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7
 8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA
 10

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

14 Plaintiffs,)

15 v.)

16 UNITED STATES DEPARTMENT OF)
 AGRICULTURE; TOM VILSACK, in his)
 17 official capacity as Secretary of the Department)
 of Agriculture; UNITED STATES FOREST)
 18 SERVICE; THOMAS L. TIDWELL, in his)
 official capacity as Chief of the United States)
 19 Forest Service; RANDY MOORE, in his)
 official capacity as PACIFIC SOUTHWEST)
 20 REGIONAL FORESTER; ALICE CARLTON,)
 in her official capacity as the former PLUMAS)
 21 NATIONAL FOREST SUPERVISOR; and)
 EARL FORD, in his official capacity as)
 22 PLUMAS NATIONAL FOREST)
 SUPERVISOR,)

23 Defendants.)
 24
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 27
 28

No. 2:15-cv-00605-MCE-EFB (TEMP)

**MEMORANDUM
 OF POINTS AND AUTHORITIES
 IN SUPPORT OF PLAINTIFFS’
 MOTION FOR SUMMARY JUDGMENT**

Date: July 21, 2016
 Time: 2:00 p.m.
 Place: Courtroom 7, 14th Floor
 Judge: Hon. Morrison C. England, Jr.

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1 Plaintiffs AMY GRANAT; CORKY LAZZARINO; SIERRA ACCESS COALITION;
2 CALIFORNIA OFF-ROAD VEHICLE ASSOCIATION; THE COUNTY OF PLUMAS; and THE
3 COUNTY OF BUTTE (collectively, the “Plumas National Forest Group”) submit the following
4 Memorandum in Support of their Motion for Summary Judgment (the “Motion”). The Motion
5 seeks summary judgment on liability against UNITED STATES DEPARTMENT OF
6 AGRICULTURE; TOM VILSACK, in his official capacity as Secretary of the Department of
7 Agriculture; UNITED STATES FOREST SERVICE; THOMAS L. TIDWELL, in his official
8 capacity as Chief of the United States Forest Service; RANDY MOORE, in his official capacity
9 as PACIFIC SOUTHWEST REGIONAL FORESTER; ALICE CARLTON, in her official capacity
10 as the former PLUMAS NATIONAL FOREST SUPERVISOR; and EARL FORD, in his official
11 capacity as PLUMAS NATIONAL FOREST SUPERVISOR (collectively, the “Federal
12 Defendants”) for their issuance of the Final Environmental Impact Statement (“FEIS”) and Record
13 of Decision (“ROD”) for the Tahoe National Forest Motorized Travel Management Project,
14 R5-MB-122a, dated September, 2010 (collectively the “Decision Documents”), in violation of the
15 Travel Management Rule, 70 Fed. Reg. 68,264-68,291 (Nov. 9, 2005) (the “Travel Management
16 Rule”) and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (“NEPA”).

17 INTRODUCTION AND SUMMARY OF ARGUMENT

18 Plumas National Forest has long provided the public with diverse opportunities for
19 motorized recreation and access through forest-wide, cross-country travel and an interconnected
20 system of routes that includes individual roads and trails, many of which link to Butte County and
21 Plumas County public roads. Before the Forest Service took the action at issue in this lawsuit,
22 some of the roads and trails in Plumas National Forest had been part of the officially designated
23 National Forest Transportation System and, as such, could be lawfully used for motorized travel.
24 In addition, there were a substantial number of other roads and trails, known as “unclassified”
25 routes, that were not part of the National Forest Transportation System *per se*, but for decades were
26 lawfully used by the public for motorized travel in the Forest. There were approximately 3,236
27 such unclassified routes, representing approximately 1,107 miles in Plumas National Forest.
28 Through the Decision Documents, the Forest Service closed approximately 94% of the unclassified

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1 routes to motorized traffic. As a result, the public may no longer lawfully use motor vehicles on
2 such unclassified routes to access Plumas National Forest for lawful purposes.

3 In violation of NEPA and the Forest Service’s own regulations, the Decision Documents
4 fail to account for the extent to which closure to motorized travel of the vast majority of the
5 unclassified routes in the Plumas National Forest significantly impacts the quality of the human
6 environment. The Forest Service also violated NEPA by failing to consider a reasonable range of
7 alternatives in the Decision Documents when it summarily rejected, from meaningful alternatives
8 review, most of the viable alternatives, thereby conducting an alternatives analysis limited to a
9 small fraction of the alternatives that could have been considered. Further, the Forest Service
10 violated its own regulations and guidelines by failing to balance the specific motorized access
11 needs of the public against the resource conservation criteria it was required to consider before
12 restricting motorized vehicles on the unclassified roads and trails. In addition, the Forest Service
13 violated NEPA and its own regulations and guidelines by (1) refusing to coordinate its action with
14 Butte County and Plumas County, (2) failing to take a “hard look” at the impacts on the human
15 environment of its wholesale motorized route closures, (3) failing to provide adequate opportunity
16 for public comment, (4) failing to properly respond to public comments, and (5) neglecting to
17 conduct a cumulative impacts analysis beyond the borders of Plumas National Forest when such
18 impacts were foreseeable.

19 As a result of these violations, Plaintiffs, their members, or their citizens, as the case may
20 be, have been and continue to be injured by the Forest Service’s action because they depend on
21 motorized access to Plumas National Forest not only for recreational and aesthetic enjoyment but
22 also for low-cost sources of food and fuel, and for fire prevention and safety purposes. In addition,
23 the interests of Plumas and Butte Counties have been injured because the Forest Service’s failure
24 to coordinate its action with the Counties have undercut the Counties’ efforts to serve their citizens
25 through road planning and maintenance activities, as well as through their governmental efforts
26 to enhance business, prosperity, and recreation in the Counties.

27 ///

28 ///

PLAINTIFFS AND THEIR INTEREST IN THE CASE¹

1
2 Plaintiff Amy Granat is an individual with an autoimmune disease known as *pemphigus*
3 *vulgaris*, which required her to undergo chemotherapy from January of 2001 until June of 2006,
4 causing infections in her legs and limiting her ability to walk. Her ability to access back-country
5 areas in Plumas National Forest has been a key part of her medical rehabilitation. She has been
6 visiting Plumas National Forest for many years since 2001. Camping, fishing, and viewing
7 wildlife in Plumas National Forest have been important priorities for her and have been her
8 principal ways of spending quality time with her children. Granat Decl. ¶ 15. Because of her
9 walking disability, she is now foreclosed from accessing many parts of the Forest that were
10 accessible to her only by motor vehicle in the past, because she is unable to access those areas on
11 crutches, by wheelchair, by cane, or by using braces on her legs, even with the help of her
12 long-time service dog, Tucker. As a result, her ability to enjoy Plumas National Forest has been
13 drastically reduced. Granat Decl. ¶ 16. Because of the Forest Service’s action, Plaintiff Granat
14 is no longer able to legally use the unclassified routes, thereby depriving her of the pleasures
15 afforded by some of her favorite parts of the Forest. Granat Decl. ¶ 18. Ms. Granat has concrete
16 plans to use the now-closed routes if they are legally authorized in the future, Granat Decl. ¶ 7, and
17 she has participated extensively in the process leading up to the issuance of the Decision
18 Documents and the appeal of such documents. Granat Decl. ¶¶ 4-18.

19 Plaintiff Corky Lazzarino is an individual who for many years has used and continues to
20 use Plumas National Forest by driving her jeep on Forest roads, rockhounding, cutting firewood,
21 fishing, driving to trailheads to go hiking, camping, exploring new places in the Forest, and
22 enjoying viewing wildlife, historical sites, and scenic forest areas. The action of the Forest Service
23 deprives her of the ability to access areas of Plumas National Forest which she had accessed in the
24 past solely by motor vehicle, and she has concrete plans to access the Forest by motor vehicle
25 using the routes closed by the Forest Service should they be made legal in the future. Lazzarino
26 Decl. ¶¶ 5-15.

27
28 ¹ Declarations filed on behalf of the Plaintiffs are solely for the purpose of establishing standing
and not for the purpose of expanding the administrative record.

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1 Plaintiff California Off-Road Vehicle Association (“CORVA”) is a statewide nonprofit
2 California corporation with approximately 3,000 members comprising individuals and
3 organizations throughout California. CORVA advocates for responsible recreation on public lands
4 and maintains an educational program for responsible outdoor recreation. Association members
5 have provided thousands of volunteer man hours maintaining Plumas National Forest’s
6 unclassified trails and roads. Granat Decl. ¶ 2. CORVA’s members have enjoyed, and hope for
7 themselves and future generations to enjoy, a variety of recreational, aesthetic, and commercial
8 activities within Plumas National Forest. These activities include riding off-road vehicles and
9 motorcycles, driving jeeps and trucks, hunting, fishing, camping, hiking, viewing wildlife and
10 plants, rockhounding, photography, cutting firewood, and travel associated with and necessary to
11 such activities via motorized vehicles. CORVA’s members have enjoyed in the past, and have
12 concrete plans to enjoy in the future should they again be authorized, numerous activities
13 prohibited by the Decision Documents, including motorized recreation on unclassified existing
14 roads and trails that have not been designated by the Forest Service in the Travel Management
15 Plan. Should those routes be made legally available once again for motorized travel, CORVA
16 members have concrete plans to use such routes to access and enjoy diverse parts of Plumas
17 National Forest for the purposes stated in this paragraph. Granat Decl. ¶ 7. Plaintiff CORVA, as
18 an organization and through individual members, attended public meetings regarding Motorized
19 Travel Management, submitted detailed comments and objections to the Draft Environmental
20 Impacts Statements, and otherwise participated in the process that generated the ROD and FEIS.
21 CORVA also prosecuted an administrative appeal of the Decision Documents. Granat Decl. ¶¶
22 7-11. As a result, CORVA was injured because other important business of the organization could
23 not be adequately addressed. Granat Decl. ¶¶ 3-5.

24 Plaintiff Sierra Access Coalition (“SAC”) is a regional organization in Northern California
25 with more than 1,450 members, including individuals, user groups, and local businesses that work
26 to protect access to public lands for a multitude of diverse uses including, but not limited to,
27 cutting and retrieving firewood, hunting, fishing, camping, sightseeing, hiking, viewing wildlife
28 and plants, rockhounding, horseback riding, driving jeeps and trucks, riding bicycles, motorcycles,

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1 off-road vehicles, and other recreational and aesthetic activities. Lazzarino Decl. ¶ 3. SAC works
2 to protect access primarily to Plumas National Forest and other national forests in Northern
3 California. Lazzarino Decl. ¶ 4. Members of SAC have enjoyed, and hope for themselves and
4 future generations to enjoy, a variety of recreational and aesthetic activities within Plumas National
5 Forest. These activities include riding off-road vehicles and motorcycles, driving jeeps and trucks,
6 hunting, fishing, camping, sightseeing, hiking, viewing wildlife and plants, rockhounding,
7 photography, cutting and retrieving firewood, and travel associated with and necessary to such
8 activities via motorized vehicles. The Forest Service’s ROD closed many of the motorized access
9 routes used by SAC members in the past for such purposes, making motorized travel on those
10 routes illegal. As a result, those routes were not included in the Plumas National Forest Travel
11 Management Plan (“TMP”). Should those routes be made legally available once again for
12 motorized travel, SAC members have concrete plans to use such routes to access and enjoy diverse
13 parts of Plumas National Forest for the purposes stated in this paragraph. Lazzarino Decl. ¶ 5.
14 SAC has spent numerous resources participating in the EIS process undertaken by the Forest
15 Service at Plumas National Forest in connection with the TMP. SAC’s participatory activities
16 included providing extensive comments on the DEIS and taking an administrative appeal of the
17 FEIS. Because of the Forest Service’s refusal to acknowledge SAC’s legitimate concerns, the
18 group has been required to go to extraordinary measures to bring their issues to the Forest
19 Service’s attention, thereby requiring the group to redirect resources from other goals, such as
20 maintaining forest routes. Lazzarino Decl. ¶ 8.

21 Plaintiff Plumas County is a political subdivision of the State of California. Perreault Decl.
22 ¶ 2. Approximately 975,000 acres of Plumas National Forest are located within Plumas County.
23 Perreault Decl. ¶ 4. Citizens of Plumas County have enjoyed, and hope for themselves and future
24 generations to enjoy, a variety of recreational, aesthetic, and commercial activities within Plumas
25 National Forest. These activities include riding off-road vehicles and motorcycles, driving jeeps
26 and trucks, hunting, fishing, camping, hiking, viewing wildlife and plants, rockhounding,
27 photography, cutting firewood, and travel associated with and necessary to such activities via
28 motorized vehicles. Because of the Forest Service’s action, the citizens of Plumas County will no

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1 | longer be able to enjoy many unclassified routes for those purposes because the routes have been
2 | closed. Many citizens of the County are dependent on revenue associated with recreational
3 | visitation to Plumas National Forest. Revenues from tourism attracted by the formerly open
4 | unclassified routes are and will continue to be lost to County residents, and the County itself has
5 | lost and will continue to lose tax and fee revenues as a result. In addition, the loss of logging road
6 | infrastructure will adversely impact the economy of Plumas County. Perreault Decl. ¶¶ 5-6.
7 | Plumas County participated actively in the Forest Service's process leading up to the ROD and
8 | FEIS, and filed and actively prosecuted an administrative appeal of those Decision Documents.
9 | Perreault Decl. ¶¶ 7-8, 14-20. Notwithstanding the best efforts of Plumas County to communicate
10 | with the Forest Service, the Forest Service failed to coordinate its decisionmaking process with
11 | such County local laws and policies, thereby directly injuring the County's interests in enacting
12 | and enforcing its local laws and policies. Perreault Decl. ¶¶ 10-13. As a result of the failure of the
13 | Forest Service to coordinate its efforts with Plumas County, County residents suffered injury
14 | because they were deprived of motorized access to many parts of the Forest and were thereby
15 | unable to enjoy the scenic, recreational, and aesthetic pleasures afforded by those areas. The
16 | Forest Service's route closures also injured Plumas County citizens who rely on forest access for
17 | food and fuel. The Forest Service's action also directly injured Plumas County itself because the
18 | closed roads provided access to forest areas for fire fighting and other safety purposes that now are
19 | illegal for motorized travel. In addition, because of the Forest Service's failure to coordinate with
20 | Plumas County, the County was required to divert resources from other important County business
21 | to its efforts to deal with the Forest Service, thereby further directly injuring the County as a
22 | government organization. Perreault Decl. ¶¶ 11-20.

23 | Plaintiff Butte County is a political subdivision of the State of California. Citizens of Butte
24 | County have enjoyed, and hope for themselves and future generations to enjoy, a variety of
25 | recreational, aesthetic, and commercial activities within Plumas National Forest. These activities
26 | include riding off-road vehicles and motorcycles, driving jeeps and trucks, hunting, fishing,
27 | camping, hiking, viewing wildlife and plants, rockhounding, photography, cutting firewood, and
28 | travel associated with and necessary to such activities via motorized vehicles. Because of the

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1 Forest Service’s action, the citizens of Butte County will no longer be able to enjoy many of the
 2 previously available unclassified routes for those purposes because the routes have been closed.
 3 Because of the Forest Service’s refusal to coordinate with Butte County in connection with its
 4 action, Butte County has been injured as an organization. Crump Decl. ¶ 5. Butte County has
 5 county roads leading to and connecting with roads and trails in Plumas National Forest. Many of
 6 these county roads and trails are designated by Butte County for shared use by highway legal and
 7 non-highway legal vehicles and act as loop access between existing roads and trails within the
 8 Forest. The Forest Service ignored these County designations, thereby injuring Butte County,
 9 which relies on a continuous connecting network of County and Forest roads. Crump Decl. ¶¶ 7-9.
 10 The Forest Service’s failure to take into account the impacts that the drastic reduction in motorized
 11 vehicle access would have on the ability of citizens of Butte County to access the Forest for such
 12 purposes forced Butte County to devote scarce County Resources to plead with the Forest Service
 13 to coordinate its efforts with County laws and policies, taking away County employees from other
 14 important County business, to the detriment of Butte County. Crump Decl. ¶ 14.

LEGAL FRAMEWORK

NEPA

15
 16
 17 NEPA is the “basic national charter for protection of the environment” and requires federal
 18 agencies to comply with its precepts “to the fullest extent possible.” *Churchill County v. Norton*,
 19 276 F.3d 1060, 1072 (9th Cir. 2001), *as amended by* 282 F.3d 1055 (9th Cir. 2002); *City of Davis*
 20 *v. Coleman*, 521 F.2d 661, 673 (9th Cir. 1975). NEPA requires that proposals for prospective
 21 major federal actions be evaluated in light of their future effect upon environmental factors before
 22 the action is approved. *California v. Norton*, 311 F.3d 1162, 1175 (9th Cir. 2002). In addition,
 23 NEPA requires that federal agencies use “all practical means” to ensure the attainment of the
 24 “widest range of beneficial uses of the environment” without undue risk and “to create and
 25 maintain conditions under which *man and nature can exist in productive harmony*.” 42 U.S.C.
 26 § 4331 (emphasis added). Major federal actions that require a change in the status quo require full
 27 NEPA review, including an Environmental Impact Statement (“EIS”). *Upper Snake River Chapter*
 28 *of Trout Unlimited v. Hodel*, 921 F.2d 232, 235 (9th Cir. 1990).

1 An EIS must include (i) “the environmental impact of the proposed action, (ii) any adverse
 2 environmental effects which cannot be avoided should the proposal be implemented,
 3 (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s
 4 environment and the maintenance and enhancement of long-term productivity, and (v) any
 5 irreversible and irretrievable commitments of resources which would be involved in the proposed
 6 action should it be implemented.” 42 U.S.C. § 4332(2)(C). NEPA section 102(2)(E) requires the
 7 agency to “study, develop and describe appropriate alternatives to recommended courses of action
 8 in any proposal which involves unresolved conflicts concerning alternative uses of available
 9 resources.” 42 U.S.C. § 4332(2)(E). The duty set forth in section 102(2)(C) is in addition to, and
 10 independent of, the EIS requirements, although it may be fulfilled in the context of an EIS.

11 **National Forest Management Act**

12 The National Forest Management Act establishes the statutory framework for management
 13 of the National Forest System. In the National Forest Management Act and other statutes,
 14 “Congress has consistently acknowledged that the Forest Service must balance competing demands
 15 in managing National Forest System lands, since Congress’ early regulation of the national forests,
 16 it has never been the case that ‘the national forests were . . . to be set aside for non-use.’” *The*
 17 *Lands Council v. McNair*, 537 F.3d 981, 990 (9th Cir. 2008) (citations omitted). Additional
 18 guidance, incorporated expressly within the Act, is offered in the Multiple-Use Sustained-Yield
 19 Act, which provides that the various surface resources be managed “so that they are utilized in the
 20 combination that will best meet the needs of the American people.” *See* 16 U.S.C. § 531(a)
 21 (definition of “multiple use”) and (b) (definition of “sustained yield”); 16 U.S.C. § 1604(g)
 22 (incorporating Multiple-Use Sustained-Yield Act provisions into the National Forest Management
 23 Act). The National Forest Management Act mandates that the Forest Service develop land and
 24 resource management plans for “units” of the National Forest System, such as Plumas National
 25 Forest. 16 U.S.C. § 1604(a). The Forest Service has promulgated guidelines for land management
 26 plans in accordance with the National Forest Management Act, including “insur[ing] consideration
 27 of the economic and environmental aspects of various systems [and] to provide for outdoor
 28 recreation.” *Id.* at § 1604(g)(3)(A).

1 Under the National Forest Management Act, the development of land and resource
2 management plans must be “coordinated with the land and resource management planning process
3 of State and local governments” 16 U.S.C. § 1604(a). Specifically, the Forest Service “shall
4 engage . . . State and local governments . . . early and throughout the planning process” for input
5 into decisionmaking regarding national forests. 36 C.F.R. § 219.4. *See* 36 C.F.R. § 219.16
6 (requirements for notification regarding plan development, amendment, or revision).

7 **The Travel Management Rule**

8 On November 9, 2005, the Forest Service published in the Federal Register the final Travel
9 Management Rule. 70 Fed. Reg. 68,264 - 68,291 (Nov. 9, 2005). The Travel Management Rule
10 “requires designation of those roads, trails, and areas that are open to motor vehicle use” and “will
11 prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles on
12 routes and in areas that is not consistent with the designations.” 70 Fed. Reg. 68,264 (Nov. 9,
13 2005). Under the rule, only roads and trails that are designated by the Forest Service as part of a
14 National Forest Transportation System on a forest-by-forest basis may be used for motorized
15 travel, regardless of the extent to which they had been used for such travel in the past.

16 The Travel Management Rule requires each national forest to identify the minimum road
17 system needed for safe and efficient travel and for administration, utilization, and protection of
18 National Forest System lands. 36 C.F.R. § 212.5(b). In determining a minimum road system, the
19 responsible official must incorporate a science-based roads analysis at the appropriate scale. *Id.*
20 The minimum system is the road system determined to be needed to meet resource and other
21 management objectives adopted in the forest land and resource management plan, to meet statutory
22 and regulatory requirements, to reflect long-term funding expectations, and to ensure that the
23 system minimizes environmental impacts associated with road construction, reconstruction,
24 decommissioning, and maintenance. *Id.*

25 The Travel Management Rule provides “general criteria” for designating roads, trails, and
26 areas for motor vehicle use on forest lands. 36 C.F.R. § 212.55(a). The responsible official must
27 consider effects on natural and cultural resources, public safety, provision of recreational
28 opportunities, access needs, conflicts among uses of National Forest System lands, the need for

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1 maintenance and administration of roads, trails, and areas, and the availability of resources for
2 maintenance and administration. *Id.* The Travel Management Rule also provides “specific
3 criteria” which must be considered for the designation of trails and areas. *Id.* at (b). The
4 responsible official must consider effects on specified resources, with the objective of minimizing
5 damage to soil, watershed, vegetation, and other forest resources; harassment of wildlife and
6 significant disruption of wildlife habitats; conflicts between motor vehicle use and other
7 recreational uses; and conflicts among different classes of motor vehicle use. *Id.*

8 The Travel Management Rule requires the Forest Service to “coordinate with appropriate
9 . . . county, and other local governmental entities . . . when designating National Forest System
10 roads, National Forest System trails, and areas on National Forest System lands pursuant to [the
11 Travel Management Rule].” 36 C.F.R. § 212.53.

12 In the Travel Management Rule, the Forest Service noted that “many National Forests
13 contain user-created roads and trails,” 70 Fed. Reg. at 68,264, concluding that a “designated and
14 managed system of roads, trails, and areas for motor vehicle use is needed,” and that such a system,
15 “established with public involvement, will enhance public enjoyment of the National Forests while
16 maintaining other important values and uses on [National Forest System] lands.” *Id.* at 68,265.

17 **FACTS**

18 The relevant facts are set forth in detail in the Statement of Undisputed Facts (“SUF”) filed
19 herewith. Specific paragraphs of the SUF are cited and described herein as appropriate.

20 **STANDARD OF REVIEW**

21 The Defendants’ actions are reviewed under the Administrative Procedure Act (“APA”),
22 5 U.S.C. § 551, *et seq.*, which authorizes a court to “set aside agency action, findings, and
23 conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
24 accordance with law”. 5 U.S.C. § 706(2)(A). Review is based on the administrative record. *See*
25 *Camp v. Pitts*, 411 U.S. 138, 142 (1973). In exercising its duty under the APA, a court must
26 consider whether the agency acted within the scope of its legal authority, whether the agency
27 adequately explained its decision, whether the agency based its decision on the facts in the record,
28 and whether the agency considered other relevant factors. *See Citizens to Preserve Overton Park*

1 | *v. Volpe*, 401 U.S. 402, 415 (1971); *see also Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 378
 2 | (1989).

3 | Summary judgment must be granted if “there is no genuine dispute as to any material fact
 4 | and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). When a dispute
 5 | is based on an administrative record, as is this case, “summary judgment is an appropriate
 6 | mechanism for deciding the legal question of whether the agency could reasonably have found the
 7 | facts as it did.” *City and County of San Francisco v. United States*, 130 F.3d 873, 877 (9th Cir.
 8 | 1997) (quoting *Occidental Eng’g Co. v. INS*, 753 F.2d 766, 770 (9th Cir. 1985)). “[T]he function
 9 | of the district court is to determine whether or not as a matter of law the evidence in the
 10 | administrative record permitted the agency to make the decision it did.” *San Francisco*, 130 F.3d
 11 | at 877 (quoting *Occidental Eng’g*, 735 F.2d at 769).

12 | **ARGUMENT**

13 | **I**

14 | **THE FOREST SERVICE VIOLATED THE TRAVEL**
 15 | **MANAGEMENT RULE, ITS OWN GUIDELINES, AND**
 16 | **NEPA BY FAILING TO EVALUATE AND DISCLOSE THE**
 17 | **ENVIRONMENTAL IMPACTS OF MOTORIZED TRAVEL ON**
 18 | **THOUSANDS OF UNCLASSIFIED BUT HISTORICALLY AND**
 19 | **LAWFULLY USED ROUTES IN PLUMAS NATIONAL FOREST**

20 | **A. Thousands of Routes Were Improperly Rejected From Inclusion in**
 21 | **the Plumas National Forest Travel Management Plan Based on a Paper**
 22 | **Review Conducted in the Office, Without On-Site Impacts Evaluation**

23 | Under the Travel Management Rule, the Forest Service is required to incorporate a
 24 | science-based roads analysis at the appropriate scale when determining the road system needed to
 25 | protect National Forest lands while providing the public with reasonable recreation and access
 26 | opportunities. 36 C.F.R. § 212.55(a). In designating roads, trails, and areas for motor vehicle use
 27 | on forest lands, the Forest Service must consider effects on natural resources, along with the
 28 | provision of recreational opportunities, access needs, and a long list of other criteria. *Id.* With
 regard to trails specifically, the Forest Service must also consider damage to soil, watershed,
 vegetation, and other forest resources. 36 C.F.R. § 212.55(b). In effect, the Travel Management
 Rule requires the Forest Service to make its decisions based upon a balancing of criteria requiring

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1 resource protection, on the one hand, and recreational opportunities, on the other hand. In turn, the
 2 REGION 5 ROUTE DESIGNATION GUIDEBOOK FOR NATIONAL FORESTS IN CALIFORNIA (“Route
 3 Designation Guidebook”), which was designed to work in tandem with the Travel Management
 4 Rule, provides that “Forest Service policy applies the minimum restrictions to protect resources
 5 and provide for user safety while continuing to provide recreation opportunities.” AR
 6 PLU-C-001689. The ROD’s restrictions on motorized vehicle use do not meet the standards of
 7 either the Travel Management Rule or the Route Designation Guidebook.

8 The Forest Service inventoried 1,107 non-system, unclassified, historically used and lawful
 9 *miles*, which comprise 3,236 individual *routes*. The inventory was based on the Forest Service’s
 10 decision to divide the Forest into three areas, referred to as “Beckwourth,” Feather River,” and
 11 Mount Hough. Only 410 of the unclassified miles (or 200 routes) received any on-site
 12 environmental impacts review, while 697 miles (or 3,036 routes) were summarily rejected from
 13 inclusion in the Plumas National Forest Travel Management Plan based upon decisions made in
 14 the office by Forest Service employees without the site-specific information required by the Travel
 15 Management Rule and the Route Designation Handbook. *See* Forest Service Spreadsheets for
 16 Beckwourth, AR PLU-G-001242-1253, Feather River, PLU-G-001256-1261, and Mount Hough,
 17 PLU-G-001277-1292 (the “First and Second Cut Spreadsheets”). The First and Second Cut
 18 Spreadsheets show that only 37% of the inventoried non-system *miles* received any on-site
 19 environmental impacts analysis, while only 6% of the *routes* received any such impacts analysis.
 20 *Id.* Thus, 63% of the *miles* were summarily rejected from inclusion in the Plumas National Forest
 21 Travel Management Plan, while 94% of the *routes* were rejected during the process, based on a
 22 paper evaluation, without on-site data gathering, review, or analysis. *Id.*

23 A careful review of the First and Second Cut Spreadsheets shows the process used by the
 24 Forest Service. First, each inventoried route received designations of High (“H”), Medium (“M”)
 25 or Low (“L”), for two general criteria developed by the Service: “Benefits and Access,” on the
 26 one hand, and “Concerns and Risks,” on the other hand. *Id.* Each of those criteria were divided
 27 into sub-criteria, such as “Travel” under “Benefits and Access,” and “Water” under “Concerns and
 28 Risks.” Next, the Forest Service designated each route as either Yes (“Y”) or No (“N”). *Id.* A “Y”

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1 designation indicated that a route would be further evaluated for possible inclusion in the Plumas
 2 National Forest Transportation Plan, while a “N” designation indicated that no further evaluation
 3 would be conducted and the route would not be included. *Id.* Only approximately 200 unclassified
 4 routes, out of a total of approximately 3,236 inventoried routes, received a “Y” designation, and
 5 *only* those 200 routes (representing 410 miles) were set aside for any on-site visits, data gathering,
 6 or analysis. *Id.* In that way, approximately 94% of the total 3,236 inventoried, unclassified routes
 7 received no on-site environmental impacts analysis before being summarily dismissed by the
 8 Forest Service from any further consideration for inclusion. *Id.* In so doing, the Forest Service
 9 ignored its duties to identify, evaluate, and disclose on-site conditions before determining whether
 10 the routes actually met the environmental and recreational criteria of the Travel Management Rule
 11 or the Route Designation Guidebook. Approximately 1,528 of the 3,036 routes that were
 12 summarily rejected from inclusion had been specifically requested for inclusion by the Petitioners
 13 or other members of the public. *See* AR PLU-D-012283-13831.

14 The failure of the Forest Service to identify, evaluate, and disclose the site conditions of
 15 94% of the unclassified routes violates the directive of the Travel Management Rule to consider:
 16 (1) effects on natural and cultural resources, public safety, provision of recreational opportunities;
 17 access needs; conflicts among uses of National Forest System lands; the need for maintenance and
 18 administration of roads, trails, and areas; the availability of resources for maintenance and
 19 administration; and (2) the effects on specified resources, with the objective of minimizing damage
 20 to soil, watershed, vegetation, and other forest resources; harassment of wildlife and significant
 21 disruption of wildlife habitats; conflicts between motor vehicle use and other recreational uses;
 22 and conflicts among different classes of motor vehicle use. 36 C.F.R. § 212.55. Accordingly, the
 23 Forest Service’s action was inconsistent with the general and specific criteria of the Travel
 24 Management Rule and therefore was “not in accordance with law.” 5 U.S.C. § 706(2)(A). *See*
 25 *Humane Society v. Locke*, 626 F.3d 1040, 1046-47 (9th Cir. 2010) (agency action should be set
 26 aside if “not in accordance with law”).

27 By its failure to gather and analyze the effects of its action on natural resources and
 28 recreational opportunities *before* determining which roads and trails are to be added to the Plumas

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1 National Forest Travel Management Plan and which are to be closed to motorized traffic, the
 2 Forest Service also failed to implement its own Route Designation Guidebook, which is applicable
 3 to all California national forests, and which requires the Forest Service to apply “*minimum*
 4 *restrictions*” on recreation opportunities, while protecting natural resources. AR PLU-C-001689.
 5 In rejecting 63% of the historical miles and 94% of the historical routes without site-specific
 6 reviews, the Forest Service violated the requirements of the Route Designation Guidebook
 7 because, by failing to collect the on-site data, it ensured that it could not balance recreational
 8 opportunities against protecting natural resources. *See Wilderness Society v. Tyrell*, 701 F. Supp.
 9 1473, 1481 (1988) (agencies must comply with their own regulations and guidelines). Moreover,
 10 the absence of site-specific data for so many routes that were summarily dismissed from further
 11 consideration means that the Forest Service’s decision is not supported by substantial evidence,
 12 and therefore is necessarily arbitrary and capricious. *See Ursack, Inc. v. Sierra Interagency Black*
 13 *Bear Group*, 639 F.3d 949, 958 n.4 (9th Cir. 2011) (an agency acts arbitrarily and capriciously
 14 when its decision is not founded on substantial evidence).

15 Among the reasons for summarily excluding most miles and routes without on-site
 16 reviews, the Forest Service eliminated roads and trails that were less than one-half mile in length
 17 or because they were dead-end spurs off of county or state roads, or led to or from private land,
 18 even when the landowner specifically requested consideration of the routes. *See, e.g.*, AR
 19 PLU-G-001242; AR PLU-G-001261; PLU-G-001277. Thus, the Forest Service’s decision to
 20 eliminate motor vehicle use on these roads and trails was not based on scientific analysis of effects
 21 to natural resources from motorized vehicles on such roads, balanced against the need to minimize
 22 impacts on recreational opportunities, as required by 36 C.F.R. § 212.55(a). *See Confederated*
 23 *Tribes of Yakima Indian Nation v. F.E.R.C.*, 746 F.2d 466, 474 (9th Cir. 1984) (agencies required
 24 to comply with their regulations).

25 **B. The Forest Service’s Blanket Exclusion of Maintenance**
 26 **Level 3 Roads Was Impermissible**

27 In addition, the Forest Service banned off-road vehicle use on all Maintenance Level 3
 28 roads, because it considered those roads “highways” within the meaning of the California Vehicle

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1 Code and has therefore concluded that mixed vehicle use on these roads is unsafe. AR at
2 PLU-B-000104. The Forest Service has produced no reports of accidents between cars and trucks
3 and motorcycles and quads in Plumas National Forest on Maintenance Level 3 roads in the past
4 10 years to support the elimination. Data such as average daily traffic counts and the proportion
5 of different classes of vehicles using the roads is relevant to evaluating potential safety issues on
6 Maintenance Level 3 roads with combined off-road vehicle, motorcycle, and passenger vehicle
7 use. AR PLU-C-000583-736. However, the Forest Service has no traffic count data to rely on
8 average daily traffic use as a basis for closing roads. The maintenance level of the roads specifies
9 the typical use, surface type, and width of the road, but does not provide information related to
10 potential safety hazards. Indeed, the Route Designation Guidebook states that “Forest Service
11 policy applies the minimum restrictions required to protect resources and provide for user safety
12 while continuing to provide recreation opportunities.” AR PLU-C-001696. Banning off-road
13 vehicles from Maintenance Level 3 roads does not align with this policy, as the Forest Service has
14 failed to provide data that demonstrates that the Maintenance Level 3 ban is the minimum
15 restriction required to provide for user safety. Moreover, the Forest Service’s procedures call for
16 an engineering analysis in decisions on motorized traffic. AR PLU-D-008356-57; AR
17 PLU-D-008419; AR PLU-C-001544. Here, the Forest Service declined to perform appropriate
18 engineering analyses to determine appropriate restrictions on Maintenance Level 3 roads and,
19 instead, with one minor exception, simply placed a blanket ban on off-road vehicle use on
20 Maintenance Level 3 roads. AR PLU-B-000016. Accordingly, the Forest Service’s decision to
21 eliminate off-road vehicles from all Maintenance Level 3 roads was inconsistent with its own
22 procedures. *See Morton v. Ruiz*, 414 U.S. 199, 235 (1974) (agency must comply with its own
23 procedures when rights of third parties are at stake).

24 The failure of the Forest Service to follow its own rules, guidelines, and procedures
25 violates not only those rules, guidelines, and procedures but also the letter and spirit of NEPA, 42
26 U.S.C. § 4332(2)(C), which mandates that an EIS must be “a detailed statement” setting forth
27 (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which
28 cannot be avoided should the proposed action be implemented, (iii) alternatives to the proposed

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1 | action, (iv) the relationship between local short-term uses of man’s environment and the
 2 | maintenance and enhancement of long-term productivity, and (v) any irreversible commitments
 3 | of resources which would be involved in the proposed action should it be implemented. By
 4 | assuming without analysis that over 63% of the unclassified miles and 94% of the unclassified
 5 | routes would not be designated, the Forest Service ignored the criteria set forth in 36 C.F.R.
 6 | § 212.55(a)-(d) and, accordingly, put itself in a position in which it could not comply with the
 7 | procedural requirements of 42 U.S.C. § 4332(2)(C), because it did not collect the data upon which
 8 | it could have complied. Although the substantive decision as to which routes would ultimately
 9 | be designated may be a matter for the sound judgment of the Defendants, they are not permitted
 10 | to ignore the required criteria or procedures of decisionmaking set forth in NEPA or in their own
 11 | regulations and guidelines. “It is rudimentary administrative law that discretion as to the
 12 | substance of the ultimate decision does not confer discretion to ignore the required procedures of
 13 | decisionmaking.” *Bennett v. Spear*, 520 U.S. 154, 172 (1997).

14 | II

15 | THE FOREST SERVICE VIOLATED NEPA BY FAILING TO 16 | CONSIDER A REASONABLE RANGE OF ALTERNATIVES

17 | An environmental impact statement must “study, develop, and describe appropriate
 18 | alternatives to recommended courses of action in any proposal which involves unresolved conflicts
 19 | concerning uses of available resources.” 42 U.S.C. §§ 4332(2)(C), 4332(2)(E). NEPA’s
 20 | implementing regulations provide that the alternatives analysis “is the heart of the environmental
 21 | impact statement [by] sharply defining the issues and providing a clear basis for choice among
 22 | options by the decisionmaker and the public.” 40 C.F.R. § 1502.14. The regulations require federal
 23 | agencies to (1) “rigorously explore and objectively evaluate all reasonable alternatives” to a
 24 | proposed action, 40 C.F.R. § 1502.14(a); (2) “not commit resources prejudicing selection of
 25 | alternatives before making a final decision,” 40 C.F.R. § 1502.2(f); (3) present alternatives in a
 26 | “comparative form, thus sharply defining the issues and providing a clear basis for choice among
 27 | options by the decisionmaker and the public,” 40 C.F.R. § 1502.14; and (4) “rigorously explore
 28 | and objectively evaluate all reasonable alternatives” and to address the reasons why any

1 alternatives “were eliminated from detailed study.” 40 C.F.R. § 1502.14(a). *See Center for*
2 *Biological Diversity v. U.S. Bureau of Land Management*, 746 F. Supp. 2d 1055, 1086 (N.D. Cal.
3 2009) (“rigorous exploration and objective evaluation of all reasonable alternatives is ‘the heart
4 of an EIS’ ”) (quoting *Natural Res. Def. Council v. U.S. Forest Service*, 421 F.3d 797, 813 (9th
5 Cir. 2005)).

6 Here, the Forest Service considered four alternatives in detail (Alternatives 2 - 4), ranging
7 from adding zero miles to the Transportation Management Plan to adding 361 miles. AR
8 PLU-B-000025-27. The First and Second Cut Spreadsheets show that, by summarily rejecting
9 63% of the inventoried miles from any on-site environmental impacts review, the Forest Service
10 did not have the underlying data for those miles upon which to conduct a meaningful alternatives
11 analysis. In effect, 3,036 of the inventoried 3,236 routes were summarily rejected from
12 alternatives analysis. AR PLU-G-001242-1253 (Beckwourth); PLU-G-001256-1261 (Feather
13 River); PLU-G-001277-1292 (Mount Hough).

14 Importantly, the Forest Service’s actual alternatives analysis was conducted in terms of
15 miles and not routes. Thus, Alternative 2 comprises a total of 361 miles, representing the largest
16 number of miles meaningfully considered by the Service in any of its alternatives. With one or
17 two exceptions, it is those same miles that are reconfigured in different formulations in
18 Alternatives 3 through 5. The remaining inventoried 1,107 miles were not subjected to
19 alternatives analysis. AR PLU-B-000025. The Council on Environmental Quality (“CEQ”), the
20 federal agency responsible for overseeing NEPA implementation by the federal government, has
21 issued guidelines specifically addressing the meaning of the term “reasonable range of
22 alternatives.” Those guidelines are “entitled to substantial deference” in connection with NEPA’s
23 interpretation. *State of Cal. v. Block*, 690 F.2d 753, 769 (9th Cir. 1982) (quoting *Andrus v. Sierra*
24 *Club*, 442 U.S. 347, 358 (1979)).

25 CEQ FAQ 1(b) states that a “reasonable range of alternatives” in an environmental impact
26 statement “must” cover “the full spectrum of alternatives” to a proposed agency action. CEQ
27 offers the example of how much of a forest should be dedicated by the Forest Service to
28 wilderness areas, stating that a reasonable range of alternatives would include a comparison and

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1 | contrast of alternatives dedicating “0%, 10%, 30%, 50%, 70%, 90% or 100% of the forest to
 2 | wilderness.” 46 Fed. Reg. 18,026, 18,026 (Mar. 23, 1981). In Plumas National Forest, the
 3 | Service took one of that series of seven alternatives (approximately 33% of the total miles subject
 4 | to evaluation) and subdivided that 33%, comprising only 361 miles out of 1,107 miles, into various
 5 | slices that addressed smaller iterations of those same 361 miles. Thus, Alternative 3 would have
 6 | added zero of those 361 miles to the Plumas National Forest Travel Management Plan, AR
 7 | PLU-B-000026, Alternative 4 would have added 140 of those same 361 miles, AR
 8 | PLU-B-000027, and Alternative 5 would have added 234 of those miles. AR PLU-B-000016.
 9 | Approximately 67% of the alternatives, comprising 746 miles, were not subjected to the
 10 | alternatives analysis. Accordingly, the alternatives analysis conducted by the Forest Service here,
 11 | which addresses only 33% of the miles under consideration, does not provide a reasonable range
 12 | of alternatives under the CEQ FAQ and, therefore, should be rejected by this Court. *Block*, 690
 13 | F. 2d at 769.

14 | The Ninth Circuit has had occasion to review the legal sufficiency of an EIS’s alternatives
 15 | analysis addressing motorized travel on public lands, holding that the EIS was fatally flawed
 16 | because the Bureau of Land Management failed to analyze the full spectrum of viable alternatives,
 17 | with one end representing greater motorized vehicle access and the other representing greater
 18 | conservation and nonmotorized vehicle recreation. *Oregon National Desert Association v. Bureau*
 19 | *of Land Management*, 625 F.3d 1092, 1123-24 (9th Cir. 2008). So too, the alternatives analysis
 20 | at issue here is fatally flawed because none of the alternatives examined in detail addressed any
 21 | scenario in which more than 33% of the user-created miles were designated for motorized travel,
 22 | thereby impermissibly “privileging . . . one form of use over another.” *Id.* at 1124.

23 | A hypothetical is appropriate. Posit a federal agency tasked with building a major
 24 | construction project significantly affecting the quality of the human environment on some portion
 25 | of a 1,000-acre parcel. The agency must determine which portion of the 1,000-acre tract parcel
 26 | will be the construction site. The agency summarily decides that it will only use the northwest
 27 | corner of that parcel, comprising 300 acres, for its alternatives analysis, rejecting the remaining
 28 | 700 acres from alternatives consideration without conducting any on-site data gathering,

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1 | evaluation, or disclosure of the environmental conditions on those 700 acres. The agency then
2 | proceeds to analyze alternative locations on only those 300 acres. No matter how the 300 acres
3 | are divided up by the agency for purposes of its alternatives analysis, that analysis does not cover
4 | a reasonable range of alternatives, given that the agency’s task was to determine where on the
5 | 1,000-acre parcel to build the construction project. Limiting the alternatives analysis to only 30%
6 | of the possible alternatives leaves out 70% of the possible alternatives, which is impermissible
7 | under CEQ Guideline 1(b). Moreover, it impermissibly ignores the Forest Service’s task at hand.
8 | *Natural Resources Defense Council, Inc. v. U.S. Forest Service*, 634 F. Supp. 2d 1045, 1060 (E.D.
9 | Cal. 2007) (“reasonable range of alternatives” must be measured in light of the purpose and need
10 | for the federal agency action). Here, the purpose and need for the Forest Service’s action was to
11 | determine how many of the unclassified 1,107 miles would be added to the Plumas National Forest
12 | Travel Management Plan. The decision to conduct alternatives analysis on only 33% of those
13 | miles resulted in the Forest Service neglecting to review possible alternatives with regard to 67%
14 | of the unclassified miles. NEPA requires agencies to “rigorously explore and objectively evaluate
15 | all reasonable alternatives,” *Natural Res. Def. Council v. U.S. Forest Service.*, 421 F.3d at 813,
16 | and “a viable but unexamined alternative renders an environmental impact statement inadequate.”
17 | *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985). By eliminating
18 | from alternatives review 67% of the unclassified miles, the Forest Service did not “rigorously
19 | explore and objectively evaluate all reasonable alternatives,” and left potentially “viable but
20 | unexamined alternatives” on the table. Accordingly, the Forest Service did not identify and
21 | analyze a reasonable range of alternatives in connection with the ROD and FEIS. *See City of*
22 | *Carmel-by-the-Sea v. U.S. Dept. Of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997) (agency cannot
23 | review alternatives in “unreasonably narrow terms”).

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III

**THE FOREST SERVICE VIOLATED NEPA AND THE
TRAVEL MANAGEMENT RULE BECAUSE IT FAILED TO
COORDINATE WITH LOCAL GOVERNMENTS TO ENSURE
CONSISTENCY OF ITS DECISION WITH LOCAL LAWS**

The Forest Service failed to comply with NEPA requirements to cooperate and coordinate with local governments in analyzing motorized vehicle use in the Final Environmental Impact Statement. NEPA provides that “it is the continuing policy of the Federal Government, in *cooperation with State and local governments*, and other concerned public and private organizations, 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 other requirements of present and future generations of Americans.” 42 U.S.C. § 4331(a) (emphasis added). 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. § 1502.16(c). To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or *local plan and laws* (whether or not federally sanctioned). 40 C.F.R. § 1502.16(d). Where an inconsistency exists, the statement should *describe* the extent to which the agency would reconcile its proposed action with the plan or law.” *Id.* (emphasis added). NEPA regulations also require that an environmental impact statement include a discussion of “[p]ossible *conflicts* between the proposed action and the objectives of Federal, regional, State, and *local . . . land use plans, policies and controls for the area concerned.*” 40 C.F.R. § 1502.16(c) (emphasis added).

The FEIS 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. AR PLU-B-000039-639. 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,

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1 including the Butte County General Plan goal to coordinate with Plumas National Forest to
 2 designate additional shared use trails along unpaved County roads, access roads, and fire roads.
 3 *Id.* The Service also failed to assess conflicts with the Plumas County General Plan goal to
 4 maintain an equitable and quality system of parks, recreation areas, multi-use trail systems, and
 5 access to local, state, and federal recreation opportunities within Plumas County. *Id.* Furthermore,
 6 the Service did not coordinate its efforts with the Plumas County General Plan Road Standard that
 7 all developments have legal access by means of Forest Service Roads or private road easements.
 8 Perreault Decl. ¶¶ 4-10; Crump Decl. ¶¶ 8-14. Finally, the Forest Service failed to consider the
 9 Plumas County Regional Transportation Plan, which incorporates the Forest Highway Program
 10 that provides funding to resurface, restore, rehabilitate, or reconstruct designated public roads that
 11 provide access to or are within a National Forest and, by its failure, did not even take into account
 12 those roads that are being improved under the Forest Highway Program, to ensure that the Forest
 13 Service does not close Forest roads connecting to County roads that are being improved
 14 specifically to provide continued access to the Forest. AR PLU-B-000039 - 639.

15 In turn, the Travel Management Rule itself requires that “[t]he responsible official shall
 16 *coordinate* with appropriate Federal, State, county, and other local governmental entities and tribal
 17 governments when designating National Forest System roads, National Forest System trails, and
 18 areas on National Forest System lands pursuant to this subpart.” 36 C.F.R. § 212.53 (emphasis
 19 added). Forest Service directives on implementation of the Travel Management Rule provide the
 20 objectives of managing the forest transportation system and motor vehicle use on National Forest
 21 System roads and trails, and in areas on National Forest System lands. These objectives include
 22 coordinating travel planning and analysis on National Forest System lands with national, regional,
 23 State, local, and tribal government transportation needs and to allow the public to participate in
 24 the designation of National Forest System roads, trails, and areas for motor vehicle use.
 25 AR PLU-D-008485. Forest Service Policy on Travel Planning also provides direction to
 26 “coordinate with federal, state, and local governmental entities and tribal governments when
 27 designating National Forest System roads, National Forest System trails, and areas on National
 28 Forest System lands.” AR PLU-C-000352; PLU-C-000228; PLU-C-000238. Similarly, Forest

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1 Service Manual provisions on Travel Management Decisions provide for coordination with
2 governmental entities, including coordinating with appropriate federal, state, county, and other
3 local governmental entities and tribal governments when making travel management decisions.

4 *Id.*

5 Butte County and Plumas County each have county roads leading to and connecting with
6 roads and trails in Plumas National Forest. AR PLU-B-001222. Many of these County roads are
7 designated by the Counties for shared use by highway legal and non-highway legal vehicles and
8 act as loop access between existing roads and trails within the Forest. Perreault Decl. ¶ 5; Crump
9 Decl. ¶ 7. Concurrent with Forest Service motorized travel management planning, the Counties
10 developed ordinances allowing “green sticker” off-road vehicles on county roads. Perreault Decl.
11 ¶ 7; Crump Decl. ¶ 8. The Forest Service stated that Recreation Use Maps would incorporate this
12 information to help identify off-road vehicles riding opportunities, but this was not done.
13 AR PLU-B-000039-639. Crump Decl. ¶ 10.

14 On November 18, 2008, the Butte County Board of Supervisors sent a letter to Randy
15 Moore, Regional Forester, requesting that the Forest Service maintain and provide public access
16 to non-paved Forest Service Maintenance Level 3 and 4 roads in Plumas National Forest.
17 AR PLU-D-009582. The Butte County Board provided a list of non-paved County-maintained
18 roads leading to and connecting with the Forest, such that these County routes could be
19 incorporated into the Forest Service’s analysis of routes to maintain or add to the National Forest
20 Transportation System. The Butte County Board requested that the Forest Service, in its
21 considerations of alternatives, consider these non-paved County maintained roads as being mixed
22 use and as loop access connectors to designated National Forest Transportation System roads and
23 areas open to the public for motorized vehicle use. *Id.*

24 On October 21, 2008, the Plumas County Board of Supervisors adopted Resolution
25 08-7514 to establish the Plumas County Coordinating Council to represent the County in
26 coordinating the management plans and actions of federal and state agencies, including in
27 coordinating with the Forest Service in accordance with the National Forest Management Act. AR
28 PLU-A-000124-127. The Resolution made note of the expectation that federal agency actions be

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1 | made consistent with the County's land use plans, and other management plans affecting the
2 | natural environment, economic stability, or the public health and safety of the citizens of Plumas
3 | County. *Id.*

4 | Notwithstanding the efforts of Plumas County and Butte County, the Forest Service did
5 | not coordinate with the Counties, nor did the Draft Environmental Impact Statement or FEIS
6 | reflect consideration of the connection between Plumas National Forest routes and the road system
7 | of the Counties, or consider the opportunities for County roads to serve as connectors between
8 | Plumas National Forest routes for motorized vehicle use. AR PLU-B-001139. Rather, with one
9 | exception, the Forest Service instituted an across-the-board ban on off-road vehicle use on
10 | Maintenance Level 3 roads in the Forest, even though the Counties allow off-road vehicle use on
11 | County roads of a similar design, surface type, and maintenance level that join with Maintenance
12 | Level 3 roads in the Forest. The Forest Service implemented the ban notwithstanding the fact that
13 | the Counties' decision to allow off-road vehicle use on these roads was based on engineering
14 | studies, while the Forest Service did not conduct any independent engineering studies in making
15 | the determination to ban off-road vehicle use on Maintenance Level 3 roads. AR PLU-B-000016.
16 | Accordingly, the Forest Service impermissibly failed to comply with its own regulations,
17 | directives, policies, and procedures in failing to coordinate its efforts with the Counties.

18 | This failure is compounded by the fact that the Counties' particular policies relevant to
19 | off-road vehicle use, and the importance of motorized vehicle access for the Counties' citizens,
20 | were brought to the Forest Service's attention in comments on the Draft Environmental Impact
21 | Statement, as well as during the two years preceding the issuance of the Draft Environmental
22 | Impact Statement. AR PLU-B-001139. Yet the Forest Service substantially ignored such
23 | comments. *Id.* As a result, many existing roads and trails were eliminated from consideration in
24 | the designation process, and closed to motorized vehicle use, for the sole and impermissible reason
25 | that they intersected with County roads, in direct opposition to Plumas and Butte County policies
26 | and their requests. AR PLU-G-001242-1253 (Beckwourth); PLU-G-001256-1261 (Feather River);
27 | PLU-G-001277-1292 (Mount Hough).

28 | ///

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1 In addition, the FEIS does not describe the consistency, or conflicts of, the Forest Service's
 2 preferred alternative with local plans, policies, or controls. On the contrary, the FEIS is devoid
 3 of any indication that the Forest Service even attempted to seriously coordinate its action with
 4 either Plumas County or Butte County; rather the FEIS states only that letters were sent to local
 5 governments announcing the posting of the Environmental Impact Statement on the Forest website
 6 and that local governments were encouraged to provide substantive comments. AR
 7 PLU-B-000488. The letters do not satisfy the coordination requirements mandated by 42 U.S.C.
 8 § 4331(a), 40 C.F.R. § 1506.2(c)-(d), 40 C.F.R. § 1502.16(c), 36 C.F.R. § 212.53, and FSM 7700
 9 because they do not evidence any meaningful "cooperation" or "coordination" with the Counties
 10 on the part of the Forest Service at any point during the process leading to the issuance of the ROD
 11 and FEIS. *See Bennett*, 520 U.S. at 572.

12 In short, the Forest Service's refusal to coordinate its action with Butte County and Plumas
 13 County have undercut the Counties' road-planning and green sticker efforts intended to serve their
 14 citizens.

15 IV

16 THE FOREST SERVICE VIOLATED NEPA 17 BECAUSE IT FAILED TO TAKE A "HARD LOOK" AT THE 18 IMPACTS OF ITS ACTION ON THE HUMAN ENVIRONMENT

19 NEPA's protections of the "environment" refer to the "human environment," 42 U.S.C.
 20 § 4332(2)(C), (E), which "shall be interpreted comprehensively to include the natural and physical
 21 environment and the relationship of people with that environment." 40 C.F.R. § 1508.14. The
 22 agency's duty to analyze impacts does not end with impacts to the physical environment, because
 23 "[w]hen an [E]nvironmental [I]mpact [S]tatement is prepared and economic or social and natural
 24 or physical environmental effects are interrelated, then the [E]nvironmental [I]mpact [S]tatement
 25 will discuss all of these effects on the human environment." *Id.* A cursory look at impacts on the
 26 human environment is insufficient; rather, the agency must take a "hard look" at such
 27 impacts before deciding on a course of action. *Or. Natural Res. Council Fund v. Goodman*, 505
 28 F.3d 884, 889 (9th Cir. 2007). The Forest Service travel management decision has significant
 impacts on human use of Plumas National Forest, particularly for dispersed recreational and

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1 aesthetic opportunities accessed by motor vehicles, such as camping, cutting firewood, aesthetic
2 appreciation, and retrieving game. Lazzarino Decl. ¶ 3.

3 The Forest Service failed to take into account the fact that many Forest users cannot access
4 Forest areas for hiking and otherwise enjoying the deeper Forest recesses without first using
5 motorized vehicles to reach those areas. Granat Decl ¶¶ 15-18. Closing so many routes to
6 motorized travel in the physical environment without such analysis ignores NEPA's mandate to
7 analyze impacts of decisions on the "human environment," including social and economic impacts.
8 Where the Forest Service does discuss dispersed recreation in the NEPA documents, there is
9 incomplete or contradictory information and, at best, a superficial level of analysis. For example,
10 the Forest Service fails to accurately acknowledge changes that its decision makes with regard to
11 lawful vehicle use for firewood retrieval and improperly avoids analysis of the impact of travel
12 management restrictions on individuals who rely on firewood from the Forest as a source of fuel.
13 AR PLU-B-000009-38. Importantly, the term "effects" is defined broadly in NEPA's
14 implementing regulations to include not only effects on natural resources, but also "aesthetic,
15 historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R.
16 § 1508.8.

17 Many residents of the area rely on access within Plumas National Forest for food and fuel.
18 Perreault Decl. ¶¶ 17, 22. With the exception of a summary review on the impacts to Native
19 American Tribes, the FEIS failed to take into account the impacts that the drastic reduction in
20 motorized vehicle access would have on the ability of the public to access the forest to obtain food
21 and fuel. *See* AR PLU-B-000561-563; *See also*, PLU-B-000039-639.

22 Because the travel management decisions will have effects not only on natural resources,
23 but also direct, indirect, and cumulative social and economic effects, and such effects were not
24 analyzed in either the DEIS or the FEIS, the action violates 42 U.S.C. § 4332(2)(C), (E) and 40
25 C.F.R. § 1508.8. For example, the Draft Environmental Impact Statement and FEIS failed to
26 analyze how the closure of approximately 745 miles of existing roads and trails previously
27 available for motorized vehicle use could impact tourism and recreational opportunities in Plumas
28 County, significantly decreasing the purchase of food, fuel, and overnight accommodations from

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1 | visitors, and whether this would result in significant effects. Perreault Decl. ¶¶ 17, 22. These
2 | present and cumulative socioeconomic effects, in conjunction with potential effects to the physical
3 | environment and/or other aspects of the human environment, constitute “significant” effects that
4 | should have been analyzed in the Final Environmental Impact Statement. *See* 40 C.F.R. § 1508.14.
5 | *See also, Andrus*, 442 U.S. at 358 (CEQ guidelines “entitled to substantial deference.”).

6 | On facts strikingly similar to the instant case, a district court in this Circuit recently
7 | invalidated a Forest Service environmental impact statement. In *Valley County, Idaho v. U.S.*
8 | *Dep’t of Agriculture*, 998 F. Supp. 2d 919, 927-28 (D. Idaho 2014), the court held that the failure
9 | of the Forest Service to evaluate the impacts on the human environment of closing 972 miles of
10 | user-created routes to motorized travel in Payette National Forest violated NEPA’s requirement
11 | that the agency take a “hard look” at environmental impacts of its proposed action. *Id.* Here too,
12 | the Forest Service failed to take a “hard look” at the impacts on the human environment when it
13 | closed 3,306 routes in Plumas National Forest without any on-site evaluation of those impacts.
14 | Accordingly, the action violates NEPA.

15 | V

16 | **THE FOREST SERVICE VIOLATED NEPA AND ITS OWN**
17 | **REGULATIONS BY FAILING TO ADEQUATELY RESPOND TO**
18 | **COMMENTS DURING THE PUBLIC COMMENT PERIOD**

19 | Federal agencies must, to the fullest extent possible, “encourage and facilitate public
20 | involvement in decisions which affect the quality of the human environment.” 40 C.F.R.
21 | § 1500.2(d). NEPA requires that final environmental impact statements “shall respond to
22 | comments as required” in section 40 C.F.R. §1502.9(b), which requires that an agency preparing
23 | a final environmental impact statement shall assess and consider comments both individually and
24 | collectively and respond to comments by one or more of the following means by stating its
25 | response in the Final Environmental Impact Statement: “(1) modify alternatives including the
26 | proposed action; (2) develop and evaluate alternatives not previously given serious consideration
27 | by the agency; (3) supplement, improve, or modify its analyses; (4) make factual corrections” or
28 | “(5) explain why the comments do not warrant further agency response, citing the sources,
authorities, or reasons which support the agency’s position and, if appropriate, indicate those

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1 | circumstances which would trigger agency reappraisal or further response.” 40 C.F.R. § 1503.4(a).

2 | *See* 40 C.F.R. § 1502.9(b).

3 | The Forest Service failed to adequately respond to several of SAC’s comments on the
4 | DEIS, in violation of NEPA. For example, SAC commented that the Forest Service’s proposed
5 | action would have negative impacts on the variety of motorized vehicle riding experiences, *i.e.*,
6 | easy, moderate, and difficult, routes available, and with the continuity of the motorized experience
7 | with the elimination of loop roads. The Forest Service’s response does not address the changes
8 | each alternative would have on the variety and continuity of the motorized experience. And it
9 | does not address the rated difficulty of the routes or delineate route continuity by difficulty and
10 | by class and license of vehicle. AR PLU-B-001180.

11 | Additionally, in response to the majority of CORVA’s comments on the DEIS, the Forest
12 | Service simply stated that the comments were “acknowledged,” with little or no further response.
13 | *See, e.g.*, AR PLU-B-001582-83. The Forest Service also failed to adequately respond to
14 | comments made by Butte County asking the Forest Service to consider non-paved County
15 | maintained roads as mixed use roads that could act as loop access connectors with Plumas
16 | National Forest roads. AR PLU-D-007903. The Forest Service summarily responded that County
17 | roads are not within the agency’s jurisdiction, without recognizing that many County roads are
18 | *within the Forest* and, therefore, certainly within its jurisdiction. AR PLU-B-001664; AR
19 | PLU-B-001223. Accordingly, such a response is not a response at all.

20 | Finally, the Forest Service failed to adequately respond to several of Plumas County’s
21 | comments on the DEIS. For example, Plumas County noted in its comments that the Forest
22 | Service has authority to allow limited use of motor vehicles within a specified distance of National
23 | Forest Transportation System routes and should exercise this discretion to allow long-established
24 | uses of the Forest to continue in a reasonable manner. The Forest Service failed to address how
25 | or why it concluded that limited vehicle use near designated routes should be prohibited; the
26 | Forest Service responded only that such use would not be allowed and that dispersed camping
27 | would continue to be allowed. AR PLU-B-001223.

28 | ///

VI

**THE FOREST SERVICE VIOLATED NEPA BY FAILING
TO ISSUE A SUPPLEMENTAL DRAFT ENVIRONMENTAL
IMPACT STATEMENT FOR PUBLIC COMMENT**

NEPA requires an agency to prepare a supplement to either a draft or final EIS if the agency makes substantial changes in the proposed action that are relevant to environmental concerns. 40 C.F.R. § 1502.9(c)(1)(I). The Forest Service made substantial changes to its proposed action alternative after circulation of the Draft Environmental Impact Statement, which were relevant to environmental concerns described in the draft. The Forest Service failed to prepare a supplement to the DEIS and therefore Plaintiffs and the public were deprived of the opportunity to comment on these changes.

Changes made to the proposed action alternative, presented for the first time in the FEIS, include: (1) restrictions on routes according to season of use, AR PLU-B-000084; (2) implementation of a one-fourth mile buffer for wildlife nests, AR PLU-B-000267; (3) implementation of a one-half mile buffer for private land “quiet recreation,” *see, e.g.*, AR PLU-B-000100-101; 103; 105; 107; (4) the closure of additional roads and trails because the analysis of potential impacts to the California red-legged frog from the continued use of these roads was not completed in a timely manner, AR PLU-B-000043; (5) 47% of single-track routes in the French Creek area were closed, AR PLU-B-000022; (6) the Sly Creek area routes were eliminated, AR PLU-B-000015; (7) 13 National Forest Transportation System routes were eliminated from the map of available routes in the French Creek area, *Id.*; and (8) the Law Enforcement Section (Appendix I) was added AR PLU-B-000633 - 639.

These changes, found in the FEIS, constitute substantial changes in the Forest Service’s proposed action that are relevant to environmental concerns because they result in a substantial increase in the number of route and area closures, as against the DEIS. The Forest Service’s failure to prepare a Supplemental DEIS to analyze these changes and make this analysis available for public comment is a violation of 40 C.F.R. § 1502.9(c)(1)(I). *See Wilderness Society* 701 F. Supp. at 1481 (agencies must comply with their own regulations and guidelines). The FEIS also violates 40 C.F.R. § 1502.14, which requires the Forest Service to provide the public with sharp

1 definition of the issues and clearly defined choices among options considered. *See Idaho Sporting*
 2 *Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998) (public must be warned of and given
 3 meaningful opportunity to comment on the effects and alternatives of agency action in an
 4 environmental impact statement).

5 VII

6 THE FOREST SERVICE VIOLATED NEPA BY FAILING TO 7 PRODUCE A CUMULATIVE IMPACTS STATEMENT BEYOND 8 THE BORDERS OF PLUMAS NATIONAL FOREST

9 An environmental impact statement must include a hard look at the cumulative impacts and
 10 effects of the proposed action and other actions on the human environment. 42 U.S.C.
 11 § 4332(2)(C); 40 C.F.R. § 1508.25; *Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir.
 12 1990) (“NEPA requires that where several actions have a cumulative or synergistic effect, this
 13 consequence must be considered in an EIS.”). A cumulative impact is “the impact on the
 14 environment which results from the incremental impact of the action when added to other past,
 15 present, and reasonably foreseeable future actions regardless of what agency (Federal or
 16 non-Federal) or person undertakes such other actions. 40 C.F.R. § 1508.7. “Cumulative Impacts
 17 can result from individually minor but collectively significant actions taking place over a period
 18 of time.” *Id.* A cumulative impacts analysis “must be more than perfunctory, it must provide a
 19 useful analysis of the cumulative impacts of past, present, and future projects.” *N. Plains Res.*
 20 *Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1076 (9th Cir. 2011) (internal quotations and
 21 citations omitted). In order to “insure that environmental information is available to public
 22 officials and citizens before decisions are made and before actions are taken,” 40 C.F.R.
 23 § 1500.1(b), the cumulative impact analysis must include “some quantified or detailed
 24 information; . . . general statements about possible effects and some risk do not constitute a hard
 25 look absent a justification regarding why more definitive information could not be provided.”
 26 *N. Plains Res. Council*, 668 F.3d at 1076 (internal quotations and citations omitted).

27 While the Forest Service nominally conducted a cumulative impacts analysis within the
 28 borders of Plumas National Forest, it did not consider the cumulative impacts resulting from past,
 current, and future loss of recreational road and trail access in Plumas National Forest on nearby

1 National Forests, which are also subject to the Travel Management Rule and which are, or will be,
2 subject to route designations and closures. By its terms, the cumulative impacts analysis is limited
3 to Plumas National Forest, without explanation as to why. AR PLU-B-000089-90. The failure
4 of the Forest Service to properly conduct a cumulative impacts analysis extending beyond the
5 border of Tahoe National Forest is a violation of 42 U.S.C. § 4332(2)(C) and 40 C.F.R. § 1508.25,
6 because the Forest Service failed to discharge its nondiscretionary duty to fully analyze cumulative
7 impacts. *See Bennett*, 520 U.S. at 172 (nondiscretionary procedural duties may not be neglected
8 by administrative agencies).

9 **CONCLUSION**

10 For the foregoing reasons, the Plaintiffs' motion for summary judgment should be granted.

11 DATED: March 30, 2016

12 Respectfully submitted,

13 DAMIEN M. SCHIFF
14 THEODORE HADZI-ANTICH

15 By /s/THEODORE HADZI-ANTICH
16 THEODORE HADZI-ANTICH

17 Attorneys for Plaintiffs AMY GRANAT, *et al.*
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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of California by using the court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Eastern District Court's CM/ECF system.

/s/THEODORE HADZI-ANTICH
THEODORE HADZI-ANTICH

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