Submitted via Email and Certified Mail.

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Objection to the Draft ROD for the Tonto National Forest Travel Management Project

Pursuant to 36 C.F.R. Part 218 (2016), Archaeology Southwest, the Center for Biological Diversity, Sierra Club, The Wilderness Society, and WildEarth Guardians object to the Draft Record of Decision for the Tonto National Forest Travel Management Project. The objecting entities provided the Forest Service with substantive, timely comments regarding the Travel Management Project[1] and have standing to object per 36 C.F.R. § 218.5(a). Formal notice of the objection period was published in the newspaper of record, the *Arizona Capital Times*, on June 10, 2016, initiating a 45-day objection period ending on July 25, 2016, making this objection timely.

For the purposes of this objection, and in accordance with 36 C.F.R. § 218.5(d), the lead objector should be identified as Katie Davis, on behalf of the Center for Biological Diversity.

Objecting Entities:

For the past thirty years, **Archaeology Southwest**, a nonprofit organization based in Tucson, has been dedicated to exploring and protecting the places of the past. Archaeology Southwest has practiced a holistic, conservation-based approach that we call Preservation Archaeology. By exploring what makes a place special, sharing this knowledge in innovative ways, and enacting flexible site protection strategies, we foster meaningful connections to the past and respectfully safeguard irreplaceable cultural resources. Members and staff of Archaeology Southwest have and will continue to explore and document the cultural and archaeological resources of the Tonto National Forest in furtherance of its mission.

The **Center for Biological Diversity** is a nonprofit organization headquartered in Tucson, Arizona. Its mission is to protect and promote recovery of imperiled fauna and flora and wild places through science, education, policy, and law. The Center has more than 50,000 members, many of whom reside in Arizona. Members and staff regularly use, and will continue to use, the public lands within the Tonto National Forest for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. Center members and staff derive scientific, recreational, conservation, and aesthetic benefits from the existence of the full complement of native biological diversity found in the wild.

The **Sierra Club** is one of the oldest and most influential grassroots environmental organizations in the country. The Sierra Club's mission is "to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments." The Grand Canyon Chapter has more than 40,000 members and supporters in the State of Arizona who value quiet

[1] Including, but not limited to: Comments Re: Draft Environmental Assessment for Travel Management on the Tonto National Forest, Arizona, submitted March 5, 2012 (included in the project record); Comments on the DEIS for the Tonto National Forest Travel Management Plan, submitted September 15, 2014 (included in the project record; hereinafter CBD et al. DEIS comments).

recreation and protection of the wildlife, plants, water, and soils of the Tonto National Forest. Our members enjoy hiking, camping, backpacking, bird watching, photography, botanizing, bicycling, horseback riding, and exploring archaeological sites in the Forest.

The Wilderness Society is a national, not-for-profit conservation organization with over 350,000 members. Founded in 1935 by Robert Marshall, Aldo Leopold, and Benton MacKaye, we provide scientific, economic, legal, and policy guidance to land managers, communities, local conservation groups, and state and federal decisionmakers. In doing so, we hope to ensure the best management of our public lands for recreation, wildlife conservation, water quality, and the ability to enjoy public lands for inspiration and spiritual renewal. Our members in Arizona, and our members from elsewhere who visit Arizona, enjoy the Tonto National Forest for hiking, backpacking, and camping, and for the aesthetic, spiritual, and wildlife values and opportunities it provides

WildEarth Guardians is a non-profit corporation, incorporated in New Mexico, with over 160,000 members and supporters nationwide and offices in Arizona and six other states. WildEarth Guardians' primary goals include protection and restoration of endangered species and riparian and other sensitive ecosystems in the southwestern United States that have been impaired as a result of public and private actions and projects, including excessive off-road vehicle use and other harmful recreational activities. Many members and staff of WildEarth Guardians live and/or recreate in Arizona and frequently use and enjoy, and intend to continue using and enjoying, the Tonto for recreational, aesthetic, and scientific activities.

Name of Proposed Project: Travel Management on the Tonto National Forest

Names and Titles of Responsible Officials: Neil Bosworth, Forest Supervisor, Tonto National Forest

Implementation Area: Tonto National Forest

REASONS FOR OBJECTION SUMMARIZED

Reasons for Objection

I. The Tonto National Forest Violated the National Environmental Policy Act.

a. *The TNF Failed to Analyze an Appropriate Range of Alternatives*[2]

The alternatives analysis is the "heart" of any NEPA document. 40 C.F.R. § 1502.14. Federal agencies are required to "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives … eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a). "NEPA requires that alternatives be given full and meaningful consideration' whether the agency prepares an EA or an EIS." *Ctr. for Biological Diversity,* 538 F.3d at 1217 (internal citations omitted).

The discussion of alternatives is intended to provide a "clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14. In the alternatives analysis itself, Wildlife Services must "[d]evote substantial treatment to each alternative considered in detail … so that reviewers may evaluate their comparative merits." 40 C.F.R. § 1502.14(b). This is critical to serving NEPA's purpose of "foster[ing] better decision making and informed public participation for actions that affect the environment." *Ore. Natural Res. Council Action*, 293 F. Supp. 2d at 1204 (citing 42 U.S.C. § 4321; 40 C.F.R. § 1501.1(c)).

In determining what constitutes a reasonable range of alternatives, NEPA requires that agencies "take into proper account all possible approaches to a particular project … which would alter the environmental impact and the cost-benefits balance." *Alaska Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995) (internal citation omitted). Reasonable alternatives include all viable alternatives. *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013); *see also* Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026, 18027 (March 23, 1981) (NEPA document must "examine all reasonable alternatives … [T]he emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative.") (hereinafter "Forty Questions"). "Feasible alternatives should be considered in detail." *W. Watersheds Project*, 719 F.3d at 1052. An agency's failure to consider a reasonable alternative "renders an [EA] inadequate." *Id.* at 1050 (internal citation omitted); *see also Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813-14 (9th Cir. 1999) (same).

The alternatives considered for this project are insufficient to meet the intent and requirements of NEPA and its implementing regulations. This action, which is forest-wide in scope and will significantly affect nearly all resources on the TNF, was evaluated through the use of only four alternatives. The first, Alternative A (the "no action" alternative) was required under NEPA. The remaining 3 alternatives presented slight differences in allocation of resources and management only through differences in route mileage (Alternative B would have the least mileage open for public use, Alternative D would have the most, Alternative C would have more than B and less than D) or acreage open to cross-country use or designated motorized opportunities. Open mileage or acres are important components of the travel management process, but is not the only significant management component. For instance, the TNF has both "Areas Designated for Motor Vehicle Use" and "Permit Zones." Alternative B presented an option for 5 permit zones, Alternative C would allow for 4 permit zones, and Alternative D would allow for 1 permit zones. None of the evaluated alternatives propose excluding permit zones from the proposed plan altogether. Likewise, the public was only given the option of choosing an alternatives that allowed either

[2] We raised the issue of the need for additional alternatives to be identified and analyzed in our CBD et al. DEIS comments at 20-21.

over 700,000 acres of motorized big game retrieval, or none at all, impermissibly limiting not only the management choices, which could be far more nuanced and complex, but also the public's ability to support understand the full range of alternative management strategies actually available to the TNF. The presentation of these issues in the alternatives exemplifies the biased perspective of the planning process, which was focused on continuing to allow extensive motorized use, regardless of the alternative chosen. There is no indication from the project record that alternatives were developed in response to environmental or resource impact concerns, rather they were developed to allow the public to respond to various degrees of motorized use, limiting the ability of the public to advocate for protection of specific resources.

General differences defined the alternatives – for instance, having the "greatest benefit" to a specific resource or the "least overall effects" – do not present sufficient difference for resource management options. Nor does the management approaches included in the alternatives represent the range of reasonable options open the TNF. In areas such as enforcement, protection of species habitat, management in Wild and Scenic Rivers, and many other areas, there is simply not enough detail or alternative proposals to cover the range of reasonable management choices. Alternatives needed to be developed and analyzed to specifically respond to resource issues, such as impacts to listed species recovery, critical habitat, air quality, impacts from motorized big game retrieval, along with many others. The TNF needs to spend more time developing a broader range of alternatives that present distinct difference in management responding to distinct resources needs and problems. The current alternatives limit public understanding of management options and limit the approaches open to the decision maker. One of those alternatives that should have been identified, developed, and analyzed was the minimum route alternative, which we discuss in detail in Section IV(a), *infra*.

Relief Sought:
Develop and analyze a broader range of alternatives, including a minimum route system alternative, to respond to specific management challenges and resource problems, allowing for clear choices in management options by the public and the decision maker.

b. *The TNF Failed to Adequately Analyze, Incorporate and Respond to the Route-Specific Analysis Submitted by the Objecting Entities.*

The objecting entities submitted an appendix (labeled Appendix C to our DEIS comments) containing route-specific analysis for a number of motorized routes in the TNF travel system. This analysis included a map showing the location and extent of impacts for these routes, as well as an Excel spreadsheet clearly indicating the route identification number and the specific impacts associated with it. The objecting entities requested that the TNF use this information to analyze alternatives that would minimize the impacts from these routes. *See* CBD et al. DEIS comments at 19-20. We did not ask that the TNF analyze a specific alternative that included closure or decommissioning of every route listed, and we repeatedly emphasized this in our comments. *See, e.g.* CBD et al. DEIS comments at 19 ("we did not ask for each route with a resource impact to be considered for closure, but rather we asked the TNF to demonstrate how route designations would minimize these impacts.").

The Forest Service is obligated under NEPA to "assess and consider comments . . . and shall respond . . . stating its response in the final statement." 40 C.F.R. § 1503.4(a). If the agency determines that the comments don't warrant further response, it is obligated to provide a rationale for that decision. *Id.* For those comments that express opposing viewpoints, the agency must disclose and discuss the viewpoints in a manner that is adequate to explain the opposition and then adequately address and refute it. 40 C.F.R. § 1502.9(b); *Ctr. for Bio. Div. v. U.S. Forest Service*, 349 F.3d 1157, 1167-68 (9th Cir. 2003).

The TNF failed to appropriately analyze alternative route classifications that would have minimized the known, documented impacts included in our analysis. First, within the FEIS, the TNF continues to misconstrue our information as a distinct "alternative," and then dismisses this "alternative." FEIS at 57. Appendix C of the FEIS analyzes some of the routes presented in our analysis, but it a) does not adequately explain a rationale for why it looked at roads with only a score of 5 or higher and b) does not address how the cumulative effects of these roads on sensitive resources was considered or minimized. Second, the cumulative impact on wildlife habitat and forest resources as disclosed in Appendix C and our associated explanation was not adequately explained or discussed within the FEIS, leaving the public without the opportunity to understand or comment on the viewpoint and information we presented.

Relief Sought:

1) Require a supplemental explanation of how the cumulative impacts of the routes identified in Appendix C to our DEIS comments was considered in the decision-making process and how those impacts are likely to affect forest resources.
2) Require supplemental analysis as to the rationale for excluding from route-specific analysis those routes with a score of less than 5.

c. *The TNF Failed to Take a Hard-look at Direct, Indirect, and Cumulative Impacts of Motorized Recreation under the Proposed Plan*

The Forest Service's legal mandate under NEPA is clear. The Forest Service must "take a 'hard look' at environmental consequences" of its proposed actions. *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1300 (9th Cir. 2003); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989); 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.16, 1508.7, 1508.8. The required hard look encompasses effects that are "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8. Cumulative impacts are those that "result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions" and "can result from individually minor but collectively significant actions taking place over a period of time." *Id.* § 1508.7. This "hard look" should be explained, and the information relied upon disclosed, within the FEIS. It requires a "full and fair discussion of significant environmental impacts." 40 C.F.R. § 1502.1. General statements about potential impacts or generalized assertions that one alternative will have less impacts to a forest resource over another alternative do not satisfy this hard look requirement. *See*, W.Watersheds Project v. Kraayenbrink, 632 F.3d 472, 491 (9th Cir. 2011); WildEarth Guardians v. U.S. Forest Service, 790 F.3d 920, 927 (9th Cir. 2015).

The FEIS and Specialist Reports for many of the forest resources do not provide enough evidence or factual information to support the TNF's conclusions about the 1) the baseline impacts of the current system, 2) the direct, indirect, and cumulative impacts of the draft decision's proposed designations, and 3) difference in impacts between the alternatives considered.

i. *Air Quality*

NEPA dictates that agencies take a "hard look" at the environmental consequences of a proposed action, including its direct, indirect, and cumulative effects. Significant impacts that must be fully analyzed and disclosed in an environmental impact statement (EIS) include those that affect public health or would threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.27(b)(2) & (10). This includes compliance with the health-based NAAQS, prevention of significant deterioration (PSD) of air quality, and adverse impacts on air quality related values such as visibility under the Clean Air Act. *See* 42 U.S.C. §§ 7409(b),

7470-79, 7491-92. NEPA also requires the Forest Service to ensure the professional and scientific integrity of an EIS. 40 C.F.R. § 1502.24

The Forest Service has failed to take a hard look at the direct, indirect, and cumulative air quality impacts associated with its travel plan for the Tonto National Forest because it failed to do the necessary quantitative modeling analyses. While compliance with general conformity requirements applies in non-attainment and maintenance areas, *see* section VII, below (addressing Clean Air Act violations), NEPA imposes a separate obligation to fully analyze and avoid significant air quality impacts, including NAAQS exceedances. As the Environmental Protection Agency specified in its comments on the DEIS, "[a]dditional air quality analysis should be performed and included in the FEIS to more clearly demonstrate that the project would not negatively affect air quality, exceed de minimis thresholds or contribute to an exceedance of the NAAQS."[3]

The AERMOD modeling analysis included in the Air Quality Report for the FEIS (Appendix D) discusses direct and indirect PM10 impacts to the Phoenix 24-hour serious nonattainment area and Class I areas. However, it is unclear from the discussion in the report what the modeled direct and indirect concentrations are, what the representative background concentrations are, and what the overall impacts are (*i.e.*, modeled concentrations plus background concentrations), compared with the NAAQS. Despite lacking quantitative information, the FEIS concludes that "[i]t is likely that fugitive dust [under Alternative C] would indirectly contribute to the exceedance of Maricopa County air quality standards, though less than Alternatives A and D." FEIS at 469. The Forest Service should not permit such increases in emissions that would contribute to PM10 NAAQS exceedances, and must provide a more complete analysis so that appropriate mitigation measures can be developed and put into place to protect air quality in the impacted areas.

Aside from direct monitoring, which is only able to measure real-time pollution levels at the location of the monitoring device, a quantitative air quality modeling analysis is the only way to evaluate how emissions from the alternatives will impact air quality. Specifically, the Forest Service must identify existing and appropriate background levels of air pollution in order to assess the overall air quality impacts from motorized vehicle travel under the various alternatives on human health, compliance with the NAAQS for PM10, PM2.5, and ozone, PSD increments, and air quality related values. This type of quantitative modeling is also necessary to ensure the professional and scientific integrity of the air quality analysis. 40 C.F.R. § 1502.24. The analysis should include the following components:

1. A Near-Field Modeling Analysis to Assess Local Air Quality Impacts

A near-field modeling analysis of localized maximum ambient air impacts should be performed to assess whether the proposed travel management designations would comply with the NAAQS and the PSD Class II increments. The agency should model the maximum emission rates from sources over the averaging times of the standard for which compliance is being assessed. The modeling analysis should be based on at least one year of quality-assured, on-site, representative meteorological data or, if no on-site data is available, five years of meteorological data from the closest meteorological station representative of the area. *See, e.g.*, Sections 9.3.a., 9.3.1.2., and 9.3.3.2. of EPA's Guidelines on Air Quality Models at 40 C.F.R. Part 51, Appendix W. For the NAAQS analysis, appropriate background concentrations reflective of current air quality in the area should be added to the modeling results.

[3] September 14, 2014 letter from EPA to the Forest Service Re: Draft Environmental Impact Statement for Travel Management on the Tonto National Forest, Gila, Maricopa, Pinal, and Yavapai Counties, Arizona (CEQ# 20140183), available online at: https://archive.epa.gov/region9/nepa/web/pdf/ceq20140183-travel-mgmnt-tonto-nat-forest-deis-2014-09-17.pdf.

2. *A Far-Field Modeling Analysis to Assess Air Quality Impacts on the Nearby Class I Areas*

The Clean Air Act declares a national policy to prevent future impairment and remedy existing impairment of visibility in Class I areas. 42 U.S.C. § 7491(a)(1). The Forest Service should perform a far-field modeling analysis to assess whether the proposed travel management designations would adversely impact air quality in nearby Class I areas. The agency should model the maximum emission rates from sources over the averaging times of the standard for which compliance is being assessed. For visibility impacts, this requires modeling of the maximum 24-hour average emission rates. The modeling analysis should be based on three years of mesoscale meteorological data, pursuant to Section 9.3.1.2.d. of EPA's Guidelines on Air Quality Models at 40 C.F.R. Part 51, Appendix W. The far-field analysis should assess the impacts of the alternatives on the PSD Class I increments and on air quality related values, including visibility.

3. *A Cumulative Air Quality Impacts Analysis*

The Forest Service should perform a quantitative assessment of cumulative air quality impacts. The qualitative assessment of PM10 and NOx pollutants in the Salt River airshed presented in the Air Quality Report is not detailed enough to ensure there would be no significant air quality impacts when considering all existing sources and reasonably foreseeable sources of air emissions that could impact the same area.

In addition to robust modeling and analysis, the Forest Service must incorporate appropriate mitigation measures. "Implicit in NEPA's demand that an agency prepare a detailed statement on 'any adverse environmental effects which cannot be avoided should the proposal be implemented,' is an understanding that the EIS will discuss the extent to which such adverse effects can be avoided." *Robertson*, 490 U.S. at 351-52 (quoting 42 U.S.C. § 4332(2)(C)(ii)). Accordingly, an EIS must discuss appropriate mitigation of any significant adverse impacts. 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.25(b). Those measures "must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated." *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998) (quotations and citation omitted). An "essential component of a reasonably complete mitigation discussion" is "an assessment of whether the proposed mitigation measures can be effective." *S. Fork Band Council of W. Shoshone of Nevada v. U.S. Dep't of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).

The Forest Service has failed to incorporate sufficient mitigation measures in the FEIS and Draft ROD. The agency must include specific and enforceable mitigation measures that will ensure the plan will not contribute to NAAQS exceedances and that are consistent with the requirements for the affected non-attainment and maintenance areas.

Numerous exceedances of the ozone standard continue to be reported in and around the Tonto National Forest.[4] Due to the ozone nonattainment status in the area, it is critical that the Forest Service not allow for *any* increase in emissions of ozone precursors (*i.e.*, NO_x tailpipe emissions) that would contribute to continued exceedances of the ozone NAAQS. Mitigation under NEPA can include "limiting the degree or magnitude of the action and its implementation." Thus, the Forest Service should require development of mitigation actions to curtail activities that contribute to NO_x emissions on days with predicted meteorological conditions conducive to unhealthy levels of ozone (*e.g.*, ozone alert days identified by Maricopa County Air Quality Department as high pollution advisory days for ozone).

[4] According to EPA Air Data (http://www.epa.gov/airquality/airdata/ad_viz_ozcompare.html), there have already been close to 20 exceedances of the 8-hour O_3 standard in Maricopa County in 2016.

Relief Sought:

1) Conduct a near-field modeling analysis to assess local air quality impacts.
2) Conduct a far-field modeling analysis to assess air quality impacts on nearby Class I areas.
3) Conduct a cumulative air quality impacts analysis.
4) Develop specific and enforceable mitigation measures that will ensure the plan will not contribute to NAAQS exceedances and that are consistent with the requirements for the affected non-attainment and maintenance areas.

ii. *Wild and Scenic Rivers*

The amount of detail regarding potential impacts to designated and eligible Wild and Scenic Rivers is inadequate. We raised this issue in our DEIS comments at page 45. Very limited information is provided, and potential effects and mitigation options are virtually non-existent. Both the FEIS and the final special areas report seem to rely on an assumption (which is not stated or justified) that road/route mileage is equivalent to more environmental impacts, though what those impacts are remain generalized or unidentified. The only mention of environmental impacts for the baseline condition are couched in general language: "sites may decrease the scenic value of the corridor," "presence of wildlife . . . could be dispersed by campers potentially causing wildlife to avoid these locations." FEIS at 129. No information is provided as to how the TNF reached these conclusions or what sources of information were used. The TNF concludes that even though Alternative C would designate additional routes and facilitate additional dispersed camping, "the effects are likely to be similar to both of these alternatives." *Id.* This logical leap is not justified by anything disclosed in the FEIS or specialist reports, and is directly contradicted by other information in the project record that explains impacts from motorized use to wildlife habitat and water resources.

Similarly, the cumulative impacts sections relative to designated and eligible Wild and Scenic Rivers is woefully sparse. It only briefly considers general activities that do or could occur in these areas and assumes that no cumulative effects will occur if these activities "follow law, regulation, and policy." FEIS at 130, 133. As the forest is well aware, not all activities follow the law, and the forest does not have adequate resources to enforce laws on all parts of the forest.

We also note that four specific recommendations and information about site-specific impacts that were made within our DEIS comments (pg. 63-69 (Specific Routes/Areas Recommendations)), but were not adequately analyzed or responded to within the FEIS or specialist reports regarding Wild and Scenic Rivers:

FR 303B - There is an extension of route 303Ba that trespasses into segment 1-a of the upper Salt River, an eligible scenic river segment. There was no NEPA analysis performed on this route extension. Route 644 has consistently created problems with vehicular trespass down close to the Salt River. This promotes erosion, destruction of riparian vegetation, and other damage.

Lower Salt River – The Bulldog OHV permit zone on the north side of the Salt River in sections 28 and 33 should be eliminated. It is inappropriate in this eligible segment and will promote additional damage to resources.

FR 502 – within the East Verde - listed as decommissioned, but this route dead ends in section PB 42.

Relief Sought:

1) Amend the final decision to fix the route and area-specific problems outlined above.
2) Require additional analysis and explanation of the analysis of the impacts associated with expanded motorized use under Alternative C and the proposed action.

3) Require additional analysis and response to the site-specific route and area comments included in our DEIS comments.
4) Require expansion and revision of the Wild and Scenic Rivers section of the FEIS to address the likely potential impacts of unauthorized motorized use within wild and scenic corridors.

iii. *Heritage Resources*

The Heritage Resources section and Specialist report start with the assumption that there are 4500+ miles open to motorized use, many of which have been previously classified as closed, decommissioned or unauthorized. *See* FEIS at 169. However, instead of going through the process of actually documenting and analyzing the impacts to heritage resources, the TNF defers such analysis until some future time, the details and timeline of which are not disclosed. FEIS at 170-171 ("Documentation is need to demonstrate that either the route does not encounter any cultural resources or that any adverse effects have been resolved in compliance with Section 106 . . . . Specific recommendations regarding particular routes will be developed."). As part of the draft decision, the TNF has proposed formally opening to motorized use 1212 miles of roads and trails that were previously designated as closed or decommissioned, or were created by forest users, and therefore have never been subject to site or route-specific NEPA analysis. This draft decision and FEIS constitute a final agency action and irreversible commitment of resources, which means that all impacts must be analyzed within this NEPA process, not at some future point in time. The TNF did not complete appropriate analysis of heritage resource impacts in this NEPA process, impermissibly delaying or deferring site-specific analysis to some future time, which is unlawful.

One federal court recently admonished the Forest Service for taking a similar approach to conducting its NEPA analysis:

> This approach puts the cart before the horse by prematurely asking for approval of the Project before the necessary baseline data and analysis are conducted. NEPA demands that the Forest Service analyze a project's impacts before it is approved; not as part of the Project itself. *See N. Plains*, 668 F.3d at 1083 (holding that "[b]ecause the [EIS] does not provide baseline data for many of the species, and instead plans to conduct surveys and studies as part of its post-approval mitigation measures, we hold that the Board did not take a sufficiently 'hard look' to fulfill its NEPA-imposed obligations at the impacts as to these species prior to issuing its decision.") (citing *LaFlamme v. F.E.R.C.*, 852 F.2d 389, 400 (9th Cir. 1988) ("[T]he very purpose of NEPA's requirement that an EIS be prepared for all actions that may significantly affect the environment is to obviate the need for speculation by insuring that available data is gathered and analyzed prior to the implementation of the proposed action.") (internal citation and quotation marks omitted))).

Idaho Conservation League v. U.S. Forest Serv., No. 1:16-cv-0025-EJL, 2016 WL 3814021, at *10 (D. Id. July 11, 2016).

Relief Sought:
Require site-specific analysis for heritage resource impacts before any final ROD or plan is issued or signed.

iv. *Wildlife Resources*

The current Draft ROD and FEIS do not meet the TNF's statutory obligation under the ESA and NEPA. First, the assumption relied upon by both the FWS and TNF as to the current impacts of motorized use across the forest lacks justification in the project record or best available science. The Draft Biological Evaluation (BE), Final TES Special Report, and FEIS provide plenty of general information about how

species may be impacted by roads and motorized trails. *See, e.g.* Draft BE at 39-50 (section entitled "General effects of routes and their associated uses on wildlife."); Final TES Report at 5-11. This general effects analysis is essentially a literature review for a number of different potential impacts and animal and plant types. However, upon reaching the section entitled "Species Evaluation," specificity of potential impacts and the current status of listed species is nearly absent. This includes a lack of information about species viability and, where applicable, recovery, based on current data. Without an understanding of baseline conditions for habitat and species' populations, that difference in impacts among alternatives cannot be determined, must less justified. This lack of detail contributes to the violations of the ESA, as alleged in Section II, *infra*.

For nearly every listed species considered in the BE, Final TES Report, and FEIS, the "Analysis of Effects" for the current, baseline includes only the number of miles of motorized routes, road density calculation, and acreage of designation motorized areas within the habitat. That information is relevant, but not a proxy for actual data or analysis of the health and viability of species population or habitat, as influenced by motorized use on the forest. Indirect and direct effects analysis consists of general statements, such as "has the potential to influence behavior, survival, reproduction and distribution," *see, e.g.* BE at 52, without identifying why such impacts may occur for a particular species. Much more detail is needed for the TNF to meet its NEPA obligations to take a "hard look" at impacts to species and habitat. With regards to impacts to narrow-headed and northern Mexican gartersnakes, the Forest Service must complete a "hard look" analysis to satisfy ESA requirements, as discussed in Section II(a).

Relief Sought:
1) Require additional analysis and information gathering about the current baseline conditions of wildlife habitat and populations and the impacts of current motorized use.
2) Complete the necessary explanation and analysis of the how management proposals will directly, indirectly, and cumulatively impacts wildlife populations and habitat within the TNF, including for narrow-headed and northern Mexican gartersnakes.

v. *Other Forest Resources*

Site-specific impacts for the travel network are lacking throughout the FEIS and specialist reports. The level of analysis differs between each specialist report and FEIS section. Through the remainder of this objection, the problems with the TNF's analysis or project record are discussed within the context of other legal requirements; however, underlying many of these problems is a general lack of information on which to judge the environmental impacts associated with the proposed action and Draft ROD. The lack of information and analysis of site-specific impacts associated with the proposals for Motorized Big Game Retrieval, for instance, undermines not only the TNF's NEPA analysis, but also its legal obligations under the Travel Management Rule. *See* Section IV (c), *infra*. For the purposes of alleging violations of NEPA process here, we note that many other resources also lack a "hard look" at direct, indirect, and cumulative impacts, which has undermined the legality of TNF's Draft ROD and FEIS and may need to be remedied within the FEIS.

d. *The TNF Failed to Properly Analyze the Indirect Impacts to Heritage Resources from the Proposed Action*

Archaeology Southwest has conducted research and submitted information to the FS regarding the statistically significant increase in the frequency of *recent* vandalism on highly visible sites in relation to their proximity to a road open to motorized use. This report was subsequent to our submittal of

comments on the DEIS and has since been published in a peer reviewed journal.[5] Our comments provided in the DEIS clearly state that the Forest Service has not adequately considered these effects as part of travel management. The Heritage Specialist report goes to great length to suggest that the proximity to a road or motorized trail has no effect on the frequency of vandalism, but provides no data on which to determine how the TNF staff reached that determination. This lack of public disclosure, and presumed lack of data, make this conclusion arbitrary and capricious.

Additionally, the FEIS and Specialist Report make no distinction between old or recent (meaning within the last 10 years) vandalism. Our comments acknowledge that nearly all highly visible sites on the TNF have experienced some level of vandalism, but that it is the ongoing vandalism that is relevant to the travel management rule under consideration. We also acknowledge that substantial progress has been made in deterring vandalism, including looting, but that it continues to occur on many archaeological sites. The failure to distinguish recent vandalism from vandalism that has occurred since the onset of the European settlement period obscures important factual information that should be considered when developing travel management rules. To our knowledge, the TNF never made an effort to distinguish these data sets or reconcile the information provided in our DEIS comments with the information relied upon in the FEIS. To rely solely on professional opinion to guide decision-making is not adequate when best available scientific data is available to analyze, and provided through the comment process, as was the case with the Archaeology Southwest 2010 study. In this report, 20% of the sites visited that were part of the Site Steward network had experienced recent vandalism which undermines the point that site stewards are a more effective deterrent than road closure. The TNF's Draft ROD and analysis in the FEIS as related to heritage resources is arbitrary and capricious.

Moreover, even the TNF's own analysis undermines the ultimate conclusions reached in the FEIS. On page 12 of the Specialist's Report, the author notes in a comment that nearly all sites within the Verde River Wild and Scenic River corridor and designated Wilderness have been looted, but found there has been virtually no damage to these sites in the last 30 years. Both the Mazatzal wilderness extension and Wild and Scenic designation occurred 30 years ago, thereby eliminating vehicular access. This finding suggests that the lack of easy access facilitated by motorized use may be the primary reason these sites have not been vandalized since designation, but the Specialist report seemingly disregards this causal connection and fails to apply this knowledge to the current action.

The specialist report goes to great length to advocate for the need to provide access to law enforcement, Forest personnel and site stewards as a more effective means of deterrence. We recommend in our comments that such access can be provided administratively, but consideration of administrative access is never considered in the FEIS or Specialist report. Further, the routes we recommended for closure in our DEIS comments were carefully considered and chosen due to their location in remote areas without needs for public access or because they were redundant in terms of access to specific areas. None of this information seems to have been incorporated into the decision-making process, which is unlawful under NEPA.

Relief Sought:

1) Close all routes identified in our DEIS comments in the section on Heritage Resources to public use.
2) Remand the Draft ROD and FEIS, and require a more thorough data analysis using existing information to discern if there is a statistically significant difference in vandalism, including

[5] Hedquist, Saul L., Leigh Anne Ellison and Andy Laurenzi, 2014. Public Lands and Cultural Resource Protection. A Case Study of the Unauthorized Damage to Archaeological Sites on the Tonto National Forest. Advances in Archaeological Practices 2 (4), pp. 298-3130. A pre-publication version of this article was cited to and included as an attachment to our DEIS comments, we are submitting the published version as an attachment to this objection.

looting among archaeological site types and whether vandalism, including looting, occurs with greater frequency the closer to a road or trail open to motorized use.

e. *The TNF Failed to Adequately Analyze the Impacts of the Proposed Amendments to the Forest Plan.*

According to the Draft ROD, as part of this action, the TNF intends to amend the existing Tonto National Forest Land and Resource Management Plan (Forest Plan). Draft ROD at 13. As an initial matter, we question the logic and reasoning behind the TNF's decision to amend the Forest Plan at a time when complete revision of the Forest Plan is being undertaken. Travel management plans are intended to implement the decisions related to recreation and land management and protection outlined in the Forest Plan. We are concerned that the TNF will use the proposed travel management plan to drive forest management planning, which would undermine the intent and purpose of forest planning, and may result in future violations of the intent and letter of NEPA, NFMA and the 2012 Planning Rule.

As it stands, with this decision, the TNF is already violating NEPA requirements for forest plan amendments. Forest plan amendments are actions subject to the requirements of NEPA. *See* 36 C.F.R. § 219.13(b)(3) (2012); 36 C.F.R. § 219.10(f) (1982). The significance of a proposed amendment dictates the scope and breadth of NEPA analysis, which can be incorporated into the EIS for a larger project. However, the Forest Service cannot skip an assessment of the environmental impacts of the proposed amendment, including its direct, indirect and cumulative effects.

Table 5 of the Draft ROD outlines one of the proposed amendments to the Forest Plan, an amendment to the current Recreation Opportunity Spectrum (ROS) classifications. Changes are proposed for nearly every identified area within the Forest Plan, resulting in significant changes to the ROS across the forest. The ROS is an important part of the Forest Plan, because, as noted in the FEIS, it "ensure[s] the Tonto is providing a diversity of recreation settings and opportunities" and "helps managers ensure that activities people want to pursue are consistent with the desired recreation setting." FEIS at 91.

In our comments on the DEIS, the objecting entities noted that changes to the ROS required NEPA analysis. CBD et al. DEIS comments at 33 ("A more robust discussion of how amending the ROS . . . would impact . . . forest resources is also needed to comply with NEPA requirements for Forest Plan amendments.").

The ROS classification system and explanation of the changes proposed are discussed in the "Recreation Resources" section of Chapter 3 of the FEIS, pages 90-95. The FEIS goes on to examine the effects *on* the ROS from implementation of the proposed action at page 102. However, there is no discussion or analysis within the FEIS about the environmental impacts *from* the change in ROS classifications. NEPA and Forest Service regulations are very clear that amendments to existing Forest Plans require NEPA analysis, which includes a hard look at associated direct, indirect and cumulative impacts.

Relief Sought:

1) Retain existing ROS classifications and modify proposed action accordingly
2) Alternatively, supplemental NEPA analysis of the proposed forest plan amendment to the ROS classification

II. The Tonto National Forest Violated the Endangered Species Act

a. *The TNF Failed to Meet its Section 7 Obligations for narrow-headed and northern Mexican garter snakes*

The Endangered Species Act (ESA) requires all federal agencies to utilize their authorities to carry out programs for the conservation of threatened and endangered species. 16 U.S.C. § 1536(a)(1) (2016). The ESA requires the Forest Service, in consultation with the U.S. Fish and Wildlife Service (FWS), to "insure that any action authorized, funded, or carried out by" the Forest Service "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of the critical habitat of such species. 16 U.S.C. § 1536(a)(2). FWS and the Forest Service must use the best scientific data available during the consultation process. *Id.*

For formal consultation, as is the case here, the FWS must provide a biological opinion (BiOp) to the Forest Service that explains how the proposed action will affect listed species and habitat. If FWS concludes that the proposed action "will jeopardize the continued existence" of a listed species or result in the destruction or adverse modification of critical habitat, the biological opinion must outline "reasonable and prudent alternatives." 16 U.S.C. § 1536(b)(3)(A). Additionally, when authorizing incidental take within the BiOp, the FWS must specify the amount or extent of incidental take, any "reasonable and prudent measures" that FWS considers necessary or appropriate to minimize such impact, and any "terms and conditions" that the Forest Service must comply with. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

We find the BiOp in this case to be flawed and the reasoning and decision making of the FWS to be arbitrary and capricious. Additionally, regardless of the contents of the BiOp or FWS's concurrence, the Forest Service retains its independent duty under Section 7 to ensure the action is not likely to jeopardize any listed species or result in destruction or adverse modification of critical habitat.

With respect to narrow headed and northern Mexican garter snakes, for which the FWS has issued incidental take for this project, the TNF's analysis is vague: "Motorized use within or adjacent to narrow-headed gartersnake habitat has the potential to influence behavior, survival, reproduction and distribution." BE at 89, Final TES Report at 43 (the analysis for the northern Mexican is identical). There is no information provided as to how vehicles or motorized use is currently impacting either habitat or population numbers of the gartersnakes within the BE or Final TES Report, beyond general statements of potential effects of motorized use in riparian areas generally. Discussion of direct effects or indirect effects lack context as to what is actually happening on the TNF – they merely present broad generalizations and no site-specific information, even though the known locations and habitat for this species is rather limited within the forest.

The finding that Alternative C would "largely benefit" the gartersnakes relies on a reduction in designated route miles and designated acreage, which *may* reduce motorized use of gartersnake habitat, but does not necessarily lead to the conclusion that there would be a large benefit to the population of gartersnakes on the forest. The FWS notes in the BiOp that "heavy recreation such as *unauthorized* off road vehicle use in riparian corridors," is a key factor affecting the species. BiOp at 18 (emphasis added). It is not merely enough for the TNF to rely on reduction in authorized use as a metric for species habitat health and population viability – the best available information suggest motorized use, including unauthorized use, is of concern. Further, no analysis is presented by the TNF as to the impact on viability or recovery of the species as a result of this action. The FWS notes this lack of analysis in the BiOp, stating that "Although all of the proposed designated routes currently exist, effects of those routes on the narrow-headed gartersnakes have not been previously analyzed by the Tonto NF or described in the BA." BiOp at 20.

Notwithstanding the Tonto's lack of effects analysis, the FWS independently describes the narrow-headed population on the forest as "likely not viable" and "at a low density or could be extirpated." BiOp at 15. Such information suggests that continued motorized use in riparian areas, as planned for in the draft decision, would severely undermine recovery efforts for the species, if not result in its extirpation from the forest. Similarly, the northern Mexican gartersnake information provided in the BiOp indicates that there are likely only 5 remaining viable populations of the snake within the U.S., two of which are located

on the TNF in Tonto Creek. These facts undermine the FWS's opinion, relied on by the TNF, that while adverse effects are expected "in stream corridors that contain northern Mexican gartersnake and its prey . . . these effects are not expected to result in population-level effects." BiOp at 40. If there are only 5 viable populations and two of them are expected to continue to be adversely effected, a conclusion that it won't result in population level impacts does not have merit. Moreover, the TNF proposes adding or retaining designated routes in the river/creek channel or adjacent floodplain and upland area, along with dispersed camping sites. For both species, incidental take is authorized, but there is not enough information provided as to how the numbers of incidental take were decided upon[6] – the TNF's documentation does nothing to illuminate the basis for this decision. Further, nothing in the draft decision, ROD or FEIS point to how the Forest Service intends to implement the required terms and conditions contained in the BiOp.

The information provided in the BiOp, BE, Final TES Report and FEIS, lead to the logical conclusion that both the narrow-headed gartersnake and the northern Mexican gartersnake have a limited number of viable populations, are likely being taken by current motorized use, and that the proposed route and designated area system was not created with the intent to assist in the recovery of the species. Regardless of the FWS official findings in the BiOp, the Forest Service has not met its independent duties under the ESA and the information provided does not justify the conclusions reached regarding the impacts to gartersnakes, thereby violating the APA, as well. The TNF also doesn't mention any of this information in the FEIS, which circumvents the purpose of NEPA, *see* Section I (e)(iv)(1), *supra*.

Relief Sought:

1) Remove all routes and dispersed camping areas that are located in gartersnake proposed critical habitat from the decision.
2) Alternatively, require additional documentation and analysis of current population trends and habitat conditions to support the determinations for these species, including the incidental take determination.
3) Require additional explanation in the ROD and FEIS about how the TNF plans implementation of the required terms and conditions included in the BiOp.

III. The Tonto National Forest Violated the National Forest Management Act

a. *The TNF Failed to Follow Appropriate Forest Plan Amendment Procedural Requirements*

We again take the opportunity to bring to the Forest Service's attention the seeming absence of logic and reasoning behind the TNF's decision to amend the Forest Plan at a time when complete revision of the Forest Plan is being undertaken. Travel management plans are intended to implement the decisions related to recreation and land management and protection outlined in the Forest Plan. We are concerned that the TNF will use the proposed travel management plan to drive forest management planning, which would undermine the intent and purpose of forest planning, and may result in future violations of the intent and letter of NEPA, NFMA and the 2012 Planning Rule as the forest planning process takes place.

Forest plan amendments are subject to the requirements of the National Forest Management Act and its implementing regulations. Amendments initiated within 3 years of May 9, 2012 can be made subject to the requirements outlined in the 1982 Planning Rule or the requirements of the 2012 Planning Rule. 36

[6] The FWS writes that "the level of incidental take can be anticipated by the information we have regarding observations of the northern Mexican [and narrow-headed] gartersnake[s] on the Tonto NF and the potential for them to be injured, or killed as a result of the proposed action," but leaves us guessing as to what that "information about observations" and "potential" actually is and how its related to incidental take. BiOp at 40, 26).

C.F.R. § 219.13(b)(3) (2012).[7] The current ROD and FEIS do not state which planning rule the responsible official has decided to use for the proposed plan amendments. Which planning rule the TNF is adhering to for this discussion must be disclosed, but we will proceed to outline the provisions of both planning rules, which, in either case, have not been followed in the current action.

1982 Planning Rule
The 1982 Planning Rule clearly states that the responsible official overseeing the plan amendment "shall determine whether a proposed amendment would result in a significant change in the plan." 36 C.F.R. § 219.10(f) (1982). This significance determination dictates the amendment process: if the change to the forest plan from the amendment is deemed significant, the Forest Supervisor must follow the same procedures required for the development and approval of a forest plan. *Id.*

The DEIS, FEIS and ROD include no determination from the responsible official as to the significance of the proposed ROS amendment. The 1982 Planning Rule outlined the significance factors previously used to guide significance determinations: 1) the timing of the proposed change compared to initiation of the next forest plan revision process, 2) the location and size of the plan area affected by the amendment, 3) the long-term significance of the amendment to the goals and objectives of the forest plan, and 4) the likelihood of the amendment to affect future decisions. FSH 1909.12 § 5.32(3)(a)-(d) (2007); *Citizen's Comm. v. U.S. Forest Service*, 297 F.3d 1012, 1033 (10th Cir. 2002). The rationale of the significance determination must be disclosed and explained within the decision, regardless of what the responsible official decides.

2012 Planning Rule
The 2012 Planning Rule likewise places affirmative obligations on the responsible official for the forest plan amendment, which have not been followed in this case. The process for amendments requires 1) an identification of "the need to change the plan," 2) opportunities for public participation, and 3) appropriate NEPA documentation depending on the likely effects of the amendment. 36 C.F.R. § 219.13(b)(1)-(3) (2012). The identification of the need to change the plan is not synonymous with the information or analysis included in a larger project, unless "a plan amendment is made together with, *and only applies to*, a project or activity decision." *Id.* at (b)(1) (emphasis added). That is not the case here – the proposed amendment to the ROS affects future decision making and would constrain future decisions and agency action related to recreation management. As noted in Section I(e), *supra*, the TNF also failed to complete adequate NEPA for the proposed amendment.

The 2012 Planning Rule also imposes certain substantive requirements. Those requirements include providing for ecological sustainability by "maintain[ing] or restor[ing]": (a) "the ecological integrity of terrestrial and aquatic ecosystems and watersheds," including "structure, function, composition, and connectivity;" (b) air and water quality, soils and soil productivity, and water resources; and (c) "the ecological integrity of riparian areas," including their "structure, function, composition, and connectivity." 36 C.F.R. § 219.8(a). Plans also must provide for: (a) "the diversity of plant and animal communities;" (b) "the persistence of native species;" and (c) "the diversity of ecosystems and habitat types." 36 C.F.R. § 219.9. In providing for social and economic sustainability, plans must account for "[s]ustainable recreation; including recreation settings, opportunities, and access; and scenic character." 36 C.F.R. § 219.8(b)(2). The decision document for the plan amendment "must include . . . [a]n explanation of how the plan components meet [those substantive] requirements." 36 C.F.R. § 219.14(a)(2). In satisfying the substantive requirements, the agency must "use the best available scientific

[7] The proposed forest plan amendment was discussed in the DEIS for this project, which was published in June 2014 – within the 3 year window outlined in the 2012 Regulations. This amendment may have been internally or externally initiated before this time, but regardless, it necessitates a decision and explanation from the TNF.

information to inform the planning process." 36 C.F.R. § 219.3. The TNF has made no attempt to address these substantive requirements with respect to its proposed amendment.

Relief Sought:

1) Retain existing ROS classifications and modify proposed action accordingly
2) Alternatively, supplement NEPA analysis of the proposed forest plan amendment to the ROS classification
3) Clear documentation within the ROD as to which planning rule the responsible official is using for the proposed plan amendments and explanation as to how the requirements of the applicable rule have been met.

b. *The TNF's Proposed Action is Inconsistent with the current Land and Resource Management Plan*

The National Forest Management Act requires that implementation-level planning efforts like a travel management plan be consistent with the governing land and resource management plan. 16 U.S.C. § 1604(i). The 1982 forest planning regulations that governed development of the 1985 Tonto National Forest Plan require plans to maintain "air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State, and/or local standards or regulations." 36 C.F.R. § 219.27(a)(12) (1982). Pursuant to that requirement, the 1985 plan includes a standard/guideline that "[m]anagement activities will be planned so that air quality will [be] equal to or better than that required by applicable federal, State, and local standards or regulations." Forest Plan at 50. The plan also sets a goal to "meet minimum air . . . quality standards," and requires the Forest Service to ensure its activities result PM10 concentrations of less than 150 micrograms per cubic meter over a 24-hour period and 75 micrograms per cubic meter over an annual period. *Id.* at 19, 50.

Given the Forest Service's failure to ensure that its action does not contribute to exceedances of the NAAQS, *see* Section VII, below, and to provide an accurate quantitative analysis of impacts, its action is not consistent with forest plan direction, *see* Section I(c)(i), *supra*.

Relief Sought:
Amend the decision to be consistent with the current forest plan.

IV. The Tonto National Forest Violated the Travel Management Rule

a. *The TNF Failed to Analyze a Minimum Route System.*

In our DEIS comments, we raised the issues that the TNF failed to analyze and identify a Minimum Route System and failed to apply the findings from the 2011 Travel Analysis Process (TAP). We again raise those issues, as they have not been resolved in the FEIS and Draft ROD. The FEIS states the following about these issues we raised:

> A Travel Analysis Process (TAP) was completed for the Tonto National Forest with the intent to identify opportunities for the national forest transportation system to meet current and future management objectives, and provide information that allows integration of ecological, social, and economic concerns into recommendations, which can be used to assist with future decisions. This process recommended a minimum road system that included some unauthorized routes. These recommendations were presented to the public as the proposed action during scoping for the environmental assessment in 2009. While Tonto National Forest resource specialists were assembled to evaluate routes through the TAP based upon localized, site-specific resource risks

> (i.e., potential impacts to cultural resources and wildlife/habitat, etc.) and benefits (administrative needs, access to commercial facilities, recreational opportunities, etc.), the data collected is incomplete and what exists in the current project record for each specific route for the entire forest lacks detailed information about the potential effects of each route on resources in terms of context and intensity. Since "The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences…" (40 CFR 1500.1(c)) and federal agencies are required to make conclusions that are not arbitrary or capricious as required by the Administrative Procedures Act of 1946, the existing information related to the TAP was found to be lacking these statutory requirements and it was determined that the existing information in the TAP would not provide a solid rationale for the decision to designate a motorized route system on the Tonto National Forest. As such, the recommendations that came from the TAP were not used to generate any of the action alternatives being considered in this analysis. Again, we feel using the updated and more complete analysis of current road conditions provided by aerial imagery, knowledge from Forest Service and Arizona Game and Fish Department employees, and site visits better serves the integrity of this NEPA process for complying with the Final Travel Management Rule in evaluating the existing conditions as opposed to using the incomplete TAP data.

FEIS at 56. In reply, we state that this outright dismissal of an intensive 205-page travel analysis (not including voluminous reports and GIS data) – completed by multiple interdisciplinary teams totaling some 40 Tonto staff persons (2011 TAP at 23-26) – because "it lacks detailed information" is arbitrary and capricious, and any findings in this FEIS that are contrary to the recommendations of that 2011 TAP must be detailed and explained. Yet they are not.

All factors analyzed in the report, and the recommendations from personnel based on it, should be used to develop alternatives to the current system during travel management and determination of roads necessary for the minimum road system based upon actual need. Deviations from these recommendations must be fully explained. The decision to disregard all data obtained through the 2011 TAP is nonsensical and contradicts previous statements without adequate explanation. And it is not the case that a subsequent analysis has been completed for this EIS process. The only route-by-route analysis in the record is that in the TAP**,** which has now been discredited and disregarded as inaccurate. If there is additional route-by-route analysis information being relied upon in this EIS process, it must be provided to the public and input allowed before a final decision is made.

Most national forests around the country completed Subpart B of the Travel Management Rule (36 C.F.R. 212.50 et seq.) prior to completing Subpart A (36 C.F.R. 212.5(b)). The Tonto, however, is in the enviable position of having completed Subpart A first with its 2011 TAP. It not only seems natural that a process in a Subpart A should precede a process in a Subpart B, but from a planning perspective it follows that a decision on the use of roads (Subpart B) should follow a thorough analysis of which roads are needed (Subpart A). In this case, the Tonto completed its Subpart A Travel Analysis and explicitly identified the Minimum Road System. TAP at 177-78. The relevant language of Subpart A – the Roads Rule – is clear what the Minimum Road System entails:

> (1) *Identification of road system.* … The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

36 C.F.R. 212.5(b)(1). Having already completed a Travel Analysis and identified its Minimum Route

System, it is too late for the Tonto to back up and pretend it has not.

Routes identified for decommissioning through the TAP must be closed, decommissioned, and reclaimed to a stable and more natural condition during the life of the project. They cannot be left open to motorized vehicles. To the extent that the final decision in this project differs from what is recommended in the TAP, the Forest Service must provide an explanation for that inconsistency.[8] Moreover, a decision to leave roads open to motorized use in this Draft ROD effectively identifies that road as needed for future use, without going through the analysis required under subpart A. Thus, to the extent that this decision ignores the findings of the TAP, it must go through its own Subpart A analysis to determine the suitability of keeping roads open because by so doing, it is identifying at least a substantial part of the needed road system.

One very pertinent requirement of Subpart A is that the road system must "reflect long-term funding expectations … ." The Tonto's average road maintenance budget covers only a fraction of miles of roads that are due for maintenance, and at the same time, the Tonto expects that road maintenance budgets will decline. FEIS Final Roads Report at 10-18. The average annual road maintenance budget on the Tonto is $2,326,900. Id. at 16. The annual maintenance cost of the current system is $8,884,472. FEIS at 78. While Alternative C will reduce costs for maintaining the road system, the annual maintenance cost for Alternative C system is $5,978,284 – or 2.5 times the annual budget. FEIS at 79; Final Roads Report at 18. This is a blatant violation of Subpart A. Additionally, this funding shortfall will increase already significant deferred maintenance needs on the forest. *See* Final Roads Report at 15.

The 2011 TAP must also withstand scrutiny. The Washington Office memoranda on Subpart A outline that each TAP must: (1) analyze all roads (maintenance levels 1 though 5); (2) produce a report summarizing the travel analysis; (3) produce a list of roads likely not needed for future use; (4) synthesize the results in a map displaying roads likely needed and likely not needed; and (5) provide an explanation of the underlying analysis for that map.[9]

Here, the Tonto completed its TAP in 2011, but portions of the TAP are inadequate. Based on this analysis, the Forest Service should apply the valid portions of that 2011 TAP to the TMP, and reject those portions of the TAP that are inadequate.

The 2011 TAP identified 4,648 miles of roads and routes as being likely needed out of the 5,414 miles of system roads and routes on the forest. 2011 TAP at 29 & 178. This equates to 86% of the road system. Some of the "likely needed" roads are low benefit roads, Maintenance Level 1 roads, or roads where the cumulative risks outweigh the benefit, but the TAP does not provide a clear justification explaining why those roads are "needed." 2011 TAP at 123-25. What is more, the TAP does not clearly identify these low benefit/high risk roads nor does it explain its decision to maintain, close or decommission them. It should be the rare circumstance in which a road identified with high risks and low access needs is identified as *likely needed*.

The 2011 TAP fails the long-term funding expectations test even more spectacularly than the FEIS. Table 5.3 of the TAP shows that the current annual maintenance needs for the forest (at that time) exceeded $7.7 million. Annual maintenance needs (table 5.4) for the TAP's recommended minimum road system exceed

[8] See, e.g., *Smiley v. Citibank*, 517 U.S. 735 (1996) ("Sudden and unexplained change . . . or change that does not take account of legitimate reliance on prior interpretation . . . may be 'arbitrary, capricious [or] an abuse of discretion") (internal citations omitted).

[9] Memorandum from Leslie Weldon to Regional Foresters *et al.* on Travel Management, Implementation of 36 CFR, Part 212, Subpart A (Mar. 29, 2012); Memorandum from Leslie Weldon, U.S. Forest Service Washington Office, to Regional Foresters *et al.* (Dec. 17, 2013).

$10.1 million, a difference of approximately $2.4 million. 2011 TAP at 190. In other words, the TAP actually *increased* the cost of maintaining an already unsustainable road system.

Relief Sought:

1) Utilize the findings of the 2011 TAP, to the extent that the TAP does not violate Subpart A, and its implementing memos to develop a minimum route system alternative and components of other alternatives.
2) Alternately, provide a substitute roads analysis to the public for review.
3) Whichever roads analysis is utilized, it must meet the requirements of Subpart A.

b. *The Proposed Travel Plan Fails to Satisfy the Executive Order Minimization Criteria*[10]

In response to the growing use of dirt bikes, snowmobiles, all-terrain vehicles, and other off-road vehicles (ORVs) and the corresponding environmental damage, social conflicts, and public safety concerns, Presidents Nixon and Carter issued Executive Orders 11644 and 11989 in 1972 and 1977, respectively, requiring federal land management agencies to plan for ORV use based on protecting resources and other uses. Exec. Order No. 11,644, 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended by* Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977). When designating areas or trails available for ORV use, agencies must locate them to:

> (1) minimize damage to soil, watershed, vegetation, or other resources of the public lands;
> (2) minimize harassment of wildlife or significant disruption of wildlife habitats; and
> (3) minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands.

Id. § 3(a). The Forest Service codified these "minimization criteria" in the Travel Management Rule. 36 C.F.R. § 212.55(b). The agency has struggled, however, to properly apply the criteria, leading to a suite of federal court cases invalidating Forest Service travel management decisions.[11] Collectively, these cases confirm the Forest Service's substantive legal obligation to meaningfully apply and implement – not just identify or consider – the minimization criteria when designating *each* area and trail, and to show in the administrative record how it did so. As the Ninth Circuit recently held, "[w]hat is required is that the Forest Service document how it evaluated and applied [relevant] data on an area-by-area [or route-by-route] basis *with the objective of minimizing impacts*." *WildEarth Guardians*, 790 F.3d at 931 (emphasis added). The agency may not rely upon "plan-wide data" or "generalized statements in the EIS that it designed [ORV] allocations" to protect various resources to demonstrate compliance with the minimization criteria. *Id.* at 930. Instead, it must "apply the minimization criteria to *each area [and trail]* it designate[s] for [ORV] use" and conduct a "granular minimization analysis to fulfill the objectives of Executive Order 11644" and the Travel Management Rule. *Id.* at 930-31.

The Tonto National Forest has not satisfied the executive order minimization criteria with respect to the 2,310 miles of trails and 8 open areas that would be designated for public motorized use under the travel plan. Neither the FEIS nor the Draft ROD include any indication that the criteria were applied on an area-by-area and route-by-route basis, or that the forest conducted the required "granular" analysis. Instead, the documents include periodic references to minimizing impacts that appear to be based on the sort of plan-

[10] This issue is addressed at pages 18-19 and 23-25 of our September 15, 2014 comments on the DEIS.
[11] *See WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 929-32 (9th Cir. 2015); *Friends of the Clearwater v. U.S. Forest Serv.*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at *37-52 (D. Idaho Mar. 11, 2015); *The Wilderness Soc'y v. U.S. Forest Serv.*, No. CV08-363-E-EJL, 2013 U.S. Dist. LEXIS 153036, at *22-32 (D. Idaho Oct. 22, 2013); *Cent. Sierra Envtl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1094-98 (E.D. Cal. 2013); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1071-74 (D. Idaho 2011).

wide data or generalized statements that the Ninth Circuit has rejected. For instance, the FEIS repeatedly states that the magnitude of potential effects on imperiled species and their habitat will be minimized because various percentages of habitat are located in designated wilderness. The analysis ignores whether or how impacts to those species and their habitat associated with designated areas and trails – which necessarily must be located outside wilderness – have been minimized.

Notably, the section of the Draft ROD entitled "designates motorized system that focuses on minimization criteria" does not provide any explanation of how the proposed travel plan satisfies the criteria. *See* Draft ROD at 15. A majority of the section addresses the forest *road* system; the minimization criteria apply only to areas and trails. The remainder of the section states that a variety of resource specialists reviewed the proposed route system. While such review undoubtedly is important, it in no way demonstrates compliance with the substantive obligation to locate areas and trails to minimize impacts. The section fails to explain how the agency applied the criteria to each area and trail.

While Table 2 in the Draft ROD and Appendix C to the FEIS provide some limited route-specific information, those tables address only a very limited subset of the designated trails. Moreover, the information in Appendix C suggests that the agency did *not* satisfy the minimization criteria with respect to many high-risk trails. Instead of closing or relocating damaging trails, Appendix C attempts to justify designation of many of those trails by discounting impacts or claiming that impacts will be mitigated in some way. Efforts to mitigate impacts associated with a designated ORV system are insufficient to fully satisfy the duty to *minimize* impacts. Instead, the plain language of the executive orders and Travel Management Rule require that areas and trails be *located* to minimize impacts in the first instance. Exec. Order 11644, § 3(a); 36 C.F.R. § 212.55(b).

The FEIS and Draft ROD provide no information about what methodology, if any, the agency used to apply the minimization criteria. Early in the travel planning process, the Forest Service had relied on a route evaluation tree – an approach that federal courts have rejected. *E.g.*, *Center for Biological Diversity v. BLM*, 746 F. Supp. 2d 1055, 1078-80 (N.D. Cal. 2009) (invalidating use of a route decision tree); *see also S. Utah Wilderness Alliance v. Burke*, 981 F. Supp. 2d 1099, 1105 (D. Utah 2013) ("cryptic spreadsheet for each route segment provides inadequate information . . . for someone other than the BLM to know why or how the routes were chosen"). To the extent that the agency continued to rely on a route evaluation tree, it must make that clear and take another approach that satisfies the minimization criteria.

Relief Sought:
To satisfy its substantive duty to minimize impacts, the Tonto National Forest must apply a transparent methodology for meaningful application of each minimization criterion to each area and trail and affirmatively demonstrate how each area and trail was located to minimize impacts. This will necessarily require applying site- and resource-specific information, including the best available scientific information and associated strategies for minimizing impacts to particular categories of resources, to design a system of areas and trails that actually *minimizes* resource damage and conflicts with other recreational uses.[12]

[12] In 2012, the Journal of Conservation Planning published a literature review and best management practices (BMPs) for ORVs on national forest lands. T. Adam Switalski & Allison Jones, Off-road Vehicle Best Management Practices for Forestlands: A Review of Scientific Literature and Guidance for Managers, *Journal of Conservation Planning* 8:12-24 (2012).[12] The BMPs provide guidelines, based on peer-reviewed science, for ORV designation decisions, implementation actions, and monitoring activities that are intended to minimize impacts to soils, water quality, vegetation, and wildlife, and conflicts with other recreational uses. The Tonto should apply these BMPs, just as the Bitterroot National Forest recently did in its travel management planning process. *See* Record of Decision, Bitterroot National Forest Travel Management Planning Project, at 18-21 (May 2016), *available at*

c. *The Exception to Cross-Country Travel for Motorized Big Game Retrieval is Not Limited and Sparingly Applied*[13]

Outside designated open areas, the Travel Management Rule prohibits motor vehicle use off designated areas roads and trails. 36 C.F.R. § 212.50(a). The Rule provides an exception to this prohibition for the "limited use of motor vehicles within a specified distance of certain designated routes" for purposes of retrieving downed big game. *Id.* § 212.51(b). The Forest Service is to apply the exception "sparingly," and only after conducting site-specific environmental analysis. Forest Service Manual 7703.11(4); *see also* Section I(c) (Forest Service's NEPA obligations). While we support hunting as an important use of our public lands – and collaborate closely with conservation-minded sportsmen groups on many initiatives – we are deeply concerned about the significant adverse impacts associated with cross-country motorized use by the public for any purpose. The Forest Service acknowledged the same concerns in the Travel Management Rule by placing stringent restrictions on the use of the motorized big game retrieval exception.

Allowing motorized big game retrieval within one mile off of all designated roads and trails across the forest – an area covering more than 1.9 million acres – for purposes of retrieving legally hunted and downed elk and bear is not "limited," does not apply only to certain designated routes, and does not apply the exception to cross-country travel "sparingly." *See* attached maps (depicting significant majority of the forest open to cross-country travel for motorized big game retrieval). In addition, the Forest Service has failed to conduct the necessary site-specific analysis of the impacts associated with motorized big game retrieval across nearly 2 million acres. As the attached maps shows, that vast area includes a host of sensitive forest resources – including designated critical habitat, water bodies, impaired stream segments under section 303d of the Clean Water Act, inventoried roadless areas that will be evaluated for potential inclusion in the National Wilderness Preservation System in the upcoming forest plan revision, Wild & Scenic River corridors, and areas in non-attainment with the National Ambient Air Quality Standards for course particulate matter and ozone – that are adversely affected by motorized, cross-country travel. Yet the FEIS addresses the effects of motorized big game retrieval "generally by alternative" and does not analyze the impacts of that use on particular resources in any level of detail. *See* FEIS at 71. For instance, the FEIS includes acreage comparisons by alternative for motorized big game retrieval in threatened and endangered species habitat, but it includes no other site-specific analysis of the direct, indirect, and cumulative impacts of that use on those species and their habitat. With respect to other resources such as air quality, the FEIS touts an overall reduction in cross-country travel, while failing to address the air quality impacts associated with opening four currently-closed ranger districts to cross-country travel for motorized big game retrieval. *See also* Section I(c)(i), *supra*, and Section VII, *infra* (addressing air quality issues).

Motorized big game retrieval currently is not permitted outside the Payson and Pleasant Valley ranger districts, meaning that cross-country use under the travel plan would constitute an *increase* over the status quo across a majority of the forest. The Forest Service has not explained why motorized big game retrieval is needed in new areas of the forest, particularly given that the agency's estimates of approximate number of yearly motorized trips show that 4 out of the 6 game management units would receive no or negligible use of motorized big game retrieval. FEIS at 40, Table 9. The FEIS also suggests that permitting motorized big game retrieval across significant new portions of the forest is likely to result in conflict with non-motorized recreationists and hunters. *See id.* at 89 (citing an Arizona Game and Fish Department study finding that 54 percent of survey participants identified "OHV disruption" as a barrier

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http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/39018_FSPLT3_3043255.pdf.

[13] Motorized big game retrieval is addressed at pages 25-27 of our September 15, 2014 comments on the DEIS.

to participation in hunting). Absent a handful of speculative statements, the FEIS provides no justification for why such sweeping use of the motorized big game retrieval exception to cross-country travel is warranted. *See, e.g.*, *id.* at 194 (suggesting that restrictions on motorized big game retrieval may mean that aging hunters choose not to harvest animals); *id.* at 191, 196-97 (suggesting that meat spoilage may be an issue absent motorized big game retrieval). The FEIS makes no attempt to explain why meat spoilage is an issue on the Tonto, particularly where it has not been an issue on the four southern districts that are currently closed to motorized big game retrieval or on other southwestern forests that experience similar conditions.[14] Nor does the FEIS address why readily available, alternative means to remove downed game, such as hand carts designed specifically for that purpose, by hand, or through the use of horses or mules, is not adequate – particularly where those methods are currently in use across a majority of the forest.

In fact, the Forest Service itself has recognized that such broad use of the camping corridor exception, which equally applies to the MBGR exception, does not meet the reqirement to apply the exception sparingly. The Forest Service did so in resolving an appeal on this issue on the Sawtooth Nationl Forest:

> [A] broad designation allowing dispersed camping along all or most designated routes is not consistent with long-term objectives for travel management. Direction from the Chief of the Forest Service indicates that the allowance of dispersed camping by general designation along roads and trails should be used sparingly.

Reviewing Officer Recommendation, Sawtooth National Forest, Travel Plan Revision, Appeals #08-04-14-0035-A215, #08-04-14-0038-A215, and #08-04-14-0039-A215 at 17; *see also* accompanying Appeal Decision at 1, adopting recommendation and directing Sawtooth National Forest to modify decision ("Include designations for motor vehicle use for dispersed camping on the initial motor vehicle use map only to the extent that they reflect conditions where motor vehicle use for dispersed camping is practicable without causing unacceptable resource damage.").

We are supportive of the restrictions on motorized big game retrieval listed in the Draft ROD and believe they are necessary to reduce damage associated with cross-country travel to retrieve downed big game. *See* Draft ROD at 11. However, those restrictions do not absolve the Forest Service from applying the exception for motorized big game retrieval in a limited and sparing manner in the first instance, which it has failed to do. Moreover, it is unclear how those restrictions will be monitored and enforced.
To comply with the Travel Management Rule, the Forest Service must ensure that its use of the motorized big game retrieval exception is limited and applied sparingly.

Relief Sought:

1) The Forest Service should eliminate or vastly reduce the size of the proposed motorized big game retrieval corridors.
2) Any corridors should be limited to specific routes in areas (e.g., game management units) where there is a justified need for motorized big game retrieval.
3) The Forest Service should provide a more robust analysis of the site-specific impacts associated with any motorized big game retrieval corridors, as well as information about how the restrictions on motorized big game retrieval will be monitored and enforced.

[14] For instance, the Coronado has not permitted motorized big game retrieval for decades, and game meat spoilage is not a problem, nor are hunters avoiding the forest because they must use traditional means to retrieve game. And the Gila has designated significantly smaller corridors of 300 feet or less to ensure more limited and sparing use of the exception to cross-country travel.

d. *The Motorized Big Game Retrieval Corridors Constitute Area Designations that Fail to Satisfy the Minimization Criteria*[15]

As described above, the Forest Service is obligated to locate all areas designated for cross-country motorized use to *minimize* resource damage and conflicts with other recreational uses. 36 C.F.R. § 212.55(b). The Travel Management Rule defines "area" as "[a] discrete, specifically delineated space that is smaller, and . . . in most cases much smaller, than a Ranger District." *Id.* § 212.1. The areas proposed for motorized big game retrieval satisfy this definition. *See* FEIS at 39 (depicting discrete, specifically delineated spaces that cover a majority of each ranger district). Yet the Forest Service has made no attempt to satisfy the minimization criteria with respect to those designations. Indeed, neither the FEIS nor the ROD even mention the minimization criteria in the context of motorized big game retrieval, much less apply the criteria as required. This constitutes a violation of the Travel Management Rule.
Given the vast size of the motorized big game retrieval areas currently proposed for designation, the host of sensitive resources within those areas, and the adverse impacts associated with cross-country motorized travel, compliance with the minimization criteria will necessarily require significant reduction or elimination of areas designated for motorized big game retrieval.

Relief Sought:

1) Consider and apply, and document this step appropriately, the minimization criteria to the areas designated for motorized big game retrieval, and affirmatively demonstrate in the record how those areas have been located to *minimize* resource damage and conflicts with other recreational uses.
2) Reduce the acreage and extent of the areas designated for motorized big game retrieval to meet the minimization requirements outlined above.

e. *The TNF Failed to Adequately Consider Minimization of Air Quality Impacts From the Proposed Designated Areas and Route System*

As explained in Section IV(a), *supra*, the Forest Service has generally failed to demonstrate compliance with the executive order minimization criteria. This is true for air quality, which constitutes a public land resource to which damage associated with OHV areas and trails must be minimized. Exec. Order No. 11644, § 3(a)(1); 36 C.F.R. § 212.55(b)(1). In addition, the Forest Service must consider "[c]ompatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors" when designating areas and trails. 36 C.F.R. § 212.55(b)(5). Even if the alternatives and draft decision complied with the Clean Air Act, NEPA, and the governing forest plan, the FEIS makes no attempt to explain how impacts to air quality were *minimized*, as required. This would necessarily require an analysis and documentation of how each area and trail was located to minimize PM10, ozone precursors, and other air pollutants, and how the system as a whole minimizes impacts.

Relief Sought:
Analyze and demonstrate how each area and trail is located to minimize air pollutants including but not limited to PM10 and ozone precursors, and how the system as a whole minimizes impacts to air quality, particularly in the context of the significant air quality issues in and around the TNF.

V. The Tonto National Forest Violated the National Historic Preservation Act

a. *The TNF Unlawfully Failed to Follow Consultation Guidelines for Previously Closed and Decommissioned Routes*

[15] Motorized big game retrieval and the minimization criteria were addressed at pages 18-19 and 23-27 of our September 15, 2014 comments on the DEIS.

Designation of a travel management system on the National Forest lands is an agency decision constituting an undertaking that, in accordance with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, requires consideration of potential effects on historic properties. We raised the problems associated with the draft decision and the need to meet the legal requirements of the NHPA in our DEIS comments at page 13.

In anticipation of travel management actions on National Forests throughout Region 3, the State Historic Preservation Offices (SHPO), Tribal Councils and Region 3 of the US Forest Service entered into a Programmatic Agreement (PA) [16] to guide the Section 106 consultation process. Appendix I[17] of the PA provides information regarding the standard consultation protocol for travel management designation. There are two elements of the PA that are especially germane to the FS decision regarding the "Use of Decommissioned and Closed Roads in the Existing Condition":

PA Appendix I Procedures II Exemptions

> "System roads and trails are defined as those identified as 'National Forest System Roads' and 'National Forest System Trails' in the FS corporate database system, as defined in the Region 3 *Travel Management Rule Implementation Guidelines*, dated 06/12/2006. These roads and trails have Forest Service numbers, usually appear on current visitor and travel management maps, and are reported on in the FS Annual Roads Accomplishment Report and similar accomplishment reports."

PA Appendix I Procedures III Stipulation Requiring Consultation

> "Designation of roads, trails, and areas other than those identified in Section II above. This includes the designation of:
>
> - previously closed roads and trails not open to motor vehicle use
> - non-system roads and trails, such as unauthorized user-created roads, old temporary roads, and other unclassified roads and trails"

Both procedures make clear that only roads and trails that are included in the agency database are exempt from any consultation requirements, and specifically, that previously closed roads and trails and any non-system roads do require consultation. PA Appendix I Procedures VII provides clear guidance regarding historic properties inventory for non-exempt roads and trails and PA Appendix I Procedures VIII requires "leaving roads, trails, areas off the approved map distributed to the public until after all Section 106 compliance needs are met."

Page 7 in the FEIS Volume I first full paragraph states: "This database also shows that there are 1,739 miles of ML 1 (closed to vehicular use) roads and 267 miles of decommissioned routes."

Pages 56-57 in FEIS Volumes I, last paragraph continuing on to the top of the page states:
"...there are approximately 267 miles of roads in RATM (the information developed as part of the RATM was incorporated into the corporate infrastructure database) that had an objective level of decommissioned.
After completing the review for these roads, approximately 75 miles were included as potential motorized trails and approximately 3 miles were identified as part of the desired road network for inclusion in Alternative C. Similarly, there are approximately 1,739 miles of roads in RATM that had an objective

[16] Region 3 First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities (2007).
[17] Standard Consultation Protocol for Travel Management Route Designation (CBD et al. DEIS comments, Appendix I)

level of ML 1 (closed to all motorized travel). After completing the review, approximately 936 miles were included as potential motorized trails and approximately 98 miles of roads were identified as part of the desired road network for inclusion in Alternative C."

Together this represents 1111 miles of potential motorized trail and 101 miles of road for inclusion in Alternative C that had been identified as closed or de-commissioned in the agency database.

In accordance with the PA Appendix I the proposed designation of these previously closed or decommissioned motorized trails and routes and unauthorized routes requires additional cultural resources inventory and formal consultation. There is no indication that these roads and trails will be excluded from the final Motor Vehicle Use Map until proper consultation, as required according to the NHPA and regional agreement has been completed. According to the FEIS, the TNF is relying on analysis that will supposedly be completed after the NEPA process to identify routes that may need to be realigned, relocated, or removed from the motorized network. FEIS at 171. This undermines both the consultation and NEPA processes, which must be followed for this federal agency action. Additionally, it remains unclear how the TNF will fund this consultation, which has not been considered within the FEIS or Draft ROD.

Relief Sought:

1) Remove previously closed or decommissioned roads from the final decision and MVUM.
2) The FEIS must be amended to make clear how the TNF intends to meet its consultation obligations under Section 106 and the Region 3 agreement.

b. *The Draft ROD and FEIS Fail to Provide Enough Information About the TNF's Compliance with Section 106.*

Notwithstanding the aforementioned issue, the Heritage resources section of the FEIS identifies 353 miles of unauthorized routes that are not exempt from Section 106 compliance requirements. Until such time as compliance requirements are met these roads and trails cannot be included on the MVUM. The FEIS is clear in stating this but what is not clear from the FEIS language is that in addition to the required inventory and consideration of protective measures, the Forest Service must complete consultation with SHPO, tribes and interested parties.

Based on the information presented, we do not believe that consultation has occurred and as such none of the 353 miles can be presented on the final MVUM. Following the submission of our DEIS comments, conversations with Arizona SHPO, we believe that the information provided in the 2010 FS inventory and subsequent Forest decision-making has not been submitted to SHPO, tribes or interested parties for consideration.[18]

Relief Sought:

1) Prevent finalization of the Draft ROD until such time as the consultation process with SHPO, tribes and interested parties is complete and incorporated into the proposed action.
2) Require supplemental explanation and discussion within the Draft ROD that make clear that no unauthorized roads or trails (or OHV designated areas where cultural resources are present) will be published on the MVUM until such time as the consultation process with SHPO, tribes and interested parties is complete.

[18] Archaeology Southwest requested in a letter to Mr. Scott Wood in 2012 that they be granted consulting party status (in 2012 Archaeology Southwest was doing business as the Center for Desert Archaeology). Archaeology Southwest reiterates this request here again.

VI. The Tonto National Forest Violated the Wild and Scenic Rivers Act

Under The National Wild and Scenic Rivers System Act of 1968 (Act), the Tonto National Forest is legally required to prioritize protection of Wild and Scenic River corridor areas.[19] Forest Service policy at FSH 1909.12, Chapter 8.12 states that management prescriptions for eligible rivers should provide the following protection:

> "…free flowing characteristics cannot be modified."
> "Outstandingly remarkable values (ORV's) must be protected, and to the extent practicable, enhanced."
> "Management and development of the river and its corridor cannot be modified to the degree that eligibility or classification would be affected."

The Draft ROD provides no additional detail about the two designated Wild and Scenic areas' – the Verde[20] and Fossil Creek[21] – ORVs and does not provide information about how the forest will ensure protection against modification of the two existing corridors.

Further, the Draft ROD does not address eligible Wild and Scenic Rivers, although, as mentioned in our DEIS comments, there are numerous eligible corridors currently exposed to 141 motorized crossings over the rivers and more than 50 miles of designated motorized routes within the corridors (page 46).

The Act also requires there to be "on average a one quarter mile corridor on either bank in the lower 48 states or an average of not more than 320 acres per mile on both sides of the river." However, the FEIS incorrectly identifies the length and boundaries of the Wild and Scenic River corridors, as it states that there is a 300 foot total width corridor for Wild and Scenic Rivers (page 24 of Cumulative Effects of the Special Areas Report, and within the DEIS). According to the Act, the corridor should be, on average, 1,320 ft. wide. The FEIS statements represent a substantial reduction in this requirement. This concern was raised in the initial scoping comments (page 45), however was not addressed in the Draft ROD.

The forest therefore violates the Act through its incorrect corridor measurements in the FEIS, the insufficient Wild and Scenic River corridors protection information and strategy, and the lack of attention to and address of such issues in the Draft ROD.

As noted in our DEIS comments, the proposed action is also too heavily biased in favor of motorized use at the expense of forest/public resources, including designated and eligible Wild and Scenic Rivers. It increases the miles of motorized route by 12 miles and allows 60 miles of routes within eligible Wild and

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[19] Currently, there are two designated Wild and Scenic Rivers on the Tonto National Forest: the Verde Wild and Scenic River Corridor and the Fossil Creek Wild and Scenic River Corridor. There are 13 rivers and streams (24 stream and river segments) that are eligible wild and scenic rivers, including the following: Parker Creek (scenic), Canyon Creek (recreational), Tonto Creek segment 3 (scenic), Tonto Creek segment 2 (wild), Workman Creek segment 1 (recreational), Workman Creek segment 2 (wild), Upper Verde River segment 2-a (wild), Upper Verde River segment 2-b (wild), Arnett/Telegraph Creeks segment 1 (wild), Arnett/Telegraph Creeks segment 2 (wild), Spring Creek segment 1 (recreational), Spring Creek segment 2 (wild), Upper Salt River segment 1-a (scenic), Upper Salt River segment 1-b (wild), Upper Salt River segment 2-a (wild), Upper Salt River segment 2-b (scenic), East Verde River segment 2 (recreational), East Verde River segment 3 (scenic), Lower Salt River segment 1 (recreational), Lower Salt River segment 2 (recreational), Pinto Creek (scenic), Salome Creek (wild), Cherry Creek segment 1-a (wild), Cherry Creek segment 1-b (scenic).

[20] Public Law 98-406, Arizona Wilderness Act. August 28, 1984; *See also* Verde Wild and Scenic River Comprehensive River Management Plan, https://www.rivers.gov/documents/plans/verde-plan.pdf.

[21] Public Law 111-11, March 30, 2009

Scenic River corridors when it should be reducing those routes and miles to protect the outstandingly remarkable values, including cultural, scenic, recreational, wildlife, and more.

Our previously submitted comments objected to the Tonto National Forest designating Motorized Big Game Retrieval (MBGR) areas and called for the forest to analyze alternatives that limit MBGR corridors much more than those alternatives analyzed in the DEIS. The comments proposed the Tonto National Forest limit the roads on which MBGR, if adopted, would apply to avoid continued resource damage to designated and eligible Wild and Scenic river corridors, as well as called for mitigation measures to be clearly identified and adopted if MBGR areas are designated.

Although the FEIS and Draft ROD limit MBGR within designated Wild and Scenic river corridors (ROD page 11), they do not limit it or give sufficient consideration to or place sufficient restrictions on the damage resulting from the allowance of MBGR on eligible Wild and Scenic river corridors. The proposed action outlined in the Draft ROD permits MBGR for elk and bear up to one mile on both sides of designated routes, including those in or near eligible Wild and Scenic River corridors. This could result in irreparable harm to outstandingly remarkable values in these corridors, particularly cultural and biological resources.

The Draft ROD also does not address eliminating motorized dispersed camping opportunities within designated or eligible Wild and Scenic River corridors. Our previously-submitted scoping comments advocated for the elimination of motorized dispersed camping opportunities within all designated and eligible Wild and Scenic River corridors (page 46) in order to protect these outstanding remarkable values, including cultural and biological resources.

Additionally, the ROD contains numerous technical errors, including the following designations omitted from the table on page 22 of the Special Areas Report:

- Spring Creek has a "wild" section that Tonto National Forest has not listed. This is segment #2.
- Workman Creek has a "wild" section that Tonto National Forest has not listed. This is segment #2.
- East Verde River has a "scenic" section that Tonto National Forest hasn't listed. This is segment #3.

Designated and eligible Wild and Scenic river corridors are home to numerous threatened and endangered species and represent an important part of Arizona's ecological heritage. It is the duty of the TNF to formulate and carry out comprehensive plans to monitor and protect such designated Wild and Scenic Rivers. Unfortunately, the TMP fails to do so.

Relief Sought:

1) Identification of properly defined quarter-mile corridors around designated and eligible Wild and Scenic Rivers, correction of such in the FEIS, and proper analysis of impacts to designated and eligible Wild and Scenic Rivers based on this correction.
2) Motorized dispersed camping areas should be eliminated in all designated and eligible Wild and Scenic River corridors.
3) The TNF should supplement discussion of cumulative effects from travel management planning on designated and eligible Wild and Scenic River corridors, including how all alternatives and any final decision will impact future management and potential for designation for all corridors.

4) List all Outstandingly Remarkable Values (ORVs) for designated and eligible Wild and Scenic Rivers and describe how the TMP will protect and enhance them and otherwise generally comply with the requirements of the Wild and Scenic Rivers Act. If it is found that any aspect of the TMP violates the Act or harms the ORVs, the TMP should be revised.

VII. The Tonto National Forest Violated the Clean Air Act[22]

Air quality is a significant concern in and around the Tonto National Forest, with three areas in non-attainment with the National Ambient Air Quality Standards (NAAQS) for course particulate matter (PM10), one area in non-attainment for the ozone NAAQS, and another maintenance area for PM10. As the FEIS recognizes:

> Fugitive dust emissions from unpaved roads, windblown dust, and industrial development are the primary contributors to ambient PM10 concentrations within the Forest and the Phoenix 24-hour PM10 nonattainment area. . . . EPA lists road dust as the largest single source of particulate matter in the air (2015). . . . Particulate emissions from unpaved roads and windblown dust have caused or contributed to numerous violations of federal air quality standards in Maricopa and Pinal Counties, resulting in nonattainment area designations for the 24-hour PM10 NAAQS.

FEIS at 458. Despite the significant PM10 impacts associated with OHV travel on unpaved roads and trails and in areas open to cross-country travel, the Forest Service has taken the position that its decision to designate 3,690 miles of roads and trails and over 2,000 acres of open areas for public motorized use, as well as over 1.9 million acres for motorized big game retrieval, will not have a significant impact on air quality and will in fact result in improvements over existing conditions. As explained below, that determination is based on inadequate and inaccurate analysis, calculations, and modeling. It also ignores the accumulated impacts of decades of OHV mismanagement that have never been subject to analysis. Even assuming that the decision may result in improvements to air quality, that does not absolve the agency from fully analyzing and disclosing the impacts of its action, as required by the Clean Air Act, NEPA, and the National Forest Management Act.

The NAAQS set maximum allowable levels for criteria pollutants to protect public health and welfare. 42 U.S.C. § 7409(b). The NAAQS for PM10 is 150 micrograms per cubic meter average 24-hour concentration. 40 C.F.R. § 50.6. Short-term and long-term exposure to particulate matter can cause premature mortality, increased hospital admissions and emergency room visits, and the development of chronic respiratory disease. 71 Fed. Reg. 2620, 2627-28 (Jan. 17, 2006). The Clean Air Act places an affirmative obligation on the Forest Service to ensure its actions conform to applicable state implementation plans (SIPs) in non-attainment and maintenance areas. 42 U.S.C. § 7506(c); 40 C.F.R. § 93.150(a). A conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions in a non-attainment or maintenance area caused by the federal action would equal or exceed identified *de minimis* thresholds. 40 C.F.R. § 93.153(b). For PM10, the threshold is 70 tons/year in serious non-attainment areas, including the Phoenix non-attainment area, and 100 tons/year in moderate non-attainment areas and maintenance areas, including the Hayden, Miami, and Payson areas. *Id.* The Forest Service claims that OHV use under each of its action alternatives would emit PM10 at levels well below the thresholds. FEIS at 461.

The FEIS presents the results of the general conformity applicability analysis in Table 166 (p. 461),

[22] These air quality related issues were raised in our September 15, 2014 comments on the DEIS at pages 53-61.

showing net decreases in emissions over the No Action Alternative, or baseline. The percentage of miles of motorized routes within the various nonattainment, maintenance, and wilderness areas to forest miles was applied to the calculated emissions inventory to provide the No Action baseline emissions for each planning area. For the alternatives, the revised percent of miles within these areas was multiplied by the total emissions, and the difference between this value and the baseline was taken as the change in emissions in each area resulting from implementation of the alternative relative to the No Action Alternative. The Air Quality Report states that "[t]ravel management is not expected to increase or decrease OHV recreation at the forest-wide level, so vehicle miles traveled do not change among the range of alternatives, hence, forest-wide emissions do not change." Air Quality Report at 52. Since the analysis fundamentally assumes the same emissions inventory for all alternatives, the USFS must more clearly explain why reductions in emissions in one area (i.e., nonattainment, maintenance, or wilderness) would not result in increases in emissions in others.

The FEIS states that the baseline PM_{10} emissions under the No Action Alternative are accounted for in the SIP. FEIS at 460. However, to our knowledge the baseline emissions were never subject to a conformity determination and, therefore, the Forest Service should complete an analysis for the No Action Alternative, which the FEIS shows would contribute more than three times the threshold of 70 tons per year for PM_{10} in the Phoenix serious non-attainment area. As the Ninth Circuit has recognized, "past failure in meeting [Clean Air Act] attainment requirements does not suggest future success" absent an analysis of the actual impact on emissions associated with the action.[23]

Further, it is likely that the inventory for the alternatives underestimates emissions and that the alternatives could in fact result in net increases in emissions in some of these nonattainment, maintenance, and wilderness areas. The following key elements of the emissions inventory must be addressed in the Forest Service's conformity applicability analysis:

1. Cross-Country Travel Must Be Accounted for in the Emissions Inventory and Analysis

The general conformity applicability analysis does not consider emissions associated with cross-country travel for motorized big game retrieval and fuelwood gathering across more than 1.9 and 1.2 million acres, respectively. Importantly, the one-mile motorized big game retrieval corridors on each side of every designated road and trail would constitute an *increase* in cross-country use in 4 of the 6 ranger districts (Cave Creek, Mesa, Globe, and Tonto Basin), where cross-country travel is currently prohibited. The Air Quality Report relies on a reduction in cross-country travel to justify its conformity applicability analysis. *See* Air Quality Report at 7 ("Allowing cross-country travel leads to the greatest negative impact on air quality, yet, its prohibition, as per alternatives B, C, and D, would result in the greatest benefit to air quality."); *id.* at 72 ("In comparison with other planning objectives, a prohibition on cross-country travel would likely result in greatest benefit with respect to attainment of the 24-hour national ambient air quality standards . . . and ultimately to human health."). Yet the report fails to acknowledge and consider the potentially significant air quality impacts from cross-country use associated with motorized big game retrieval and fuelwood gathering. *See also* Section IV(b), above (including map depicting motorized big game retrieval in and around non-attainment and maintenance areas). The conformity applicability analysis must include emissions from cross-country travel for these uses.

2. Spatial Allocation of OHV Usage Must Be Considered

The analysis assumes that implementation of the alternatives would have no specific effect on the spatial

[23] *See Hall v. EPA*, 273 F.3d 1146, 1159-61 (9th Cir. 2001) (EPA improperly assumed that ambient air quality standards would be protected because the rules it was approving would not relax existing standards, but it failed to quantify or determine the adequacy of the actual emissions reductions under the rules).

changes in OHV usage (*i.e.*, how OHV is dispersed across the forest and in relation to nonattainment and maintenance areas). Specifically, the Air Quality Report states, "the emissions inventory does not cover all areas of the Forest nor does it offer sufficient detail to resolve emissions sources and activities specific to the Tonto National Forest due to its use of spatial allocation factors, which disperse PM_{10} emissions from off-road recreation vehicles evenly across the Phoenix 24-hour PM_{10} nonattainment area." Air Quality Report at 76. The USFS must consider how OHV use under the various alternatives would vary spatially as a result of certain factors – *e.g.*, ease of access, desirability/popularity of newly designated routes, etc. Implementation of the various alternatives would likely affect spatial use patterns and could result in an increase in OHV recreation in certain areas – *e.g.*, where motorized cross-country travel is authorized – and a decrease in use in others, which could impact the spatial distribution of air quality impacts associated with OHV use. The Air Quality Report references using spatial allocation factors to apportion emissions based on passive open space and vacant land use data, Air Quality Report at 77, 81-82, but this does not directly address how implementation of designated areas and routes for each individual alternative would change spatial allocation of OHV usage in the impacted areas. And it does not appear that the spatial allocation factors referred to in the Air Quality Report are even implemented in the underlying analysis: the Air Quality Report states that the Maricopa County Air Quality Department 2011 emission inventory employs a "ratio of vacant and passive open space (area) in the PM_{10} nonattainment area to Maricopa County," whereas the Tonto National Forest emission inventory employs "a ratio of miles (length) of unpaved roads within each nonattainment area to total forest miles." Air Quality Report at 76.

3. The Proportion of Roadways Should Not Be Used as the Sole Indicator of OHV Usage

The Air Quality Report for the FEIS indicates that "reducing the number of miles of authorized OHV routes in an area would not strictly result in a proportional and corresponding reduction in OHV travel within that area." Air Quality Report at 82. The Report provides specific examples: "a 49 percent reduction in roadway miles for the Phoenix NAA, would result in a 21 percent reduction in OHV travel within that area," while "a twenty five percent decrease in roadway miles for the Payson 24-hour PM10 nonattainment area would result in an eighteen percent increase of OHV traffic." However, the emissions inventory presents a ratio of miles in the "planning areas" to forest-wide miles, which would imply a strict proportional corresponding reduction in emissions for the various alternatives. The Forest Service must consider in its analysis the changes in travel density that would be expected to occur with the implementation of reduced route miles under the various alternatives.

4. Growth Factors Likely Underestimate Future Potential Emissions

The growth factor assumed in the Forest Service's analysis is based on data showing declining growth rates in the industry. Specifically, the Forest Service reports that EPA's NONROAD model estimates are "consist with current economic trends which indicate that off-highway motorcycle populations have leveled off over the last ten years." Air Quality Report at 78. And, "[l]agging retail sales for off-road recreational vehicles reported by the Motorcycle Industry Council indicate declining growth rates for populations of ATV and off- highway motorcycles." *Id.* In contrast, the FEIS highlights historic growth rates in the industry over the ten years prior to the period where industry growth has leveled off, presenting annual historic growth rates over 50%:

> During the past ten years, OHV use has increased dramatically across the nation and on millions of acres of public land in the western U.S. In Arizona, sales of OHVs increased 623 percent, from 1995 to 2006 (Arizona State Parks, 2009). Prior to 2001, the majority of OHV sales in Arizona consisted of ATVs; however, by 2008 UTVs had surpassed the sales of ATVs in Maricopa County (Arizona State Parks, 2009). According to a survey

> conducted by Arizona State Parks (2009), 22 percent of adult Arizona residents have participated in motorized recreation, with nearly 11 percent indicating that motorized vehicle use accounts for the majority of their recreation.

FEIS at 5. Growth rates are a key component in estimating potential emissions under the various alternatives and the USFS must choose rates that reflect the possibility that the industry will once again grow at rates similar to those seen historically. Choosing rates based on a period of industry stagnation and decline will result in potentially grossly underestimated emissions during future periods of growth.

5. *NO_x Emissions Assumptions Are Not Specified*

Finally, it is not clear from review of the Air Quality Report if NO_x emissions estimates are reasonably conservative. Emissions are estimated based on operational hours by engine rating and equipment load factor and use emission factors from EPA's NONROAD2008 model, but no specifics are provided on the load factors and operational hour assumptions and therefore the public is unable to determine if NO_x emissions are representative of potential emissions under the various alternatives. *See* Air Quality Report at 41.

Relief Sought:
The Forest Service must revise the general conformity applicability analysis to address the above deficiencies and, if thresholds are exceeded, proceed with a full conformity analysis, impose required mitigation measures consistent with the SIP, and otherwise reduce OHV travel to ensure conformity

VIII. Motorized Route Incursions in Designated Wilderness

We support the draft decision to close motorized routes that constitute illegal incursions into designated Wilderness Areas, including FS 203, 393, and 487. *See* FEIS at 119-126; Draft ROD at 30. The Wilderness Act prohibits permanent and temporary roads and motor vehicle use to preserve the wilderness character of designated Wilderness. 16 U.S.C. § 1133(c); *see also* FEIS at 116. To the extent the Forest Service is exploring potential wilderness boundary adjustments, we are interested in participating in those discussions. *See* Draft ROD at 30. We recommend the TNF maintain its commitment to the closure of motorized routes that constitute illegal incursions into designated Wilderness Areas.

IX. Conclusion

We respectfully submit this objection to the Forest Service and look forward to having the opportunity to discuss appropriate resolutions to points raised in this objection with the reviewing officer.

Sincerely,

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