No. 17-15665

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMY GRANAT; CORKY LAZZARINO; SIERRA ACCESS COALITION; CALIFORNIA OFF-ROAD VEHICLE ASSOCIATION; THE COUNTY OF PLUMAS; and THE COUNTY OF BUTTE,
Appellants,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, a federal agency; SONNY PERDUE, in his official capacity as Secretary of the UNITED STATES DEPARTMENT OF AGRICULTURE; UNITED STATES FOREST SERVICE, a federal agency; THOMAS L. TIDWELL, in his official capacity as Chief of the UNITED STATES FOREST SERVICE; RANDY MOORE, in his official capacity as PACIFIC SOUTHWEST REGIONAL FORESTER; ALICE CARLTON, in her official capacity as the former PLUMAS NATIONAL FOREST SUPERVISOR; and EARL FORD, in his official capacity as PLUMAS NATIONAL FOREST SUPERVISOR,
Appellees.

On Appeal from the United States District Court
for the Eastern District of California
Honorable Morrison C. England, Jr., District Judge

APPELLANTS' OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Appellants Sierra Access Coalition and California Off-Road Vehicle Association hereby state that they have no parent corporations, and no publicly held corporation owns 10 percent or more of the stock of either of them.

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STATEMENT OF SUBJECT MATTER JURISDICTION

Appellants Amy Granat, Corky Lazzarino, the California Off-Road Vehicle Association (CORVA), the Sierra Access Coalition (SAC), Butte County, and Plumas County (collectively, the Forest Users) brought suit in the district court pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) to challenge the actions of the United States Forest Service (Forest Service or Service), all of which arose under the laws of the United States, including the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321-4370h, and related federal regulations; the Administrative Procedure Act, 5 U.S.C. § 551, *et seq*.; and the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B).

The district court entered judgment on March 2, 2017. ER 022 (Judgment). The Forest Users filed a timely Notice of Appeal on April 5, 2017. ER 022a (ECF Doc. No. 46). The statutory basis for this Court's appellate jurisdiction is 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. The National Environmental Policy Act requires federal agencies to consider a reasonable range of alternatives to any proposed action that may have a significant effect on the environment. An

Environmental Impact Statement (EIS) must "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a).

The question presented is whether the Forest Service failed to consider a reasonable range of alternatives in its Record of Decision and Final Environmental Impact Statement as required by NEPA when it summarily excluded 63 percent of all inventoried miles from any consideration, as part of the agency's consideration of alternatives proposing additions to the Transportation Management Plan in the Plumas National Forest.

2. When determining which routes to designate for motorized travel on the Plumas National Forest, the Forest Service was required to "coordinate with appropriate . . . county, and other local governmental entities," 36 C.F.R. § 212.53, as well as to "cooperate with local agencies" in, among other things, "[j]oint planning processes," 40 C.F.R. § 1506.2(b)(1). Moreover, the agency was required to, among other things, expressly describe (i) the extent to which its proposal "would [be] reconcile[d]" with local planning processes, *id.* § 1502.6(d), as well as (ii) "[p]ossible conflicts" with such processes and local land-use plans, *id.* § 1502.16(c).

The question presented is whether the Forest Service satisfied the foregoing legal obligations merely by considering Appellants Plumas and Butte Counties' local-plan-based comments and objections, without further explanation or attempt at coordination or reconciliation.

STATUTORY & REGULATORY PROVISIONS

National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq*.

Travel Management Rule (excerpts).

Regulations related to Environmental Impact Statements: 40 C.F.R. § 1502.1, 40 C.F.R. § 1502.2, 40 C.F.R. § 1502.14, 40 C.F.R. § 1502.16.

40 C.F.R. § 1506.2.

Council on Environmental Quality, NEPA FAQ, 46 Fed. Reg. 18,026 (Mar. 23, 1981) (excerpt).

Copies of these authorities are included in the Addendum provided with this Brief.

INTRODUCTION AND STATEMENT OF THE CASE

Plumas National Forest (the Forest) has long provided the public with diverse opportunities for motorized recreation and access—allowing forest-wide, cross-country travel by means of an interconnected system of routes. This system includes individual roads and trails, many of which link to public roads within the California Counties of Butte and Plumas, where over 1,000,000 acres of the Forest are located.

Historically, "motor vehicle use was unrestricted throughout most of the" Plumas National Forest. ER 236 (Record of Decision). And even in "restricted" areas, certain motorized vehicle access was permitted. *See*, *e.g.*, ER 348 (motorized vehicle access to wild and scenic rivers); ER 349 (wheeled vehicles permitted on designated routes of recreation areas). Indeed, according to the Forest Service itself, motor vehicles "represent an integral part of [the] recreational experience" in National Forests and are "a legitimate and appropriate way for people to enjoy their National Forests—in the right places, and with proper management." 70 Fed. Reg. at 68,264.

Unfortunately, and in violation of federal law, the Forest Service severely restricted the use of motorized vehicles in Plumas National

Forest. The Service's action now prevents the Appellants Forest Users from even accessing the vast majority of the Forest.

The Forest Users

Amy Granat is an individual with an autoimmune disease known as *pemphigus vulgaris*, which required her to undergo chemotherapy from January of 2001 until June of 2006, causing infections in her legs and limiting her ability to walk. Her ability to access back-country areas in Plumas National Forest has been a key part of her medical rehabilitation. She has been visiting Plumas National Forest for many years since 2001. Camping, fishing, and viewing wildlife in Plumas National Forest have been important priorities for her and have been her principal ways of spending quality time with her children. ER 108-09, ¶ 15 (Declaration of Amy Granat). Because of her walking disability, Amy is unable to access those areas on crutches, by wheelchair, by cane, or by using braces on her legs, even with the help of her long-time service dog, Tucker. As a result, she is now foreclosed from accessing many parts of the Forest that in the past were accessible to her only by motor vehicle.

Similarly, Corky Lazzarino, members of CORVA and SAC, and residents of Butte and Plumas Counties are now prohibited from

accessing parts of the Forest they had used for hiking, camping, exploring, fishing, riding off-road vehicles, hunting, cutting and retrieving firewood, and photography—in some cases from using the Forest for mere sustenance. Representatives from both CORVA and SAC submitted detailed comments and objections to the Draft Environmental Impacts Statements, and otherwise participated in the process that generated the Record of Decision and the Final Environmental Impact Statement (collectively, Decision Documents). And each organization prosecuted an administrative appeal of the Record of Decision and Final Environmental Impact Statement. ER 095-98, ¶¶ 3, 5-15 (Declaration of Corky Lazzarino); ER 103, 106-08, ¶¶ 2, 7-11 (Declaration of Amy Granat).

Further, residents of Butte and Plumas Counties remain dependent on revenue associated with recreational use of the Forest, which had traditionally attracted significant tourism. The Counties themselves will lose tax and fee revenues due to the prohibitions on Forest use. The motorized-vehicle restrictions further harm the Counties, whose roads and trails connect with (now inaccessible) Forest roads and trails, which the Counties had used for, *inter alia*, fire-fighting and other safety

purposes. ER 087, 089-91, ¶¶ 5-6, 11-20 (Declaration of Robert Perreault, Jr.); ER 113-14, ¶¶ 7-9 (Declaration of John Crump).

All of these traditionally enjoyed motorized vehicle uses are now illegal. But had the Service followed the law, these harms could have been avoided.

The Forest Service's Notice of Intent and Its Legal Obligations

Before the 2005 Travel Management Rule was adopted, Plumas National Forest contained approximately 4,137 miles of National Forest System (NFS) roads and approximately 130 miles of motorized trails. ER 025, No. 3 (Resp. to Fed. Defs.' Stmt. of Undisp. Facts).

In January 2008, the Forest Service issued a notice of intent to prepare an environmental impact statement (Notice of Intent) for the Plumas National Forest to analyze impacts associated with the addition to the National Forest Transportation System of certain existing, unclassified, but nevertheless lawful routes and trails in Plumas National Forest. ER 054.

National Environmental Policy Act

The Service's actions triggered the National Environmental Policy Act, which is the "basic national charter for protection of the

environment," and which requires federal agencies to comply with its precepts "to the fullest extent possible." *Churchill County v. Norton*, 276 F.3d 1060, 1072 (9th Cir. 2001), *as amended by* 282 F.3d 1055 (9th Cir. 2002); *City of Davis v. Coleman*, 521 F.2d 661, 673 (9th Cir. 1975). NEPA requires that proposals for prospective major federal actions be evaluated in light of their future effect upon the human environment before the action can be approved. *California v. Norton*, 311 F.3d 1162, 1175 (9th Cir. 2002).

In addition, NEPA requires that federal agencies use "all practical means" to ensure the attainment of the "widest range of beneficial uses of the environment" without undue risk and "to create and maintain conditions under which *man and nature can exist in productive harmony*." 42 U.S.C. § 4331 (emphasis added). Major federal actions that require a change in the *status quo* require full NEPA review, which includes an Environmental Impact Statement. *Upper Snake River Chapter of Trout Unlimited v. Hodel*, 921 F.2d 232, 235 (9th Cir. 1990).

> An Environmental Impact Statement must describe:
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

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

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

42 U.S.C. § 4332(C).

NEPA requires the agency to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E).

The Forest Service failed to meet this requirement. Before the Service's actions here—its issuance of the Decision Documents—Plumas National Forest had approximately 3,236 "unclassified" roads and trails, representing approximately 1,107 miles. Although "unclassified," these roads and trails were designated as part of the National Forest Transportation System, and as such, they could lawfully be used for motorized travel. Through its Decision Documents, the Forest Service closed approximately 79 percent of these trails to motorized traffic. *Cf.* ER 288 (ROD Comparison of Alternatives).

The alternatives considered by the Forest Service did not represent the full range of alternatives when considering what fraction of the inventoried miles to add to the Transportation Management Plan. The Forest Service categorically excluded approximately 700 of the available inventoried miles from its alternatives analysis and crafted all proposed alternatives from iterations of the remaining 410 inventoried miles, prejudicing the available choices to a small set of similar alternatives. *See* ER 288 (ROD Comparison of Alternatives). Because this analysis did not satisfy the purpose and need for the Environmental Impact Statement, the alternatives analysis was inadequate under NEPA.

The Travel Management Rule

The Service's actions also violated its own Travel Management Rule, which was issued in November 2005. 70 Fed. Reg. 68,264-291 (Nov. 9, 2005), *codified at* 36 C.F.R. § 212.50, *et seq*. According to this Rule (36 C.F.R. § 212.50), the Forest Service "*shall* coordinate with appropriate . . . local governmental entities . . . when designating" National Forest System roads, trails, and areas on National Forest System lands. Here, the Service—by its own admission—merely met with the Counties, sought their input, and considered information they

provided. The Service's pro forma "consideration," however, does not constitute the *coordination* required by the Travel Management Rule.

The Forest Service Severely Restricts Motorized-Vehicle Access to Plumas National Forest

Below, the Service emphasized the notice it provided to the public, the number of public meetings it held, and its purported consideration of all comments and objections. *See*, *e.g.*, ER 069-72, Nos. 16-19, 22-25 (Fed. Defs.' Stmt. of Undisp. Facts). The Service also noted that—after the Decision Documents were published—it met with Plumas County representatives "on at least two occasions" and with Butte County officials in January 2011. ER 081, No. 58 (Fed. Defs.' Stmt. of Undisp. Facts); ER 046, No. 58 (Resp. to Fed. Defs.' Stmt. of Undisp. Facts).

The Counties objected that mere meetings and requests for information did not satisfy the Travel Management Rule's requirement of "coordination" with local governments. *See* ER 217-19 (Plumas County Appeal); ER 223-24 (Butte County Appeal).

But in the Service's view, the agency "recognized . . . a need for limited additions to the NFTS [National Forest Transportation System] to provide motor vehicle access to dispersed recreation opportunities and to provide a diversity of motorized recreation opportunities[,]" while

"underst[anding] that these purposes had to be balanced with the overall purpose of regulating unmanaged motor vehicle travel and the related detrimental effects." ER 072, No. 27 (Fed. Defs.' Stmt. of Undisp. Facts).

The Service published the draft environmental impact statement in December 2008. ER 290 (Notice of Draft Environmental Impact Statement Availability, 73 Fed. Reg. 79,473). This publication triggered a comment period, and Amy Granat, Corky Lazzarino, their respective organizations, and the Counties all submitted comments. ER 074, No. 33 (Defs.' Stmt. of Undisp. Facts); *see* ER 036, No. 33 (Resp. to Defs.' Stmt. of Undisp. Facts) (undisputed); ER 037-39, No. 37 (Resp. to Defs.' Stmt. of Undisp. Facts) (undisputed).

In August 2010, the Plumas National Forest issued its Final Environmental Impact Statement. ER 003 (Memorandum and Order) (hereinafter, Order). This statement included responses to comments received in response to the draft Environmental Impact Statement. *Id.*; ER 076, No. 38 (Defs.' Stmt. of Undisp. Facts); *see* ER 039, No. 38 (Resp. to Defs.' Stmt. of Undisp. Facts). But it did not include "discussions of . . . [p]ossible conflicts between the proposed action and the objectives of

Federal, regional, State, and local . . . land use plans, policies[,] and controls[,]" as required by 40 C.F.R. § 1502.16(c).

The Final Environmental Impact Statement includes a description and comparison of four alternatives and a "no action" alternative. ER 62-89 (FEIS); ER 076, No. 39 (Defs.' Stmt. of Undisp. Facts); *see* ER 039, No. 39 (Resp. to Defs.' Stmt. of Undisp. Facts). The Service considered 11 other alternatives but did not include them in its detailed study. ER 283-87 (FEIS); ER 076-77, No. 40 (Defs.' Stmt. of Undisp. Facts); *see* ER 039, No. 40 (Resp. to Defs.' Stmt. of Undisp. Facts). In particular, of the 3,236 Plumas National Forest routes that the Service inventoried, the vast majority of these routes—3,036—were "eliminated from detailed consideration." ER 058, No. 21 (Fed. Defs.' Resp. to Pl.' Stmt. of Undisp. Facts).

The Forest Service first inventoried 1,107 miles of unclassified, but historically used and lawful miles, constituting 3,236 individual routes. *See* ER 292-303 (Beckwourth spreadsheet); ER 304-19 (Mount Hough spreadsheet); *and* ER 320-25 (Feather River spreadsheet) (collectively, The First and Second Cut Spreadsheets). The Forest Service gave each inventoried route a designation of High, Medium, or Low in two

categories: "Benefits and Access," on the one hand, and "Concerns and Risks," on the other. *Id.* These two categories were divided into sub-criteria, such as "Travel" under "Benefits and Access," and "Water" under "Concerns and Risks." The Forest Service then designated each route as either Yes ("Y") or No ("N"). *Id.* A "Y" designation indicated that the route would receive further evaluation by the Service for inclusion in the Plumas Forest Transportation Plan. *Id.* An "N" designation indicated that no further evaluation would be conducted, and the route would not be considered for inclusion. *Id.* Of the routes given a "Y" designation, approximately 200 routes, covering 410 miles, were given an on-site "field review." *See id.*; ER 055-56, Nos. 13, 15 (Fed. Defs.' Resp. to Pl.' Stmt. of Undisp. Facts).

The Forest Supervisor for the Plumas National Forest signed the Record of Decision on August 30, 2010. ER 251. The Record of Decision selected "Alternative 5" as described in the Final Environmental Impact Statement, with two modifications. ER 237-39 (ROD); ER 078-79, No. 46 (Defs.' Stmt. of Undisp. Facts); *see* ER 042, No. 46 (Resp. to Defs.' Stmt. of Undisp. Facts).

As a result, while the number of miles of the motorized trail network in the Forest was increased, *access* to the Forest was decreased. Defs.' Stmt. of Undisp. Facts No. 47; *see* ER 042, No. 47 (Resp. to Defs.' Stmt. of Undisp. Facts). Indeed, as the Service acknowledged, by "eliminating cross-country travel from designated routes," the Service *reduced* "the availability of acreage for motorized vehicle use as well as motorized vehicle access to dispersed recreational activities." ER 080, No. 51 (Defs.' Stmt. of Undisp. Facts) (citing PLU-B-000017); ER 043-44, No. 51 (Resp. to Defs.' Stmt. of Undisp. Facts).[1]

The Forest Users Sue to Enforce the Travel Management Rule

The Forest Users commenced this action in March 2015, to challenge the Forest Service's insufficient processes employed here. Compl. (ECF Doc. No. 1). They asserted twelve claims for relief, alleging that the Service failed to coordinate with the Counties, as required by the

[1] For example, as Appellants SAC and CORVA explained in their appeal to the Decision Documents, as a result of the Service's decision, "able bodied people may travel by foot, horse or bicycle in non-designated areas, [but] the disabled, handicapped and elderly will have no way to access points of interest with the Forest[,] including [dispersed] camping, game retrieval, or wood-cutting. Many people who have previously benefited from access to their National Forest will be restricted from enjoying the activities and locations that they have used and visited in the past." ER 179.

Travel Management Rule; the Service failed to consider an adequate range of alternatives when it designated motorized routes; the Service illegally applied the Travel Management Rule; the Service failed to conduct an adequate analysis under NEPA and consistent with local laws, and provided a deficient socioeconomic-impacts analysis; the Service failed to identify, evaluate, and disclose the environmental impacts of motorized travel on historically lawfully used routes in the Forest; the Service failed to provide the public with the scientific basis for its Decision Documents; the Service failed to sufficiently analyze its decision's impact on the human environment; the Service inadequately responded to comments; the Service failed to prepare a supplement to its draft environmental impact statement; the Service failed to consider adequately the cumulative impacts of its designation; and the Service violated the Freedom of Information Act. ER 124-70 (Complaint for Declaratory and Injunctive Relief).

The parties submitted motions for summary judgment. (ECF Doc. Nos. 31, 37, 38, 41). In a memorandum decision and order, the district court granted in full the Forest Service's motion for summary judgment. With respect to the issues raised in this appeal, the court ruled that the

Forest Service (1) considered a reasonable range of alternatives and (2) properly coordinated with local governments. ER 010-11, 013-15 (Order) (ECF Doc. No. 44). First, the court held that the purpose of considering a reasonable range of alternatives—to foster informed decisionmaking and informed public participation—was met here when the Service considered four "action" alternatives, eleven other, less-detailed alternatives, and a "no-action" alternative. *Id.* at 011. Even though the Service reviewed only 400 of the approximately 1,100 miles of Forest roads, the district court held that the Service adequately responded to public input by surveying an additional 35 miles and by considering an extra 155 miles of routes; and therefore, that the range of alternatives fostered informed decisionmaking and informed public participation. *Id.*

Second, the district court held that the Service satisfied its obligation to "coordinate" its actions and "cooperate" with local governments. *Id.* at 013-15. Without defining the term, the district court concluded that the Service's "formal meetings" with Plumas County officials, and its offer to meet with two Butte County supervisors, was sufficient coordination. *Id.* at 014. The court also rejected the Forest

Users' argument that the Forest Service ignored the Counties' land-use plans and thereby failed to "cooperate." *Id.* at 015. The Forest Users filed their timely Notice of Appeal on April 5, 2017. ER 022a.

STANDARD OF REVIEW

Challenges to final agency action decided on summary judgment are reviewed by this Court de novo under the Administrative Procedure Act's (APA) arbitrary and capricious standard. *E.g.*, *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Service*, 378 F.3d 1059, 1065 (9th Cir. 2004). *See* 5 U.S.C. § 706(2)(A). *See also Pac. Coast Fed'n of Fishermen's Ass'n v. U.S. Bureau of Reclamation*, 426 F.3d 1082, 1090 (9th Cir. 2005). Review is based on the administrative record. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973). An agency decision is arbitrary and capricious under the APA where the agency "relied on factors" that Congress "did not intend it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (en banc) (quotations omitted).

An agency-prepared Environmental Impact Statement violates NEPA (1) where the "information in the . . . EIS [is] so incomplete or misleading that the decisionmaker and the public could not make an informed comparison of the alternatives," *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) (quotation marks and citation omitted); (2) where the agency "entirely fail[s] to consider an important aspect of the problem," *id.* (quotation marks and citation omitted); or (3) where the Environmental Impact Statement fails to "provide a useful analysis of the cumulative impacts of past, present, and future projects," *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1076 (9th Cir. 2011) (quotation marks and citation omitted).

SUMMARY OF THE ARGUMENT

The Forest Service closed hundreds of miles of lawful, user-created routes that had provided varied recreational opportunities for decades within Plumas National Forest. Prohibiting all motorized use of these trails has effectively closed off portions of Plumas National Forest to all visitors except the most able-bodied. Motorized travel over these user-created trials has long provided a means for Forest visitors with disabilities or other mobility challenges to reach distributed recreational

opportunities, while others trails provided motorized recreational opportunities.

The district court rejected the twelve claims for relief brought by the Forest Users. After considering the district court's decision, the Forest Users appeal solely on the following grounds.

First, the Forest Service violated its duty under NEPA to consider a reasonable range of alternatives, in violation of 42 U.S.C. § 4332(E) and 40 C.F.R. § 1502.1, because the Forest Service summarily excluded approximately 700 of the 1,110 inventoried miles from all consideration. The Forest Service presented only four alternatives in the Record of Decision and Final Environmental Impact Statement, with one alternative adding 361 miles to the Transportation Management Plan, and the other three alternatives representing various reconfigurations of portions of that same 361 miles. This was an unreasonably narrow array of alternatives that failed to foster informed decisionmaking.

Second, the Forest Service violated its duty to coordinate and cooperate with the appropriate local entities when choosing which of the inventoried trails within Plumas National Forest should be designated as National Forest System roads or trails, in violation of 36 C.F.R.

§ 212.53 and 40 C.F.R. § 1506.2. The Forest Service relied solely on evidence that it had "communicated" with the Counties of Plumas and Butte as to the addition of trails to the Transportation Management Plan, and had "considered" the information provided by the Counties. But there was no evidence that the Service attempted to coordinate the addition of trails with the "land use plans, policies and controls" for the area concerned with Plumas National Forest. 40 C.F.R. § 1502.16(c).

ARGUMENT

I. THE FOREST SERVICE'S RECORD OF DECISION AND FINAL ENVIRONMENTAL IMPACT STATEMENT DID NOT CONSIDER A REASONABLE RANGE OF ALTERNATIVES

The Forest Service violated NEPA by failing to adequately consider a reasonable range of alternatives to the agency's proposed action. NEPA requires that all agencies study, develop, and describe appropriate alternatives when they propose action that creates conflicts concerning alternative uses of natural resources. 42 U.S.C. § 4332(E). However, the alternatives analysis contained within the Record of Decision and Final Environmental Impact Statement was insufficient under NEPA for the following two reasons. First, the alternatives considered by the Forest Service did not represent the full range of alternatives when considering

what fraction of the inventoried miles to add to the Transportation Management Plan. Second, the Forest Service categorically excluded approximately 700 of the available inventoried miles from its alternatives analysis and crafted all proposed alternatives from iterations of the remaining 410 inventoried miles, prejudicing the available choices to a small set of similar alternatives. Because this analysis did not satisfy the purpose and need for the Environmental Impact Statement, the alternatives analysis was inadequate under NEPA.

A. The Forest Service Provided an Insufficient Range of Options to Qualify as a Reasonable Range of Alternatives

The purpose of an Environmental Impact Statement is to provide both decisionmakers and the public with a "full and fair discussion" of significant environmental impacts and inform them of reasonable alternatives. 40 C.F.R. § 1502.1. "The 'touchstone' for courts reviewing challenges to an EIS under NEPA 'is whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation.'" *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 872 (9th Cir. 2004) (quoting *Cal. v. Block*, 690 F.2d 753, 769

(9th Cir. 1982)). To accomplish these goals, the EIS must "rigorously explore and objectively evaluate *all* reasonable alternatives." 40 C.F.R. § 1502.14(a) (emphasis added). Although the agency shall identify its preferred alternative, all reasonable alternatives should be presented in comparative form, providing a clear basis for choice among options. 40 C.F.R. § 1502.14. Further, agencies are prohibited from committing resources "prejudicing selection of alternatives" before they have made a final decision. 40 C.F.R. § 1502.2(f). Agencies must also discuss the reasons that any alternatives were "eliminated from detailed study." 40 C.F.R. § 1502.14(a). "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Westlands Water Dist.*, 376 F.3d at 868 (quoting *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998)).

The Forest Service inventoried 1,107 miles of unclassified but historically used and lawful miles, constituting 3,236 individual routes. *See* ER 292-325 (The First and Second Cut Spreadsheets). The Forest Service then gave each inventoried route a designation of High, Medium, or Low for two general criteria developed by the Service: "Benefits and

Access," on the one hand, and "Concerns and Risks," on the other. *Id.* Each of those criteria was divided into sub-criteria, such as "Travel" under "Benefits and Access," and "Water" under "Concerns and Risks." The Forest Service next designated each route as either Yes ("Y") or No ("N"). *Id.* A "Y" designation indicated that the route would be further evaluated by the Service for inclusion in the Plumas Forest Transportation Plan, while an "N" designation indicated that no further evaluation would be conducted, and the route would not be considered for inclusion. *Id.* Only 200 routes, out of 3,236 inventoried routes, received a "Y" designation. *Id.* The remaining 3,036 routes—including 1,528 routes specifically requested for inclusion by the Forest Users—received no on-site analysis, and were not included in the detailed alternatives analysis. ER 056, No. 15, ER 058, No. 21 (Fed. Defs.' Resp. to Pl.' Stmt. of Undisp. Facts).

In this way, the Forest Service summarily rejected 697 of the 1,107 miles contained in the First and Second Cut Spreadsheets. The Forest Service only conducted on-site environmental impacts review of the remaining 410 miles. All alternatives presented for consideration by the Forest Service and the public came from varying reconfigurations of the

approximately 37 percent of inventoried miles for which on-site reviews had been conducted.

Only four alternatives for the addition of miles to the Transportation Management Plan were considered in detail (Alternatives 2-5). These alternatives ranged from adding zero miles to the Plan to adding 361 miles. Alternative 2, which proposed adding 361 miles, or 33 percent of the 1,107 inventoried miles, to the Transportation Management Plan, contained the largest number of miles meaningfully considered by the Service. The remaining alternatives, with one or two minor exceptions, only presented reconfigured formulations and subsets of those same 361 miles. A fifth alternative, Alternative 1, represented taking "no action" at all, which only served as a baseline comparison for the other alternatives. *See* ER 262 (FEIS list of alternatives). While this alternative purports to allow continued use of the trails, it was not legally feasible under the Travel Management Rule, which prohibits motorized vehicle use on unclassified routes. This "no action" alternative would also add zero miles to the Transportation Management Plan, and is therefore not equivalent to the potential feasible alternatives that should have

been examined. These unexamined feasible alternatives represent the potential addition of between 34 and 100 percent of the inventoried miles.

The Forest Service's alternatives analysis does not comport with the relevant NEPA guidelines. The Council for Environmental Quality (CEQ) is the federal agency responsible for overseeing NEPA implementation by the federal government. Guidance documents issued by CEQ are entitled to substantial deference in connection with NEPA's interpretation. *Cal. v. Block*, 690 F.2d at 769. The CEQ FAQ section 1(b) notes that while there may be "an infinite number of alternatives" within a proposed action, only a reasonable number of alternatives must be analyzed and compared in a prepared EIS. 46 Fed. Reg. at 18,026. However, those alternatives must "cover the full spectrum of alternatives." *Id.* The example given within the FAQ of an "appropriate series of alternatives" is "dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the forest to wilderness." *Id.*

The full range of alternatives presented and considered for Plumas National Forest proposed adding 0, 13, 21, and 33 percent of the inventoried miles to the Transportation Management Plan. But the Forest Service gave no permissible reason as to why potential

alternatives considering the addition of larger percentages of the inventoried miles would not have been feasible. Indeed, the effects of a designation of more miles would not have been harder to ascertain than those of smaller designations, nor would an implementation of a larger number of miles have been any more remote or speculative. *Cf. Life of the Land v. Brinegar*, 485 F.2d 460, 472 (9th Cir. 1973) ("[T]here is no need for an [environmental impact statement] to consider an alternative whose effect cannot be reasonably ascertained, and whose implementation is deemed remote and speculative."). This is not to suggest that the Service necessarily should have considered more than five alternatives, but merely that those considered alternatives should have covered the "full spectrum" of alternatives between 0 and 100 percent. *See* CEQ FAQ 1(b).

Restating the alternatives considered in the Record of Decision and Final Environmental Impact Statement in the terms of the CEQ guidelines makes clear the failure of the Forest Service to consider a reasonable range of alternatives. The four considered alternatives can be viewed as "dedicating" 67, 79, 87, and 100 "percent of the [unclassified] Forest to wilderness." *See* CEQ FAQ 1(b) *and* ER 262 (FEIS list of

alternatives). This is a far cry from the "appropriate series of alternatives" suggested in the CEQ guidelines, covering "0, 10, 30, 50, 70, 90, or 100 percent." CEQ FAQ 1(b). In order to "cover[] the full spectrum of alternatives," the Service needed to "analyze[] and compare[]" at least *some* of the reasonable alternatives that exist through the range covering dedication of 0 to 66 percent of the unclassified forest to restricted access.

To be sure, the Forest Service could have eventually determined that alternatives adding between 34 and 100 percent of the unclassified trails would produce an undesirable amount of environmental harm, regardless of any potential recreational benefit. An agency could similarly determine that a dedication of only 0 to 33 percent of a forest to wilderness would not meet its environmental protection goals. But that would not relieve the agency of its NEPA obligations to examine those feasible alternatives within that range that were necessary to foster "informed decision-making" by the public and agency. *See Westlands Water Dist.*, 376 F.3d at 868. Failing to examine any such option within that range of feasible potential alternatives renders the Record of Decision and Final Environmental Impact Statement inadequate. *Id.*

In sum, the Forest Service provided a limited set of alternatives that represented only a third of the actual range of possible options. Since the proposed agency action prompting the Environmental Impact Statement was to determine whether and to what extent existing unclassified trails should be added to the Transportation Management Plan, the Record of Decision and Final Environmental Impact Statement did not satisfy the requirements of NEPA, and the decision of the district court should be reversed.

B. The Range of Options Considered Was Inadequate Because 700 Miles Were Summarily Excluded from Inclusion in Any Alternative

By summarily rejecting 63 percent of the available miles (comprising nearly 94 percent of the available inventoried routes) from any consideration, the Forest Service could not present a "reasonable range of alternatives" as required by NEPA. The four alternatives[2] considered in detail ranged from adding 0 percent to adding 33 percent of the available inventoried miles to the Travel Management Plan.

[2] As noted above, the fifth alternative, Alternative 1, would not have added any miles to the Travel Management Plan, but also would not have prohibited any use of motorized vehicles on the unclassified roads and trails, constituting "no action" by the agency. For that reason, Alternative 1 was not legally feasible under the Travel Management Rule.

However, all four alternatives were composed of varying formulations of essentially *the same 361 miles*:

- Alternative 2 would have added 361 miles, or 33 percent of the total inventoried miles.
- Alternative 5 would have added 234 of those same miles, or 21 percent of the total miles.
- Alternative 4 would have added 140 of the same miles, or 13 percent of the total.
- Alternative 3 would not have added any miles to the plan, thus prohibiting all recreational use in the Forest without special authorization.

ER 262.

Even assuming arguendo that the Forest Service could have established that any dedication of more than 361 miles would have been infeasible (however, as noted in Part I.A., no such argument was made in the district court),[3] the range of alternatives considered is still insufficient. Approximately 700 miles were categorically excluded from any consideration by the First and Second Cut Spreadsheets, and did not receive any on-site analysis by the Forest Service. Many of these routes

[3] Similarly, the unpublished decision in *Friends of Tahoe Forest Access v. U.S. Dep't of Agric.*, 641 F. App'x 741, 744 (9th Cir. 2016), did not address whether a summary exclusion of miles without any examination—using information and criteria that did not adequately assess environmental or recreational concerns—would violate NEPA.

were excluded for *non-environmental* reasons. *See, e.g.*, ER 292 (Beckwourth spreadsheet) ("dead end spur," "off county road," "off [maintenance] level 3"). Hence, their designation in place of designated routes within the Forest Service's preferred 410-mile subset might well have maintained the comparable recreational opportunities *while decreasing* any related environmental effects. For that reason, designation of many of these routes in the disfavored subset would have been consistent with the project's purpose of regulating motor vehicle travel, and providing additional motor vehicle access for recreational and other access needs. *Cf.* ER 237 (ROD). Indeed, many of the unclassified trails have been used for both accessing dispersed recreation activities and for motorized recreation opportunities for years. *See*, *e.g.*, ER 326-47 (examples of "Green Sheets," or Route Designation Feedback Forms, detailing historic uses on trails).

Again, as noted in the preceding paragraph, alternatives crafted from these unexamined miles might also have avoided environmental impacts that were contained within the agency's four principal alternatives. Because the Forest Service limited its on-site review and crafted all four considered alternatives from the same subset of 410 miles,

the agency did not consider the possibility, for example, that comparable recreational opportunities might exist on trails in areas that were already environmentally degraded. Incorporating such trails may have allowed the Forest Service to provide as good—or even better—recreational opportunities while reducing environmental impacts as compared to the designation of routes within the agency's favored 410-mile subset. Failing to investigate, propose, and consider any such options using differing subsets of all 1,107 available miles renders the Record of Decision and Final Environmental Impact Statement inadequate. *Westlands Water Dist.*, 376 F.3d at 868.

That point is borne out by the following hypothetical. Imagine that a government agency has been tasked with siting a building project within a 1,000-acre forest. Further assume that that agency has determined that the maximum potential allowable area for the building project was 300 acres. If the agency first pre-selected 300 acres from within a 1,000-acre forest and crafted alternatives out of various slices of that 300-acre parcel, it would end up with a "range of alternatives" that might represent building sites of 100, 150, 200, 250, and 300 acres. While this would appear to provide a full range of potential choices for a

maximum 300-acre building site, the Service would have excluded 700 acres of alternative and perhaps well-suited building sites from review, effectively "prejudicing [the] selection of alternatives" before making a final decision. 40 C.F.R. § 1502.2(f). Indeed, a 300-acre building site in the northwest corner of a 1,000-acre forest could conceivably have far fewer environmental impacts than a 100-acre building site in the southeast corner, or vice versa. A proper range of alternatives would instead include a range of building footprints, located in multiple feasible locations within the 1,000-acre forest.[4] Only by examining varied options can an agency provide decisionmakers and the public with enough information to foster "informed decision-making." *Westlands Water Dist.*, 376 F.3d at 868.

[4] As previously noted, many of the routes that the Forest Service summarily dismissed from further NEPA analysis—including the alternatives analysis—were removed from consideration not because of any legal or environmental concern, but simply because of the agency's conclusion that the routes may not have offered the best recreational opportunities. *See, e.g.*, ER 292 (Beckwourth spreadsheet) ("dead end spur," "off county road," "off [maintenance] level 3"). Moreover, many trails had been specifically requested for inclusion by interested parties because of their recreational value. *See, e.g.*, ER 292-294 (routes 6831, 7207, 7225, 7442, 7959, 7960, 7961, 7962, 7104, 7106, 8187, 6813, 6814, 1646, 5202, 5203).

Because the Forest Service selected only 410 miles for on-site environmental review, and then only considered alternatives crafted from that small subset of miles, the Environmental Impact Statement did not provide a reasonable range of alternatives. The district court decision to the contrary should be reversed.

C. The Considered Alternatives Were Insufficient to Meet the Purpose and Need of the Proposed Action Because the Majority of the Unclassified, Inventoried Miles Were Summarily Excluded From Consideration

The range of alternatives presented and considered by the Forest Service was also insufficient to meet the purpose and need of a proposed action. The Record of Decision explicitly identified that the purpose and need of the proposed action was to make additions to the existing Transportation Management Plan. ER 237. Further, the purpose of these additions was to "[p]rovide motor vehicle access to dispersed recreational opportunities" and "[p]rovide a diversity of motorized recreation opportunities." *Id.* Because the Forest Service excluded 63 percent of the unclassified miles from on-site review using information that did not adequately consider environmental impacts or recreational opportunities, the alternatives could not foster consideration of how the

project could best meet those goals while preserving environmental resources.[5]

In rejecting the Forest Users' argument, the district court cited to *Central Sierra Envtl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1088 (E.D. Cal. 2013) (hereinafter *CSERC*), noting that a reasonable range of alternatives is "determined in light of the purpose and need of the project." ER 010 (Order).

A closer examination of that case is instructive. In *CSERC*, the plaintiffs alleged that the Forest Service had failed to consider a reasonable range of alternatives by not including options that would have closed additional existing National Forest Transportation System roadways to all motorized travel. *Id.* at 1089. The court noted that the Service was not required to consider alternatives that would not aid the Service in making a "reasoned choice." *Id.* at 1090 (citing to *Block*, 690 F.2d at 767). Because the purpose and need of the project was "focused on managing motorized travel on unauthorized trails and making

[5] Certainly, the Forest Service was not required to conduct on-site examination of every mile. But the First and Second Cut Spreadsheets excluded many trails for non-environmental reasons, despite their historical ability to provide recreational opportunities. *See*, *e.g.*, ER 326-47 (examples of Green Sheets detailing varied historic uses on trails).

modifications to the existing National Forest Transportation System system to *facilitate* motorized use, the court determined that considering such additional options might have been acceptable, but were not necessary for the Service to make a "reasoned choice." *Id.*

Here, the vast majority of inventoried routes were summarily excluded using criteria contained in the First and Second Cut Spreadsheets. *See* ER 292-325 (The First and Second Cut Spreadsheets). These miles received no on-site survey, and many were excluded for reasons other than environmental attributes or ability to either provide motor vehicle access to recreational activities or provide motorized recreation opportunities. *See* ER 292 (Beckwourth spreadsheet) ("dead end spur," "off county road," "off [maintenance] level 3"). The First and Second Cut Spreadsheets did not remove routes that would not—or could not—facilitate the purpose or need of the proposed action. Indeed, the plan as finally adopted has closed off unclassified trails that had been used both for accessing dispersed recreation activities and for motorized recreation opportunities for years—in some cases, decades. *See*, *e.g.*, ER 326-47 (examples of Green Sheets detailing varied historic uses of trails). Importantly, these spreadsheets did not contain information such

as the locations within Plumas National Forest where people have historically engaged in camping, hiking, hunting, fishing, watching wildlife, collecting rocks, cutting firewood, among other lawful activities. *Id.*

Nor did the Forest Service consider how it might have avoided environmental impacts by substituting trails from the approximately 700 unexamined miles as opposed to those from the 410-mile subset. As noted above, many of these miles were summarily excluded for *non-environmental* reasons. *See, e.g.*, ER 292 (Beckwourth spreadsheet) ("dead end spur," "off county road," "off [maintenance] level 3"). Under the Travel Management Rule, the Forest Service was required to consider the potential effects on damage to soil, watershed, vegetation, and other forest resources, and the harassment of wildlife and significant disruption of wildlife habitats, among other criteria. *See* 36 C.F.R. § 212.55(b). Many of the unexamined trails might have provided significant recreational opportunities with minimal environmental impacts, making them more appropriate for addition to the Transportation Management Plan than those miles actually included in the Service's proposed alternatives. The existence of these "viable but

unexamined alternative[s]" renders the Environmental Impact Statement "inadequate." *Westlands Water Dist.*, 376 F.3d at 868 (quoting *Morongo Band of Mission Indians*, 161 F.3d at 575).

In sum, by eliminating 67 percent of the inventoried miles from any alternatives review, the Forest Service failed to "rigorously explore and objectively evaluate all reasonable alternatives," and therefore ignored potentially "viable but unexamined alternatives." 40 C.F.R. § 1502.14(a); *Westlands Water Dist.*, 376 F.3d at 868. Accordingly, the Service did not identify and analyze a reasonable range of alternatives in the Record of Decision and Final Environmental Impact Statement prepared for Plumas National Forest's Transportation Management Plan. This Court should reverse the decision of the district court.

II. THE FOREST SERVICE, BY MERELY MEETING WITH THE COUNTIES AND CONSIDERING THEIR INPUT, FAILED TO SATISFY ITS OBLIGATIONS TO "COORDINATE" AND "COOPERATE" WITH LOCAL GOVERNMENTS

The Forest Service was expressly required to ("shall") "coordinate with appropriate . . . local governmental entities . . . when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands." 36 C.F.R. § 212.53. As the Forest Service itself recognizes, "coordination with State, local, and tribal

governments is *critical* to the success of this final rule." Travel Management Rule, 70 Fed. Reg. at 68,280 (emphasis added).

Local governments have concerns and represent interests distinct from (but not necessarily adverse to) the Service's concerns and interests. And in this case, more than 1,000,000 acres of Plumas National Forest are located within Plumas and Butte Counties. Order at 3, ER 003.[6] Both Plumas and Butte Counties had acute concerns and interests in the effects of the then-proposed plans—such as the Counties' shared use of forest roads for safety and emergency vehicles, as well as the motor-vehicle restrictions' effects on recreation, tourism, access for food and fuel, and commerce. Further, and not least, the Counties represent the interests of their individual citizens, who have relied for years on motorized transportation to enjoy what is, after all, a *public* forest.

Here, the district court held that merely "meeting" with County officials and "consider[ing]" the Counties' input satisfied the Travel Management Rule's requirement that the Service "coordinate" with the Counties. ER 013-15 (Order). The district court, however, failed to

[6] Approximately 975,000 acres of the forest are located in Plumas County, and approximately 100,000 acres are in Butte County. ER 003.

consider what was actually required for the Service to "coordinate" with local governments. The district court did not even attempt to define the terms or determine what they require. Instead, it summarily concluded that the Service met its obligations under the Travel Management Rule and NEPA.

But the lack of express definitions does not relieve a court of its obligation to determine the meaning of "coordinate." Indeed, the facts in this case demonstrate that the Court should take this opportunity to examine the definition of "coordinate" along with its context in the scheme of the requirements set forth in the Travel Management Rule. The serious injuries suffered by the Counties and their citizens here demonstrate the importance of doing more than merely meeting with County officials (in public forms) and (ostensibly) considering their input.

A. The Term "Coordinate" Does Not Mean Merely "Meet With" or "Consider"

Accepting the Forest Service's view, the district court ruled that the Service sufficiently "coordinated" with the Counties by holding "four formal meetings and six informal meetings" with Plumas County officials and "offer[ing] to set up private, individual meetings" with two Butte

County supervisors. ER 014 (Order). The Service also "corresponded" with County officials. *Id.*

Below, the Forest Service established merely that it *considered* County input. That is, the Service sought and considered input from county officials; advised that it was open to considering additional specific trails in the future; considered County comments and objections; communicated with the Counties; reviewed planning and land use policies; held public meetings and opportunities for the Counties to participate in the decision-making process; provided notification of the planning process; and solicited and received the Counties' comments and concerns. *See*, *e.g.*, ER 029-30, No. 17 (Resp. to Fed. Defs.' Stmt. of Undisp. Facts).

The law and related regulations, however, require more than mere meetings and "consideration." The Travel Management Rule provides that "[t]he responsible official *shall coordinate* with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart." 36 C.F.R. § 212.53 (emphasis added).

Thus, the regulation's plain text requires not mere meetings and consideration, but actual coordination. *Cf. United States v. Bucher*, 375 F.3d 929, 932 (9th Cir. 2004) ("As with legislation, we presume the drafters [of regulations] said what they meant and meant what they said.") (citing *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). And the decision by the Service to require coordination—rather than consideration—in the Travel Management Rule must not be "treated lightly." *Guidiville Band of Pomo Indians v. NGV Gaming, Ltd.*, 531 F.3d 767, 775 (9th Cir. 2008) (citing *SEC v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003) (explaining that "Congress's explicit decision to use one word over another in drafting a statute is material," and adding that "[i]t is a decision that is imbued with legal significance and should not be presumed to be random or devoid of meaning")); *Biehl v. CIR*, 351 F.3d 982, 987 (9th Cir. 2003) (Courts "will not stretch the statutory language to cover a situation not contemplated by Congress").[7]

[7] As a general matter, the "tenets of statutory construction apply with equal force to the interpretation of regulations." *Boeing Co. v. United States*, 258 F.3d 958, 967 (9th Cir. 2001) (citing *Black & Decker Corp. v. Comm'r*, 986 F.2d 60, 65 (4th Cir. 1993), *aff'd*, 537 U.S. 437 (2003)).

The closest the Forest Service came to coordination here was its bare *consideration* of information provided by the Counties. ER 013-15 (Order). It is appropriate, therefore, to determine what these terms mean. *See United States v. Hagberg*, 207 F.3d 569, 574 (9th Cir. 2000) ("To interpret a regulation, we look first to its plain language.") (citing *Reno v. NTSB*, 45 F.3d 1375, 1379 (9th Cir. 1995)). And because the language is unambiguous, the ordinary meaning of to "coordinate" controls. *See Reno*, 45 F.3d at 1379 (when regulation is unambiguous, its plain meaning controls unless this reading would lead to absurd results).

Several dictionaries agree that to "coordinate" requires not just consideration, but more importantly, harmony or making different things work together in a single plan:

- "to bring into a common action, movement, or condition[;] [to] harmonize;"[8]
- to "[b]ring the different elements of (a complex activity or organization) into a harmonious or efficient relationship."[9]

[8] https://www.merriam-webster.com/dictionary/coordinate.

[9] https://en.oxforddictionaries.com/definition/coordinate. This dictionary defines "coordination" as the "organization of the different elements of a complex body or activity so as to enable them to work together effectively." https://en.oxforddictionaries.com/definition/coordination.

- "to make various, separate things work together."[10]

- "to organize the different parts of a job or plan so that the people involved work together effectively" and "to organize things into a system."[11]

On the other hand, "to consider" means merely "to think about a particular subject or thing or about doing something or about whether to do something;"[12] or to "[t]hink carefully about (something), typically before making a decision."[13]

Had the Travel Management Rule merely intended the Service to *consider* input from local governments—rather than *coordinate with* local governments—it would have said so. *See*, *e.g.*, 36 C.F.R.

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[10] http://dictionary.cambridge.org/us/dictionary/english/coordinate. Similarly, "coordination" is defined as "the activity of organizing separate things so that they work together." http://dictionary.cambridge.org/us/dictionary/english/coordination.

[11] http://www.macmillandictionary.com/us/dictionary/american/coordinate_1. "Coordination" here is defined as "the process of organizing people or things in order to make them work together effectively." http://www.macmillandictionary.com/us/dictionary/american/coordination.

[12] http://dictionary.cambridge.org/us/dictionary/english/consider.

[13] https://en.oxforddictionaries.com/definition/consider. Similar definitions can be found in the Macmillan dictionary ("to think about something carefully before making a decision or developing an opinion") (http://www.macmillandictionary.com/us/dictionary/american/consider); and Merriam-Webster ("to think about carefully") (https://www.merriam-webster.com/dictionary/consider).

§ 212.55(a) ("In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall *consider* effects on National Forest System natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration.") (emphasis added); 36 C.F.R. § 212.55(b) ("In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall *consider* [certain] effects . . . .") (emphasis added).

To provide just one example, Plumas County's appeal of the Record of Decision noted that, in response to comments, the Forest Service stated that county roads would be used to connect routes as user maps would be developed in the future. ER 232 (Plumas County Appeal). As the County pointed out in response, this approach "ignore[d] the requirement for legitimate coordination, since routes designated under the Public

Motorized Travel Management decision may overlook important roads that should be included in the system for the specific purposes of connecting to or enhancing the use of county roads." *Id.* The County identified, among other things, its General Plan and explained the interests of the County that the Service must consider if it were to truly coordinate its activities. *Id.* Instead, the Service simply went ahead with *its* plans, without any attempt to *coordinate* with the Counties.

Further, the significance of the coordination requirement is reflected by the Service's emphasis on how cooperative planning and coordination with affected agencies is essential to the motor vehicle route designation process under the Travel Management rule. 70 Fed. Reg. at 68,269. Such coordination is essential "to ensure that [the Service] take local needs into account." *Id.* at 68,272. Coordinating with local government entities "offers better opportunities for sustainable long-term recreational motor vehicle use and better economic opportunities for local residents and communities." *Id.* at 68,271. Moreover, designations of routes are "best handled at the local level by officials with first-hand knowledge of the particular circumstances, uses, and

environmental impacts involved, in coordination with Federal, State, and local governmental entities." *Id.* at 68,268.

Coordination means working together with others to achieve a unified goal, not merely working together with someone else. In *Cal. Native Plant Society v. City of Rancho Cordova*, 172 Cal. App. 4th 603, 641 (2009), the California court of appeal upheld the trial court's conclusion that the City of Rancho Cordova failed to "coordinate" with the U.S. Fish and Wildlife Service[14] regarding mitigation measures for special-status species when approving the City's residential and commercial project. The court accepted the City's dictionary definition of coordination to mean "to negotiate with others in order to work together effectively," but according to the court, "even under this definition the concept of 'coordination' means more than trying to work together with someone else." *Id.* "To 'coordinate' is 'to bring into a common action, movement, or condition'; it is synonymous with 'harmonize.'" *Id.* (citing *Merriam-Webster's Collegiate Dict.*, *supra*, at 275, col. 1).

[14] Although this case does not involve the Travel Management Rule's coordination requirement, it does involve a coordination requirement in which coordination was not defined.

Furthermore, "the dictionary the City cite[d] for the definition of the word 'coordinate' define[d] the word 'coordination' as 'cooperative effort resulting in an effective relationship.'" *Id.* (citing *New Oxford Dict.*, *supra*, at 378, col. 3). The court thus rejected that City's argument that "coordination" was synonymous with "consultation," explaining that "by definition 'coordination' implies some measure of cooperation that is not achieved merely by asking for and considering input or trying to work together." *Id.*

The court went on to say that the word "coordination" "implies a measure of cooperation [that] is apparent not only from the dictionary definition of the word, but also from the context in which the word is used in the plan." *Id.* Additionally, while "coordination" did not require the City to subordinate itself to the Service and others "by implementing their comments and taking their direction," the court concluded that the "coordination" requirement could not reasonably be "satisfied by the mere solicitation and rejection of input from agencies with which the City [wa]s required to coordinate" with. *Id.* at 642.

* * *

By allowing the Service to meet its coordination obligations by merely meeting with the Counties and considering their input, the district court failed to apply the plain meaning of the Travel Management Rule. In effect, the district court read the coordination requirement out of the Rule.[15] *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1184 (9th Cir. 2013) (text should be interpreted so as not to render it superfluous).

Therefore, this Court should reverse.

B. The Service Did Not Cooperate With the Counties When It Failed to Include Discussion of Conflicts Between Its Proposed Action and the Counties' Plans

Separately, the Service failed its obligation to expressly discuss conflicts between the Counties' plans and the Service's proposed course of action.

NEPA expressly states that it is "the continuing policy of the Federal Government, in *cooperation with* . . . local governments"

> to use *all* practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the *general* welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and

[15] Because the meaning of coordination is plain, a contrary agency interpretation would be entitled to no deference. *See Edwards v. First American Corp.*, 798 F.3d 1172, 1180 n.4 (9th Cir. 2015).

> other requirements of present and future generations of Americans.

42 U.S.C. § 4331(a) (emphasis added).

Accordingly, NEPA regulations provide that "[a]gencies shall *cooperate* with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements . . . ." 40 C.F.R. § 1506.2(c) (emphasis added). And "[w]here an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d).

Finally, a Final Environmental Impact Statement "*shall* include discussions" of "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(c) (emphasis added).

Here, the Final Environmental Impact Statement did not include any discussion of Plumas County or Butte County plans and policies in relation to motorized vehicle use on County roads, and the relation of these plans and policies to the Forest Service's proposed restrictions on motorized vehicle use. ER 174-78 (SAC & CORVA Appeal); ER 217-19

(Plumas County Appeal); ER 222-26 (Butte County Appeal). The Forest Service failed to assess possible conflicts between the goals, policies, and standards of the Butte County General Plan and the Plumas County General Plan, especially the Counties' goals of an integrated forest transportation network. *Id. Cf. Openlands v. U.S. Dep't of Transp.*, 124 F. Supp. 3d 796, 808-09 (N.D. Ill. 2015) (NEPA requires an agency to explain how it will reconcile its proposed transportation project with local transportation plans that are based on different planning assumptions).

The district court therefore erred when it concluded that the Forest Users did not identify any inconsistency between the Service's proposals and the Counties' plans and policies. ER 015 (Order). The Travel Management Plan closed off several hundred miles of roads that had been used and that the Counties planned to continue to use for safety and emergency vehicles, which closures will negatively affect recreation, tourism, access for food and fuel, and commerce.

Put another way, the question is not whether the Counties "might have preferred" certain road designations. ER 015 (Order). Rather, it is whether the Service failed to meet its obligations under NEPA to expressly "include discussions" of "[p]ossible conflicts between the

proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(c). Because the Service failed to include these discussions, the Service failed to follow NEPA's requirements. The district court's conclusion to the contrary is legal error.

CONCLUSION

For the reasons stated, the Forest Users respectfully request that the Court reverse the district court's judgment.

DATED: July 14, 2017.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Plaintiffs-Appellants are aware of no related cases within the meaning of Circuit Rule 28-2.6.

CERTIFICATE OF COMPLIANCE

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I hereby certify that on July 14, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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