



# **Texas Public Policy Foundation**

**BEFORE THE SECRETARY OF THE UNITED STATES  
DEPARTMENT OF AGRICULTURE AND THE CHIEF OF  
THE UNITED STATES FOREST SERVICE**

**AMY GRANAT, CORKY LAZZARINO, SIERRA  
ACCESS COALITION, LA PORTE SERVICE  
AND REPAIR, AND LAZZARINO MACHINE  
WORKS,**

**Petitioners,**

**and**

**SECRETARY OF THE UNITED STATES  
DEPARTMENT OF AGRICULTURE AND  
CHIEF OF THE UNITED STATES FOREST  
SERVICE,**

**Responsible Officials.**

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**ADMINISTRATIVE PETITION SEEKING REVISION OF  
THE 2005 TRAVEL MANAGEMENT RULE**

## Introduction and Executive Summary

Pursuant to the Right to Petition Government Clause of the First Amendment of the United States Constitution<sup>1</sup> and the Administrative Procedure Act (“APA”)<sup>2</sup>, Amy Granat, Corky Lazzarino, Sierra Access Coalition, La Porte Service and Repair, and Lazzarino Machine Works (the “Petitioners”) hereby petition the Secretary of the United States Department of Agriculture (“USDA”) and the Chief of the United States Forest Service (“Forest Service”) to amend the Forest Service’s 2005 Travel Management Rule and Designated Routes and Areas for Motor Vehicle Use, codified at 36 C.F.R. Parts 212, 251, 261, and 295 (sometimes referred to herein as the “2005 Travel Management Rule”).

National parks and national forests are designed to be accessed by the public. For many, like the petitioners here, motorized access is the only way those areas can be accessed and enjoyed. While national lands

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<sup>1</sup> “Congress shall make no law . . . abridging . . . the right of the people . . . to petition Government for a redress of grievances.” U.S. Const. amend. I. The right to petition for redress of grievances is among the most precious of liberties safeguarded by the Bill of Rights. *United Mine Workers v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967). It shares the “preferred place” accorded in our system of government to the First Amendment freedoms and has a sanctity and sanction not permitting dubious intrusions. *Thomas v. Collins*, 323 U.S. 516, 530 (1945). “Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remote, but by clear and present danger.” *Id.* The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. *United States v. Cruikshank*, 92 U.S. (2 Otto) 542, 552 (1875).

<sup>2</sup> 5 U.S.C. Section 553(e).

also serve conservation purposes, conservation has always been coextensive, and not superior, to access rights.

Before the Forest Service promulgated the 2005 Travel Management Rule, the presumption was that motorized travel was permitted in and on user-created routes and trails in national forests unless there was evidence that restricting motorized use was necessary to avoid significant damage to the environment. This presumption respected the traditional balance between public access and conservation. The 2005 Travel Management Rule flipped this presumption on its head. Now motorized use is restricted to specific trails that are pre-approved and published on official Forest Service maps. This pre-approval process involves numerous regulatory hurdles designed to disfavor motor vehicle use and requires a lengthy environmental review. These severe restrictions on motorized vehicle access has had the effect of keeping people out of national forests. In some national forests, prior Administrations eliminated as much as 90% of traditional motorized access routes under the 2005 Travel Management Rule.

For example, implementation of the 2005 Travel Management Rule in Plumas National Forest located in Northern California has severely limited public access. The Forest Service's Record of Decision and Travel Management Rule for Plumas National Forest closed more than 3,000 routes, comprising approximately 94% of the historically available

motorized access routes in the forest. Petitioners have a particular interest in accessing lands and uses that are only feasible with a motor vehicle.

Recent government efforts to keep people out of public lands have thwarted the requirements of law and generations of multi-use policy. The current Administration has the opportunity to reverse prior Administrations' impermissible and misguided efforts to close national forests to multiple public uses. Accordingly, the Petitioners hereby ask the Secretary of the United States Department of Agriculture (the "Secretary") and the Chief of the United States Forest Service (the "Chief") to replace the Travel Management Rule with a rule that permits motorized travel on routes, trails, and other areas that had been used historically for motorized travel in the national forests before the promulgation of the 2005 Travel Management Rule.

The new rule should provide that motorized travel in the national forests is permitted unless a specific route, trail, or area in a particular national forest is explicitly designated, marked, and labeled as closed to motorized travel on an official map prepared and published by the Forest Service. The rule should also provide an opportunity for public comment on all proposed closures. Alternatively, the Petitioners ask that the Travel Management Rule be amended, as set forth in this petition, to recognize that sustainable motorized recreational use in national forests is mandated by law to achieve the multi-use goals intended by Congress.

“It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” 16 U.S.C. § 528.

### **Interests of the Petitioners**

Petitioner Amy Granat is an individual with an autoimmune disease known as pemphigus vulgaris. This condition required her to undergo chemotherapy from January of 2001 until June of 2006, causing infections in her legs and limiting her ability to walk. She also has neuroendocrine cancer. Her ability to access back-country areas in Plumas National Forest has been a key part of her medical rehabilitation. She has been visiting Plumas National Forest for many years since 2001. Camping, fishing, and viewing wildlife in Plumas National Forest have been important priorities for her and have been her principal ways of spending quality time with her children. Because of her walking disability, she is now foreclosed from accessing many parts of Plumas National Forest that were accessible to her only by motor vehicle in the past, because she is unable to access those areas on crutches, by wheelchair, by cane, or by using braces on her legs, even with the help of her long-time service dog, Lukas. As a result, her ability to enjoy Plumas National Forest has been drastically reduced. Because of the Forest Service’s action, Petitioner Granat is no longer able to legally use the unclassified routes, thereby depriving her of the pleasures afforded by some of her favorite parts of the Forest.

Petitioner Corky Lazzarino is an individual who for many years has used and continues to use Plumas National Forest by driving her Jeep on Forest roads, rockhounding, cutting firewood, fishing, driving to trailheads to go hiking, camping, exploring new places in the Forest, and enjoying viewing wildlife, historical sites, and scenic forest areas. The Forest Service's action deprives her of the ability to access areas of Plumas National Forest which she had accessed in the past solely by motor vehicle, and she has concrete plans to access the Forest by motor vehicle using the routes closed by the Forest Service should they be made legal in the future.

Petitioner Sierra Access Coalition (“SAC”) is a 501(c)(3) organization headquartered in California with more than 1,450 members, including individuals, user groups, and local businesses. SAC works to protect public lands access for a multitude of diverse uses, including but not limited to cutting and retrieving firewood, hunting, fishing, camping, sightseeing, hiking, viewing wildlife and plants, rockhounding, horseback riding, driving Jeeps and trucks, riding bicycles, motorcycles, off-road vehicles, and other recreational and aesthetic activities. SAC works to protect access to national forests. Members of SAC have enjoyed, and hope for themselves and future generations to enjoy, a variety of recreational and aesthetic activities. For example, the Forest Service’s Record of Decision (“ROD”) for Plumas National Forest closed many of the motorized access routes SAC

members used in the past for such purposes, making motorized travel on those routes illegal. As a result, those routes were not included in the Plumas National Forest Travel Management Plan. Should those routes be made legally available once again for motorized travel, SAC members have concrete plans to use such routes to access and enjoy diverse parts of Plumas National Forest via motorized vehicles. SAC has spent numerous resources participating in the Forest Service's Environmental Impact Statement ("EIS") process for the Plumas National Forest Travel Management Plan, which implemented the 2005 Travel Management Rule in Plumas National Forest. SAC's participatory activities included providing extensive comments on the draft EIS and taking administrative appeal of the final EIS and the associated ROD. Because the Forest Service refused to acknowledge SAC's legitimate concerns, the group has been required to go to extraordinary measures to bring their issues to the Forest Service's attention, thereby requiring the group to redirect resources from other goals, such as maintaining forest routes.

La Porte Service and Repair is a California business comprised of individuals who like to get out and enjoy national forests for hiking, jeeping, hunting, getting firewood, and other pleasures afforded by public lands. We also like to keep trails open so that others can enjoy.

Lazzarino Machine Works is a business based in Quincy, California, whose members use motorized vehicles on public land and maintain the trail systems for off-road recreation.

## **History of Motorized Access to National Parks and Forests**

Like all federally controlled lands, national parks and forests are created by statute. A review of early public lands statutes indicates that the primary purpose for acquiring and opening these lands was public access and use. Congress created the first national park, Yellowstone, in 1872. *See An Act to set apart a certain Tract of Land lying near the headwaters of the Yellowstone River as a public park*, ch. XXIV, 17 Stat. 32 (1872) (codified at 16 U.S.C. §§ 21–40c). The statutory language creating Yellowstone stated that the land was to be “dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people.” 16 U.S.C. § 21.

In 1914, President Taft, who suffered limited mobility due to his size, opined that “if we are going to have national parks, we ought to make them available to the people, and we ought to build the roads, as expensive as they may be, in order that those parks may become what they are intended to be when Congress creates them.” John Copeland Nagle, *How National Park Law Really Works*, 86 U. Colo. L. Rev. 861, 876 (2015). Taft’s opinion was influenced by the fact that he could not journey down Bright Angel Trail into the Grand Canyon “because they were afraid the mules could not carry [him]” *Id.* This convinced Taft that “something needs to be done in respect to those parks if we are all to enjoy them.” *Id.* Taft’s concerns, among others, would shape the adoption of

the Organic Act which created the structure of the national parks system. *Id.*

The presumption of use was also present in the national forests. Unlike national parks, which serve the joint purposes of aesthetics and recreation, national forests were initially viewed as reservoirs for natural resources. They are not “parks set aside for nonuse, but have been established for economic reasons.” *United States v. New Mexico*, 438 U.S. 696, 708 (1978) (quoting 30 Cong. Rec. 966 (1897) (Cong. McRae)).

For example, the Organic Administration Act of June 4, 1897, passed less than a decade after Congress began regulating the national forests, identified two purposes for which it would reserve a national forest at that time: “[to] secure favorable conditions of water flows, and to furnish a continuous supply of timber.” *United States v. New Mexico*, 438 U.S. 696, at 707–08 (1978) (quoting 16 U.S.C. § 475 (1976)).

In 1960, Congress recognized a broader purpose for national forests. The Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. §§ 528–31, states that “[i]t is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” *Id.* § 528. This is the first law that set forth these five criteria for use of national forests, with human use given priority. Put simply, the primary purpose of the national forest is human use.

Consistent with this mixed purpose, trails were developed in the national forests for ease of access. As technology advanced, these trails began to be used more often for motorized access.

The first restrictions on motorized access did not appear until 1972. That year, President Nixon signed the first executive order regulating off-road vehicle use on public lands. Exec. Order No. 11,644, 37 Fed. Reg. 2877 (Feb. 9, 1972). That order noted that:

An estimated 5 million off-road recreational vehicles—motorcycles, minibikes, trail bikes, snowmobiles, dune-buggies, all-terrain vehicles, and others—are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands—often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity—has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

*Id.* Importantly, the executive order “required that the Forest Service balance competing demands in managing National Forest System lands.” *Lands Council v. McNair*, 537 F.3d 981, 990 (9th Cir. 2008) (citations omitted). “[I]t has never been the case that the national forests were . . . to be set aside for non-use.” *Id.* Operating under this framework, existing trails in many national forests remained largely open to motorized access.

### **The 2005 Travel Management Rule and Its Abuses**

On November 9, 2005, the Forest Service published in the Federal Register the final Travel Management Rule. Travel Management;

Designated Routes and Areas for Motor Vehicle Use, 70 Fed. Reg. 68,264 (Nov. 9, 2005) (codified at 36 C.F.R. pts. 212, 251, 261, 295). The 2005 Travel Management Rule “requires designation of those roads, trails, and areas that are open to motor vehicle use” and “prohibit[s] the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations.” 70 Fed. Reg. at 68,264. Before the 2005 rule, motorized access in national forests was permitted unless specifically prohibited on a particular route or trail. The 2005 rule essentially turned the previous standard on its head by permitting only designated routes for motor vehicle use while prohibiting motorized use of any non-designated route. While the 2005 Travel Management Rule provides that the Forest Service must balance “recreational opportunities” and “access needs” with conservation concerns, *id.* at 68,271, in practice under the prior Administrations the rule was used to establish a presumption against motorized use.

The 2005 Travel Management Rule required the Forest Service to inventory all historical motorized routes and designate any particular ones on which motorized access would be permitted. Only routes designated on Forest Service maps as part of a National Forest Transportation System may be used for motorized travel, regardless of how much they had been used for such travel in the past. *Id.* at 68,264. Because a sizeable number of long-standing national forest routes had never been mapped, the 2005 Travel Management Rule created a

presumption that such routes may not be used for motorized access. Eliminating motorized access affects the public's ability to enjoy other traditional American activities in national forests, such as hunting and fishing.

Under this system, if longtime users of such routes wish to have their motorized access protected, they must petition to have a particular route recognized and designated on official maps for a particular national forest. The 2005 Travel Management Rule's regulatory criteria was tightly managed to create a heavy presumption that motor vehicle use is disfavored. *See* 36 C.F.R. § 212.55(a). Moreover, the regulatory standard is unduly burdensome for the Forest Service because it requires that the agency catalogue and investigate all user-created routes—a task the agency is loath to perform.

For example, in the Plumas National Forest, the application of the 2005 Travel Management Rule closed more than 3,000 routes, comprising approximately 94% of the historically available motorized access routes in the forest. In that case, the Forest Service inventoried 1,107 non-system, unclassified, historically used and lawful miles of trails, which comprise 3,236 individual routes. Only 410 of the unclassified miles (or 200 routes) received any on-site environmental impacts review. The Forest Service summarily rejected 697 miles (or 3,036 routes) from inclusion in the Plumas National Forest Travel Management Plan without ever visiting the routes to collect the site-

specific information that the 2005 Travel Management Rule and the Route Designation Handbook require. *See Forest Service Spreadsheets for Beckwourth, AR PLU-G-001242-1253, Feather River, PLU-G-001256-1261, and Mount Hough, PLU-G-001277-1292.*<sup>3</sup> This failure to engage in onsite investigation triggered a federal lawsuit under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”), which requires federal agencies, including the Forest Service, to complete an Environmental Impact Statement (“EIS”) for major federal actions affecting the quality of the human environment.

An EIS must consider a reasonable range of meaningful alternatives, take a “hard look” at the impacts of a proposed action on the human environment, involve the public in decisionmaking, and conduct cumulative analyses of the proposed action’s impact. The lawsuit challenged the Forest Service’s EIS for Plumas National Forest because many of the historical routes used for motorized access were summarily closed without any on-site investigation to determine whether their continued use would cause or contribute to any environmental harm. Years of litigation culminated in the Ninth Circuit deciding that the Forest Service acted properly because it did not have enough time and resources to conduct site-specific evaluations of the historical routes. In effect, the Ninth Circuit’s decision turned NEPA on its head. NEPA was

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<sup>3</sup> All AR citations are from the Administrative Record created by the Forest Service in the case of *Granat v. United States Department of Agriculture*, Case No. 2:15-cv-00605-MCE-EFB (E.D. Cal.).

intended to protect the “human environment,” not to keep humans out of the environment. At the same time, the decision compromised the multiple-use doctrine that had been in-place for decades, bowing to the Forest Service’s “time and resource constraints” excuse that served as a pretext for prior Administrations’ agenda of keeping people out of our public lands. This decision created an elite level in society—ensuring that only the most able-bodied among us could enjoy the natural pleasures of the deepest and most remote parts of Plumas National Forest—because motorized access was denied to those who were unable to access those areas due to physical handicap or age. *See Granat v. United States Department of Agriculture*, 238 F. Supp. 3d 1242 (E.D. Cal. 2017), *affirmed*, 720 Fed. Appx. 879 (9th Cir. 2018).

On the other hand, in *Valley County, Idaho, v. U.S. Dep’t of Agriculture*, 998 F. Supp. 2d 919 (D. Idaho 2014), the district court held that the Forest Service’s failure to evaluate the impacts on the human environment of closing 972 miles of user-created routes to motorized travel in Payette National Forest violated NEPA’s requirement that the agency take a “hard look” at the impacts of its proposed action. *Id.* at 927–28.

A lack of resources or willingness to engage in the on-site investigations necessary to develop the maps required by the existing rule has also slowed the adoption of plans in the Sequoia National Forest. The United States Forest Service published a notice of intent to develop

the Piute Mountains Travel Management Plan for the Sequoia National Forest in the Federal Register on February 18, 2011 (76 Fed. Reg. 9537). The project has been on hold since then.

The foregoing three examples point out how prior Administrations manipulated the 2005 Travel Management Rule to keep people out of our national forests and how implementing that rule at various forests has taken an inordinate and unsustainable amount of the Forest Service's time, energy, and resources.

Moreover, disabled and handicapped individuals are disproportionately impacted by current regulations that favor closing motorized routes. As indicated above, one of the petitioners, Amy Granat, has a walking disability and is now foreclosed from accessing many parts of Plumas National Forest that were accessible to her only by motor vehicle in the past. As a result, her ability to enjoy Plumas National Forest has been drastically reduced. In addition, Petitioners have witnessed difficult scenarios where elderly or limited mobility individuals, in one case a 91-year old amputee hunter, was unable to retrieve legally downed game due to arbitrary restrictions on motorized access. Diminishing disabled individuals' access to public lands presents serious legal problems and subjects the Forest Service to legal challenges based upon disproportionate impacts to handicapped individuals. These effects on disabled individuals' access flow directly from the 2005 Travel Management Rule.

The Americans with Disabilities Act (“ADA”) prohibit discriminating against a disabled person in access to government programs, activities, and benefits. 42 U.S.C. §§ 12101–213; 29 U.S.C. § 794. In the ADA, Congress declared its intent to address “outright intentional exclusion” as well as “the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, [and] failure to make modifications to existing facilities and practices.” 42 U.S.C. § 12101(a)(5). Courts have interpreted this language as a clear indication that “Congress intended the ADA to cover at least some so-called disparate impact cases of discrimination, for the barriers to full participation listed above are almost all facially neutral but may work to effectuate discrimination against disabled persons.” *Crowder v. Kitagawa*, 81 F.3d 1480, 1483 (9th Cir. 1996). Congress provided similar protections for disabled persons accessing federal executive agency programs and activities in section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. As the Supreme Court explained in *Alexander v. Choate*, 469 U.S. 287 (1985), Congress intended section 504 to protect disabled persons from discrimination arising out of both discriminatory animus and “thoughtlessness,” “indifference,” or “benign neglect.” *Id.* at 295.

Unlike disparate impact claims arising in the racial context, however, the Court found that judicial review over each and every instance of disparate impact discrimination would be overly burdensome.

Rather than attempt to classify a type of discrimination as either “deliberate” or “disparate impact,” the Court determined it more useful to assess whether disabled persons were denied “meaningful access” to government-provided services. *Id.* at 302. An entity will frequently have to make modifications to its policies, practices and procedures in order to avoid discriminating against individuals with disabilities, and to truly afford them “meaningful access.” *Id.*; *see also Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (noting that the “failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion”).

If a government policy denies disabled individuals “meaningful access” to a government benefit, program, or facility the relevant public entity must make reasonable modifications to provide access to those with disabilities, “unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” *Crowder v. Kitagawa*, 81 F.3d 1480, 1485 (9th Cir. 1996) (quoting 28 C.F.R. § 35.130(b)(7)). Here, the 2005 Travel Management Rule’s implementation has denied meaningful access to Plumas National Forest to Petitioner Amy Granat. Moreover, other individuals who are handicapped also have been denied such meaningful access to a wide variety of national forests throughout the nation. Accordingly, the 2005 Travel Management Rule should be changed in accordance with the following recommendations.

## **Proposed Changes to the 2005 Travel Management Rule**

Based on the foregoing abuses of the 2005 Travel Management Rule, Petitioners hereby request that the Forest Service change the rule in one of two ways. First, the agency could rescind the 2005 rule and replace it with a rule based on the conceptual outline set forth below. The purpose of the conceptual outline is to establish a more balanced approach to motorized public access and forest conservation, and to more efficiently allocate Forest Service resources. These goals are achieved by returning to a general presumption that user-created routes and trails for access to national forests are open for motorized use, while providing a mechanism by which the Forest Service or members of the public could take action to have specific routes or trails closed for conservation purposes. This would achieve the goal of providing greater public access, while at the same time obviating the need for the Forest Service to catalogue, examine, and study each user-created route and trail in the National Forest System to determine whether it should be designated for motorized travel on an official map. Accordingly, the map under the revised rule suggested in this Petition would designate only those routes or areas on or in which motorized travel would *not* be permitted. All areas not designated as closed would be open for motorized travel. Of course, under the conceptual outline suggested herein, users should be prohibited from creating new routes through areas designated on maps as prohibited for motorized use. The resulting savings of federal

government resources would be fully consistent with the efforts of the current Administration to bring down government spending so as to deal more effectively with a federal deficit that has been growing unchecked for decades.

The second option would be for the agency to adopt a series of significant changes to the existing Travel Management Rule, as laid out and explained below. While not as efficient and cost-effective as the suggested new rule, the benefit of the latter approach is that it modifies the 2005 Travel Management Rule so as to make it more balanced to support mixed uses of our national forests, as Congress intended.

Under either scenario, the Forest Service should declare that all decisions using the 2005 Travel Management Rule are null and void.

The remaining parts of this petition provide a conceptual outline of the suggested replacement rule, followed, in the alternative, by a redline of suggested amendments to the current 2005 Travel Management Rule.

### **Conceptual Outline of the Suggested Replacement Rule**

1. *Motorized travel in the national forests is permitted unless a particular route, trail, or area in a particular national forest is explicitly designated, marked, and labeled as closed to motorized travel on an official map prepared and published by the Forest Service.*

2. *Any interested person may petition the Service to have a trail, route, or area closed to motor vehicle use for environmental, conservation, or human safety reasons.*
3. *Decisions to close a trail, route, or area pursuant to section 2 shall be made subject to the following limitations.*
  - a. *Prior to the closure of any trail, route, or area the agency shall publish clear maps of the proposed trail, route, or area to be closed and provide opportunity for public comment on the proposed closure.*
  - b. *Prior to the closure of any trail, route, or area the agency shall seek and consider input from state, local, and tribal authorities with jurisdictions contiguous with the trail, route, or area to be closed.*
  - c. *In considering whether trail, route, or area closure is necessary, the agency shall presume that all types of motorized access are compatible with environmental, conservation, and human safety concerns unless the preponderance of evidence indicates otherwise.*
  - d. *In considering whether trail, route, or area closure is necessary, the agency shall balance environmental or conservation concerns with any impacts that trail, route, or area closure could have on the ability of the public,*

*including members of the public with impaired mobility, to access public lands.*

- e. *Decisions to close a trail, route, or area under this section shall be made on a case-by-case basis, and shall be based on site-specific evidence pertaining to the impacts of continued motor vehicle use of the particular trail, route, or area to be closed.*
- f. *Prior to the closure of any trail, route, or area the agency shall consider a reasonable range of alternatives that meet the environmental, conservation, or safety goals without restricting access.*

- 4. *Notwithstanding sections 2 and 3, above, the agency shall have authority to temporarily close a trail for up to sixty days if, based on a preponderance of the evidence, failure to do so would cause irreparable harm to the environment, conservation, or safety.*
- 5. *Any decision to close a trail, route, or area for more than 60 days in a calendar year shall be subject to the requirements of section 3.*
- 6. *Decisions to close a trail, route, or area under sections 3,4, or 5 shall be considered final agency action for purposes of the Administrative Procedure Act.*

## Alternatively, Suggested Amendments to the 2005 Travel Management Rule

Alternatively, Petitioners seek the following changes to the 2005 rule.

### **212.1 Definitions:**

- Off-Highway Vehicle (OHV): Any motorized vehicle that travels on National Forest System Lands, including cars, trucks, motor homes, motorcycles and other vehicles. This may include *both vehicles registered for use on state highways as well as vehicles registered as legal for off-highway use* ~~street legal registration or non-highway legal registration~~.

### **Subpart B**

#### **212.50 Purpose, scope, and definitions**

**(a) Purpose.** This subpart provides for a system of National Forest System roads, National Forest System 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 ~~including class of vehicles and time of year~~ not in accordance with these designations ~~is prohibited by 36 CFR 261.13 shall be reviewed by the responsible official at the District Ranger level to determine inclusion into the National Forest System Road, trail and area inventory. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.~~ Travel Management shall be regarded as a mandate for sustainable motorized use on National Forest System lands, rather than a mandate for closure of National Forest Service routes. All references to the minimization criteria in Executive Order #11644 as amended by Executive Order #11989 shall be considered met through a comprehensive program of maintenance and management of native surface routes and trails, subject to mitigation efforts when needed. This does not pertain to over-snow recreation. NEPA analysis for this purpose exempts analyses using Categorical Exclusions.

#### **Explanation:**

The suggested amendment strikes language and adds additional language to section 212.50 (a). The stricken language allowed for broad-based categorical exclusions of certain types of traffic and promoted a presumption against access. In examples like the Plumas National Forest, mentioned above, this stricken language was used to eliminate vast amounts of trails without any site-specific evaluation of the trails themselves. These changes will ensure that motorized access is based on a site-specific analysis that balances conservation, access needs, wildfire suppression and response. Additional language was added to emphasize that a balanced approach is needed that balances conservation, access and wildfire suppression and response considerations. NEPA analysis for this purpose exempts analyses using Categorical Exclusions.

#### **212.51 Designation of roads, trails, and areas**

**(a) General.** Motor Vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands already designated or under review for designation ~~shall be designated by vehicle class and, if appropriate, by time of year~~ by the responsible

official on administrative units or Ranger Districts of the National Forest System, shall be designated provided that the following vehicles and uses are exempt from these designations:

- (1) Aircraft;
- (2) Watercraft;
- (3) Over-snow vehicles (see §212.81);
- (4) Limited administrative use by the Forest Service;
- (5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (6) Authorized use of any combat or combat support vehicle for national defense purposes;
- (7) Law enforcement response to violations of law, including pursuit;
- (8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations; and
- (9) *Parking motor vehicles shall be at a safe distance from a route of travel. Parking motor vehicles will be in accordance with 36 CFR 261.15 (h) and shall not unreasonably disturb the land, wildlife or vegetative resources.*

*Explanation:*

*The proposed changes would strike language from subsection (a) and add a new exemption as subsection (a)(9). The stricken language is removed to ensure that access decisions are made on a case-by-case basis and based on route-specific evidence. Petitioners' experience is that broad exclusions based on vehicle-type or time of year unnecessarily and arbitrarily deny access, because every route will be different and have unique needs.*

*The proposed changes also include a new exemption in (a)(9) for parking vehicles near trails. This change is also based on a desire to move towards a site-specific inquiry. In many forests, the current rule is that vehicles may be no more than one vehicle length off the side of a trail. Yet on many trails this distance is not sufficient for safety reasons. For example, off-loading horses from a trailer often requires a greater distance. This change will allow local Forest Service officials the flexibility needed to adapt to local conditions.*

**(b) Motor vehicle use for dispersed camping, big game retrieval, fuelwood cutting and fuelwood retrieval, rockhounding, recreational mining and gathering of edible resources.** In designating routes, the responsible official may include in the designation the **limited** use of motor vehicles ~~within a specified distance of certain forest roads or trails where motor vehicle use is allowed, and if appropriate within specified time periods, solely~~ for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

*Cross Country travel shall be allowed solely for over-snow recreation and the purposes of dispersed camping, big game retrieval, fuelwood cutting and fuelwood retrieval, rockhounding, recreational mining, gathering of edible resources, and tribal cultural purposes, among other uses yet to be determined. Cross country travel will be in accordance with 36 CFR 261.15 (h) and shall not cause damage or unreasonably disturb the land, wildlife or vegetative resources. In determining whether cross-country travel is permitted, the agency shall also consider the need for disabled and elderly access. The responsible official shall coordinate ease of access with*

*secondary users of road and trails including private property owners, grazing permittees, owners of mining claims, as well as ensure tribal members ease of access to cultural sites.*

*Explanation:*

*The amended language of § 212.51(b) is designed to ensure that access is based on site-specific evidence with particular attention to the access needs of the disabled, elderly, tribal members and secondary users. Petitioners have witnessed difficult scenarios where elderly or limited mobility individuals, in one case a 91-year old amputee hunter, was unable to retrieve legally downed game due to arbitrary restrictions on cross country travel. The proposed changes will provide officials with flexibility to make case-by-case determinations based on the facts on the ground.*

## **212.52 Public Involvement**

**(a) General.** *The Public involvement is an integral and necessary component shall be allowed to participate* in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. *Before considering any designation, revision, or closure, the responsible official shall coordinate meetings of stakeholder groups, local governments and tribal authorities, including representation of the public who have interest as secondary users (i.e. private property owners, grazing permittees, owners of mining claims etc.) of roads, trails, and areas, as a required component of the decision-making process.*

*To facilitate this coordination, advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act (NEPA), on proposed agency designations, route closures, or and revisions. NEPA analysis for this purpose exempts analyses using Categorical Exclusions. This notice shall include clear maps of the routes to be revised or closed.*

*Explanation:*

*The proposed amendment adds stronger language to ensure public and local government participation in the travel management process. Because trail users and local governments typically have the most on-site information regarding access needs, trail use, and local conditions, this participation is essential to ensuring a site specific balanced approach to route management. NEPA analysis for this purpose exempts analyses using Categorical Exclusions.*

*Additionally, the proposed amendment strikes language from § 212.52(a) to ensure that route closures are not treated more favorably than new route designations. In Petitioners' experience in the Plumas National Forest, nearly 90% of route closures occurred with complete disregard for public input, whereas creating new routes would be subject to a robust administrative process. This amended language resolves this disparity and returns to a more balanced approach.*

## **212.55 Criteria for designation of roads, trails, and areas.**

**(a) General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.** In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider effects on ~~National Forest System~~ natural and cultural resources, public safety, and provision of recreational opportunities, access needs, *wildfire defensible space, and parity of conflicts among* uses of National Forest System lands. ~~the need~~

~~for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and the availability of resources for that maintenance and administration. NEPA analysis for this purpose exempts analyses using Categorical Exclusions.~~

*Explanation:*

The term “conflict” has been replaced with “parity” to emphasize the need to balance conservation and use without favoring one over the other. Added language includes the need for wildfire defensible space as integral to the designation criteria. The additional stricken language has been removed because Petitioners deem it inappropriate for trail management decisions to be made based on hypothetical future budget concerns. Many OHV groups are ready and willing to perform trail maintenance at no cost to the government. As with the other changes, this amendment is designed to move trail management to a case-by-case site-specific inquiry and include the importance of wildfire defensible space. NEPA analysis for this purpose exempts analyses using Categorical Exclusions.

**(b) Specific criteria for designation of trails and areas.** In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider *implementing mitigation measures in lieu of closing routes, and* effects on the following, ~~with the objective of minimizing:~~

- (1) ~~Irreversible~~ damage to soil, watershed, vegetation, and other forest resources;
- (2) ~~Harassment of wildlife and significant disruption of wildlife habitats; Significant threats to the Viability of species and species habitat as considered in the whole;~~
- (3) ~~Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and~~
- (4) ~~Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.~~
- (5) Compatibility of motor vehicle use with existing conditions in populated areas ~~taking into account sound, emissions, and other factors;~~
- (6) *The need for wildfire defensible space, which includes rapid access for firefighters and firefighting equipment;*
- (7) *Potential negative impact on local economies (especially logging), tourism and pertinent economic factors from closures including consideration impacts on residents who may be disproportionately affected in a negative manner by road closures; and*
- (8) *Impacts on secondary uses that are non-motorized but require motorized access to the forest (i.e. dispersed camping, hunting, fishing, rockhounding, hiking, wildlife viewing, cross-country skiing, etc.).*

**(c) Specific criteria for designation of roads.** In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall consider:

- (1) ~~Speed, volume, composition, and distribution of traffic on roads; and~~
- (2) ~~Compatibility of vehicle class with road geometry and road surfacing.~~

*Explanation:*

These amendments ensure that the agency takes a balanced approach, considering both access, socioeconomic, and environmental concerns when rendering decisions and includes the need for wildfire

defensible space. The Rule's prior language included a series of conservation factors that favor in closure without any express factors that would support keeping trails open.

## **212.56 Identification of designated roads, trails, and areas.**

Designated roads, trails, and areas shall be identified on a motor vehicle use map. Motor vehicle use maps shall be made available to the public at the headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as soon as practicable, on the website of corresponding administrative units and Ranger Districts. ~~The motor vehicle use maps shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated. The motor vehicle use map should be of the quality that can be used as a standalone map. It must be clearly legible and designed to be used in conjunction with other available maps. This map shall not to be used as the sole proof and/or determination of legal motor vehicle travel on National Forest Service lands.~~

## **212.81 Over-Snow Vehicle Use**

**(a) General.** Over-snow vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by the Responsible Official on administrative units or Ranger Districts, or parts of administrative units or Ranger Districts, of the National Forest System ~~where snowfall is adequate for that use to occur, when snowfall is adequate for OSV use to occur, although no minimum snow depth shall be defined. and, if appropriate, shall be designated by class of vehicle and time of year.~~ Over-snow use by motorized vehicles is recognized as less impactful on natural resources due to snow cover. All existing Forest Service System routes and areas shall be designated for OSV use, unless specifically prohibited following NEPA analysis, exempting analyses for Categorical Exclusions.

*Explanation:*

*The stricken language is removed to ensure that access decisions are made on a case-by-case basis and based on route and area-specific evidence. Petitioners' experience is that broad exclusions based on vehicle-type, time of year, or snow depth unnecessarily and arbitrarily deny access, because every trail will have different needs. Over-snow motorized vehicles operate differently depending on variations of snow. Categorical Exclusions are not substantive NEPA analyses that are subject to change due to public comment and do not require the necessary collaboration of all interested parties.*

**(b) Previous over-snow vehicle decisions.** ~~Public notice with no further public involvement is sufficient if an administrative unit or a Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict over-snow vehicle use to designated routes and areas over the entire administrative unit or Ranger District, or parts of the administrative unit or Ranger District, where snowfall is adequate for OSV use to occur, and no change is proposed to these previous decisions.~~

*Explanation:*

*The proposed amendment is designed to ensure a more balanced approach where use and conservation are balanced as opposed to operating under strong presumption of non-use.*

**(c) Identification of roads, trails, and areas for over-snow vehicle use.** Designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands for

over-snow vehicle use shall be reflected on an over-snow vehicle use map. Over-snow vehicle use maps shall be made available to the public at headquarters of corresponding administrative units and Ranger Districts of the National Forest System and, as soon as practicable, on the Web site of the corresponding administrative units and Ranger Districts. ~~Over-snow vehicle use maps shall specify the classes of vehicles and the time of year for which use is designated, if applicable.~~

*Explanation:*

*There is no need to specify the class of vehicle for over snow travel. All over-snow vehicle types should be allowed. Time of year is subjective, and weather is not predictable from one year to the next. This change will require less work and funding for the Forest Service.*

**Subpart A**

212.5 Road System Management

**(a) Traffic rules.** Rules set forth under 36 CFR part 261 and this section shall apply to all National Forest System roads under the jurisdiction of the Forest Service except when in conflict with *other uses established by a* written agreement.

**(1) General.** Traffic on roads is subject to State traffic laws where applicable except when in conflict with designations established under subpart B of this part or with the rules at 36 CFR part 261. *If there is disagreement in interpretation of county roads that traverse a forest, all efforts shall be made to mirror the county road management scheme.*

**(2) Specific.** The following specific traffic rules shall apply unless different rules are established in 36 CFR part 261.

(i) The load, weight, length, height, and width limitations of vehicles shall be in accordance with the laws of the States wherein the road is located. Greater or lesser limits may be imposed, and these greater or lesser limits shall be established as provided in 36 CFR part 261.

(ii) Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 CFR part 261. Classes of vehicles may include but are not limited to distinguishable groupings such as passenger cars, buses, trucks, motorcycles, all-terrain vehicles, 4-wheel drive vehicles, off-highway vehicles, and trailers. Types of traffic may include but are not limited to groupings such as commercial hauling, recreation, and administrative.

(iii) Roads, or segments thereof, may be closed to all vehicle use as provided in 36 CFR part 261.

(iv) Additional rules may be imposed as provided in 36 CFR part 261.

*Explanation:*

*Because all route closures should be made on a route by route basis and local officials have the most on the ground knowledge, local decision makers should receive deference in route closure decisions. The county management scheme allowing access on roads in any forest shall be considered the de facto agency road management scheme.*

**(b) Road System**

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

*Explanation:*

*References to a “minimum” road system have been eliminated because they imply a presumption against motorized use. Moreover, it is impossible to factually prove the minimum amount of access required as it involves an inherently subjective value judgment. The language in 212.5 (b) lacked any reference to the need for wildfire defensible space, response, suppression and rehabilitation.*

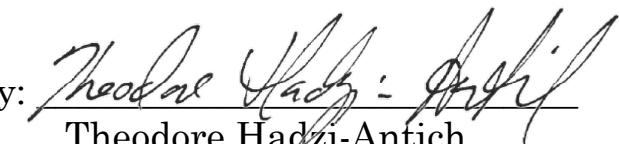
## CONCLUSION

For the foregoing reasons, Petitioners hereby petition the Secretary of Agriculture and the Chief of the Forest Service to rescind the 2005 Travel Management Rule and replace it with a rule based upon the conceptual outline set forth above, or, in the alternative, to amend the 2005 Travel Management Rule as set forth above in the redline of the existing Rule.

Dated: June 6, 2025,

Respectfully submitted,

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