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INTRODUCTION

After the Secretary of Agriculture adopted a regulation that changed the way the Forest Service regulates off-highway vehicles on national forests, the Service added several hundred miles of trails to the extensive existing system of trails, roads, and areas where motor-vehicle use is allowed on the Plumas National Forest in California. At the same time, the Service prohibited unauthorized cross-country motorized travel as it had occurred prior to the regulation. Motor-vehicle advocacy groups and two counties challenged the Service's actions under the National Environmental Policy Act (NEPA). They contend that because motor-vehicle users had created more than a thousand miles of unauthorized routes before the regulation's adoption, NEPA required the Service to analyze the possibility of adding even more mileage or allowing motor vehicles on different combinations of those unauthorized routes.

The district court correctly rejected the plaintiffs' claims on summary judgment, and this Court should affirm. The process that the Service used to develop alternatives fulfilled NEPA's twin aims of fostering informed decision-making and ensuring public involvement. Although the counties argue that the Service inadequately coordinated with them under NEPA and the Service's regulation, they had ample opportunity to provide input through that years-long public process. Moreover, nothing in the procedural requirements of

NEPA or the regulation provides the counties with a virtual veto power over the Service's substantive choices.

STATEMENT OF JURISDICTION

We agree with the statement of jurisdiction in the plaintiffs' brief (at 1).

ISSUES PRESENTED

1. Whether the district court correctly held that the Service complied with NEPA by considering a reasonable range of alternatives to its proposal for designating trails for motorized use on the Plumas National Forest (Plumas).

2. Whether the district court correctly held that that the Service's outreach to the public and to the counties during the administrative process satisfied its responsibilities to "coordinate" with local governmental entities under 36 C.F.R. 212.53, and to "cooperate" with the counties' planning processes under various regulations implementing NEPA.

STATEMENT OF THE CASE

1. Statutory background

NEPA requires federal agencies to follow procedures for taking a "hard look" at the environmental impacts of their decisions. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Thus, before taking major federal action "significantly affecting" the environment, agencies must prepare a detailed environmental impact statement, or EIS, on "the environmental

impact" of their proposed action, as well as "alternatives" to that proposal. 42 U.S.C. 4332(2)(C)(i), (iii); *see also* 42 U.S.C. 4332(2)(E). Although NEPA sets forth procedures for agencies to follow, it does not constrain an agency's substantive choices. *Robertson*, 490 U.S. at 350. Thus, "[o]nce satisfied that a proposing agency has taken a 'hard look' at a decision's environmental consequences, the [court's] review" of the agency's NEPA compliance "is at an end." *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992).

2. Statement of facts[2]

a. 2005 Rule

The Executive Branch has long recognized the need to manage the use of motorized vehicles on the national forests to protect natural resources, promote public safety, and minimize conflicts between various users of those forests. *See* E.O. 11989, 42 Fed. Reg. 26,959 (May 24, 1977); E.O. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972). But before 2005, many national forests were open to motor-vehicle travel off designated roads and trails. *See* 69 Fed. Reg. 42,381, 42,382 (July 15, 2004) (proposed rule); *see also* 36 C.F.R. 295.2, 295.5 (2004). With few restrictions, a largely unregulated network of cross-country motorized routes proliferated without the Forest Service's permission or any

[2] Record citations refer to the plaintiffs' excerpts of record (ER) and to the government's supplemental excerpts of record (SER).

analysis of the possible effects of long-term use as motorized trails. *See* 70 Fed. Reg. 68,264, 68,264-65 (Nov. 9, 2005); 69 Fed. Reg. at 42,384. Some unauthorized routes are well-sited and provide high-quality opportunities for outdoor recreation; however, others are poorly located, are not designed to best meet public recreation or access needs, and may be adversely affecting important natural and cultural resources. 70 Fed. Reg. at 68,268.

Responding to these circumstances, the Secretary in 2005 adopted a rule that changed the way motor-vehicle use on national forests is managed. 70 Fed. Reg. at 68,264-91 (codified at 36 C.F.R. 212.1–261.55) (SER96-123). To better manage motor-vehicle use, the 2005 Rule directed the Service to designate specific roads, trails,[3] and areas for motor-vehicle use by the public on each national forest, outside of which motor-vehicle use would be prohibited. *See* 36 C.F.R. 212.50, 212.55, 261.13; *see also* 70 Fed. Reg. at 68,264-65, 68,273, 68,291. In making these designations, the Service considers a variety of general criteria, including the national forest's natural and cultural resources; public safety; provision of recreational opportunities; access needs; conflicts among uses of National Forest System lands; the need for maintenance and administration of roads, trails, and areas that would arise if

[3] Roads and trails differ principally in their width. Generally trails are less than, and roads more than, 50 inches wide. *See* 36 C.F.R. 212.1 (defining "Road" and "Trail").

the uses under consideration are designated; and the availability of resources for that maintenance and administration. 36 C.F.R. 212.55(a).

When designating motorized *trails*—the only type of designation at issue in this appeal—the Service must also try to minimize "(1) Damage to soil, watershed, vegetation, and other forest resources; (2) Harassment of wildlife and significant disruption of wildlife habitats; (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands," and (4) "Conflicts among different classes of motor vehicle uses" on those lands. 36 C.F.R. 212.55(b). Motor-vehicle trail designations are documented in publicly available maps maintained by the Service. 36 C.F.R. 212.2(a), (b), 212.56; *see also* 36 C.F.R. 212.1. Motor-vehicle use is generally prohibited outside of designated roads, trails, and areas. 36 C.F.R. 261.1b, 261.13.

After the Secretary adopted the 2005 Rule, the Service updated its nationwide guidance to assist national forests implementing the Rule. *See* 73 Fed. Reg. 74,689, 74,689 (Dec. 9, 2008) (revising Service manual and handbook).

b. 2010 travel-management designations for the Plumas National Forest

Historically, off-highway motor-vehicle use was unrestricted across most of the Plumas, with nearly one million acres open to cross-country travel. *See*

ER240, SER56. Before the 2005 Rule was adopted, the Service had begun reviewing, mapping, and validating the locations of motorized routes on the Plumas. SER62. With the help of interested citizens whom the Service trained to identify their favorite riding areas, the Service inventoried 1,107 miles of unauthorized routes on the Plumas open to cross-country travel. SER56. The majority of those routes originated as temporary roads or log-skidding trails constructed for timber sales; such routes were never intended to be used by motor vehicles for more than a short period of time. SER89. After the 2005 Rule was adopted, the Service began to review existing routes and identify proposals for limited, additional designations of trails on the Plumas through a process involving consideration of the forest plan, internal and external discussions, opportunities for public input, and validation of route locations. *Id*.

Based on the best information available about all the inventoried routes, the Service developed a "first cut" map displaying 220 miles of proposed motorized routes known and used by the public, including destination, loop, and spur trails to fishing and camping sites. *Id*. This map avoided routes on private land with no rights-of-way, routes where motorized use would conflict with other uses, and routes with adverse impacts on streams, plants, and wildlife habitat. *Id*. The Service then held public information meetings and

workshops in three local communities (*id.*), as a result of which it identified an additional 155 miles of routes. ER283. Following that, the Service conducted a public-involvement process under NEPA known as scoping (discussed below at pp. 24-25), identifying another 35 miles, for a total of 410 miles of routes, all of which the Service surveyed in the field. *Id.*; *see also* SER56, SER62-63 (discussing public involvement).

Informed by field observations and existing databases, the Service's resource specialists evaluated each route's proximity to roads, trails, and forest resources and determined whether the benefits of providing motorized access on each route outweighed any associated risks to water, wildlife, plants, and cultural resources. The specialists documented their assessments of each route and the reasons whether to include it in the analysis. *See*, *e.g.*, ER292-325 (inventory spreadsheets); *see also* SER147 (definitions).

After preparing and circulating a draft impact statement for public comment, the Service published a final EIS in August 2010 that defines the project purpose and need as twofold: (1) "for regulation of unmanaged motor vehicle travel by the public," and (2) "for limited additions to the National Forest Transportation system to [p]rovide motor vehicle access to dispersed recreation opportunities" and to "[p]rovide a diversity of motorized recreation opportunities." ER237; *see also* SER59-60. This purpose reflects the Service's

responsibility to consider possible effects on natural resources as well as administrative and management needs. *Id.*; *see* 36 C.F.R. 212.55(a), (b).

In furtherance of that purpose, the EIS analyzed in detail four action alternatives and a no-action alternative. *See* ER269-82. The action alternatives considered designating between zero and 361 miles of motor-vehicle trails as part of the Plumas transportation system, while the no-action alternative represented continuing, unrestricted cross-country motor-vehicle travel. *See* ER281, 288. The Service also considered 11 other alternatives—including some that would have designated more miles of inventoried routes—and explained why the EIS did not analyze them in greater depth. ER283-87.

On August 30, 2010, the Forest Supervisor for the Plumas signed a record of decision selecting an alternative designating an additional 234 miles of motorized trails as part of the forest's transportation system, bringing the total number of recognized trail miles on the forest to 364. *See* ER 239, 240. In addition to the trails, about 4,137 miles of roads are authorized for motor-vehicle travel on the Plumas. ER236. The Supervisor's decision did not remove any of the previously designated roads or trails from motorized use. *See* SER56, SER91.

The decision responds to issues about access, motorized recreation opportunities, and natural resource protection, and it discusses how the

various criteria for designating the trails were satisfied. *See* ER240-44. The Supervisor stated that "it was a challenge to balance the desires of motorized recreation enthusiasts and maintain natural resources," but that it was "important to add * * * the best of the most popular, well-located routes, so that the Forest continues to provide a diversity of motorized recreation experiences, while maintaining other resource values." ER240.

The plaintiffs administratively appealed the Forest Supervisor's decision to the Regional Forester, who rejected the appeals. *See* SER1-41.

c. District-court suit

In March 2015, the plaintiffs filed a 12-claim complaint in federal district court alleging that the Service's decision violated NEPA. ER146-67. The plaintiffs also alleged that the Service violated the 2005 Rule by incorrectly applying the trail-designation criteria and by failing to coordinate with local county governments. ER140-46.

In March 2017, the district court granted summary judgment to the Service on all claims. ER1-21. Regarding the two principal issues raised by the plaintiffs in this appeal, the district court first held that the Service had fulfilled the requirements of NEPA by considering a range of alternatives that "fostered informed decision-making and informed public participation." ER11. The court observed that the Service had considered numerous alternatives, had

explained its reasons for not more fully analyzing alternatives suggested by the public, and had responded to public input by surveying and considering additional routes not part of the original proposal. *Id*. Second, the court held that the record demonstrated that the Service had coordinated with the counties under NEPA and the 2005 Rule, and that mere disagreement between the counties and the Service did not prove that the coordination had been inadequate. ER14-15.

The court entered final judgment for the Service. ER22. This appeal follows.

STANDARD OF REVIEW

This Court reviews *de novo* the district court's grant of summary judgment. *Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1041 (9th Cir. 2011). Under the governing standard of the Administrative Procedure Act (APA), the Forest Service's decision "may be set aside if 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Id.* (quoting 5 U.S.C. 706(2)(A)). Under that highly deferential standard, the court "will not substitute [its] judgment for that of the agency concerning the wisdom or prudence of a proposed action." *City of Carmel-By-The-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1150 (9th Cir. 1997) (internal quotation marks, citation omitted). Rather, the Court reviews the record to ensure that the

Service has not "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or [an explanation that] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Assn., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

SUMMARY OF ARGUMENT

The record demonstrates that the Service developed a reasonable range of alternatives for analysis in the EIS. From those alternatives, the Forest Supervisor selected what she described as "the best of the most popular, well located routes" for off-highway-vehicle trails on the Plumas National Forest. The Supervisor's decision—which she recognized as a "challeng[ing] balance" between the "desires of motorized recreation enthusiasts" like the plaintiffs and the Service's statutory and regulatory responsibility for "maintaining natural resource values"—was the product of informed decision-making and public participation, thereby satisfying NEPA and the 2005 Rule.

The plaintiffs err in contending that the Service violated NEPA by not analyzing in detail a greater number of miles for trail designation, and by not formulating its alternatives from combinations of mileages in which the public had no interest but which plaintiffs believe *might* have fewer environmental

impacts and greater recreation opportunities. First, the range of alternatives is adequate because it was guided by the project's purpose and need, which include regulating off-highway motorized vehicles in accordance with the criteria for both providing recreational opportunities and protecting forest natural resources. The range of alternatives considered by the Service reasonably served those purposes. Second, the combination of routes analyzed by the Service was the product of informed public and agency consideration. NEPA permits such a stepwise approach to formulating and evaluating alternatives, and the Service's chosen process was eminently reasonable.

Nor did the Service fail to satisfy its responsibilities to the counties under NEPA or the 2005 Rule. In addition to giving the counties the same multitude of opportunities for involvement provided to everyone else, the Service met with the counties' representatives on numerous occasions, exchanged information, and extended the public comment period at the counties' request. Nothing more was reasonably required. Moreover, the plaintiffs identify no conflict between the Service's decision and any specific provisions of the county plans. In short, the EIS thoroughly addresses the counties' underlying concerns, satisfying NEPA.

ARGUMENT

THE SERVICE COMPLIED WITH NEPA AND THE TRAVEL RULE

I. The Service considered a reasonable range of alternatives that fostered informed decision-making and public participation.

The Service manages the Plumas National Forest for multiple use—"a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.'" *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004) (*quoting* 43 U.S.C. 1702(c)).[4] For that reason, this Court has described the Service's multiple-use-management responsibility as "breath[ing] discretion at every pore." *Perkins v. Bergland*, 608 F.2d 803, 806 (9th Cir. 1979) (internal quotation marks, citation omitted).

With those responsibilities in mind, the Service has long possessed authority to manage the use of motorized vehicles on the national forests. *See*, *e.g.*, *Skranak v. Castenada*, 425 F.3d 1213, 1217 (9th Cir. 2005) (reiterating that "16 U.S.C. 551 confers broad powers on the Service to regulate roads for the

[4] For purposes of this case, the definition of "multiple use management" under the Federal Land Policy and Management Act concerning the Secretary of the Interior's management of the public lands has "essentially [the] same meaning" as the definition that Congress applies to the Forest Service. H.R. Rep. No. 94-1163, at 5 (1976); *cf.* 16 U.S.C. 531(a).

good of the forests") (citing *Clouser v. Espy*, 42 F.3d 1522, 1538 (9th Cir. 1994)); *McMichael v. United States*, 355 F.2d 283 (9th Cir. 1965) (upholding prohibition on motor vehicles in "primitive area" of national forest).

Here, the plaintiffs are dissatisfied with the total mileage of the routes that the Service designated for motorized use. The plaintiffs do not allege, however, that the Service violated a substantive mandate in making its travel-management decision or that it lacked authority to restrict motorized vehicles. They instead rely on NEPA, a procedural statute that requires agencies to take a "hard look" at the environmental impacts of their proposed actions. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). This Court considers it unreasonable to require more in-depth environmental analysis of alternatives that are less environmentally beneficial. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1089 (9th Cir. 2014); *Douglas Cty. v. Babbitt*, 48 F.3d 1495, 1508 (9th Cir. 1995). In any event, the record shows that the Forest Service's comprehensive EIS satisfies NEPA.

A. The Service considered a reasonable range of alternatives.

An EIS must evaluate "all reasonable alternatives," and for alternatives eliminated from detailed study, it must "briefly discuss the reasons for their

having been eliminated." 40 C.F.R. 1502.14(a).[5] The range of alternatives to be considered in an EIS is governed by a "rule of reason," meaning that agencies "need not consider an infinite range of alternatives, only reasonable or feasible ones." *City of Carmel-By-The-Sea*, 123 F.3d at 1155; *see also California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982) (agency must consider only those alternatives "necessary to permit a reasoned choice") (quotation marks, citation omitted). An EIS need not analyze alternatives which are "inconsistent with the [agency's] basic policy objectives," which are "not significantly distinguishable from alternatives actually considered, or which have substantially similar consequences." *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990) (citations omitted). So long as the EIS's treatment of alternatives "fosters informed decision-making and informed public participation," it satisfies NEPA. *Block*, 690 F.2d at 767.

Here, the Service analyzed five alternatives in detail: a no action alternative that would continue to allow motorized travel on all 1,107 miles of inventoried routes; and alternatives that would designate 0, 140, 234, and 361 miles, respectively, as official motorized trails. *See* ER264, ER281; *see generally*

[5] NEPA created the Council on Environmental Quality (CEQ or Council), an agency in the Executive Office of the President which has issued regulations to help federal agencies apply the statute's requirements. *See* 40 C.F.R. 1500 *et seq.* Courts give the Council's regulations substantial deference when interpreting NEPA. *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979).

ER269-82. The Service arrived at the range of alternatives by screening all the inventoried routes based on recreational benefits, resource values, and administrative needs; and by surveying 410 miles of routes, including 190 miles proposed by the public or added after public scoping. ER283. The Service also considered another 11 other options, including designating many more miles of trails than it had already proposed, up to the full set of inventoried routes. ER283-87. The alternatives were developed through a process that entailed public meetings, workshops, and outreach. Thus, the final EIS, which spanned more than 600 pages, was the product of a process that fostered informed decision-making and public participation. *See Block*, 690 F.2d at 767.

In asserting that NEPA required the Service to fully analyze options designating greater trail mileages, the plaintiffs ignore several key points. First, the Service *did* analyze the option of allowing motorized travel on more miles of trails through the no-action alternative. ER269. The fact that the Service could not permissibly implement that alternative in light of the 2005 Rule does not mean that the Service was less than fully informed about the environmental effects of increased motorized travel. Second, the Service did not have to consider "every conceivable permutation" of travel route mileages, for the range of alternatives that must be analyzed under NEPA need only be

"[r]easonable." *Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 871 (9th Cir. 2004) (EIS "was not required to consider more mid-range alternatives to comply with NEPA"). Third, the upper bound of the mileage range considered for designation was developed through a rational screening process based on public input and interest in specific routes. *See supra* at pp. 6-8, *infra* at pp. 24-25. In sum, the Service's determination of such upper bound was reasonable and explained in the record. *See*, *e.g.*, ER283.

Plaintiffs' base their argument on the premise that all 1,107 miles of inventoried routes are "lawful." Pl. Br. 13. But forest users created those routes "without agency authorization, environmental analysis, or public involvement," and they "do not have the same status as * * * roads and trails included in the forest transportation system." 70 Fed. Reg. at 68,268. As discussed above at p. 3, the pre-2005 regulations did allow motorists to travel across most of the forest—including along unauthorized, user-created routes—so long as their vehicles did not damage the land, wildlife, or vegetation. But the Service determined that those limitations were insufficient to control the proliferation of routes and the associated environmental damage. 70 Fed. Reg. at 68,265. Now that the Service has issued its designation decision, motorized

use outside designated trails, roads, and areas is generally prohibited. See 36 C.F.R. 261.13.[6]

This Court should reject the plaintiffs' argument that NEPA requires the Service to consider other alternatives designating more miles of user-created routes as motorized trails. The EIS "cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable." *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978) (internal quotation marks omitted). Moreover, a main purpose of the motorized trail designations is to address the "proliferation of unplanned, unauthorized, non-sustainable roads, trails and areas created by cross-country travel [which] adversely impacts the environment." SER59. In such a context, where the agency seeks "to conserve and protect the natural environment, rather than to harm it," this Court has held that the "NEPA alternatives requirement must be interpreted less stringently." *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1120 (9th Cir. 2002).

An unpublished decision of this Court involving similar facts confirms the reasonableness of the Service's approach. *Friends of Tahoe Forest Access v. U.S. Dep't of Agric.*, 641 Fed. Appx. 741 (9th Cir. 2016) held that the range of alternatives that the Service developed through a "robust public process" for

[6] This brief uses the term "trails" only in reference to routes that have been designated as part of the Plumas transportation system.

designating motor-vehicle trails on a neighboring national forest satisfied NEPA. *Id.* at 743-44. The Court should hold likewise here, where the range of alternatives that the Service analyzed represents an even greater percentage of the total possible routes—approximately 32 percent (361 of 1,107) of the total miles—than the nine percent (80 of 869 miles) analyzed in *Friends*. *Id.*

Relying on a CEQ guidance document, the plaintiffs argue (at 26-28) that the Service failed to cover "the full spectrum of alternatives," by not analyzing in detail a greater percentage of the full inventory of unauthorized routes on the Plumas. *Id.* (quoting *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981) (emphasis omitted)). Regardless of how much deference the guidance receives, *cf. Friends of the Earth v. Hintz*, 800 F.2d 822, 837 n.15 (9th Cir. 1986) (holding that this document is not binding on federal agencies and not entitled to substantial deference), it does not help the plaintiffs' case. The document, which "do[es] not impose any additional requirements beyond those of the NEPA regulations," merely provides that "[w]hat constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case." 46 Fed. Reg. at 18,026-27.

In this case, the purpose and need of the Service's action was not to evaluate all of the unauthorized, user-created routes but rather to regulate

unmanaged motor-vehicle traffic and designate "limited additions" to the official transportation system—all while considering possible effects on natural resources, access, public safety, user conflict, and administrative and management needs. ER237; *see also* ER10, SER59-60; 36 C.F.R. 212.55(a), (b). As the preamble to the 2005 Rule recognized, some user-created routes "are poorly located and cause unacceptable environmental impacts." 70 Fed. Reg. 68,268. Thus, the Service's manual provides only that unauthorized routes "*may* be identified through travel analysis and considered in making travel management decisions," not that they *must* be. Forest Service Manual 7715.78, para. 1, www.fs.fed.us/im/directives/dughtml/fsm.html (reprinted at SER95) (emphasis added).

Here, the Service developed its range of alternatives "based on public concerns about specific trails" rather than "based on arbitrary total trail mileages." ER283. Thus, the Service relied on the public to suggest routes of interest, and it carefully considered all routes so suggested. *Id*. Expanding the range of alternatives to include more mileage for routes that generated no public interest or that would have substantial adverse effects on natural resources "would be costly and time consuming without compelling benefits to recreation," and would likely not satisfy the Service's regulatory criteria. *Id.*; *see also* 36 C.F.R. 212.55(a), (b)(1), (2). Therefore, alternatives that included

arbitrarily greater mileages were not reasonably within the range that had to be considered, as we next demonstrate.

B. The Service's decision to exclude additional miles of unauthorized motorized routes from detailed analysis was rational and consistent with the project's purpose and need.

The plaintiffs challenge the Service's decision not to fully analyze about 700 miles of routes created without the Service's authorization, arguing that the Service's approach was unreasonable because some combinations of those routes *might* have provided comparable recreational opportunities with fewer environmental impacts. Pl. Br. 29-34. That argument suffers from numerous flaws.

Under NEPA, agencies do not have to analyze alternatives that fail to serve a proposed project's purpose and need. *See Westlands Water Dist.*, 376 F.3d at 865 (providing that the underlying purpose and need dictates the reasonableness of an agency's alternatives analysis); *see also City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986) ("When the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved."). As discussed above at pp. 6-8, the Service winnowed its options for designating routes based on an administrative process that involved the public and that considered factors pertinent to the project's purpose, namely, regulating previously uncontrolled motor-vehicle

travel to provide for recreation while protecting the environment, taking into consideration administrative and management needs.

The plaintiffs argue (at 36-37) that the Service excluded many routes for reasons other than environmental protection and that NEPA prohibits them from doing so. That argument is factually and legally deficient. The record citations that the plaintiffs provide (at 33 n.4) are so few that they would amount to "fly speck[s]" if they could not be readily distinguished. *Or. Envtl. Council v. Kunzman*, 817 F.2d 484, 492 (9th Cir. 1987) (internal quotation marks, citation omitted) (courts may not "hold [an EIS] insufficient on the basis of inconsequential, technical deficiencies"). But even taken on their own terms, the plaintiffs' factual examples of routes fail to prove their point. Many of these routes *do* implicate environmental concerns, including placement near riparian habitat conservation areas, decomposed granite soils, and habitat for northern goshawks and California spotted owls; other routes fail to comply with forest plan standards and guidelines or best management practices. *See* ER292-94 (routes 1646, 5202, 5203, 6813, 6814, 7225, 7442, 7959-62); SER147 (defining abbreviations).

Plaintiffs point to route suggestions submitted by the public. Pl. Br. 35 n.5, 36-37. But all of the routes identified by number on the suggestion forms (*see* ER326, ER330, ER345) were in fact included in the proposed designations.

See ER301 (routes 6675, 7063, 7064). Another route (ER332-35) was already part of the transportation system as a road and was therefore converted for proper designation on the official map. *See* ER301 (proposing "21N93 – Gold Lake shore" road to be designated and "convert[ed] to OHV trail") (capitalization changed). Two other routes identified by the plaintiffs are county roads over which the Service lacks jurisdiction. *See id.* (Sierra County Roads 721, 822, displayed on the maps at ER338, ER341). Yet another route (ER342-44) was located in an area where motor-vehicle use was restricted by the forest plan. *See* ER301 ("Gold Lake West") (capitalization changed); *see also* ER349 (forest-plan direction "[r]estricting wheeled vehicles to designated routes").

To be sure, some routes identified by the plaintiffs were not analyzed because they are dead-end spurs, require private access, lead to private lands, or run parallel to other routes. *See* ER292-94 (routes 5202, 5203, 6831, 7104, 7106, 7207, 7959-7962, 8187). But the purpose and need, as well as the 2005 Rule, required consideration of such non-environmental factors as public safety, access to public and private lands, and route maintenance and administration. ER237, SER59-61; *see* 36 C.F.R. 212.55(a). Those considerations adequately support the Service's decision to reject the routes identified by the plaintiffs.

In essence, the plaintiffs take issue with the process by which the Service winnowed all the possible options down to a manageable set of choices for detailed analysis in the final EIS. But the Service's approach to the possible combinations of routes was reasonable in light of the task's complexity. First, the Service identified 1,107 miles of unauthorized routes that it might add, in limited measure, to the Plumas transportation system. SER56. Next, the Service used scoping to narrow the range of options for detailed analysis in the EIS, "cho[osing] to focus alternative development based on public concerns about specific trails rather than developing alternatives based on arbitrary total trail mileages." ER283. Where members of the public identified specific trails they preferred, the Service considered them, such that nearly half of the total miles surveyed (190 out of 410) were proposed by the public or added after scoping. *Id.* The Service screened out the most problematic routes—both in terms of impacts on the environment or nearby private property, as well as those that added little value to the overall trail network—and documented its reasons for doing so. *See*, *e.g.*, ER292-325, SER147.

NEPA and its regulations support the Service's approach. The regulations encourage agencies to involve the public at an early stage through scoping. *See* 40 C.F.R. 1501.7; 36 C.F.R. 220.4(e). Agencies use scoping "to deemphasize insignificant issues, narrowing the scope of the [EIS] process

accordingly." 40 C.F.R. 1500.4(g), (j); *see also* 40 C.F.R. 1501.7(a)(3). "[P]urposes of the scoping period include narrowing the issues to receive in-depth treatment in the EIS and determining the range of actions, alternatives, and impacts to be addressed in the EIS." *Kootenai Tribe*, 313 F.3d at 1117. Using the scoping process to narrow the topics of an EIS is consistent with NEPA's goal of "foster[ing] excellent action" and informed decision-making, 40 C.F.R. 1500.1(c), as it helps agencies "focus on * * * alternatives" that are actually "significant" to the public. 40 C.F.R. 1502.1.

In response to suggestions by the plaintiffs and others that the Service designate more miles of unspecified routes, the Service explained that it was rejecting that approach because "[d]esigning and analyzing an alternative that adds additional trails that did not generate specific public interest" or that have adverse environmental issues would result in administrative costs without any compelling benefits to recreation. ER283. The Service also considered designating all 1,107 miles of inventoried routes as part of the transportation system, but it rejected that option because the full set of routes "included many short routes that would not benefit the trail system," as well as some routes associated with private land or raising multiple concerns about their effects on natural resources. *Id*. That explanation finds support in the 2005 Rule, which requires consideration of not only recreational opportunities but also access

needs, user conflicts, maintenance and administration, forest resources and wildlife habitat. 36 C.F.R. 212.55(a), (b)(1)-(3). Such an alternative might include trails that do not comport with the project purpose or regulatory criteria. *See* ER283.

The Service's approach to inventorying, reviewing, and rating unauthorized routes as a preliminary step in developing the alternatives for the EIS is also supported by the Service's handbook, which directs the Service to "[r]eview existing travel or roads analysis and conduct any necessary travel analysis *before* conducting environmental analysis of a proposal to change current travel management direction," and to "[a]void duplication by incorporating relevant information from travel analysis into site-specific environmental analysis, documentation, and decision-making." Forest Serv. Handbook 7709.55, ch. 10, para. 14, http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?7709.55 (reprinted at SER93).

Furthermore, although plaintiffs concede (at 35 n.5) that "the Forest Service was not required to conduct on-site examination of every mile," they nonetheless contend (at 36) that many routes were eliminated without any on-site survey. But NEPA does not require agencies to follow any particular methodology so long as their analyses are reasonable, and courts may not impose such procedures on agencies in the guise of ensuring compliance with

the statute. *See Churchill Cty. v. Norton*, 276 F.3d 1060, 1072 (9th Cir. 2001) (citing *Vt. Yankee*, 435 U.S. at 549). Indeed, this Court sitting en banc in *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008) held that the Service need not conduct on-the-ground analyses before undertaking projects because such a requirement "cannot be derived from the procedural parameters of NEPA." *Id.* at 992 (quotation marks, citation omitted); *see also Wilderness Soc'y v. Tyrrel*, 918 F.2d 813, 818 (9th Cir. 1990) (In general, a "court may not fashion procedural obligations beyond those explicitly enumerated in the pertinent statutes.").

Finally, the Service committed to refining its transportation system, including (where appropriate) by designating more routes in the future to provide recreation opportunities. ER242. The EIS describes the challenged proposal as "just one project, among many," and "only one step in the overall management" of the Forest's transportation system. SER58. Nothing in the challenged decision precludes the Service from exercising its discretion to designate more routes in the future. ER263. Indeed, the regulations provide that trail designations "may be revised as needed to meet changing conditions," subject to public involvement and other requirements. 36 C.F.R. 212.54; *see* 70 Fed. Reg. at 68,268 (noting that "changes in public demand, route construction, and monitoring * * * may lead responsible officials to consider revising designations"); *cf. Massachusetts v. EPA*, 549 U.S. 497, 524

(2007) ("Agencies * * * do not generally resolve massive problems in one fell regulatory swoop."); *Nw. Res. Info. Ctr., Inc. v. NMFS*, 56 F.3d 1060, 1069 (9th Cir. 1995). NEPA does not compel a different approach.

In sum, the Service analyzed a reasonable range of alternatives in the EIS, thereby fostering informed decision-making and meaningful public participation. The plaintiffs' arguments to the contrary should be rejected.

II. The Service's public outreach satisfied its obligations to the Counties.

A. The Service "coordinated" with the Counties under the Travel Rule.

The 2005 Rule provides that the Service "shall coordinate with appropriate Federal, State, county, and other local government entities and tribal governments when designating * * * National Forest System trails." 36 C.F.R. 212.53. The plaintiffs—which include two counties—acknowledge that the Service met with the counties' representatives, solicited their input, and responded to their comments during the administrative process. Pl. Br. 41. They nonetheless maintain that the Service's outreach failed to satisfy the regulatory responsibility to "coordinate" with the counties. Pl. Br. 41. That argument should be rejected.

The counties participated in the numerous public-involvement opportunities that the Service provided all interested parties. *See*, *e.g.*, SER127, SER131, SER137, SER140-43 (comment letters). In addition, the Service held

ten meetings with Plumas County officials, and it offered to set up individual meetings with two Butte County Supervisors. *See* SER39, SER145; *see also* SER124-27, SER131, SER137, SER139-42, SER144 (meeting sign-in sheets, lists, letters). Service personnel also exchanged information with county officials about the project by email, *see*, *e.g.*, SER124, and the Service provided the counties additional time they requested to comment on the draft EIS, SER39. The Service's decision also adopts a suggestion by Plumas County to designate trails needing mitigation pending completion of that work, rather than not to designate them at this time. *See* ER239, ER258-61 (identifying approximately 69 miles of such trails); *cf.* SER129 (County's letter, paragraph G). And the decision reflects a suggestion by counties to allow "mixed use" by both highway and non-highway vehicles on some non-paved forest roads. *See* ER239; *cf.* SER132-33, SER137 (comments supporting mixed use).

The Service continued to address the counties' concerns after issuing its decision, *e.g.*, by discussing the consideration of mixed use of vehicles on specific routes, SER148-52, and by meeting with county representatives concerning their administrative appeal and the district-court complaint they intended to file, SER42, SER47-53, SER150 (letter recognizing Butte County representatives as having "taken the time to not only meet in the office but also in the field").

Ultimately, the Service concluded that the "discussions, meetings, workshops, offers to meet both privately and individually, correspondence, inclusion on mailing lists, and discretionary extension of a comment period provide ample evidence that the [Plumas National Forest] coordinated with counties and other local government agencies" in satisfaction of the 2005 Rule. SER39. The Service is responsible not only for considering the prerogatives of local governments where national forests are situated but also managing those forests for many different purposes. *See*, *e.g.*, *Perkins*, 608 F.2d at 806; 16 U.S.C. 528, 531(a). In that context, interpreting "coordination" as allowing the counties to be meaningfully engaged in the administrative process as described above was neither "plainly erroneous" nor "inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997). Thus, the Service's interpretation of its coordination regulation as having been satisfied by the outreach in this case should be upheld. SER39; s*ee Pub. Lands for the People, Inc. v. U.S. Dep't of Agric.*, 697 F.3d 1192, 1199 (9th Cir. 2012) (giving "wide deference" to the Service's interpretation of a regulation). In any event, the Service's interpretation is a more plausible reading of the regulation than giving the counties the virtual power to veto the Service's choices.

Plaintiffs argue (at 43-47) that "consideration" of the counties' views or "consultation" with their representatives is not enough to satisfy the 2005 Rule

and that the Service's actions were insufficient because they did not "harmonize" the Service's trail designations with the counties' preferences. *See*, *e.g.*, Webster's Third New International Dictionary 501 (1993) (defining "coordinate" as meaning "to bring into a common action, movement, or condition; regulate and combine in harmonious action; harmonize"). Plaintiffs' dictionary-driven arguments, however, ignore the reality that while the Service works cooperatively with local interests in designating trails, the 2005 Rule vests the authority to make the final decisions in the *Service*.

In adopting the 2005 Rule, the Secretary responded to comments that local governments should decide where roads and vehicle access are needed to serve their communities. These responses acknowledged that although "coordination with local governments is essential" to ensure that the Service takes local needs into account when designating motorized routes, "the Forest Service retains ultimate responsibility, as provided by Congress, for management of uses on the [national forests]." 70 Fed. Reg. at 68,272. Similarly, although some commenters on the proposed rule thought that counties should receive formal recognition as participants in the Service's travel-management decisions, the Secretary responded that "[n]othing in the final rule * * * can relieve the Forest Service of the ultimate responsibility for decisions regarding management of [those] lands." *Id.* at 68,269.

The plaintiffs' interpretation of coordination would require the Service to acquiesce in the counties' preferences, contrary to the intent of the regulation. Their argument that the Service did not fulfill its coordination responsibilities should be rejected.

B. The Service "cooperated" with the Counties under NEPA.

NEPA contemplates that the federal government will work "in cooperation with State and local governments" in achieving the statute's goals. 42 U.S.C. 4331(a); *see also City of Davis v. Coleman*, 521 F.2d 661, 672 (9th Cir. 1975). To that end, NEPA's regulations seek to eliminate duplication between federal and local planning processes by requiring an EIS to "discuss any inconsistency of a proposed action with any approved State or local plan and laws." 40 C.F.R. 1506.2(d). Where an inconsistency exists, the EIS "should describe the extent to which the agency would reconcile its proposed action with the plan or law." *Id*. An EIS must also discuss "[p]ossible conflicts between the proposed action and the objectives of * * * local * * * land use plans, policies and controls for the area concerned." 40 C.F.R. 1502.16(c).

Although plaintiffs assert (at 50-51) that the Service failed to satisfy some of NEPA's requirements with respect to local governments, those arguments should be rejected. First, the plaintiffs fail to identify any specific requirements of any local plan or policy that are inconsistent with the Service's decision. A

county's generalized preference for certain goals or outcomes is an insufficient basis for a NEPA violation. *See Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1175-76 (10th Cir. 2002) (finding no violation of Section 1506.2(d) from federally funded road construction based on statement in city's plan that it had "shifted priorities" away from roads).

Regardless, the Service complied with the regulations by adequately addressing the objectives that the plaintiffs contend underlie the counties' plans and policies—for example, by analyzing or responding to comments about recreation-related income, visitor expenditures, labor and employment, and business. *See* SER67-79, SER86, SER87 (describing off-highway-vehicle use on the Plumas as "limited," but noting that business related to such vehicles would likely increase due to the designations). Indeed, when it comes to tourism, the most popular motorized recreation activity on the Plumas, snowmobiling, is not even covered by the Service's decision. SER71, SER90; *see* 36 C.F.R. 212.51(a)(3). Nor do the designations limit access by emergency, fire, and law enforcement vehicles under most circumstances. 36 C.F.R. 212.51(a)(5), (7); *see also* SER84, SER88 (firefighters' access). And for integrating county and Forest System roads, the Service committed to identifying county roads as connectors on maps that the Service develops to display off-highway-vehicle travel recommendations. SER85. Finally, the

Service addressed hunting and firewood gathering. *See*, *e.g.*, SER65, SER81, SER82, SER84, SER88.

The plaintiffs do not challenge the adequacy of the Service's analysis of any of those topics. Rather, they simply disagree with the Service's policy choices. But that disagreement does not amount to a violation of NEPA, for "the federal regulation [40 C.F.R. 1506.2(d)] does not require that the Service bow to local law—only that it consider it." *Glisson v. U.S. Forest Serv.*, 138 F.3d 1181, 1183 (7th Cir. 1998). Moreover, the Service need not expressly mention the local plan or policy for its decision-making to withstand scrutiny under NEPA. *See id.* (declining to order a "futile reman[d]" of an agency decision for the failure to disclose an alleged conflict with a local law that was "not an adequate reason for blocking the project"). Both the APA and NEPA's regulations codify the principle of harmless error. *See* 5 U.S.C. 706 (reviewing courts shall take "due account" of "the rule of prejudicial error"); 40 C.F.R. 1500.3 (disclaiming causes of action based on "any trivial violation of [the CEQ] regulations").[7] Here, the Service's thorough analysis of environmental impacts and its extensive public-involvement process "foster[ed] informed

[7] Plaintiffs' references to other NEPA regulations, unaccompanied by any argument, are insufficient to preserve those issues for appellate review. Pl. Br. 2, 50; *see Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); Fed. R. App. P. 28(a)(8)(A). Regardless, plaintiffs do not identify any "local requirements," much less any such requirements that are "comparable" to NEPA, on which a violation of those regulations could be based. 40 C.F.R. 1506.2(b)(1), (c).

decision-making and informed public participation," thereby serving NEPA's purposes. *Block*, 690 F.2d at 767.

In sum, the Service's extensive public-involvement process and its outreach to the counties satisfied its responsibilities under NEPA and the pertinent regulations.

CONCLUSION

For these reasons, the district court's judgment should be affirmed.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Counsel for defendants-appellees is not aware of any related cases under 9th Cir. R. 28-2.6.

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Date: Aug 14, 2017

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STATUTORY ADDENDUM

National Environmental Policy Act

National Environmental Policy Act
Title 42, United States Code

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

Code of Federal Regulations

Title 36—Parks, Forests, and Public Property

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 212—TRAVEL MANAGEMENT

Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use

§ 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, provision of recreational opportunities, access needs, 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.

(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 effects on the following, with the objective of minimizing:

(1) Damage to soil, watershed, vegetation, and other forest resources;

(2) Harassment of wildlife and significant disruption of wildlife habitats;

(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.

In addition, the responsible official shall consider:

(5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.

(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.

(d) *Rights of access*. In making designations pursuant to this subpart, the responsible official shall recognize:

(1) Valid existing rights; and

(2) The rights of use of National Forest System roads and National Forest System trails under § 212.6(b).

(e) *Wilderness areas and primitive areas*. National Forest System roads, National Forest System trails, and areas on National Forest System lands in wilderness areas or primitive areas shall not be designated for motor vehicle use pursuant to this section, unless, in the case of wilderness areas, motor vehicle use is authorized by the applicable enabling legislation for those areas.

Code of Federal Regulations (2004)

Title 36—Parks, Forests, and Public Property

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 295—USE OF MOTOR VEHICLES OFF FOREST SERVICE ROADS

§ 295.2 Planning and designation for use of vehicles off National Forest System roads.

(a) On National Forest System lands, the continuing land management planning process will be used to allow, restrict, or prohibit use by specific vehicle types off roads. This process will include coordination with appropriate Federal, State and local agencies. The planning process will analyze and evaluate current and potential impacts arising from operation of specific vehicle types on soil, water, vegetation, fish and wildlife, forest visitors and cultural and historic resources. If the analysis indicates that the use of one or more vehicle types off roads will cause considerable adverse effects on the resources or other forest visitors, use of the affected areas and trails by the vehicle type or types likely to cause such adverse effects will be restricted or prohibited until such time as the adverse effects can be eliminated as provided in 36 CFR part 261.

(b) Off-road vehicle management plans shall provide vehicle management direction aimed at resource protection, public safety of all users, minimizing conflicts among users, and provide for diverse use and benefits of the National Forests. Designation of 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 or Primitive Areas.
However, this does not preclude the use of any fire, military, emergency, or law enforcement vehicle for emergency purposes, or the use of any combat or combat support vehicle for national defense purposes, or registered motorboats, or vehicle use expressly authorized by the Chief, Forest Service, under a permit, lease, license, or contract.

§ 295.5 Monitoring effects of vehicle use off National Forest System roads.

The effects of use by specific types of vehicles off roads on National Forest System lands will be monitored. If the results of monitoring, including public input, indicate that the use of one or more vehicle types off roads is causing or will cause considerable adverse effects on the factors and resource values referred to in § 295.2, the area or trail suffering adverse effects will be immediately closed to the responsible vehicle type or types until the adverse effects have been eliminated and measures have been implemented to prevent future recurrence as provided in 36 CFR part 261. Forest Supervisors may delegate immediate closure authority to District Rangers or other forest officers in order to facilitate timely actions to meet these objectives. Designations, use restrictions, and operating conditions will be revised as needed to meet changing conditions.

Code of Federal Regulations

Title 40—Protection of Environment

CHAPTER V—COUNCIL ON ENVIRONMENTAL QUALITY

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously 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.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

PART 1506—OTHER REQUIREMENTS OF NEPA

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.