

U.S House of Representatives – Natural Resource Committee  
Subcommittee on National Parks, Forests and Public Lands  
Oversight Field Hearing on "Explosion of Federal Regulations Threatening Jobs and  
Economic Survival in the West" – Elko, Nevada - March 12, 2012  
**Official Submission and Commentary of Apache County, Arizona**

Committee members,

It is a pleasure for Apache County, Arizona to be able to officially submit testimony, both written and oral, to the Subcommittee on National Parks, Forests and Public Lands. Most notably today concerning the United States Forest Service Travel Management Rule/Plan as well as on Coordination and Cooperation by federal agencies with local government entities.

The Travel Management Rule/Plan and the public planning process have been fraught with errors, omissions and fraud. The Travel Management Rule and ensuing Plan are ill conceived, were ill-managed throughout all phases and has turned into a giant waste of tax dollars.

The only recommendation concerning the Travel Management Rule and Plan that Apache County, Arizona can submit, is to completely disband the entire operation and have the United States Forest Service live within the appropriately narrow parameters of their Congressional Charter and Delegation of Authority.

On the subject of Coordination and Cooperation by Federal Agencies with local government agencies, Apache County, Arizona can say little more than this. It is for the most part nonexistent in the daily activities and operations of many if not most federal agencies. The almost complete lack of existence of inter-governmental Coordination and Cooperation is a detriment to our way of life, our political system and our very existence as a country.

Apache County, Arizona hereby officially submits the following commentary in multiple forms. Apache County, Arizona begins with Part 1, a paraphrastic breakdown of just a small amount of the large number of ill conceived and ill-managed portions and activities involved with the Travel Management Rule and Plan. Next, in Part 2, Apache County, Arizona submits a comprehensive and detailed analysis of the United States Forest Service, Draft Environmental Impact Statement for Public Motorized Travel Management Plan on the Apache-Sitgreaves National Forest.

Supporting documentation in the form of signed affidavits, maps, photos, legislative actions and correspondence for any of the following testimony can be additionally provided if needed upon request to Apache County, Arizona Board of Supervisors.

Sincerely,  
R. John Lee, Supervisor  
Apache County Board of Supervisors

## **Part 1 -**

### **Paraphrastic breakdown of just a small amount of the large number of ill conceived and ill-managed portions and activities involved with the Travel Management Rule and Plan.**

In the below summary statements there are various abbreviations used, here is a brief listing of definitions:

A.C. = Apache County

ASNF = Apache-Sitgreaves National Forest

AZGFD = Arizona Game and Fish Department

B.O.S. = Board Of Supervisors (the elected county leadership in Arizona)

DEIS = Draft Environmental Impact Statement

F.O.I.A. = Freedom Of Information Act

M.O.U. – Memorandum Of Understanding

NOVHCC = National Off Highway Vehicle Conservation Council

R.O. = Regional Office (of the USFS)

S.O. = Supervisors Office (of the USFS)

TMP = Travel Management Plan

TMR = Travel Management Rule

In NOVHCC training during the early phases of the public debut of the TMP, the “land managers” were already being given training on how to respond and given sample, pre-fabricated answer, before public comments and meetings were open in a widespread manner of format. Answers cannot be pre-fabricated if the dialogue is supposed to be coordinated, open and honest for individual and local government input.

At NOVHCC training Apache County and local stakeholder groups confronted TMR author, Jerry Ingersoll, about the best way to defeat this plan since it was ill conceived, poorly managed and not applicable in our region. He said he had never been to the ASNF before this “training” and told us not to worry about the TMR and the TMP, as it would be a hardly noticeable change in our forest. In fact it didn’t take much time to realize Mr. Ingersoll had hardly left an office work environment and had not conferred during the authoring of the plan with local government one bit. This proves lack of local government and stakeholder’s coordination and cooperation in the drafting of the TMR

Almost 10,000 comments from individuals were not accounted for during the public commentary and scoping phases of the TMP at the USFS, Apache-Sitgreaves National Forest Supervisors Office until found by a temporary worker in a mop closet. There has never been proof that once found and made an issue of outright fraud, that the comments were ever comprehensively included. Bob Taylor, USFS, A-S said at a public hearing the reason they didn’t list them in the front page newspaper article of that day (this was in the foyer of the Eagar Town Hall because he didn’t want anybody to hear) was because they didn’t know how to add them up and include them???? When these were turned into the S.O. there were so many comments from individuals with accompanying maps that it took moving dollies to bring them into the building (we have photo evidence of this

delivery). At the time of delivery, Eagar AZ Police Department Head Clerk had the USFS, A-S, Supervisor Elaine Zieroth take an oath that was officially administered and entered into the Arizona Notary books, yet these comments come up missing? There is no way to accept such a number of comments on a proposed plan, swear in the AZ State Notary Books officiated by a police officer, and still have them end-up in a mop closet unless intentional fraud was being perpetrated. Fraud in the gathering of public commentary, input, coordination and cooperation is what took place throughout the process.

While certain districts under the ASNF got “play areas” for multiple-use on the early phases of the TMP public Commentary, there were none included in the planning for Ranger Districts within Apache County. When inquired as to why the districts in Apache County didn’t have any, Jeff Rivera and Rick Davalos, both District Rangers from Alpine and Springerville prospectively, said there were no areas in their entire districts for such a thing. The Multiple Use and Sustained Yield Act having never been overturned, this was again mismanagement.

When asked by an elderly gentleman, who had to use a walker for mobility and to stand, at a Blue Ridge H.S. public meeting about driving to get his firewood which was his only source of heat, he was told by Biologist and TMP Team Leader Bob Copeland to hire some strong H.S. kids to carry it for him or get a wheelbarrow. This answer shows not only a lack of courtesy, but shows an utter contempt for the public comment process.

No specialist reports were published on the USFS, ASNF website to do comprehensive analysis and commentary on the DEIS. To get copies on a CD, it took the threat of action by the Apache County Attorney’s Office. There is no way that anyone, whether local residents or local governments to comment on the DEIS without the use of the NEPA Specialist Reports.

Electronic submittals of comments were the method stated as preferred by the ASNF, S.O, yet when servers mysteriously went down during the abbreviated comment period for the DEIS, no time extension was allowed even upon official request of Apache County. Lack of ability to submit commentary is proof of a corrupt public input process.

When reports and background information were needed during the DEIS comment period, magically the TMR team CPU went down. This is an item that could have been replaced for an insignificant amount of money and caused more lost commentary time. Again, no time extension allowed and again more proof of a corrupt public input process.

When A.C. requested a time extension for all people because specialist reports weren’t disseminated until the third week into a 30-day comment period, it was denied by the ASNF, S.O. Yet, the ASNF, S.O. wanted a time extension from Apache County when they tried a water grab and corrupted up their own applications to the state of AZ, DWR, because they couldn’t figure out their imaginary flow rates. This shows an obvious attitude of the USFS leadership that they should not be held to the same time constraints they hold others.

A.C. passed resolutions for Coordination and/or Cooperation, sent letters to the ASNF, S.O., as did the Town Of Eagar. Both Entities were denied despite the fact that both entities met the legal criteria.

A.C. passed resolution against TMP, yet we were never met with by ASNF, S.O. until Apache County got even more forceful in their direct request for a coordinating and cooperating meeting. This is proof of negligence and an affront to the law.

A.C. had an M.O.U. with USFS, A-S, S.O. as a coordinating entity, yet the USFS, ASNF, S.O.-Elaine Zieroth did not renew the M.O.U. once the TMR and TMP process started. This is proof of the desire of the USFS to eliminate local governments from the process of Coordination and Cooperation.

No I.D. Team notifications, invitations, seat at the table, etc. were offered to any local government entities or recognized stakeholder groups. This is more proof of the USFS desire to not Coordinate with local government entities.

Mapping of the road networks in the ASNF were rigged from the beginning...different colored roads, not counting mileage of closures of roads that we use and are numbered (because the ASNF said the roads were already closed in their computer), etc. This proves a lack of baseline data and shows the propensity of the USFS to be unable to conduct accurate reporting or program analysis.

Public commentary had been annotated in early public meetings and then processed to spreadsheets; those reporting systems were mysteriously stopped with no explanations and never re-surfaced in the public commentary process (A.C. possesses the few that were generated in spreadsheet format). What happened to all the other verbal comments during dozens of following meetings? This along with the fact that it is a rare event to see any USFS personnel taking notes or even having a notebook with them proves that the public meetings for the TMP were a farce at best. The public was led to believe that their input was counted in the planning and scoping phases, which is a fraud perpetrated upon the residents, attendees and stakeholders.

When asked for proof of notification mailings to local government officials, the ASNF could not give concise proof to Mr. Leon Hamblin, the Town Of Eagar's duly appointed representative to the USFS and the Apache County Natural Resource Coordinator. This lack of comprehensive record keeping is proof that the USFS often fails to coordinate with local government entities in a concise and legal manner.

Alternatives and plans and surveys for the NEPA Contemporary Tribal Specialist Report was never seen by the Apache County Board of Supervisors who are Navajo and which are 2/3rds or the Board. The reports, surveys, questions, etc. which would be used to promulgate a Tribal Specialist Report have never been show to Apache County nor in the native tongues of the tribes.

Never a single written response to the commentary submitted by the A.C. – B.O.S. to date for the USFS, ASNF, DEIS. This was on December 13, 2010 and shows once again a desire by the USFS leadership to not coordinate with local government entities.

Local user groups never once received replies back from Harv Forsgren or Gail Kimball upon direct inquiry via postal mail and email. This is an integral part of the public rule-making process and the TMR/TMP process is fraught with examples of non-compliance.

Reports promulgated out of the environmental community PRIOR to public release of the TMR/TMP celebrated the drops in OHV Sales and Use. Yet, increased use was the auspice for much of the response and ideology in the public meetings, planning, alternatives offered, etc. by the USFS. This shows a lack of baseline data to support the “solution” being promulgated.

When the AZGFD held ONE public meeting on the access issue, the overwhelming response was against any closures, by such a large margin, that no further public meetings were held and the agency was going to submit a “No Action” alternative to the USFS. Suddenly, and admitted by the USFS, ASNF, S.O.-Elaine Zieroth at the Wagon Wheel School Public Meeting, the AZGFD received a grant for \$200,000 to study Roadless areas and their input on “No Action” was shut down from public prevue. This shows a propensity of the USFS, among other agencies, to use the grant-making process as a political and ideological weapon.

The public commentary form for the TMR/TMP generated by the USFS, ASNF was so confusing, illogical and ill-conceived, that local user groups had to create a comment form, take it in to the USFS, ASNF, S.O. for approval of Bob Taylor (a TMR Team Member and sometimes acting Team Leader), then get it disseminated just to make the public commentary phase work. This shows a lack of ability and desire of the USFS to readily accept public input, coordinate with local residents and government entities.

Upon the deadlines for the electronic submittal of commentary for the USFS, ASNF, TMP-DEIS, when the receipt system was not responding to submitters as on previous actions, some user group staff asked A.C. representatives to hand deliver their comments to the S.O. on the final day out of frustration. This was due to their distance from the S.O. (like Glenwood, NM) and when hand-delivered, Ryan the Archaeologist from the ASNF refused to sign for or give receipts for submissions. This action show a lack of integrity and responsibility on the part of USFS staff, and undermines the public process.

Multiple times throughout the process of early public meetings on the TMR/TMP, many user groups and stakeholders noticed the huge discrepancies in the maps and public presentations by the USFS, ASNF, S.O compared to the reality on the ground of the existing and numbered road networks. Large numbers of these people volunteered, out of pocket, to GPS the roads, dispersed camping sites, etc. and turn in the data. It was never used in final DEIS stages and throughout the volunteering people were continually and heavily discouraged by the S.O. when they came in to submit data and “Ground

Truthing”. This proves that partnering and coordinating with local stakeholders and government entities is nothing but lip service.

Upon the closing days of the USFS, ASNF, DEIS comment period of the TMP, the S.O. started hand-picking certain individuals that had to have escorts to go into a building that the public is paying for. We were told that it was because of the ASNF, S.O. receiving terrorist threats and life-threatening messages from the public. We were also told this was policy and that these acts were under investigation. Why then were only certain people escorted around a building that they had been in hundreds of time (discrimination) and when we inquired with local law enforcement at all levels, they knew nothing of threats or investigation. So who was investigating these “terrorist” threats? Where is the documentation? This is simply an intimidation and discriminatory act by the USFS.

Speaking of discriminatory actions and behavior, on multiple occasions it was brought out in commentary both written and oral, that the TMR/TMP adversely effected our disabled populations. This is a direct violation of the Americans with Disabilities Act.

FOIA requests from the public, being submitted to get information to better coordinate and offer comprehensive commentary were repeatedly not answered. At a point several weeks and several months in some cases after these submissions, A.C. demanded a meeting with the USFS, ASNF Supervisor Chris Knopf (who by the way had never been to see the county despite repeated requests and commentary on the TMP). Suddenly when two officially appointed local government representatives, Leon Hamblin for the Town Of Eagar and Doyel Shamley, Apache County Natural Resource Coordinator, were leaving the driveway to attend the meeting they received a call from the ASNF, Supervisors secretarial aide, Tami Slade. She stated that the ASNF, S.O. wanted to offer any and all help with FOIA requests and answers. This was after weeks and in some cases months of inquiries as to the status of the FOIA requests to USFS, ASNF, TMP Team members like Daryl Jevons and Michelle Davalos. Receiving a phone call, not written correspondence, 1-hour before the meeting that is being held a half-hour drive away is preposterous. This is a poorly veiled attempt by the USFS to comply with federal law and shows an absolute disregard by the agency to comply with mandates.

The Socio-Economic Specialist Report for the ASNF, TMP-DEIS, when analyzed by a NMSU institute was so fraught with errors, that the USFS, ASNF, S.O. threw out the first report. Then the ASNF decided to do the new report in-house, despite telling the public for months that there were no updates on the report status because it had been contracted out to a firm in PHX due to the ASNF not having the in-house capability to do the report. This was a massive waste of taxpayer funds and shows that the agency is fully capable of changing their story to meet the needs of the day.

The public had been told all through the process that the decisions were being made at the most local level (ranger district) and at the highest, it would be at the S.O. level for customization to each area and locale. Yet, almost every time an inquiry was made about a motive, idea, plan or decision during the scoping and public meeting phases the District Ranger Level would blame the S.O., the S.O. would blame the R.O. and the R.O. and

randomly all lower levels would blame Washington D.C. This shows a common use of deflection used by the agency when the public or local government entities try to coordinate in planning.

## **Part 2 -**

### **A comprehensive and detailed analysis by Apache County, Arizona of the United States Forest Service, Draft Environmental Impact Statement for the Public Motorized Travel Management Plan on the Apache-Sitgreaves National Forest.**

For your convenience, an outline of our comments on DEIS errors is as follows:

1. Introduction
2. Comments on use of language
  - a. The DEIS employs the “Orwellian Swap”, i.e. changing the name of one element in the Forest landscape for the sole purpose of enhancing the ability to change that element's legal status.
3. Comments on Chapter 1: Purpose and Need
  - a. The DEIS demonstrates prejudice against motorized travel, leading to conclusions that are not supported by the data.
  - b. The DEIS has failed to clearly define the meaning of biological, physical, cultural resources on the forest.
  - c. The DEIS has failed to disclose the full range of considerations the responsible official shall address when providing a system of roads, trails and areas designated for motor vehicles.
  - d. The DEIS has failed to clearly disclose the full process followed that would result in a large number of existing roads being closed.
  - e. The DEIS has failed to address all of the key issues pertaining to motorized access that have been presented to it throughout the entire Travel Management Plan (TMP) process.
  - f. The DEIS has failed to clearly and accurately describe the existing transportation system in the A-S.
  - g. The A-S DEIS failed to comply with federal regulations addressing consistency requirements and failed to comply with federal regulations addressing coordination with the County including cooperating Agency status for local government
  - h. The DEIS is missing important information regarding Joint Planning Requests
  - i. The DEIS omits mention of the A-S Memorandum of Understanding (MOU) with Arizona and New Mexico Counties.
  - j. The DEIS is missing important information in regards to consistency requirements analysis as it pertains to local and state policies, plans, programs and activities.
  - k. DEIS failed to disclose the possible consistencies and inconsistencies between the proposed A-S TMP alternatives in the DEIS and State, Tribal and/or local government policies.
4. Comments on Chapter 2: Alternatives, including Proposed Action



- a. The DEIS has failed to develop and present alternatives that are significantly different from each other.
  - b. The DEIS fails to show current management direction or level of management intensity in the “No Action” alternative
  - c. The DEIS has not clearly and concisely defined the "No Action" alternative (Alternative A), including what it would mean to take "no action" and not implement the TMR.
5. Comments on Chapter 3: Affected Environment and Environmental Consequences
- a. The DEIS fails to include the required analysis of the current and future environmental consequences of travel in the A-S.
6. Conclusions

Attachment 1: Federal, State and Local Coordination Requirements

Attachment 2: Apache County Board of Supervisors CEQ Factors for Cooperating Agency

## **1. Introduction**

The following comments are hereby submitted to the U.S House of Representatives – Natural Resource Committee, Subcommittee on National Parks, Forests and Public Lands- Oversight Field Hearing on, "Explosion of Federal Regulations Threatening Jobs and Economic Survival in the West". As well, this is submitted to the United States Forest Service, Apache-Sitgreaves National Forest (“Agency”), to aid in the preparation of a Final Environmental Impact Statement (EIS) for Public Motorized Travel Management, if the plan is proceeded with, that meets the purpose of an EIS as described in 40 CFR 1502.1. It is the intent of these comments to provide information to the Agency that highlights where the Agency has not followed its own Travel Management Rule (TMR) as found in 36 CFR Part 212, National Forest Planning Rules (“planning rule”), as found in 36 CFR Part 219 and other of the Forest Service regulations and authorizing laws that direct how the management of National Forest land is to take place. These comments will also point out where the National Environment Policy Act and the Council on Environmental Quality regulations (40 CFR, Parts 1500-1508) have not been followed.

The following comments are not intended to be an exhaustive legal review of the Draft Environment Impact Statement (DEIS), but a layman's review that captures the easily identified and obvious places where the Agency has failed to comply with the law and regulations.

These comments are being offered to ensure that the Agency provides a full and fair discussion of significant environmental impacts and informs decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts and/or enhance the quality of the human environment. Also, these comments will attempt to point out where the Agency has not been concise, clear or to the point, as well as where the Agency has not clearly provided evidence that is meaningful to the average person that supports the analysis or conclusion that is presented. (40 CFR 1502.1)

These comments will not completely cover all of the information generated and used by the Agency in their preparation of the DEIS because it has been difficult to acquire anything but summary information from the Agency, and the period for reviewing the large volume of information has been extremely short for anyone who does not have the luxury of being able to review the information for periods of consecutive days or for periods of extended time. These comments have been generated by the local people who live and work in the communities that surround the Apache Sitgreaves National Forest (A-S) and who are concerned with the future management of the Forest.

Again these comments are not intended to be all-inclusive, but represent the concerns and positions of the local hardworking citizens.

*Note: Where the information that a comment addresses is found in more than one place in the DEIS and supporting documents, an effort is made to note the different places the information is found, but this is not a complete review that the agency can rely upon to meet its requirement to be thorough and accurate.*

*Any acronyms used in the comments should follow the definitions for acronyms found in the preface to the DEIS.*

## **2. General comment on use of language**

### **a. The DEIS employs the “Orwellian Swap”, i.e. changing the name of one element in the Forest landscape for the sole purpose of enhancing the ability to change that element's legal status.**

Discussion: The technique of "Orwellian Swap" occurs throughout the DEIS in the replacement of the word “unclassified” with the word "unauthorized” with respect to roads and trails. Use of this technique influences the understanding of the nature of the roads within the A-S without due process of law. Changing the descriptor of all the existing, lawful routes from a neutral term to a negative one in order to create bias unfairly enables the Agency to influence the Decision without providing required supporting analysis.

The process that produced the Travel Management Rule did not address the replacement of “unclassified” with “unauthorized”. The TMR and its associated record reveal no compelling need nor did it employ a legitimate process to replace the neutral and accurate descriptor with a new one that is loaded with negative and inaccurate connotations.

In using the descriptor "unauthorized" for roads and trails in a currently open forest, the Agency does not honor the baseline regulatory Decision document for the A-S, the Apache-Sitgreaves National Forests Land and Resource Management Plan (LRMP). The LRMP designated the A-S as “open”, thereby authorizing the use on all roads and trails not closed by a discrete Decision document. Hence any and all roads and trails not closed are simply unclassified (i.e. not assigned to any designation), which is significantly different than unauthorized (i.e. illegal).

The term “Orwellian Swap” derives from the name of George Orwell, pen name of Eric Blair, author of, *Animal Farm* and *1984*.

1984 was intended, and has since been recognized, as a warning against the deceit of a fictional government whose principle tactic was to change the nature of a

thing by giving it a different name with a different meaning, and relentlessly using the new name until it achieved general acceptance as the reality.

Under the color of the NEPA, the Agency has attempted to do exactly this. To change the name of roads and the activities associated with them that have been legal for more than 100 years suddenly "not authorized" is the essence of an Orwellian Swap.

Is it legal for the government, via the Agency, to do this? We contend that it is not legal. This is a tactic that the Data Quality Act is intended to discourage: the re-naming of a normal forest activity that dates from the early twentieth century, with a new name that does not accurately describe the activity. All roads were always open to all travelers. The Agency is required to take discrete action to prohibit the use of any given road. The use of the term "unauthorized" throughout this analysis regardless of actual lawfulness does in fact go to the intent and purpose of this DEIS.

Remedy: Replace the descriptor "unauthorized" with the descriptor "unclassified" when used to modify the words "road/s" and "trail/s" in this DEIS.

### **3. Comments on Chapter 1: Purpose and Need**

#### **a. The DEIS demonstrates prejudice against motorized travel, leading to conclusions that are not supported by the data.**

Discussion 3a: In Chapter 1, page 14, "Purpose and Need for Action" section, all three paragraphs demonstrate prejudice against motorized travel, which leads to the conclusion that motorized usage in National Forest lands is responsible for the poor condition of our forests and profiles motorists as flagrant destroyers of our natural environment. Paragraph 1 implies that motor vehicle usage is the sole source of negative impacts to the biological, physical, and cultural resources on the forest. Paragraph 3 itemizes poor resource conditions and blatantly accuses motorized usage as the cause. These assertions are not fair, nor based on analysis.

*40CFR 1502.1: The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.*

*It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.*

*Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.*

The Travel Management Rule (TMR) Summary validates the way visitors access the National Forests and acknowledges that Americans cherish these lands and

should indicate that the goal of the TMP is to provide motorized public access on a designated system of routes to enhance the quality of the human environment.

Most National Forest visitors use motor vehicles to access the National Forests, whether for recreational sightseeing; camping and hiking; hunting and fishing; commercial purposes such as logging, mining, and grazing; administration of utilities and other land uses; outfitting and guiding; or the many other multiple uses of NFS lands. For many visitors, motor vehicles also represent an integral part of their recreational experience. People come to National Forests to ride on roads and trails in pickup trucks, ATVs, motorcycles, and a variety of other conveyances. Motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests - in the right places, and with proper management.

Americans cherish the National Forests and National Grasslands for the values they provide: opportunities for healthy recreation and exercise, natural scenic beauty, important natural resources, protection of rare species, wilderness, a connection with their history, and opportunities for unparalleled outdoor adventure. The agency must strike an appropriate balance in managing all types of recreational activities. To this end, a designated system of roads, trails, and areas for motor vehicle use, established with public involvement, will enhance public enjoyment of the National Forests while maintaining other important values and uses on NFS lands.

Remedy 3a: Remove prejudicial wording in and replace with statements that, in a clear and concise way define the purpose of an EIS; insure that a full and fair discussion follows with supporting evidence.

State that the goal of the TMP is to provide motorized public access on a designated system of routes to enhance the quality of the human environment, as per the Travel Management Rule Summary.

- b.** The DEIS has failed to clearly define the meaning of biological, physical, cultural resources on the forest.

Discussion 3b: In the "Purpose and Need for Action" section of the Summary and in Chapter 1, the Agency has failed to clearly define the meaning of "biological, physical, cultural resources on the forest". Without clearly defined meanings, it is impossible to determine what resources are or could be impacted and to analyze the effects that any of the DEIS alternatives might have.

Remedy 3b: Insert full definitions with examples for biological resources, physical resources and cultural resources in the Summary and in Chapter 1.

- c.** The DEIS has failed to disclose the full range of considerations the responsible official shall address when providing a system of roads, trails and areas designated for motor vehicles.

Discussion 3c: In the "Purpose and Need for Action" section of the Summary and Chapter 1, the Agency has failed to disclose all of the items the responsible

official must consider when providing a system of roads, trails and areas designated for motor vehicle use found in the TMR at 36 CFR 212.55(a).

It is important that the "Purpose and Need for Action" statement sets the stage for what needs to be considered in the analysis, especially when compliance with the TMR is included as a need presented by the Agency. It would be much easier for the public to understand and accept the underlying purpose for a well managed road and motorized trail system if requirements for consideration by the responsible official are stated (36 CFR 212.55(a)). The public is especially desirous that public safety, recreational opportunities, and access to and within the forest are given the same consideration as biological and physical resources.

Remedy 3c: Insert additional wording which explicitly states that the purpose and need for analyzing and implementing a transportation system on the Apache-Sitgreaves National Forest includes provision for the human needs for safety, recreational access and recreation opportunities, as well as the need for healthy ecosystems that support human socio-economic opportunities and protection of cultural resources.

**d. The DEIS has failed to clearly disclose the full process followed that would result in a large number of existing roads being closed.**

Discussion 3d: The Agency has failed to clearly disclose the process they followed that would result in a large number of existing roads being closed. While a revised "Proposed Action" has been presented to the public after the initial scoping, the Agency has only considered and analyzed the minimum access needs of dispersed recreation and big game retrieval as called for in the TMR at 36 CFR 212.51 (b). The DEIS does not address other access needs brought forward by the local governments and the public, and little to no justification has been presented for omitting these needs.

For example, local governments are concerned that closed roads will not be drivable in the future as they erode and become blocked by encroaching vegetation (without public use most of these roads will not be maintained). These roads are used and may be needed in the future for fire, search and rescue, and law enforcement purposes. It is not enough to say that fire and law enforcement vehicles and uses are exempt from the motor vehicle restrictions as stated in the TMR at 36 CFR 212.51 when the roads themselves become impassible.

Remedy 3d: Re-open communications with the local governments and then accept, openly and fairly address and include in the DEIS the concerns dealing with all access needs and public safety concerns that are presented to them by the local governments and the public.

**e. The DEIS has failed to address all of the key issues pertaining to motorized access that have been presented to it throughout the entire Travel Management Plan (TMP) process.**

Discussion 3e: In the "Issue" section of the Summary and Chapter 1, the agency has not adequately addressed all of the key issues pertaining to motorized access that have been presented to it throughout the entire Travel Management Plan (TMP) process, but instead has brought forward only the issues of dispersed camping and big game retrieval that are listed in the TMR at 36 CFR 212.51 (b). In particular, the most significant issue, namely loss of forest access, has not been addressed; the issues that are addressed are simply sub-issues of loss of forest access in general. In failing to address this issue as a whole, the impacts, effects and cumulative effects of the sub-issues may appear to be less significant than they are.

In reading the Travel Analysis Process (TAP) Report, Final Scoping Report and the various reports and press releases pertaining to public input for the TMP, it is clear that motorized access to and within the forest for other than dispersed camping and big game retrieval is also very important to the public, but has not been addressed in the DEIS. On page 33-34 of the Final Scoping Report, "Motorized Access" (forest access) is listed as a "Key Issue" (with only the permit issue being dismissed), but this key issue was not carried forward when the significant issues were developed or when the alternatives were formulated.

Remedy 3e: The Agency should address loss of Motorized Access (forest access) in a supplemental EIS that develops an alternative that examines this most significant issue as a whole. By developing an alternative that addresses this issue, the agency could then present a realistic and fair analysis that displays some of the trade-offs that the deciding officer needs to consider in making his/her decision.

**f. The DEIS has failed to clearly and accurately describe the existing transportation system in the A-S.**

Discussion 3f: The Agency does not clearly and accurately describe the "Existing Transportation System" in the DEIS (Chapter 1, page 11). There are multiple discrepancies in what is being reported as total miles of open and closed roads found throughout the DEIS and the Specialist Reports. The Agency's description of the existing road and trail system does not reflect what is found on the ground. This is obvious when looking at the various different renditions of maps produced by the agency.

The current situation is that all of the A-S except the areas covered by pre-existing Closure Orders is open to motorized use. The 3,373 miles of "NFS Closed Roads" shown in Table 2 on page 14 of the DEIS are designated as available to be driven on by the public. Additionally, on page 5 of the Transportation Specialist Report it is explicitly stated that the Agency is managing roads as open even though those roads are coded as closed in the database. The following reflects current ground conditions to the best of our available knowledge, how the Agency

has actually been managing the road system, and how the public has been using the road system.

- 100 miles of roads coded as closed (maintenance level 1) in the database are actually being managed as open and public motorized used is being allowed on the ground.
- 375 miles of roads coded as decommissioned in the database are actually being managed as open and public motorized used is being allowed on the ground.
- 2,832 miles of open National Forest System roads includes the above 475 miles.

The above examples provide evidence of the inconsistent management and the dependence on faulty data in the INFRA database, as well as the problem of using the TAP analysis to establish the existing transportation system without the proper NEPA analysis and decision.

Also because the DEIS arbitrarily defines well over half of the roads on the forest as ML 1 "Closed", the need for addressing the majority road closure issues is thus eliminated. Without an accurate description of the current level of roads all analysis of impacts are incorrect and unrealistic.

Remedy 3f: Provide a realistic description of the existing transportation system that shows the actual roads located on the Forest that are open and are being used by the public. Create a database of existing transportation system roads and trails that indicates the type of vehicle that routinely uses the different segments of road would clear up the confusion and inconsistencies in mileages reported in the DEIS and the Specialist Reports. A realistic existing transportation system that shows the actual roads open and being used by the public could then be compared to the proposed transportation system that is the product of the TAP analysis completed in 2008 for the Forest. Having the ability to compare an on-the-ground existing transportation system to a proposed or desired transportation system is necessary for a fair, accurate, clear, and concise analysis as required by NEPA.

**g. The DEIS has failed to comply with federal regulations addressing consistency requirements and has failed to comply with federal regulations addressing coordination with the County including Cooperating Agency status for local government.**

Discussion 3g1: The DEIS omits key information regarding compliance with required intergovernmental coordination with local governments or state governments. The DEIS discusses public participation on p. 16 and tribal consultation (not coordination) on p. 17, however coordination with local governments or state governments is missing from the DEIS. Fulfilling coordination requirements is also absent from the DEIS sections, *Decision Framework*, starting on p.18. In addition, Chapter 4: *List of Preparer; Consultation and Coordination* is also void or lacking any discussion of the Apache Sitgreaves National Forest (hereafter, referred to as "A-S"). Coordination is not public involvement, nor, is it "consultation".

In not addressing coordination in the DEIS, specifically, the A-S is out of compliance with the attached federal, state and local coordination requirements spelled out in the attached federal statutes and regulations<sup>1</sup>.

Remedy 3g1: Include these laws, regulation and agency directives into the DEIS in the sections and appendix that address related laws and regulations; additionally, comply with these coordination requirements for the DEIS.

Discussion 3g2: The DEIS is required to disclose coordination and that the agency complied with these laws and regulations related to coordination requirements. The County instructs the A-S to comply with 36 CFR 219.7 and disclose the results of their consistency review, per 219.7(c) and (40 CFR 1502.16(c), 1506.2). This requirement may be disclosed in the DEIS in the Decision Framework to disclose that the A-S TMP DEIS has complied with (a) through (f), below:

*(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.*

*(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include--*

*(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;*

*(2) An assessment of the interrelated impacts of these plans and policies;*

*(3) A determination of how each Forest Service plan should deal with the impacts identified; and,*

*(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.*

*(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative.*

*(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.*

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<sup>1</sup> See Appendix , Federal State and Local Coordination Requirements



*(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.*

Remedy 3g2: Review the planning and land use policies of local governments; display the results of said review in the DEIS and how the line officer fulfilled this requirement. This should include reviewing prior Memoranda of Understanding and previous communications from local governments regarding planning, coordination and cooperation. Additionally, coordinate with local government in the implementation of monitoring; include results of said planning in the monitoring section of the DEIS.

Discussion 3g3: The Travel Management Rule (Federal Register 11/9/05) 36 CFR section 212.253 requires the A-S NF to coordinate with the County with regard to development of the TMP Amendment, particularly with regard to sub part B of the rules “designation of roads, trails and areas for motor vehicle use.” To the knowledge of the County, such intergovernmental coordination never occurred.

Remedy 3g3: In order for the Agency to fulfill its responsibility to fully disclose coordination activities, A-S should explain in the DEIS how the requirements, specified above, per 36 CFR 219.7 (1982) have been met. If the Agency did not coordinate with the state of Arizona, local and/or tribal governments, it should display a statement to that effect and document the reasons for not doing so.

The Agency should disclose and insert in Chapter 4: *List of Preparer; Consultation and Coordination* exactly which State agencies, tribal and/or local governments the Agency coordinated with and how the Agency did coordinate; see 219.7, above. Again, “consultation” does not rise to the standard of “coordination”.

In addition, insert into the DEIS, a new subsection to Chapter 4 to include: “*Coordination with State, Tribal and Local Governments*” (found on p.169 in the DEIS) to be consistent with 219.7.

Discussion 3g4: The state of Arizona has mandated intergovernmental coordination with the passage of AZ Senate Bill 1398, amending section 2. Title 11, Chapter 2, Article 4, ARS – to be read 11-269.09: Federal and state regulations: local coordination: standing and definition:

*D. (2) Coordination means the process by which the federal and state governments seeks in good faith to reach consistency between federal or state regulation, rule, plan or policy and the county law, regulation, plan or policy that is less restrictive than the federal or state regulation, rule, plan or policy.*

*B. If the federal or state government fails to coordinate in good faith with the county, the county shall hold public hearings, consider the evidence and vote on whether to authorize litigation to enforce the county's coordination rights.*

Remedy 3g 4: Insert into DEIS how Agency has fulfilled this requirement in order for the County to comply with Subsection B. of this State law's above requirements.

Discussion 3g 5: Agency coordination requirements, cited above, additionally address intergovernmental coordination, not the Non-Government Organizations (NGOs) discussed in the DEIS on p.170: "*Coordination with Groups and Individuals*". This is the only reference to coordination in the DEIS. In reviewing this subsection on p.170, the DEIS does not disclose potentially affected private property owners, per 36 CFR 219.6(k) Requirement:

*Forest planning activities should be coordinated to the extent practicable with owners of lands that are intermingled with, or dependent for access upon, National Forest System lands. The results of this coordination shall be included in the environmental impact statement for the plan as part of the review required in Sec. 219.7(c).*

Without this information and the apparent lack of compliance, stated above, and no meaningful County coordination, the Agency cannot produce an accurate Effects Analysis in the FEIS. Furthermore, the Deciding officer cannot find appropriate balance between the effects of the proposed action and/or activities vs. the benefits to society and the health, safety and welfare of the County and its environs.

Remedy 3g 5: The FEIS must describe in the DEIS how the line officer fulfilled this requirement to coordinate with potentially effected private property owners, such as inholders and adjacent property owners, per 36 CFR 219.6(k).

Discussion 3g6: We have identified a mistake in the A-S NEPA process which is not disclosed in the DEIS. The DEIS makes no mention of the Agency having rejected the Cooperating Agency (CA) request. It should be included in the FEIS Chapter 4 and/or in the FEIS Appendix.

CA status is an effective way to improve coordination with shared, cooperation with on-the-ground information, especially about roads, laws enforcement, related and potentially affected programs (such as wildland urban interface, and programs, activities and concerns by the rural fire depts., as wildfire first responders) is to incorporate the County input through its expertise into the Interdisciplinary Team process. This is best achieved through CA status that allows the flexibility and timely sharing of important information by way of the County's legal responsibilities and it's expertise in these important aspects of the proposed travel management plan impacts disclosed in the DEIS. As a CA, the County is also more effectively tied into the implementation of the travel

management plan that is intertwined with County roads and transportation plans, programs and activities.

The County requested CA status for these very reasons. Yet, the Agency denied the County's request for Cooperating Agency status. The County asserts that the Agency and its NEPA analysis misinterpreted the regulations related to CA. Specifically the Agency incorporated into their denial their own unsupported opinions and position for turning down the County's request for CA.

The County also instructs the A-S to include in the FEIS as to why Apache County does meet one or more of the *CEQ Factors for Cooperating Agency*. Apache County maintains that they do meet one or more of the factors for obtaining CA. Refer to Attachment 2 for the County's Factors for Cooperating.

It is not clear to Apache County Supervisors why the County's Cooperating Agency request was rejected, particularly given that Navajo County was granted cooperating agency in the TMP EIS. The County also is aware that Gila National Forest granted cooperating agency to three adjacent New Mexico counties in their travel management EIS NEPA process. Apache County is no different in jurisdiction or expertise. The County has the same intermixed transportation systems, cost-share programs, and road contracts as well as other cooperative ventures that can be impacted by travel management rules.

The Agency is arbitrary and capricious in its rejection of the County's CA request.

Without this information and apparent lack of compliance, stated above, and no meaningful input from the County via coordination, cooperating agency and/or joint planning, the A-S cannot produce an accurate Effects Analysis in the FEIS. Furthermore, the Deciding officer cannot find appropriate balance between the effects of the proposed action and/or activities vs. the benefits to society and the health, safety and welfare of the County and its environs.

Remedy 3g 6: The Agency's rejection of the Cooperating Agency (CA) request should be included in the FEIS Chapter 4 and/or in the DEIS Appendix. The correspondence for both the County's request and the Agency denial should be in the project record, and are available at the County's office upon request. The Agency should disclose its legal reasoning for the CA denial, including documentation of why the County's factors for CA are not sufficient for CA status to assist the A-S in the TMP NEPA analyses. In the event that the Agency should decide to provide Apache County with the same CA status that have been granted to other forest dependent counties, per 1502.9 (b), then the Agency should document this in the DEIS.

#### **h. The DEIS is missing important information regarding Joint Planning Requests**

Discussion: The DEIS is missing important information related to the A-S NEPA process. In addition to the cooperating agency rejection, the Apache Sitgreaves National Forest has ignored Catron County and Apache County requests for joint

environmental impact statements assessments and joint hearings in the NEPA process, per 40 CFR§1506.2. Both counties have environmental laws and policies for protecting the environment. The County desires an explanation as to why the A-S is not complying with §1506.2 that requires cooperating with the County Board of Supervisors "...to the maximum extent possible". This failure to comply with this regulation can be corrected by complying with 40 CFR 1506.2 and 1502.9 (b).

Without this compliance by A-S, stated above, and no meaningful County coordination, cooperating agency and/or joint planning, the A-S cannot produce an accurate Effects Analysis in the FEIS. Furthermore, the Deciding officer cannot find appropriate balance between the effects of the proposed action and/or activities vs. the benefits to society and the health, safety and welfare of the County and its environs.

Remedy: Include an explanation as to why the Agency has not complied with 40 CFR§1506.2 in Chapter 4 and/or in the DEIS Appendix. In the event that the Agency should decide to comply with this regulation, then the Agency should document this in the DEIS.

i. **The DEIS omits mention of the A-S Memorandum of Understanding (MOU) with Arizona and New Mexico Counties.**

Discussion: A mistake in the A-S NEPA process, not disclosed in the DEIS, has been identified. The Agency did not coordinate or cooperate with the County, per MOU with the A-S Memorandum of Understanding with Apache County. The County made the request to coordinate and cooperate with the DEIS process prior to the MOU expiring; however the Agency did not respond to the request.

Furthermore, the A-S NEPA process has not disclosed the fact that the Region III Forester also has an MOU with Arizona and New Mexico counties. The County is a co-signatory to the MOU with the Regional Forester, signed in 1994. The AZ/NM Coalition of Counties helped facilitate this MOU that resulted in the Region III public policy that was transformed into the Region's *Integrated Resource Management Policy*, in which the Agency and the Counties agree to coordination, cooperating agency and joint planning to assist the Forest Service. The County has not been notified by USFS that this policy has been rescinded. The AZ/NM MOU with the Regional Forester requires notification of all parties if the MOU is to be terminated.

Due to this evidence the A-S must comply with coordination, CA and joint planning and document such intergovernmental affairs in the FEIS, as stated above, and per 1502.9 (b).

Without the A-S NEPA process compliance with County coordination, cooperating agency and joint planning, the A-S cannot produce an accurate Effects Analysis in the FEIS. Furthermore, the Deciding officer cannot find appropriate balance between the effects of the proposed action and/or activities

vs. the benefits to society and the health, safety and welfare of the County and its environs.

Remedy: The Agency should discuss the A-S Memorandum of Understanding (MOU) with Arizona and New Mexico Counties, in particular providing explanation for non-compliance with the 1994 Region III Forester MOU. In the event that the Agency's policy and MOUs have been purged or rejected, the Agency should provide documentation of proper notification to signatories of such, along with an explanation as to why the Agency took such action.

**j. The DEIS is missing important information in regards to consistency requirements analysis as it pertains to local and state policies, plans, programs and activities.**

Discussion: The DEIS is missing very important information in regards to consistency requirements analysis as it pertains to local and state policies, plans, programs and activities, per 36 CFR 219.7. The only reference to consistency in the DEIS is found on p.19 and p.20 that pertains to the forest plan. The section goes on to state:

*All alternatives are consistent with standards and guidelines in the forest plan and are consistent with applicable laws, regulation and policy, unless noted.*

Yet, the DEIS discussion and analysis of their statement, above, is unsupported and missing critical information necessary for effective NEPA analysis. CEQ requirement for consistency with state and local plans for NEPA is found in 40 CFR 1502.25(a):

*...directs to the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with other environmental review laws and executive orders.*

Furthermore, CEQ states:

*(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. (40 CFR 1506.2)*

Both CEQ regulations and the USFS 36 CFR 29.7 are similar in purpose and need:

*(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2), as discussed in the County's previous section on coordination in section f (discussions/remedies 3g1 through 3g6), above.*

The above consistency discussion illustrates why it is so important for the A-S NEPA process to comply with the federal agency coordination requirements, discussed in the previous section, above. Consistency review ties into t and cannot properly be achieved without coordination he requirement to coordinate to identify these intergovernmental consistent and inconsistent policies to improve the environmental conditions.

Remedy: The Agency should document coordination with the County, per 36 CFR 219.7 (1982) in order to complete the consistency requirements, per 36 CFR per 219.7 or provide discussion as to reasons for non-compliance with CFR requirements.

**k. DEIS failed to disclose the possible consistencies and inconsistencies between the proposed A-S TMP alternatives in the DEIS and State, Tribal and/or local government policies.**

Discussion: The FEIS consistency section must address related local policies, programs and activities, such as county roads and transportation plans, related County environmental planning and review process; the County Community Wildfire Prevention Plan, related law enforcement to just name some of the related county policies. CEQ recommends that consistency analysis be located in the Affects Analysis.

Furthermore, the DEIS is missing related discussion regarding consistencies with state policies, such as the Arizona Coordination Act and the Arizona Dept. of Transportation (Chapter 28 section on coordination) the Arizona Dept. of Environmental Quality (Chapter 49), Arizona Dept. of Water Resources to name a few.

Remedy: The Agency should address specific individual local government policy and planning, including discussion of consistency with local and state policy and planning in the Affects Analysis section.

**4. Comments on Chapter 2: Alternatives, including Proposed Action**

**a. The DEIS has failed to develop and present alternatives that are significantly different from each other.**

Discussion: In the "Alternatives" section of the Summary and Chapter 2, the agency has not developed and presented alternatives that are significantly different in the actions they call for. Rigorous exploration and objective analysis in the evaluation of all reasonable alternatives is called for in CEQ regulation 40 CR 1502.14 (a). For example, Table 1 on Page 4 and Table 3 on page 27 of the DEIS indicate no significant difference between the total miles of any alternative.

Because the DEIS does not bring forward the issue of motorized access as one of the issues to be address and is limited to only addressing dispersed camping and big game retrieval, alternatives that address a host of other concerns brought forward by the public are not included in the DEIS. As stated elsewhere, issues such as access for the disabled and elderly are not addressed in any of the alternatives. Thus, while the DEIS displays a variety of different actions (alternatives) that address opportunities for dispersed camping and big game retrieval there is little difference as concerns anything else.

The narrow range of difference between the alternatives found in the DEIS as made the effects and outcomes of implementing any of the alternative not much different. This includes implementing the "No Action" alternative. This is again obvious when looking at Table 1 on Page 4 and Table 3 on page 27 of the DEIS and when looking at the differences between the alternatives displayed in any of the Specialist Reports.

Remedy: Re-evaluate all reasonable alternatives based upon the broader and more accurate information subsequent to creating an accurate database of existing open roads in use by the public as well as by type of actual use, thus enabling the inclusion of a true range of reasonable alternatives so "reviewers may evaluate their comparative merits" as called for in 40 CFR 1502.14 (b).

**b. The DEIS fails to show current management direction or level of management intensity in the "No Action" alternative**

Discussion: The 'No Action' alternative should show the forest as it is currently being managed AND used by the public because the No Action Alternative was designed to reflect the current ground conditions. The public and the local counties have vigorously maintained over the past year that the agency's maps for travel management do not include a great number of roads that are in public use, and where the agency has allowed that use. We maintain the No Action Alternative grossly under-represents the current ground conditions.

The agency is admitting its actions have been irregular and inconsistent, and management has been implemented unevenly. Decisions were made to include some ML-1 and decommissioned roads in the 2,832 miles of 'open National Forest System roads' even though the agency knows these roads are coded as closed in the database. We can find no criteria for how the agency decided which closed roads to include as open in the 2,832 miles. There is no explanation of what the agency means by 'to the best of our knowledge'. How did the agency decide which ML-1 roads were in use by the public? We see no methodology for making this decision. Some ML-1 roads were included in the No Action Alternative and the action alternatives. Why only this particular handful of roads? The Alternatives include some ML-1 roads. That means ML-1 roads qualify for designation, so all of them should be up for consideration and should be in the No Action Alternative.

The agency has explicitly stated that its road management practices do not align with its road management categories. We note that the map the agency sells to the public shows all the roads. This communicates the management direction to

the public. That management is that all roads are open to the public, regardless of how they are coded in the database.

The agency is not allowed to 'cherry-pick' when applying criteria. We maintain that if the agency is including some closed roads in the No Action Alternative (because they are in use by the public) it must include all of the roads the public claims to use. The agency has presented no justification for refusing to include those roads. The agency cannot exclude the vast majority of ML-1 from the No Action Alternative simply because they are coded as closed in the database.

The Transportation Specialist report identifies key aspects of the human environment which must be considered under NEPA

- current ground conditions (existing condition)
- current management of the road system (existing direction)
- public use of the road system (affected environment)

The historic road use patterns are part of the human environment which must be included in the analysis. Leaving the vast majority of ML-1 roads out of the No Action Alternative is exactly equivalent to deciding they will not be designated for public use. This is a significant impact on the human environment, it is controversial, and the impact will be severe. When all the roads in public use are acknowledged, and compared to the Action Alternatives, it becomes obvious that the true nature of proposed closure is in excess of 50%, not the single digit percentages claimed in the comparison of alternatives. Reducing historical use by over 50% is severe. It means pushing everyone into half the space which is a severe cumulative effect. When added to closing cross country travel, the cumulative effect is even more severe. This cannot be avoided by breaking the closures down into the small component parts. CEQ provides clear direction on these issues at Section 1508.27

**c. The DEIS has not clearly and concisely defined the "No Action" alternative (Alternative A), including what it would mean to take "no action" and not implement the TMR.**

Discussion: In both the Summary and in Chapter 2 of the DEIS the Agency states that the "No Action" alternative represents the existing transportation system and proposes no change. What is not clearly explained is that the existing transportation system, as represented throughout all portions of the DEIS, was defined by completing a Travel Action Process (TAP) analysis, which is discussed in the Transportation Specialist Report and the Forests' Travel Analysis Report.

The agency does not make clear in the DEIS that the TAP analysis is not a decision-making process, which is stated in FSM 7712.3 (1). Also it should be noted that the "Introduction" to the Forests' Travel Analysis Report states: "TAP is not a NEPA process, rather it is an integrated ecological, social, and economic approach to transportation planning, addressing both existing and future roads."



... "The TAP outcomes are a set of proposals for change to travel management direction and to the forest transportation system. These changes will be evaluated through a subsequent NEPA process." The Forests' Travel Analysis Report in "Step 1-Setting Up the Analysis, Analysis Timeline" clearly shows the purpose the TAP was completed on the Apache Sitgreaves National Forest to provide information and recommend a transportation system for consideration in the upcoming EIS analysis process.

To take what the agency has said in FSM 7712.3 (1), Forests' Travel Analysis Report and Transportation Specialist Report as being accurate, then the existing transportation system presented in the DEIS is a proposed or recommended travel management system that has not been subject to the NEPA process where a responsible official have made a decision to implement the proposed transportation system. What is called the existing transportation system in the DEIS is just a recommendation and has not been properly analyzed and implemented through the NEPA decision making process, as required by law.

Most of the public believes the current TMP NEPA analysis being conducted on the Apache Sitgreaves National Forest was being conducted to implement the TAP proposed/recommended transportation system. The transportation system currently in place on the Apache Sitgreaves National Forest is something much different than the transportation system defined and used throughout the DEIS.

Based on the above assessment the "No Action" alternative presented in the DEIS should be much different than what is currently included in the document.

Without having an accurate and realistic "No Action" alternative the requirement to have a "No Action" alternative (40 CFR 1502.14 (d)) in an EIS is not being met. The miles of road currently located on the Forest and the current use of these roads is not accurately represented; thus the current flawed "No Action" alternative does not accurately represent the baseline for comparison with the "Action" alternatives. Without an accurate baseline used for comparison, the effects analyses for most of the items analyzed in the DEIS are also skewed and do not provide an accurate analysis to inform the public or decision maker. All impacts that may affect the local communities, and human environment are still undisclosed as analyzed within the current document. The DEIS as currently written is a totally flawed analysis that should be redone.

Remedy: Clearly and concisely, as well as fairly and accurately, display the effects of implementing the TMR on the Apache Sitgreaves National Forest.

## **5. Comments on Chapter 3: Affected Environment and Environmental Consequences**

### **a. The DEIS fails to include the required analysis of the current and future environmental consequences of travel in the A-S.**

Discussion: The agency has throughout the discussions of effects in Chapter 3 made generalized statements about possible effects and risk rather than the required analysis. The requirement to take a hard look at the environmental

consequences rather than making conclusive assertions has been included in the findings of numerous court decision that deal with environmental analysis and decisions. Also, 40 CFR 1502.24 states: "Agencies shall insure the professional integrity, including scientific integrity, of the discussion and analysis in environmental impact statements."

Throughout the effects analysis in the DEIS resource specialists have continued to make the argument that the mere presence of roads is a measure of disturbance. There is no disclosure of the amount or type of traffic that uses a road or class of roads in order to better address actual disturbance. The DEIS makes the base assumption that roads equal disturbance, which is bad, and that no roads equals no disturbance thus is good, without providing data and analysis to support such an assumption. The analysis makes no differentiation between roads that are used by a vehicle once or twice a year and roads that are used by vehicles every hour of every day all year long. Additionally, there is no differentiation between the impacts of the different sizes and types of vehicles; a 10 ton truck and a 300 pound ATV are apparently considered to have the same environment impacts. Also there is no data disclosed for measurement of actual area of vegetative or wildlife disturbance.

Remedy: The Agency should disclose site specific data about the types of vehicles and the frequency of use on the different classes of roads that occur on the Forest, along with acreage of actual disturbed land and impacts on wildlife. Estimates of acres of actual impacted land area should be displayed as a percent of any given land area such as acres of disturbance per section etc. This data should then be used to present the current and future effect on the environment (Direct and Indirect effects) and also be used to show a clear difference between the alternatives. (See 40 CFR 1502.16)

## **6. Conclusions**

With the lack of DEIS consistency information and compliance, and absent County coordination, cooperating agency and joint planning, the Agency cannot produce an accurate FEIS. Furthermore, the Deciding officer cannot find appropriate balance between the effects of the proposed action and/or activities vs. the benefits to society and the health, safety and welfare of the County and its environs. The County finds that the DEIS is incomplete, missing information, and is out of compliance with CEQ, and other related laws and regulations. In conclusion, the A-S NEPA process and DEIS for public full disclosure is fundamentally flawed, and thus the DEIS should be redone.

The Agency must correct the errors identified in these comments by issuing a Supplemental DEIS (SDEIS). A SDEIS must correct the many flaws that have been identified in the DEIS and provide the analyses that have identified as being missing from the DEIS. The SDEIS must accurately bring forward the key issues identified in Scoping and formulate sufficiently differentiated alternatives that are responsive to the Scoping issues that were identified. The DEIS must address the social factors that

were omitted. It must clearly display an accurate "No Action" alternative which included all of the actual roads and trails located on the Forest and must include a full analysis of the impacts of the cross country travel closure, particularly in regards to the cumulative effects on the human environment; for example a reduced quality of experience.

The SDEIS cannot evade the necessity of qualitative discussions of effects and social factors by narrowing the range of the alternatives and reducing the scope of the analysis. There should not be an effort to pre-select the outcome of the analysis or mislead the public by altering or limiting the data that will be used in the formation of alternatives and/or conducting the analysis. The analysis must address the effects of the different alternatives clearly and not depend on broad assertions of opinion.

## **Attachment 1: Federal, State and Local Coordination Requirements**

National Forest Management Act (16 USC §1604)

Forest and Rangeland Renewable Resources Planning Act § 6 (16 USC 1604(a))

Multiple Use Sustained Yield Act of 1960, §3 (16 USC §530)

U.S Forest Service 219 Planning Rule: Coordination with Other Public Planning Efforts (36 CFR §219.7);

Travel Management Rule (36 CFR §212.53)

US Forest Service Manual (FSM) 1921.63(a);

US Forest Service Manual (FSM 1950.2)

Integrated Resource Management Process—the Road to Ecosystem Management (USFS Region 3, 4<sup>th</sup> edition, appendix A)

National Environmental Policy Act §101(a), 102(c), (42 USC §4331(b)(5) & §4332(2))

Joint Planning (40 CFR §1506.2 (b)); Cooperating Agencies (40 CFR§1501.6)

President's Council on Environmental Quality Directive to Federal Agencies regarding Cooperating Agency, Feb. 2002

40 CFR §1501.7; 40 CFR §1503.1

*Regulatory Flexibility Act* (5 USC §601-612)

Proper Consideration of Small Entities in Agency Rulemaking - Presidential Executive Order 13272

Intergovernmental Cooperation Act (§401 and 3 USC §301)

Intergovernmental Review of Federal Programs - Presidential Executive Order 12372

Facilitation of Cooperative Conservation - Presidential Executive Order 13352

Environmental Justice - Presidential Executive Order 12898 §302(d)

Outdoor Recreation Act (16 USC §4601)

National Trails System Act (16 U.S.C. 1241)

Presidential Executive Order 13195: Trails for America in the 21<sup>st</sup>. Century

Use of Off-Road Vehicles on the Public Lands - Presidential Executive Order 11644

TMR coordination: TM Rule (Federal Register Nov. 9'05sec. 212.53)

Arizona Coordination Act

Apache County Board of Supervisors Resolution in Feb. 2010 notified Apache-Sitgreaves National Forest: The need to coordinate the A-S NF Forest Plan process and their TMP planning process

Catron County Ordinance 002-93: Catron County Environmental Planning & Review Process; and, Catron County Resolution 002-2010: County Board of Supervisors Asserting Legal Standing and Formally Invoking Coordination with All Federal and State Agencies Maintaining Jurisdiction Over Lands And/Or Resources Located Within The County of Catron, New Mexico

## **Attachment 2: Apache County Board of Supervisors CEQ Factors for Cooperating Agency**

The President's Council on Environmental Quality (CEQ) spells out the requirements for cooperating agency status in the NEPA process in its 12 factors for determining CA acceptance or rejection. Apache County's opinion is that it meets several of the factors. If the US Forest Service needs more detailed information all they have to do is ask for more detail and clarification. See the below summary, just to name a few.

### Jurisdiction by law (40 C.F.R. § 1508.15):

- *Does the agency have the authority to veto a proposal or a portion of a proposal? What about County roads including RS2477 roads that may be inadvertently closed? Would it not be helpful to have counties as Cooperating Agencies to avoid such problems?*
- *Does the agency have the authority to finance a proposal or a portion of a proposal? Again, CA counties do provide cost-share for forest systems roads and other related financing.*

### Special expertise (40 C.F.R. § 1508.26] :

- *Does the cooperating agency have the expertise needed to help the lead agency meet a statutory responsibility? Given the intermix of County and USFS roads; the county had the expertise to assist the Forest Service, and meet this factor.*
- *Does the cooperating agency have the expertise developed to carry out an agency mission? The Apache County has provided such expertise for years. A-S NF/USFS should seek Apache County expertise regarding the existing roads.*
- *Does the cooperating agency have the related program expertise or experience? Given the County roads on the A-S NF as well as the USFS roads contracted by the County, it would meet this factor. In addition, the County has expertise through it's Cooperative Extension branch as well as specialized expertise to assist in socioeconomics, Wildland Urban interface, watershed management to name a few. With open and honest dialogue, the County can bring a variety of resources to assist the Forest Service especially given the time crunch and the shortage of manpower to complete the EIS.*
- *Does the cooperating agency have the expertise regarding the proposed actions' relationship to the objectives of regional, State and local land use plans, policies and controls (1502.16(c))? Given the above as well as further discussion, it would be a factor for Apache County.*

\* Note: These factors are for TMP. If the Forest Service needs more information and justification, please notify Apache County, Arizona and we will be more than happy to provide you with the necessary information.