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Sent to:
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Stephen Montgomery, Eric La Price
Desirae Watson & Chris Nagano (USFWS)**

Subject: Comments re: Over Snow Vehicle (OSV) Grooming and Objections to Updating the MVUM to Add Roads in the Giant Sequoia National Monument

Sequoia ForestKeeper and the Kern-Kaweah Chapter of the Sierra Club provide the following comments.

While we appreciate and acknowledge the substantial reduction in the number of routes and route miles in the current OSV grooming proposal, the potential adverse effects from grooming and associated snowmobiling must still be considered significant on species such as the Pacific fisher. Therefore the use of a categorical exclusion is precluded, and the Forest Service must prepare an EA or EIS after conferring and then consulting with the U.S. Fish and Wildlife Service regarding these adverse effects on the Pacific fisher.

Also, we object to the use of a section of the Summit National Recreation Trail near Quaking Aspen Campground, which the Forest Service proposes to arbitrarily re-designate as a road. As the Monument Plan states, OSVs are only allowed on roads, not trails, and the same goes for OSV grooming. Therefore, we also object to the proposed “update” of the MVUM to add roads in the Giant Sequoia National Monument without further analysis and a plan amendment.

COMMENTS

1. Because there are adverse effects from OSV grooming and associated snowmobile use, the Forest Service must confer with USFWS regarding OSV grooming effects and snowmobile use on Pacific fishers and prepare a full environmental analysis.

Because the Pacific fisher is proposed for listing, the Endangered Species Act (ESA) requires the Forest Service to confer with the U.S. Fish and Wildlife Service with regard to any activities that may affect a proposed species. And since it is likely the fisher will be officially listed under the ESA as of April 7, 2016, the Forest Service will also be required to formally or informally consult with USFWS with regard to proposed OSV grooming and any associated snowmobiling activities. *See Defenders of Wildlife v. Martin*, 454 F. Supp. 2d 1085 (E.D. Wash. 2006) (enjoining snowmobiling and snowmobile grooming activities until the Forest Service concluded consultation regarding the ESA-listed mountain caribou).

Pacific fishers are likely to be adversely affected by noise from OSV grooming activities, associated snowmobile noise, and the potential for associated snowmobile collisions with fishers since groomed trails will allow snowmobile users to greatly increase their speed. Grooming may also make it easier for the fisher's predators to access areas and cause higher mortality. Moreover, grooming may also make it easier to ride snowmobiles at night when fisher are even more active. For those reasons, the Forest Service must prepare a full environmental analysis.

In 2009, the Sequoia NF completed its travel management analysis, in which is discussed the effects of noise associated with off-highway vehicles (OHVs) on Pacific fishers:

The level of route density and associated noise disturbance may influence how fisher utilize available habitat. This notion seems to be supported by a few recent studies that imply that fisher may favor occupancy of landscapes with lower road use or road density. For example, Dark (1997) studied fisher in a well-roaded study area (i.e. areas without roads did not exist) on the Shasta-Trinity National Forest. Results suggested that fisher were detected more frequently at sites where roads were closed by the use of gates or otherwise designed to discourage vehicular traffic. Fishers used habitats with a greater density of low-use roads and favored landscapes with more contiguous, unfrequented forests and less human activity. Campbell (2004) noted that sample units examined within the central and southern Sierra Nevada region occupied by fisher were negatively associated with road density. This relationship was significant at multiple spatial scales (from 494 to 7,413 acres).

* * *

Zielinski et al. (2007) acknowledged that they did not know how martens would react in the presence of OHVs or their sound, or whether their exposure to OHVs generates a stress response that produces deleterious effect on reproduction or survival. It is unknown if the effects of motorized routes on Pacific fisher are comparable to marten, but because fishers occur at lower elevations than martens, they are more likely to be directly affected by human activities.

TMP FEIS, p. 529 (provided in Attachment A). There is no question that noise disturbance, similar to that from OHVs, occurs during OSV grooming and associated snowmobiling use. Moreover, OSV grooming, like motorized routes for OHVs, likely make it easier for the fisher's predators to gain access and cause greater mortalities:

Route for Competitors and Predators: Motorized routes may provide access for competitors or predators that would not have existed otherwise. Habitat alterations favoring bobcats, mountain lions or coyotes could increase fisher mortalities (Macfarlane 2009).

TMP FEIS, p. 530 (Attachment A). According to recent studies, predators are still considered the greatest source of mortality to fishers.

That OSV grooming and associated snowmobile use is similar to effects from OHVs was confirmed by a literature review and analysis by the Forest Service, in conjunction with the

National Park Service, to understand the effects from winter recreation on mid-size carnivores in the Greater Yellowstone Ecosystem. In 1999, the agencies conducted this extensive literature review and found:

Mortality resulting from an accidental collision with a snowmobile is possible, but the probability is low. Intentional killing of carnivores by a snowmobiler is possible, but most likely it would only occur in rare, isolated incidents.

Winter stress combined with human disturbance/ harassment may cause increased mortality to wildlife. Most studies on this topic have been conducted on ungulates, however. Copeland (1996) found that human activities near wolverine dens during the denning and kit-rearing period may cause den abandonment and displace wolverines into suboptimal denning sites. This could result in lower reproductive success and/or kit survival.

Natal dens are also important to recruitment for other carnivores, including the fisher, marten, and lynx. Minimal human disturbance is an important feature when females choose a den site. Fisher and lynx are likely to move to another den if disturbed.

* * *

Compaction of snowfields by snowmobiles alters the mild snow microenvironment, potentially affecting organisms that live within or beneath the snow by increasing temperature stress or restricting movement by compacting the air spaces between the snow and the ground (Schmid 1983, Boyle and Sampson 1985). Winter mortality of small mammals is markedly increased under areas compacted by snowmobiles. The reduction in population numbers of these small mammals could well reduce the population of species preying upon them (Bury 1978). Fitzgerald (1977) found that the long-tailed weasel often tunnels beneath the snow when hunting during the winter. Raine (1983) found that martens made less use of subnivean space when the snow surface was crusted, probably because of difficult access.

A significant effect on carnivores from winter recreational activities is displacement from or avoidance of high recreational use areas (*i.e.*, groomed trails, marked trails, destination areas, and play areas). Human use will increase where high recreational use areas exist or are provided. As the associated recreational use level increases, the impact on carnivores also increases (Ruediger 1996).

* * *

[S]tudies show that fishers generally are more common where densities of humans are low and human disturbance is reduced. They are secretive, usually avoid humans, and seldom linger when they become aware of the presence of humans. The females use one to three dens and are more likely to move if disturbed. Indirectly, human activities may lead to negative impacts on fishers through increased human access to fisher populations (USFS 1991, Ruggiero et al. 1994, Heinemeyer and Jones 1994).

Effects of Winter Recreation on Mid-Sized Carnivores (Wolverine, Fisher, Marten, Lynx, Bobcat, Red Fox, and Weasel), pp. 67-69 (included as Attachment B) (emphasis on “groomed trails” added).

2. Effects on Pacific fisher are extraordinary circumstances that preclude the use of a categorical exclusion.

Because there are likely to be significant adverse effects on Pacific fisher from OSV grooming and associated snowmobile use, these effects constitute extraordinary circumstances precluding the use of a CE.

The NEPA regulations at 36 C.F.R. § 220.6(a) preclude use of a CE if there are extraordinary circumstances related to the proposed action. The Forest Service must consider certain resource conditions, including “Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species...” 36 C.F.R. § 220.6(b)(1)(i). And, “[i]f the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA.” 36 C.F.R. § 220.6(c).

There is no question that roads proposed for grooming are located within core habitat for Pacific fishers. And because there are likely to be adverse effects on Pacific fishers from OSV grooming and associated snowmobile use, these extraordinary circumstances preclude the use of a CE, and the Forest Service should prepare an EA. At the very least, the literature shows that there is uncertainty about OSV grooming and its effects on fisher, which would require the Forest Service to prepare an EA.

In addition, the use of the road and trail repair/maintenance CE is not a proper fit for this proposal. *See* 36 C.F.R. § 220.6(d)(4). The Forest Service appears to use this as a catchall CE even though OSV grooming is not listed as one of the examples provided in the CE. OSV grooming is neither a repair nor a maintenance activity. Instead, it is more like road reconstruction, which requires a more thorough environmental analysis.

3. Forest Service route 21S61A is a National Recreation Trail and not a road and cannot be groomed or used by snowmobiles. Therefore, we strongly object to the proposed “updating” of the Motor Vehicle Use Map (MVUM), which would allow OSV grooming and use by snowmobiles.

The Giant Sequoia National Monument Plan restricts OSVs to designated roads. *See* GSNM Plan, p. 106 (“Limit over-snow vehicles to designated roads.”). Therefore snowmobiles and OSV groomers are not allowed on trails.

There is clear evidence that the proposed route to the west of Ponderosa through the Quaking Aspen area traverses the Summit National Recreation Trail, which has been incorrectly labeled as FS route 21S61A. This route is not a road and has always been considered a trail until the Forest Service recently engaged in its 36 C.F.R. § 212, Subpart A analysis. That analysis has

incorrectly labeled this trail as a road. In fact, the Monument Plan specifically refers to this trail: “The trail system within the Monument currently consists of approximately 196 miles of system trails, including about 12 miles of the Summit National Recreation Trail.” GSNM Plan, p. 129.

The Forest Service website describes the Summit Trail (31E14):

31E14 The Summit Trail is 33.3 miles long. It begins at Forest Road 22S03 At Mule Mdw and ends at Forest Boundary. The trail is open for the following uses: Mountain Biking, Horseback Riding.

See <http://tinyurl.com/z3f3zj9> (last viewed on Feb. 12, see also Attachment C for screenshot). Note that it does *not* state that it is open to OHVs or snowmobiles.

Moreover, both the USGS topographic map for Sentinel Peak, CA (Figure 1, below), and the 2001 Sequoia National Forest Recreation Map (Figure 2, below), prepared at the time the Giant Sequoia National Monument was created, clearly depict the section of the Summit Trail (31E14) between Quaking Aspen Campground and FS route 21S78 as a trail.

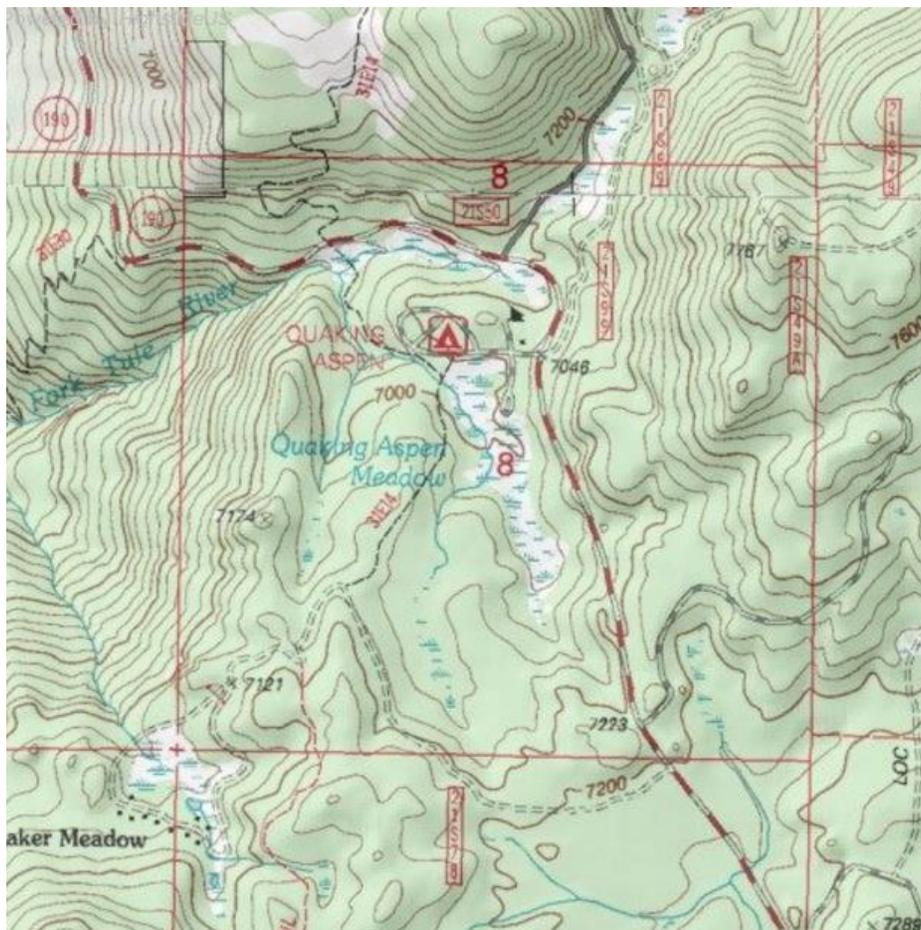


Figure 1. USGS Topo Map from the time the Giant Sequoia National Monument was created, showing 31E14 between Quaking Aspen and the road to Quaker Meadow as a trail.

Even though the Forest Service appears to have re-designated this trail as a road, it is fairly easy to confirm that the 1/4-1/2 mile section was a trail at the time the Monument was created.

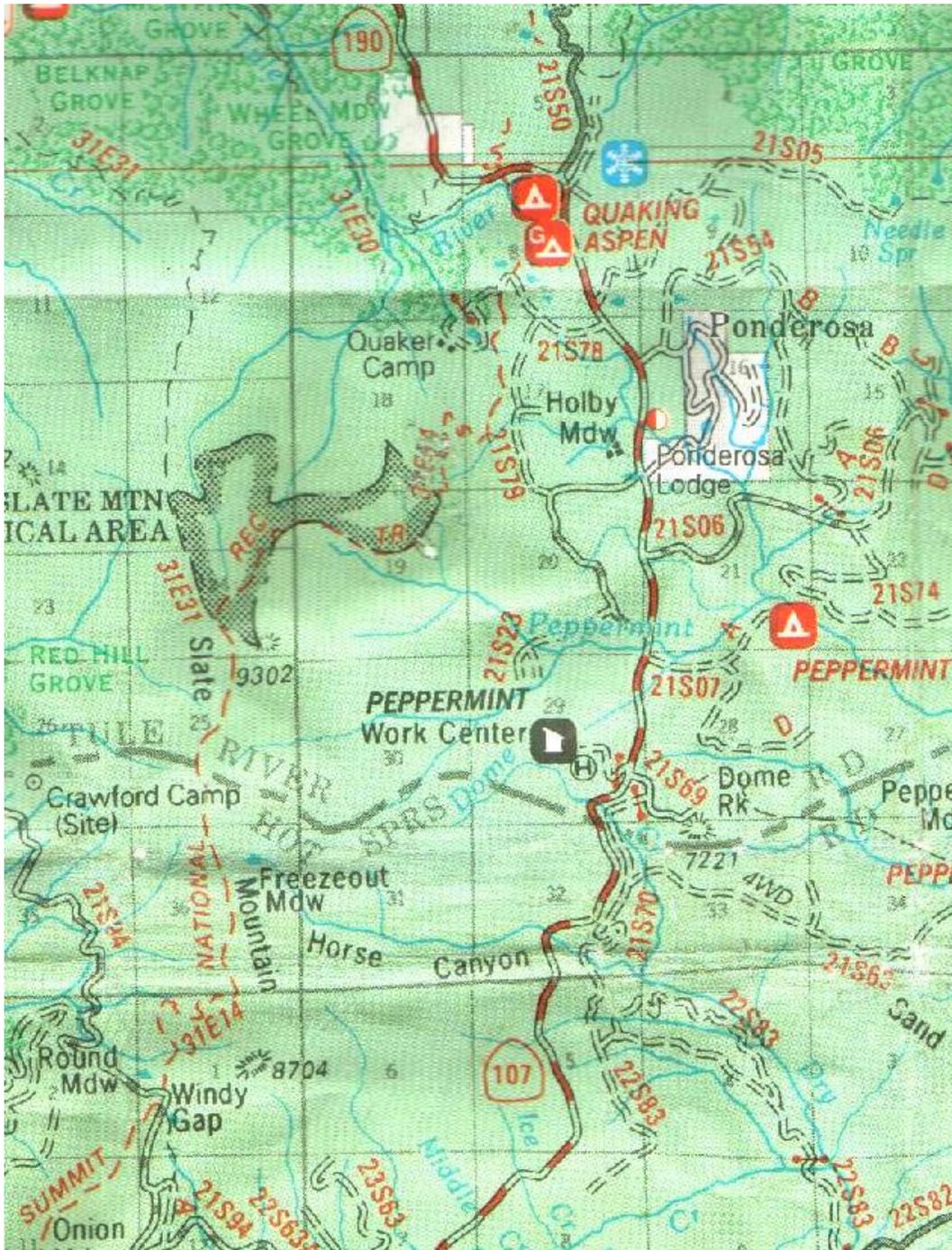


Figure 2. 2001 Sequoia National Forest Recreation Map, also depicting the section between Quaking Aspen and the road to Quaker Meadow as a red dash (trail).

This is also supported by the 1995 topo/trail map below (Figure 3), which shows the Summit National Recreation Trail as a trail and not a road.

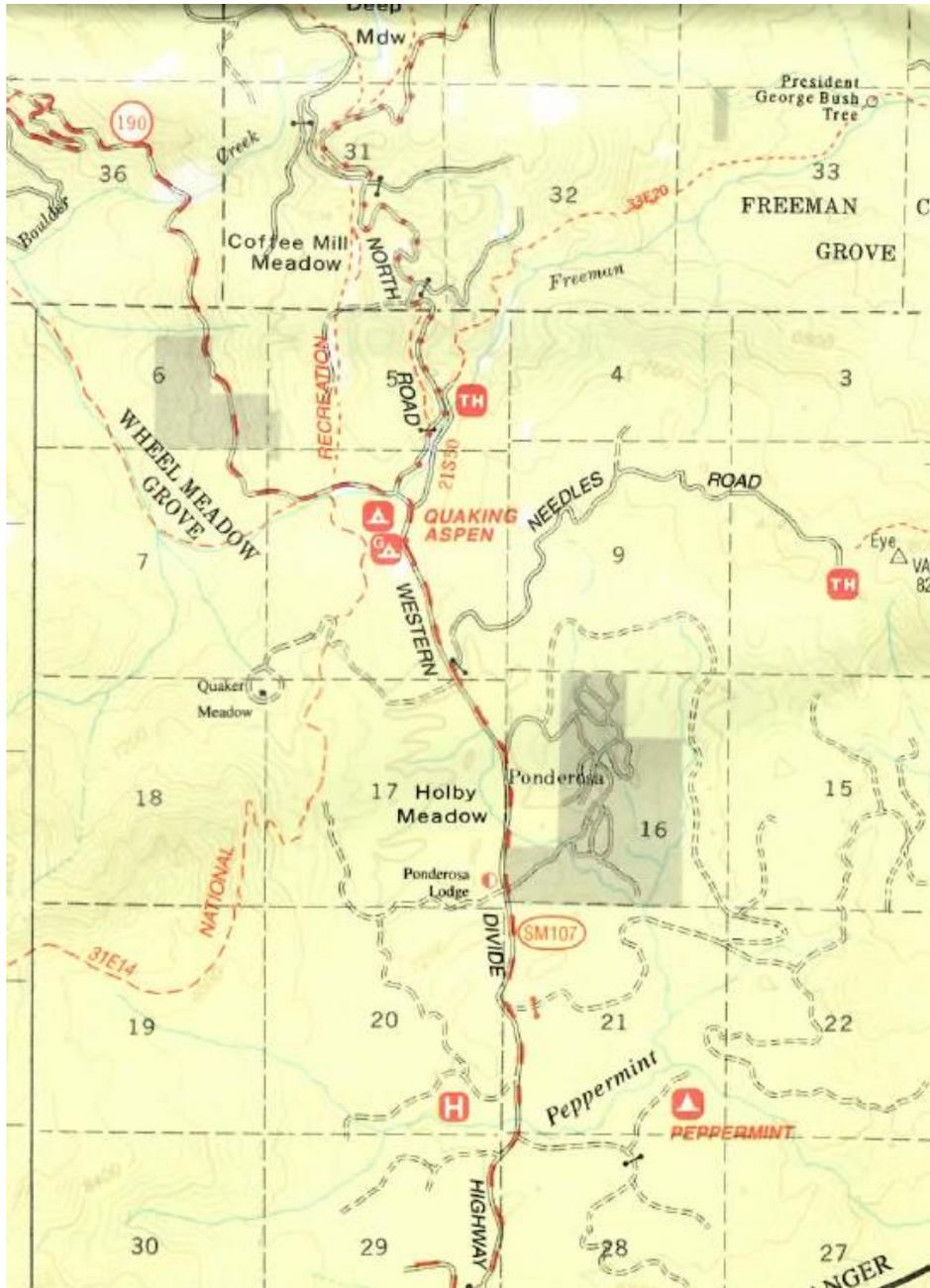


Figure 3. 1995 Topo/Trail Map of the Area, depicting the Summit National Recreation Trail

The travel management regulations themselves should be of help here. They define road as “Road. A motor vehicle route over 50 inches wide, unless identified and managed as a trail” and trail as “Trail. A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.” 36 C.F.R. § 212.1. In other words, you can have a trail that’s wider than 50 inches, if it is “identified and managed as a trail,” but you cannot have a road that is narrower than 50 inches. And since the Summit Trail route was “identified and managed as a trail” before and after the time of the creation of the Monument, it cannot be considered a road. It should also be easy to determine on the ground whether the trail is less than 50 inches wide at any point, in which case it cannot be considered a road.

For those reasons, the Motor Vehicle Use Map (MVUM) for the Western Divide Ranger District is likely correct for the portion between Quaking Aspen Campground and FS route 21S78, contrary to the suggestion in the scoping notice that it needs to be updated. See Figure 4, below.

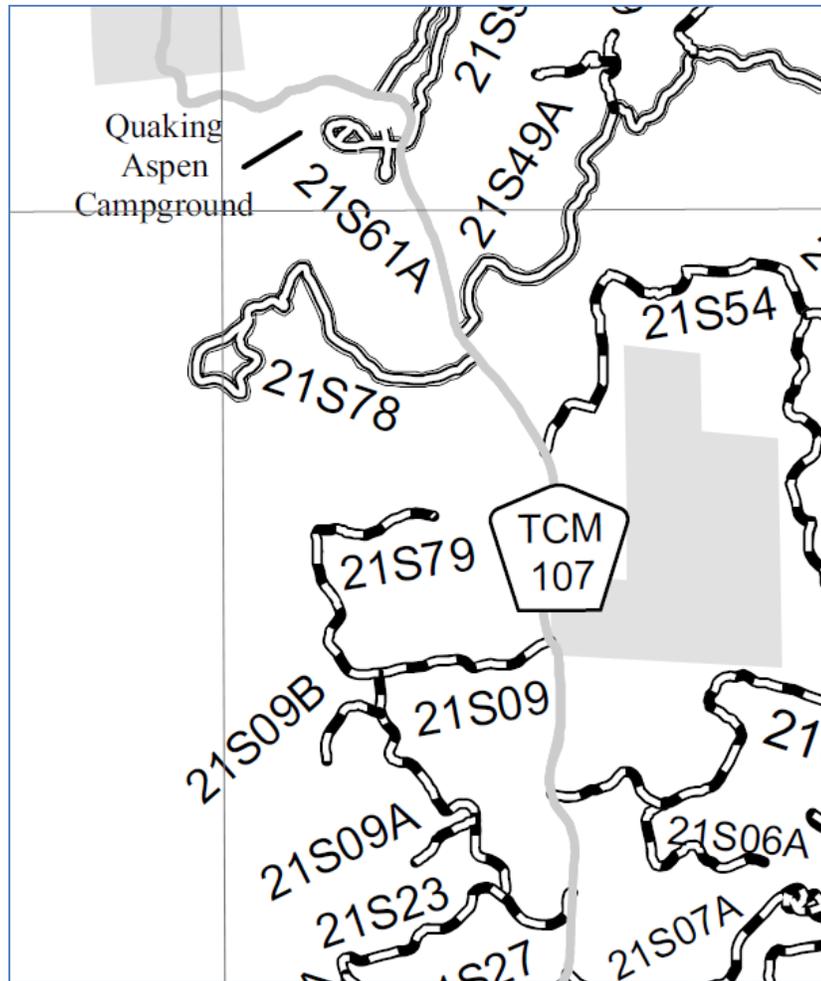


Figure 4. Current MVUM Map, showing no road where the Summit Trail is located, and depicting 21S61A as a small spur road to a parking area near Quaking Aspen Campground. Moreover, FS route 21S79A is not depicted.

This was all confirmed by previous District Ranger Rick Stevens in 2013, when OSV grooming previously came up in scoping. Then, Mr. Stevens conceded that the grooming segment south of Quaking Aspen Campground, which connects the campground to 21S78 and then to 21S79, was not a designated road on their system, and he told us that the Forest Service should not be grooming there.

With regard to the Kern Plateau, the OSV grooming map is in error and makes an omission with regard to a connection between FS routes 22S41 and 21S28. On the MVUM, those roads are connected by a trail (33E24), and if it was the Forest's intent to only groom roads, it should eliminate 21S28 from the proposal.

4. The Forest Service cannot simply “update” the MVUM without first engaging in a public involvement process and an appropriate NEPA analysis, which may even require a Monument Plan amendment.

The Forest Service cannot arbitrarily re-designate a trail as a road in an “update” just because it is a convenient location for snowmobile use and OSV grooming. Moreover, such an update will also affect summer recreation use. And so far, we know of no site-specific decision that has authorized a change in status of a trail to a road or the addition of new roads to the system subsequent to the Subpart A analysis. We have contacted District Ranger Eric La Price for more information to determine if such a decision was previously authorized.

Currently, OSV grooming and snowmobile use is prohibited on any trail by the Monument Plan, and trails are protected from changes by the Monument Proclamation. To make changes or add roads, the Forest Service must satisfy certain requirements, including a determination that the road furthers the Monument purposes and only after an adequate environmental analysis with public involvement.

The Monument Proclamation states: “No new roads or trails will be authorized within the monument except to further the purposes of the monument.” “The road system in the Monument that is currently designated for motorized use is shown on the MVUMs for the Hume Lake and Western Divide Ranger Districts (see the map packet).” GSNM Plan, p. 129.

The Monument Plan makes specific reference to the process for changes to the road system, including making site-specific changes only after environmental analysis:

Designated road maps were published in 2001 and with the 2003 Monument Plan Final EIS, and motor vehicle use maps (MVUMs) were published in 2008 to reflect this management of the transportation system in the Monument (the two MVUMs covering the Monument are included in the Map Packet for this Monument Plan).

Because the Giant Sequoia National Monument Plan is a programmatic level decision and does not directly authorize any project level site specific actions, the transportation plan also does not make any site specific changes to the transportation system. Instead it provides a framework by which to manage the transportation system and make future decisions concerning changes to it that support the management intent of the Monument Plan. Changes to the existing transportation system will only be made after appropriate site-specific environmental analysis.

GSNM Plan, p. 127 (emphasis added). Further, the Monument Plan includes specific requirements for analyzing the effects of new road proposals on wildlife:

Evaluate proposals for new roads, trails, and recreational and other developments for their potential to disturb [nest sites or den sites for spotted and great grey owls, goshawks, fishers, and martens as applicable].

GSNM Plan Standards, pp. 91-94. According to our records, the only known great grey owl nesting area is located directly adjacent to 21S50 where OSV grooming is proposed.

We are not aware of any site-specific environmental analysis that may have take place to make site-specific changes to turn the trail from Quaking Aspen south into the road shown as 21S61A. Moreover, 21S79A also does not appear on the MVUM, and we are also unaware of any decisions adding this route to the road system.

This change in designation from a trail to a road constitutes a “new” road, which would require further evaluation and analysis, and this change can only be authorized if it furthers the purposes of the monument. Such an “update,” or other changes to the MVUM, must be analyzed in a Monument-wide winter and summer recreation plan, which must go through a public NEPA process disclosing the direct, indirect, and cumulative impacts to species, other resources, other recreation users, and public safety. It is not appropriate to toss this decision into an OSV grooming scoping document.

This “update” to the MVUM should not be taken lightly, since the MVUM is integrated into the Monument Plan. Such a change to the status of trails and roads, which may not be limited to those segments in the OSV grooming project, constitutes an amendment to the Plan, which requires appropriate public involvement and analysis. It may even constitute a significant amendment to the plan, which requires even further scrutiny. These changes to routes stem from the TMP’s Subpart A analysis, which the Forest Service has stresses was only an inventory and not a decision document. Therefore, any decisions to make changes to add road segments or change the MVUM must be done through the forest planning process with appropriate environmental analysis.

5. The Forest Service should undertake winter travel planning to determine which routes are appropriate for OSV use prior to determining whether these routes should or should not be groomed.

In 2015 the Forest Service published new regulations – the Over-Snow Vehicle Rule – requiring National Forests to designate specific routes and areas for OSV use and outlining how the process under which these designations should occur.¹

The OSV Rule revises Subpart C of the 2005 Travel Management Rule and requires that forests designate routes and areas where OSV use is allowed, publish these designations on an OSV use map, and prohibit any OSV activity that is inconsistent with the published map. This travel planning is to occur under the directives that accompanied the 2005 Travel Management Rule until the Washington Office finalizes new directives to accompany the OSV Rule.

Forest Service travel management planning can be traced back to Executive Orders 11644 and 11989, which were issued by Presidents Nixon and Carter in 1972 and 1977, respectively. These orders were in response to the growing use of dirt bikes, snowmobiles, all-terrain vehicles, and other off-road vehicles (ORVs) and corresponding environmental damage and conflicts with

¹ 80 Fed. Reg. 4500 (Jan. 28, 2015); 36 C.F.R. Part 212, Subpart C.

non-motorized users. The executive orders require federal land management agencies to plan for ORV use to protect other resources and recreational uses. Specifically, the executive orders require that, when designating areas or trails available for ORV use, the agencies locate them to:

- (1) minimize damage to soil, watershed, vegetation, and 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, taking into account noise and other factors.²

Thirty-three years after President Nixon issued Executive Order 11644, the Bush Administration – citing unmanaged recreation as one of the top four threats facing the national forests – published the Travel Management Rule in 2005. The 2005 rule codified the executive order “minimization criteria.” The 2015 OSV Rule builds upon the 2005 Travel Management Rule by requiring that the Forest Service designate a system of areas and routes – based on the minimization criteria – where OSVs are permitted.³

A string of federal court cases, invalidating prior Forest Service travel management decisions, is evidence that the Forest Service struggles with properly applying the minimization criteria.⁴ Most recently, in *WildEarth Guardians v. U.S. Forest Service*, the Ninth Circuit Court of Appeals invalidated the decision to allocate approximately 60% of the Beaverhead-Deerlodge National Forest to cross-country OSV use where the record failed to show that the agency applied and implemented the minimization criteria when it made those area designations.⁵ The Ninth Circuit’s decision upheld several lower court decisions and affirmed that the Forest Service has a *substantive* duty to meaningfully apply the minimization criteria.⁶

When designating routes for OSV use it is critical that the agency apply the minimization criteria at a granular level. To do so the agency’s methodology should, at minimum:

1. Incorporate site-specific data.

² Exec. Order No. 11,644, § 3(a), 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended* by Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977).

³ *Winter Wildlands Alliance v. U.S. Forest Service*, No. 1:11-CV-586-REB, 2013 U.S. Dist. LEXIS 47728, at *27-36 (D. Idaho Mar. 28, 2013) (explaining that OSV “designations *must* be made and they *must* be based on the [minimization] criteria”) (emphasis in original).

⁴ *WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 929-32 (9th Cir. 2015); *Friends of the Clearwater v. U.S. Forest Service*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at *37-52 (D. Idaho 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).

⁵ *WildEarth Guardians v. U.S. Forest Service*, 790 F.3d 920 (9th Cir. 2015).

⁶ *WildEarth Guardians*, 790 F.3d at 932 (“consideration” of the minimization criteria is insufficient; rather, the agency “must apply the data it has compiled to show how it designed the areas open to snowmobile use ‘with the objective of minimizing’ ” impacts); *Friends of Clearwater*, 2015 U.S. Dist. LEXIS 30671, at *42 (“to satisfy the Travel Management Rule, ‘the Forest Service must actually explain how it aimed to minimize environmental damage in designating routes. . . .’”); *Guzman*, 766 F.Supp.2d at 1074 (“The language ‘with the object of minimizing’ means that the whole goal or purpose of the exercise is to select routes in order to minimize impacts in light of the agency’s other duties.”).

2. Provide opportunities for public participation early in the planning process.
3. Consider the best available scientific information.
4. Account for projected climate change impacts, including reduced and less reliable snowpack, and increased vulnerability of wildlife and resources to OSV impacts.
5. Consider site-specific and larger-scale impacts.
6. Apply best management practices.
7. Account for available resources for monitoring and enforcement.
8. Consider whether to designate areas or trails by “class of vehicle” and “time of year,” as provided by the OSV rule.

If the Forest Service feels that the current system of OSV routes in GSNM is in accordance with the OSV Rule it must show how the minimization criteria were applied at the route designation stage prior to undertaking any grooming efforts.

On those points, we join and concur with comments made by Snowlands Network and the Winter Wildlands Alliance.

For Sequoia ForestKeeper and the Kern-Kaweah Chapter of the Sierra Club,



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