-28). In order to meet NEPA requirements for an adequate range of alternatives, one alternative needs to be developed that avoids and protects these soil types, in addition to mitigating the effects to soils with medium erosion risk ratings using proven mitigation techniques. Given that “The magnitude and extent of soil impacts are generally the least on trails designed for non-motorized uses compared to roads and motorized use trails,” (DEIS p. 3-73), we feel that in order to meet the E.O.’s mandate to minimize impacts the Custer NF should not designate motorized use on any highly erodible soils, and should implement demonstrated mitigation measures for all other soil types.

## **Issue #6 – Water Quality, Fisheries and Aquatics**

### Water Quality

In order to comply with state and federal water quality standards and the Forest Plan, all routes that are known to be causing water quality problems should be closed until appropriate actions can be taken to prevent further water quality degradation. Continued motorized use of routes known to cause water degradation is in direct violation of the Montana Water Quality Act, Surface Water Quality Standards, which “require that land management activities must not generate pollutants in excess of those that are naturally occurring, regardless of the stream’s classification.” Though BMPs are often considered to be sufficient to satisfy this requirement, if motorized use of a route is in violation of the Surface Water Quality Standards, even with application of the BMPs, then the route should be closed until further degradation can be avoided.

The DEIS refers to the use of BMPs to satisfy the requirement of preventing degradation or contributing to degradation of already limited streams, and states that BMPs will be more fully discussed later. (DEIS p. 3-77). However, no specific discussion of BMPs, as relating to water quality, can be found in the DEIS, other than a laundry list of general BMPs<sup>6</sup> which does not specify when application of these BMPs is triggered, how they are implemented, or how

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<sup>6</sup> “guidelines for determination of cumulative watershed effects; management by closure to use; management of off-road vehicle use; protection of water quality within developed and dispersed recreation areas; location of pack and riding stock facilities in wilderness, primitive, and backcountry areas; transportation planning; location and design of roads and trails; road and trail erosion control plan; maintenance of roads; traffic control during wet periods; and trail maintenance and rehabilitation” p. 3-77.

effective they have proven to be. There is no explanation for how the “reasonableness” of BMPs is determined or whether their application provides for the protection of “present and reasonably anticipated beneficial uses.” (See ARM 17.30.602(25)). Chapter 2 refers to the “Soil and Water Conservation Practices Handbook,” housed at FSH 2509.22, as containing the applicable BMPs. The internet site for Forest Service directives does not contain a FSH 2509.22. Region 2’s Soil and Water Conservation Practices Handbook appears to be housed at FSH 2509.25, but there is no corresponding direction for Region 1. Please explain this discrepancy and provide the appropriate information concerning type and application of BMPs. Finally, the citation for the definition of “naturally occurring” is incorrect and should be ARM 17.30.602(19). There is no ARM 16.20.603.

### Inadequate NEPA Analysis

The self-imposed limitation to only look at actions that are changes to the existing system produces an artificially low estimate of the effects of the proposed transportation system. The effect of proposed routes together with existing system routes should be evaluated cumulatively in order to gain a clearer picture of potential environmental impacts. Sedimentation on existing routes is mentioned several times in the analysis and should be fully evaluated in the direct effects of the proposed action.

The DEIS states “Due to the large number and miles of routes, GIS analysis using existing spatial data was the only practical method to accomplish this evaluation” (DEIS p. 3-83). While it may be practical to use this approach it is not necessarily accurate if the spatial data excluded non-system routes. Unfortunately the DEIS does not explain the limitations of this approach as is required under the Data Quality Act.<sup>7</sup> Guidelines for this statute state:

“Uncertainty is inherent in science, and in many cases individual studies do not produce conclusive evidence. Thus, when an agency generates a scientific assessment, it is presenting its scientific judgment about the accumulated evidence rather than scientific fact.”<sup>8</sup>

“To ensure the objectivity of scientific research information developed and disseminated by USDA, its agencies and offices will: Subject the proposed research project(s) to a high quality and objective review; Provide an explanation that accompanies all research information detailing how it was obtained, what it is, the conditions to which it applies, and the limitations or reservations that should be applied in using the information.”<sup>9</sup>

Without accounting for the deficiencies of the model, cumulative impacts cannot be adequately analyzed.

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<sup>7</sup> Section 515 of the Consolidated Appropriations Act, 2001 (Pub.L. 106-554)

<sup>8</sup> OFFICE OF MANAGEMENT AND BUDGET. 2004. *Final Information Quality Bulletin for Peer Review*. Available online at [http://www.ocio.usda.gov/qi\\_guide/doc/peer\\_bulletin.pdf](http://www.ocio.usda.gov/qi_guide/doc/peer_bulletin.pdf).

<sup>9</sup> [http://www.ocio.usda.gov/qi\\_guide/scientific\\_research.html](http://www.ocio.usda.gov/qi_guide/scientific_research.html)

There appears to be no evaluation of the effect of increased use of stream crossings in areas that do not have bridges or other constructed crossings, and therefore are occurring in the streambed itself, stirring up sediment and disturbing stream habitat. There is also no discussion of stream crossings of user created routes that are additions to the system. These effects must be disclosed in order to make a fully reasoned and informed decision.

In addition, Table 3-30 titled, "Route Risk Summary" should display miles and number of routes by specific trail class and road maintenance levels. Without looking at these routes individually, the DEIS cannot adequately evaluate potential water quality impacts because each trail class and road maintenance level have different erosion potentials and therefore different mitigation needs. The Route Field Observation section provided a good evaluation of 80 miles of routes, but only included three trails, (Table 3-31, DEIS p. 3-84). This demonstrates a need to look more closely at conditions on the ground or at the very least use a modeling system that can adequately account for different trail classes, road maintenance levels and non-system routes.

One particularly troubling claim is that, "The only action that would tend to increase risk for moderate and high risk routes is designating non-system roads or trails for public motorized use." (DEIS p. 3-88). The reasoning given is that, "All other actions would tend to decrease risk for moderate and high risk routes." (DEIS p. 3-88). While this may be true for some actions, we take exception with the claim that converting system roads to motorized trails open to all motor vehicles will not increase risk for moderate and high risk routes. The DEIS states that, "Converting roads to trails reduces tread width and vehicle weight/compaction, both of which potentially increase revegetation and reduce erosion." (DEIS p. 3-88). However, by allowing vehicles over 50" to use these trails, they will in effect act as roads and have the same tread width and vehicle weight/compaction. Even more, their potential for impacts may be greater than a road because maintenance will be based on trail class instead of road maintenance level. The water quality impacts analysis needs to account for this difference instead of making a blanket assertion that all roads to trails conversion will reduce impacts.

Furthermore, the assertion that non-use will adequately mitigate impacts on routes converted to administrative use is questionable at best. While this may occur, the DEIS provides no assurances that there will be adequate monitoring to ensure the mitigation is sufficient, nor does it describe the closure devices or enforcement strategy that will ensure illegal use does not occur. It appears the Custer NF is just making the claim that non-use is sufficient without detailing how the Forest Service will ensure that non-administrative use actually does not occur.

Finally, the Custer NF relies heavily on the implementation of Best Management Practices to minimize negative environmental effects that may result from the implementation of the preferred alternative. The DEIS states, "[u]nder Montana Surface Water Quality Standards, soil and water conservation practices (or BMPs) are the primary mechanism to minimize water quality impacts from non-point source pollution and still allow dispersed land management activities to occur on National Forest land, (p. 3-77). In the cumulative effects analysis for the preferred alternative, the DEIS explains, "[c]ompliance with Forest Plan direction and Montana Water Quality regulations will be possible under this alternative because routes identified as needing active rehabilitation beyond maintenance are part of all action alternatives (see Appendix E)." (p. 3-100). Of course the appendix and the cumulative effects analysis are limited

to only identified routes and stream crossings. However, in order for the analysis to be accurate, and for the list of priority rehabilitation to be effective in reducing actual water quality impacts, unidentified non-system routes need to be addressed. We request that the Custer NF provide a plan and implementation schedule for removing any non-system routes after the release of the Beartooth District MVUM.

### Range of Alternatives

The Custer NF should have provided at least one action alternative that does not designate motorized use on moderate and high risk routes. Both the Preferred Alternative and Alternative C add essentially the same amount of non-system routes with moderate or high risk ratings; this is hardly a choice.

The 2006 Montana Integrated Water Quality Report lists seven streams within the analysis area where one or more uses are impaired and a TMDL is required. (DEIS p. 3-77). MTDEQ recommends that land management proposals in watersheds with TMDL streams incorporate actions that improve overall watershed conditions. (DEIS p. 3-77). There is no indication that overall watershed conditions will be improved by the proposed actions, and specifically by the practice of converting decaying roads to trails, which by definition have lower maintenance standards and lower maintenance priorities.

The West Fork Rock Creek drainage is a municipal watershed, with an A-1 classification from the state of Montana. A-1 classified streams are held to a higher standard than B-1 classified streams, including lower thresholds for coliform and turbidity. There is no alternative which fully protects and improves this important watershed. Heavy dispersed recreation (camping) impacts are occurring in the Rock Creek drainage. (DEIS p. 3-82). However, there is no indication as to how these water quality impacts will be eliminated, as “activities continue to expand into new areas each year thereby continually increasing the risk of impact to water resources.” (DEIS p. 3-82). The preferred alternative allows dispersed camping to continue virtually unchecked and unregulated.

Finally, it is inappropriate that all alternatives provide for adding user created routes to the transportation system. As admitted in the draft EIS, “[u]nplanned (user created) routes have the potential to be the most detrimental to water quality because of improper location of the route in relation to adjacent streams.” However, many user created routes are adopted into the proposed system under all alternatives. It is inappropriate to add these routes to the system without extensive discussion as to the measures that should and will be taken to mitigate the impacts of these routes to water quality. The effects of these routes cannot be brushed aside by referring to the incorporation of BMPs. BMPs are implemented at the design and construction phase, and the proverbial horse is already out of the gate with regards to user created routes. The agency has no opportunity to carefully plan and evaluate the effects of route placement, but must accept the location as “designed” by the users, which is admittedly not always the best for the environment.

### Executive Order Violations - Preferred Alternative

The DEIS states “This alternative proposes to add 4.1 miles of moderate and high risk non-system routes. Field observations indicate that routes 21407 and 241412 proposed for addition

contribute to water quality impacts. Adding these routes to the transportation system will continue these impacts into the foreseeable future until road maintenance occurs, although it is unknown when maintenance would occur.” (DEIS p. 3-93). This is an obvious violation of the E.O.s direction to minimize impacts and should be eliminated from any alternative.

### **Fisheries and Aquatics**

It is difficult to sufficiently comment on this section since the DEIS did not provide any resource maps illustrating stream crossings, proposed route changes, and the presence of sensitive species. In general, until there is adequate water quality analysis there cannot be an adequate fisheries and aquatics analysis since much of one depends on the other. Still, we have identified several specific concerns that are listed below.

### **Inadequate NEPA Analysis**

The DEIS states, “In most cases, the actual use, or mode of travel (motorized versus non-motorized) is inconsequential. Rather, it is the facility (road or trail) that has the potential to impact aquatic habitat and biota,” (DEIS p. 3-107). We assert that the “mode of travel” is important when determining the amount of sediment production, in addition to the “facility” (road or trail). While it is assumed that roads experience greater soil erosion and contribute to stream sedimentation more than trails, this is not always the case. One ongoing study (Welsh et al. 2006) found that ORV trails produced five times more sediment than unpaved roads. While driving on roads has long been identified as a major contributor to stream sedimentation (for review see Gucinski 2001), recent studies have found ORVs to be a significant cause of stream sedimentation (Sack and da Luz 2004, Chin et al. 2004, Ayala et al. 2005, Welsh et al. 2006). It has also been demonstrated that sediment loss increases with increased ORV traffic (Foltz 2006). Stream sedimentation can greatly reduce aquatic habitat (Newcomb and MacDonald 1991). For example, Chin et al. (2004) found that watersheds with ORVs exhibited higher percentages of sands and fines, lower depths, and lower volume. These studies call into question the assumption that “modes of travel” are inconsequential. The DEIS does recognize the need to evaluate different uses: “...some uses have higher potential to disturb soils and increase erosion potential on both roads and trails, and therefore segregation of uses is maintained throughout the report.” (DEIS p. 3-106). In order to adequately analyze the erosion potential for different uses, the roads and trails need to be segregated as well since each trail class and road maintenance level have different erosion potentials and therefore different mitigation needs.

The DEIS did not adequately analyze the potential impacts to fisheries from stream crossings due to an improper assumption: “Because crossings generally comprise a very small percentage of the total stream or riparian corridor, effects are generally minimal for the stream as a whole... Thus, this component of the issue is addressed for roads or trails that follow stream courses, and for roads or trails with numerous crossings.” (DEIS p. 3-109). Even a single stream crossing can have a negative impact on aquatic habitat. For example, a modeling exercise found that the average annual sediment yield from one ORV stream crossing to be 126.8 tons/ha (Ayala et al. 2005). Additionally, a study by Sack and da Luz (2003) found that off-road vehicle use resulted in a loss of more than 200 pounds of soil off every 100 feet of trail each year. The decision not to

analyze single stream crossings is arbitrary and capricious, and in violation of the NEPA duty to fully analyze the impacts of the proposed action.

Another false assumption is that “Because fish passage has been addressed through the Forest-wide culvert inventory and fish passage analysis, and because impacts can be mitigated through facility design or replacement, this component of the aquatic issue is dismissed from further detailed analysis in this report.” (p. 3-109). The DEIS should at least look at where the mitigation needs to occur and how the change in the transportation system will impact those needs. Merely stating that they will be mitigated and then not explaining how or detailing the potential needed changes due to increase in motorized use at these stream crossings is arbitrary and capricious.

While it may be a typo, the DEIS falsely states that, “...the No Action Alternative is indicative of the existing condition of the project area and there for, all routes were evaluated for cumulative effects to aquatic systems at the watershed scale for this alternative,” (DEIS p. 3-110). The No Action alternative only includes existing system routes, (DEIS p. 2-9), while Alternative A includes all existing routes identified in the 1999-2000 inventory. (DEIS p. 2-7). The No Action alternative is obviously not indicative of the existing condition, and Alternative A excludes non-system routes created after the 1999-2000 inventory. In order to ensure the accuracy of the Custer NF’s environmental analysis of aquatic systems, the Custer NF must provide a plan and implementation schedule to remove all non-system routes once the MVUM is released. Without such a plan the analysis would be based on a false assumption that all non-system routes not designated in the MVUM would have negligible environmental impacts.

The DEIS falsely states that, “In general terms, the only action that would tend to increase risk for moderate and high risk routes is designating non-system roads or trails for public motorized use. This action adds additional route miles to the landscape, and does not reduce the risk of indirect and cumulative effects to aquatic ecosystems,” (DEIS p. 3-113). As stated in the above water quality section, we question the broad assertion that converting system roads to trails available for all motorized use is not going to have an impact. The DEIS needs to demonstrate that these routes will not contribute to decreased water quality and conversely fisheries as well.

Finally, the DEIS failed to analyze the impacts to fisheries and aquatics from the dispersed camping exemption. The preferred alternative will allow this exemption on all but two routes across the entire planning area, yet there is no mention of where dispersed camping could intersect with fisheries habitat for sensitive or management indicator species. In order to comply with NEPA, the Custer NF needs to analyze this issue for direct, indirect and cumulative impacts.

### Executive Order Violations

The DEIS states that the preferred alternative “proposes to add 4.1 miles of moderate and high risk non-system routes...Of these routes, road 241412 has potential for impacting sensitive species and their habitats.” (DEIS p. 3-115). In order to comply with the mandate to minimize impacts under the E.O.s the Custer NF should remove this route from their preferred alternative.

In terms of minimizing cumulative effects, the preferred alternative again falls short of complying with the E.O. and the Clean Water Act. The DEIS states, “Under all action alternatives and for all watersheds in the analysis area (including non-sensitive species occupied watersheds), actions that do not reduce risk to aquatic systems for moderate and high risk routes are minimal and in most cases are offset by actions that reduce risk (see Water Quality Section).” (DEIS p. 3-118). This reasoning asserts that it is acceptable to designate motorized use on moderate and high risk routes because impacts will be offset by other beneficial actions. The DEIS did not adequately demonstrate that these actions will in fact reduce water quality risks. Furthermore, actions that introduce fine sediments into water quality limited segments for sedimentation are still Clean Water Act violations<sup>10</sup> even if supposedly offset in other segments. This sentence seems to say that the agency can degrade some sections because others will improve.

## **Issue #7 – Vegetation**

### **Vegetative Recovery**

#### **Inadequate NEPA Analysis**

The DEIS introduction states that “Most interest heard from public comment pertains to the alpine and subalpine systems that are difficult to recover.” (DEIS p. 3-122). Even though “most interest” in public comments focuses on these areas, this does not mean impacts to vegetation at lower elevations should be excluded from analysis. The DEIS further explains that, “Approximately 59% (319,748 acres) of the District (539,771 acres) is over 8000’ in elevation where systems are typically considered subalpine and alpine,” (DEIS p. 3-122). Unfortunately, unlike other sections, there is no specific analysis by unit. The DEIS needs to analyze motorized route designations by unit, elevation and cover type. As the DEIS states, “Many of the high elevation motorized routes occur through areas of open grass and forbs on gentle to moderate terrain,” (DEIS p. 3-122). These areas are susceptible to illegal off-route use and the DEIS must evaluate the potential impacts in these areas from illegal use. Furthermore, the DEIS correctly explains that the “magnitude of effects varies depending on local characteristics of the landscape including slope, aspect, soil susceptibility to erosion, and vegetation type,” (DEIS p. 3-123). An adequate analysis would look at each of these characteristics for each planning unit. Instead, the analysis lumped together all miles and acres over 8,000 ft and then claimed that “all alternatives pose minor potential impacts to subalpine / alpine landscape area (less than 3% of total),” (DEIS p. 3-123). The decision not to include acres below 8,000 ft is arbitrary and capricious, and in violation of NEPA. Furthermore, the only analysis by alternative is found in Table 3-47. This does not constitute adequate NEPA analysis.

Finally, the cumulative effects section does not adequately evaluate the cumulative effects of the proposed action in concert with reasonably foreseeable future actions. “*Reasonably Foreseeable Actions* are those which are formal proposals or decisions not yet implemented at the time of the analysis.” (DEIS p.3-1). Though these actions are listed in Table 3-1, the effects of these actions are not adequately disclosed in the following statement: “Roads and trails within the project area have the potential to be improved, modified, or closed and new roads and trails may be

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<sup>10</sup> 33 U.S.C. 1313(d)

constructed in the future following appropriate environmental analysis.” (DEIS p. 3-123). The DEIS's unsubstantiated conclusion on cumulative impacts is that “Implementation of any of the alternatives considered in this EIS would not be expected to contribute to significant cumulative effects associated with native vegetation.” (DEIS p. 3-124). This claim is arbitrary and capricious, and in violation of the disclosure and analysis requirements of NEPA.

### Weeds

“The Forest Service has identified invasive species as one of the top threats to the health of National Forests” (DEIS p. 3-124) and we heartily support that assertion. Noxious weeds such as leafy spurge, spotted knapweed, Canada thistle, and houndstongue are in the planning area, and they have a high potential to radically and irreversibly change mountain ecosystems; the Pryor Unit is particularly susceptible due to the continual use of non-system routes for motorized use and the increased access to areas previously unharmed by noxious weeds. The DEIS explains, “Motorized vehicles and equipment contribute the most to introduction and spread of noxious weeds because of vehicle mobility and size, and/or distance of travel within a given time,” (DEIS p. 3-127).

### Inadequate NEPA Analysis

In discussing the analysis methodology, the DEIS explains, “Overlaying weed inventories and designated public motorized routes, with this susceptibility assessment can further identify areas that are potentially at risk from invasion.” (DEIS p. 3-129). Unfortunately, designated routes do not include identified non-system routes. Since Appendix C lists these non-system routes, it would be reasonable to at least include them in the weed susceptibility assessment. Furthermore, to ensure the accuracy of the Custer NF’s environmental analysis, the Custer NF needs to provide a plan and implementation schedule to remove all non-system routes once the MVUM is released. Without such a plan the analysis would be based on a false assumption that all non-system routes not designated in the MVUM would have negligible environmental impacts. The decision to exclude identified non-system routes from the weed susceptibility assessment was arbitrary and capricious, and is in violation of NEPA. Therefore, all conclusions based on the Level of Risk determinations should be re-evaluated.

Just as in the vegetation recovery section, the DEIS analysis arbitrarily lumped together the entire planning area for weed susceptibility by cover type, (Table 3-52, DEIS p. 133), even though Table 3-51 contains this information for the Beartooth Unit separately. Nowhere does the DEIS list the same information for the Pyors Unit. Even more, Table 3-53 lists the acres of current weed infestation by alternative only. This approach does not adequately analyze weed susceptibility in the Pryors Unit.

The DEIS states, “[t]he amount of use is of much greater significance in determining the risk of spreading or introducing noxious weeds than the type of use,” (p. 3-134), but does not cite any studies for this conclusion. A study in Montana demonstrated that a single ATV can disperse more than 2,000 invasive knapweed seeds over a 10-mile radius. The research also found that these seeds are more likely to germinate and crowd out native plants in areas where soil has been

compacted by off-road vehicles.<sup>11</sup> The DEIS further states, “No data on the amount of use on various roads and trails has been collected. Neither is there any known data concerning the correlation between the type of recreation use and the spread of weeds.” (DEIS 3-134). This statement seems to contradict previous conclusions that “Motorized vehicles and equipment contribute the most to introduction and spread of noxious weeds because of vehicle mobility and size, and/or distance of travel within a given time,” (DEIS p. 3-127). Additionally, “Off-road vehicles are cited as the key source of the spread of invasive and noxious plants in the western United States, affecting an estimated 4,600 acres of public land daily.”<sup>12</sup> Another study on this issue concluded that roads and off-road vehicles are the chief threats to the invasion of exotic weeds in roadless areas that provide refuge to native species.<sup>13</sup>

Finally, the DEIS concludes, “there is insufficient data to draw a definite conclusion that any alternative would have a significant difference on the spread of noxious weeds based only on the type of use allowed under that alternative.” (DEIS p. 3-135). This is arbitrary and capricious, and in violation of NEPA. The deficiencies stated above clearly demonstrate that the Custer NF did not take a hard look at weed susceptibility in the Pryors Unit, and the DEIS made contradictory statements in order to arrive at its conclusion.

### Executive Order Violations

The DEIS states, “The percent of susceptible buffer acres under Alternatives A, B, and No Action range between 12 and 17% of all District susceptible acres while Alternative C’s susceptible acres is 2% of all District susceptible acres.” (DEIS p. 3-136). Yet the Custer NF chose Alternative B as its preferred alternative. Adopting such an alternative in a record of decision would violate the E.O. mandate to minimize impacts.

### Sensitive Species

The DEIS concludes that, “[i]mplementation of any alternative would not be anticipated to move any sensitive plant species within the project area toward federal listing.” (DEIS p. 3-145). Unfortunately, the analysis only looked at the overall district and did not examine the Beartooth and Pryors Units separately. Since the Absoraka-Beartooth Wilderness constitutes such a large portion of the planning area, grouping the whole district together skews the analysis results. The Pryors Unit is a discrete unit, separate from the rest of the districts and other sections of the DEIS recognize this fact by analyzing the Pryors Unit separately. Even though the conclusion stated in the DEIS may remain the same, it is still necessary to evaluate the district by discrete units in order to properly determine cumulative effects and locate opportunities to minimize impacts as is required under the E.O.<sup>14</sup> Without including this information the DEIS cannot meet

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<sup>11</sup> Montana State University Extension Service Bulletin. 1992. Controlling knapweed on Montana rangeland. Circular 311, February 1992.

<sup>12</sup> U.S. Department of the Interior. Undated. "Partners Against Weeds, An Action Plan for the Bureau of Land Management."

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

<sup>14</sup> Exec. Order 11644 § 3 (1972) as amended by Exec. Order 11989 (1977)

its obligation to take a hard look at potential negative impacts, and therefore is in violation of NEPA.

## **Issue #8 – Wildlife and Habitat**

The Executive Orders clearly state that “Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.”<sup>15</sup> Therefore, the threshold for determining negative impacts to threatened, endangered or sensitive species is not based solely on the Endangered Species Act (“ESA”). In other words, just because an action may not move the species towards listing under the ESA, it does not mean the potential for harassment of a species is minimized or that significant disruption of its habitat will not occur.

### Inadequate NEPA Analysis and Violation of NFMA

Just as in the Vegetation section, the DEIS lumped the whole district together in analyzing potential impacts to wildlife. For reasons explained above, this does not meet NEPA’s hard look requirement. In addition, the fact that the bighorn sheep and elk analysis were broken into different units demonstrates that the decision not to do the same for other specific species was arbitrary and capricious. Because the district was not consistently separated into units, it is difficult to adequately comment on the alternatives.

The Canada Lynx section was one of the few actually separated into units, but these were based on the Lynx Conservation Assessment and Strategy, not the Pryor or Beartooth unit as elsewhere in the DEIS. However, the Pryor Mountain Lynx Analysis Unit (LAU) only represents a small portion of the area evaluated, which includes three larger LAUs in the Beartooths. This average road density data based on LAUs is not valid for the Pryor LAU, where the road density is much larger (0.6 mi/sq mi in No Action). There is a big difference between the alternatives’ effects on the smaller LAU of the Pryors. The road density is 0.5 mi/sq mi in Alternative B, and 0.3 mi/sq mi in alternative C which is a 40% decrease. If route #2088 was closed the road density in Alternative C might be even less.

In addition, the DEIS states that for grizzly bear, “Alternative C would provide the greatest amount of secure habitat in biologically unsuitable areas, important because grizzly bears have been documented using such areas as recently as year 2004.” (DEIS p. 3- 161). Though the area may have been determined to be “unsuitable” for the grizzly, this assertion is evidently incorrect, as the bear has been documented in these areas and is obviously finding the area “suitable.” “Evidence strongly supports the idea that activities such as . . . motorized tourism . . . and the roads that support such activities, displace bears from what otherwise would be occupied habitat (Craighead et al. 1995). In addition, human-caused mortality is more likely to occur in heavily roaded areas of their range (various authors cited in Craighead et al. 1995).” (DEIS p. 3-161). These statements have been further demonstrated by bear mortalities near the Custer resulting from human encounters this fall. Finally, the grizzly was listed as endangered until only recently and the de-listing decision is currently in litigation. Taken together, these threats and the precarious status of the grizzly population indicate that the grizzly is indeed on a trend towards listing and the Custer must take appropriate actions to prevent that from occurring. Analysis of

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<sup>15</sup> Exec. Order 11644 § 3 (1972) as amended by Exec. Order 11989 (1977)

the effects of increased motorized use and access on the grizzly are inadequate and do not fully evaluate how increasing use in these areas will contribute to the trend towards re-listing of the grizzly, or even how the effects on grizzly will be minimized, as required in the E.O.

Finally, the analysis of sensitive species and wildlife generally does not satisfy the requirement of the National Forest Management Act that the Forest Service must ensure that a diverse population of wildlife will be maintained in the planning area. (See 16 U.S.C. § 1604(g)(3)(B)). There is no indication by the analysis presented that a diverse wildlife population will be maintained.

### Executive Order Violations

Even with the skewed analysis, it is apparent that Alternative C is the best option for minimizing overall harassment to wildlife, maintaining a diverse wildlife population, and preventing significant disruption of their habitat. Alternative C has the lowest road density, which benefits Canada lynx, gray wolves, grizzly bear, deer, and elk. Bighorn sheep would also benefit. The DEIS states for Alt. C effects on bighorn sheep that “[t]he availability of escape terrain would be the highest under this alternative in both the Beartooth and Pryors Units. The greatest difference would be in the Pryors, where Alternative C would provide 9.9% more escape terrain than under the No Action Alternative.” (DEIS p. 3-173). Finally, Alt. C provides the greatest benefits to general wildlife:

“**Alternative C. Mortality:** This alternative has the lowest potential for leading to wildlife mortality. *Habitat Modification /Changes to Behavior:* When considering motorized and non-motorized routes collectively, “core” area is the same as under Alternative C, and slightly more than Alternatives B and No Action for the Beartooth Unit. **For the Pryors Unit, “core” is the highest under this alternative**” (emphasis added).

(DEIS, p. 3-181).

### **Issue #9 – Public Safety**

#### Motorized Mixed Use

The DEIS states, “[a]n engineering analysis has not been completed for the roads designated for motorized mixed use in each alternative. The engineering analysis would be completed once the decision has been made to designate for motorized mixed use,” (p. 3-191). It would seem that in order to properly evaluate potential user conflicts, and the potential for injury, the engineering analysis would be needed during the NEPA process, not once a the decision is made. The Forest Service’s own proposed directives reinforce this assertion where they call for an engineering analysis as part of the overall travel analysis requirement.<sup>16</sup> We urge that before designating any mixed use roads, that an engineering analysis be completed and incorporated into the environmental analysis.

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<sup>16</sup> See proposed Forest Service Handbook 7709.55 Chapter 21.41(2) where it states, “A decision to allow motorized mixed use on an NFS road must be informed by engineering analysis (FSH 7709.55 ch. 30).”

The DEIS also states that, “[r]outes designated as trails do not require a motorized mixed use analysis, (p. 3-191). Since the proposed use of these “trails” in terms of the allowable width of vehicles which can drive on them seems to be no different than a Maintenance Level 2 road, one might assume that the only reason to suggest this change in classification from road to trail was to avoid having to complete a mixed use analysis. We note that the Forest Service currently has no trail design parameters for vehicles larger than ATVs, which would seem to indicate a belief within the agency that pickups, jeeps, and other vehicles larger than 50 inches wide belong on roads, not motorized trails. Given this legal ambiguity, we urge that any routes allowing vehicles greater than 50” be designated and managed as Maintenance Level 2 roads.

In addition, the Custer NF asserts that Montana traffic laws do not apply to Forest Service trails. We question this assertion. Motorized trails open to all motorized use may fit within the definition of a "public highway." This is especially true given that Montana state law states that a "way of the state open to the public" is "any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public." MCA Sec. 61-8-101(1). In the case *State v. Weis* (1997), 285 Mont. 41, the court found that an individual who was driving on a private lane could be convicted of drunk driving under Montana law, which requires that the action occur on a "way of the state open to the public." The private lane received no county funds for maintenance, was in fact marked as private by the individuals, but that it frequently received use by the public in the form of "members of the public who are lost, who are simply curious or who have a purpose for going to the residences which are served by the lane." That was enough to make it a "way of the state open to the public." It follows that trails open to vehicles greater than 50” would be a way of the state, since these trails are a public place adapted for public travel and as such will be commonly used by the public.

## **Issue #10 – Implementation and Enforcement**

Even the most resource protective travel plan is only as good as the capacity to enforce restrictions. We would like to see an alternative based on the current enforcement capacity on the Custer NF.

We have a particular concern with the conclusion for Alt. C. The DEIS states, “This alternative does not include the designation of motorized trails within the Pryor Unit. As a result, the District will not be able to apply for State of Montana Recreation Trail Program grant funding for activities such as providing additional FPOs and coordinating/supporting volunteer patrol programs on the Pryor Unit, where there is a key need for this support. The Beartooth Unit would continue to be eligible for these Programs,” (DEIS p. 3-196). This seems to erroneously suggest that the Alternative B would be more enforceable, when in fact this is not the case. Those routes that are closed would not need the same level of enforcement as those designated open, therefore the costs would be less for Alternative C. Table 3-76 illustrates this fact by showing implementation costs for Alternative C to be less than any other alternative. (DEIS p. 3-197).

Unfortunately, the DEIS did not adequately analyze implementation of the alternatives as there is no mention of the needed closure devices or a description of how these devices will be maintained. Enforcement and monitoring plans should be in place for each motorized route.

### **Issue #11 – Maintenance and Administration of Roads and Trails**

The Beartooth Travel Plan should reflect the Custer NF's economic constraints. We would like to see an alternative that reflects what the district can actually maintain within its projected budgets. Towards this end, clearly applying 36 CFR 212 subpart A to the travel plan will reduce maintenance costs.

In this process the Custer-Beartooth District should be determining both the minimum roads system, including identifying roads for decommissioning, in addition to designating motorized trail needs. This includes utilizing a full roads analysis that includes maintenance level 1-5 roads. Travel Management planning direction, as found in the regulations and agency directives, includes the entire motorized travel system and the process must provide for a comprehensive transportation plan that applies both Subparts A and B of the Rule.

The regulations require the agency to determine the “minimum road system needed for safe and efficient travel and for utilization and protection of National Forest System lands. 36 CFR § 212.5(b)(1). In addition, each forest supervisor, “must review the road system on each National Forest and Grassland and identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails.” 36 CFR § 212.5(b)(2). 2005 saw the promulgation of the Travel Management Rule. 70 Fed. Reg. 68264 (November 9, 2005) (“Travel Management; Designated Routes and Areas for Motor Vehicle Use.”) (“Travel Management Rule” or “TMR”).

In the 2005 final rule, the FS promulgated and revised section 212.1 - 212.21 (Subpart A), and simultaneously promulgated section 212.50 – 212.57 (Subpart B). Overall, the new regulations amended part 212, subpart B of part 251, subpart A of part 261, and removed part 295 of title 36 of the Code of Federal Regulations (CFR). These three regulations are now referred to collectively as the “Travel Management Rule. The Agency indicated that the revision was necessary to provide a “national framework” to reach overall FS goals for resource management. 70 Fed. Reg. 68265. The stated purpose of the Rule is to designate a socially, economically and environmentally sustainable forest transportation system that will accommodate motorized access needs in NFS lands. 36 CFR 212.5; *see generally*, 70 Fed. Reg. 68264-65.

The Agency indicated that the purpose of subpart A, *see, e.g.*, 36 CFR § 212.5 “Road System Management,” is for each unit of the National Forest System to determine a minimum road system in order to establish the means for “safe and efficient travel . . . [the] administration, utilization . . . and protection the natural resources (“National Forest System Lands”)” as well as to meet “resource and management objects pursuant to 36 CFR 219. 36 CFR 212.5(b). The Rule requires that the minimum road system be determined to effectively administer NFS lands, and to “meet resource and other management objectives adopted in the relevant land and

resource management plan. 36 CFR § 212.5. Further, section 212.5(b)(2) requires Forests to identify and decommission unneeded roads.

The complimentary purpose of subpart B, e.g., 36 CFR § 212.50 “Designation of Roads, Trails, and Areas for Motor Vehicle Use,” is to provide for a system of roads, trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, motor vehicle use outside designated areas is prohibited by 36 CFR 261.13. To comply with the TMR, a Forest must address and implement the Rule as a unitary whole; both subparts A and B must be implemented simultaneously.

Additionally, the road designations required under § 212.50 must also “be consistent with the applicable land management plan. 70 Fed. Reg. at 68268. Consequently, the minimum road system (subpart A) must be determined in concert with the process of designating a motorized vehicle system (subpart B) in order to assure conformity with applicable Forest Plans, and to comply with the objectives of both the TMR (36 CFR § 212 *et seq.*) and Forest planning rules (36 CFR § 219 *et seq.*). Initiating subpart B independent of the minimum road system may conflict with the applicable Forest Plan’s resource management objectives in regards to (1) environmental objectives for ecosystem sustainability such as road density standards, wildlife habitat, species diversity, soils, watersheds; and (2) fiscal resource objectives, such as economic sustainability. 36 CFR 219.10(a)(b).

Science Based Roads Analysis: 36 CFR § 212.5 requires that the minimum road system determination “must incorporate a science-based roads analysis. The science based analysis applies to all system roads, and road management decisions,<sup>17</sup> “to ensure that the identified system minimizes adverse environmental impacts. *Id.* Science-based assessments are needed to address the specific criteria for roads designation under section 212.55, and are required for the minimum road system determination under section 212.5. In addition, this roads analysis must include all maintenance level roads, not just ML 3, 4 and 5. The DEIS should provide an appendix or reference a project file that demonstrates how the complete roads analysis was used to determine the minimum road system. We look forward to seeing this information in the Final EIS.

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

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<sup>17</sup> Including “road construction, reconstruction, decommissioning, and maintenance. 36 CFR 212.5.

Maintenance Expense: Road maintenance is expensive, as clearly demonstrated by the numbers outlined in Table 3-79, which indicate projected annual maintenance needs of over \$1.3 million. A minimum road system analysis integrated with a travel management process will reduce the costs of duplicating the planning process, and prevent unnecessary road maintenance costs. NFS lands nationwide have a total road maintenance backlog of more than \$8.4 billion.<sup>18</sup> Reducing the backlog of redundant routes that are unstable, eroding, located in sensitive habitat areas, or contributing to watershed degradation will diminish additional maintenance and environmental mitigation expenses in the near future. As admitted in the Draft EIS, “[t]he more miles needing maintenance, the more potential for miles with deferred maintenance,” (DEIS p. 3-202). The USDA reports only 21 percent of the unclassified roads in the national forest system are adequately maintained, compared to 37 percent as recently as the late 1990s.<sup>19</sup> In addition, many classified roads in the road system are not adequately maintained to meet basic safety standards and to prevent road degradation, improper drainage, and soil erosions.<sup>20</sup>

Accordingly, failing to implement subpart A and subpart B as a comprehensive and unified regulatory scheme will lead to likely conflicts with Forest Plan economic objectives. The maintenance of unnecessary roads that are designated prior to the determination of a minimum road system will result in the unnecessary wasting of fiscal resources. The FS requires the minimum road analysis to “reflect[s] long-term funding expectations. 36 CFR 212.5. If roads are first designated, maintained and then later closed once the minimum footprint is determined, the result will be conflict with Forest Plan fiscal management objectives, which must mandate fiscal sustainability. 36 CFR 219.10(a).

In conclusion, the Beartooth District must necessarily initiate a forest-wide travel analysis before a final decision is made. We request to receive a copy of that travel analysis. This analysis includes the identification of a minimum road system as required under Subpart A, integrated with the designation of roads and trails, pursuant Subpart B. Failure to determine the minimum road system analysis needed to administer the National Forest System lands, in concert with designating roads and trails for motorized use, compromises the agencies purpose: to determine the minimum transportation system necessary to provide “safe and efficient travel”; and the “administration, utilization, and protection of NFS lands. *See* 36 CFR 212.5(b); 70 Fed. Reg. 68264-65.

## **CONCLUSION**

As discussed above, the current Beartooth Travel Plan DEIS does not contain an adequate range of alternatives. Furthermore, Alternative C does not represent the Pryors Coalition’s vision. We have also uncovered several major flaws in the analysis described in the DEIS. and we look forward to seeing these corrected.

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<sup>18</sup> “Road Maintenance Backlog. Taxpayer for Common Sense. October 30, 2007. [www.taxpayer.net/forests](http://www.taxpayer.net/forests) (citing U.S. Department of Agriculture: U.S. Forest Service, *FY 2000 Proposed Budget Explanatory Notes for the Committee on Appropriations*. Washington, DC, 1999).

<sup>19</sup> *Id.*

<sup>20</sup> Road maintenance standards are set by the National Highway Transportation Safety Administration (NHTSA), the Environmental Protection Agency, and specific Forest Service road management plans. “Road Maintenance Backlog. Taxpayer for Common Sense. October 30, 2007. [www.taxpayer.net/forests](http://www.taxpayer.net/forests) (citing, U.S.D.A.: U.S. Forest Service, *Public Forest Service Roads*, Washington, DC, 2000.)

While meeting NEPA requirements is a necessary part of travel planning, doing so does not necessarily meet the Executive Order requirements. The E.O. requires responsible officials to choose the alternative that minimizes impacts. We look forward to working with the Custer NF toward achieving the best possible travel plan for the Beartooth District.

Sincerely,

/s/ Adam Rissien  
Wildlands CPR

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**Appendix A**

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

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

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