



# California Association of 4 Wheel Drive Clubs

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Subject: OHV Programmatic Agreement Comments

The below comments are submitted on behalf of the California Association of 4 Wheel Drive Clubs (CA4WDC) and its individual members and member clubs. CA4WDC is a California association representing over 8,000 motorized recreationists and their families. While the main focus of CA4WDC is to advocate access to public lands for motorized recreation, many of our members participate in multiple forms of recreation; including but not limited to hunting, fishing, camping, hiking, horseback riding, bicycle riding, and gem and mineral collection.

We recognized the positive health and social benefits that can be achieved through outdoor activities. We also recognize that motorized recreation provides the small business owners in the local communities a significant financial stimulus. Our members are directly affected by management decisions concerning public land use.

The CA4WDC members subscribe to the concepts of: 1) public access to public lands for their children and grandchildren; 2) concern for condition and safety of the environment; and 3) sharing our natural heritage. The general public desires access to public lands now and for future generations. Limiting access today deprives our children the opportunity to view the many natural wonders of public lands. The general public is deeply concerned about the condition of the environment and personal

safety. They desire wildlife available for viewing and scenic vistas to enjoy. They also want to feel safe while enjoying the natural wonders. Lastly, the public desires to share the natural heritage with friends and family today as well as in the future. How can our children learn and appreciate our natural heritage when native species are allowed to deteriorate and historic routes are routinely blocked or eradicated from existence? With these guidelines, the below comments were developed.

Comments for OHV Programmatic Agreement:

Page 10, lines 20-21.

6. Forests may develop definitions of archaeology site properties that may be used if approved by the SHPO.

Comment:

This "freedom" to develop definitions would lead to non-standard documentation as consistency of definitions would become non-standard within a "scientific" discipline and renders the 'scientific discipline" to an arbitrary decision process. The appropriate wording should leave the development of definitions with the SHPO and the individual forest should be required to use only approved definitions of archaeology site properties. This reduces the arbitrary documentation process and allows for consistency to support the decision process.

Page 10, lines 30-35.

Previous inventory and report efforts:

"...shall be reviewed for adequacy by Forest HRMs, or persons designated by HRMs, to determine if resurvey is appropriate, given the passage of time, changing standards, research designs, conditions, or undertaking effects."

Comment:

The noted subsection criteria contains two underlying problems:

1 - The review for adequacy is noted as a responsibility of the "...Forest HRMs, or persons designated by the HRMs...". The definition of an HRM does not indicate that the HRM has authority to delegate responsibilities to another individual. The responsibility for directing, planning, and administering the Forests Heritage Resources Program and providing professional and technical advice is defined at a prescribed performance level. While a person can be DELEGATED as HRM, the HRM does not appear to have authority to further delegation of their authority and responsibility. Recommend that the phrase "designated by" be replaced with "delegated as".

2 - Reasons to determine if a resurvey is appropriate are listed as "...the passage of time changing standards, research designs, conditions, or undertaking effects". The phrases are subjective and lack discrete criteria to be used as a measurement to support a decision. Recommend that resurvey be in conjunction with Forest Plan Revision cycle.

Page 11, lines 8-9.

iv) other standards mutually agreed to by the Forests and the SHPO.

Comment:

This portion deals with the Heritage Survey Reports (HSR) and defines reporting criteria that defines conformance to accepted standards. Section 7bi-iii provides guidance that is standard. Section 7biv adds an arbitrary "guideline" that is outside the accepted guidelines defining a standard reporting process. Recommend that Section 7biv be deleted.

Page 11, lines 22-23.

e) HSRs shall be completed prior to making decisions about implementing undertakings.

Comment:

This statements dictates that HSRs shall be completed prior to making decisions. This statement lacks a definitive timeframe that will ensure the HSRs are completed in a timely manner. It is recommended that a time limit (within 20 days of an under

taking being identified) be assigned in order to expedite completion of HSRs as not to delay the decision process.

Page 11, lines 25-32.

a) Copies of HSRs shall be made available as follows: HSRs for these undertakings shall be submitted to the SHPO if requested or if the appropriate Information Center of the CHRIS does not accept them.

b) Copies of these HSRs shall be submitted to appropriate Information Centers of the CHRIS.

Comment:

This section defines reporting criteria. It is interesting that criteria b) dictates that copies of HSRs shall be submitted to appropriate Information Centers of the CHRIS. However, criteria a) indicates that the appropriate Information Center of the CHRIS may not accept reports in which case they shall be submitted to the SHPO IF REQUESTED.

There is a fundamental problem with the logic of report distribution as outlined. Either the reports are REQUIRED and an appropriate office is designated to receive, record, and retain the reports or the reports are an exercise in bureaucratic folly and not required. Which ever the case, The Paperwork Reduction Act (federal legislation) provides guidance for agencies to establish firm requirements for collecting and retaining information. The collection of reports must be based in law and collected and retained under consistent policy. This section indicates there is no basis in law requiring a report as the office with oversight responsibility has the option of not accepting a report. Recommend the language of a) and b) be change to identify a formal report criteria that designates an official channel to receive, record, and retain reports.

Pages 11-12, Section 9 a) and b)

Comment:

The a) and b) sections provide qualifications for determining that no additional identification efforts are required. Sub-section b) is problematic in that it states "...undertakings are documented in the manner agreed upon by the SHPO and Forests...".

Previous sections define standard reporting criteria that must be met. This sub-section provides for an arbitrary report outside the standard reporting criteria. Recommend that language of Section 9 a) and b) be modified to define a standard data collection and reporting criteria.

Page 23; XI. FOREST PARTICIPATION

Comment:

This section provides for Forests to be added or deleted from participation in the OHV PA. If Forests can be added or deleted, the question arises as to why is the programmatic agreement necessary? Either Forests are bound by the OHV PA or the OHV PA is an unnecessary document. There should be no ad hoc deviation from the OHV PA; either it applies to all Forests identified within the scope of application; or, the OHV PA is shelved as an unnecessary bureaucratic process.

Appendix B, Standard Resource Protection Measures.

Comment:

This section defines that historic properties shall be excluded from areas where activities associated with an undertaking will occur and introduces the concept of buffer zones that are included in the protection area. This does leave an arbitrary definition of what distance would constitute an "appropriate" buffer zone around historical properties. The section does not allow for geographic barriers that may limit the buffer zone without adverse impact on the recreation opportunity. Inclusion of "case-by-case" and "consulted to determine appropriate" are arbitrary and capricious terms that provide no assurance an activity could ever be approved. Recommend the section be changed to include: a) specific distance parameters for buffers zones be established and b) once a buffer zone is established, activities associated with an undertaking are permitted within the buffer zone under a "case-by-case" review.

Page 36, Line 18

Comment:

This line identifies straw bales as an appropriate non-intrusive barrier. Additional qualification of the type of permitted

"straw bales" is appropriate. For example, "straw bales" should be clarified to be either "rice-straw or certified weed-free straw".

Page 41, Appendix C, Lines 42-44

Comment:

This section discusses the OHV route designation process. Page 41, lines 42-44 introduces the linkage of "wheeled vehicles use (including mountain bikes)" as being subject to Forest Orders. Previous discussion within this section aligns this process directly to motorized OHV activities. Executive Order 11644 defines off-road vehicles as motorized vehicles. Due to the ambiguity introduced by this section, either the definitions of OHVs need to be expanded to include mountain bikes as off road vehicles subject to this OHV PA or all references to "wheeled vehicles" needs to be struck and replaced with the appropriate term.

Page 45, Appendix C, OHV Use Levels, Lines 13 through 19

Comment:

The noted section defines five OHV Use Level Categories ranging from Light to Heavy with an accompanying numeric figure. From the discussion, it is unclear as to how the metrics were determined and how the metrics will be applied. At issue are two factors: 1) How are the numbers accumulated? And, 2) What criteria is used to determine the number is attributed as an OHV operator as opposed to a general forest visitor?

For example, Heavy OHV Use is assigned 1501 or more OHV operators per week. There is no distinction as to being a singular week with 1501 or more OHV operators, or multiple weeks at that level. Assuming that is a weekly count and is sustained every week for one year, the annual count of "OHV Operators" would be in excess of 78,000 annual visitors. When 2002 Forest Service visitation numbers are reviewed, it becomes unclear as to how OHV visitors are distinguished from the total visitor numbers. A review of published Forest Service visitation numbers indicates that a majority of the Forests within Region 5 receive more than 78,000 visitors per month (936,000 annual visitors), with some Forests exceeding 250,000 visitors per month (3,000,000 annual visitors). With these estimates, OHV

recreation is estimated to be 2 to 8 percent of the Forest visitors. A general disconnect comes when national Forest Service officials attribute "unmanaged OHV recreation" as one of the top four priorities facing Forest Service management. Adding to the mix of issues is the assertion by Forest officials that OHV recreation demand (as well as general Forest visitation) is expected to increase in the coming years. As such, the premise of this OHVPA is to restrict access to Forest routes, which is an adverse action toward recreation when dealing with the expected increase in recreation demand.

Of concern within the implementation of this document, is the determination of what constitutes "an OHV recreationists"? Page 45, line 31 alludes to the fact that "OHV and recreation program managers" are involved in the implementation of this document. As such, does this document pertain to "OHV recreation" or other "recreation programs"? If this document is restricted to "OHV recreation", it is prejudicial and detrimental to a comprehensive forest-wide recreation program.

In addition, a question arises as to the presiding authority in executing this document. Previous sections assign responsibilities to "Forest HRMs, or persons designated by HRMs" and the above noted section assigns other responsibilities to "OHV and recreation program managers". It is unclear as to whether there is cooperation between the different "responsibilities". This document does indicate that there is a dominant-subservient relationship between the "Forest HRMs, or persons designated by HRMs" and "OHV and recreation program managers". What process are proposed (or in place) to resolve differences between these two "responsibility sets"?

The issue of excluding routes from designated OHV systems is further complicated by lack of consistency of definitions. As noted, the OHV Route Designation Process (Page 41, line 43 includes the explicit phrase: "including mountain bikes" with reference to Forest Orders for closure of routes. Page 46, lines 6 and 7 indicate that "mountain bicycles" are "not necessarily prohibited other non-motorized uses" with respect to decisions to close roads. Again, this underscores a pre-determined prejudice toward a specific forest visitor segment; one that is expected to increase in future forest visitor counts.

The prejudice is underscored again (on page 46, lines 14-15) when it states: "Where no decisions are made on the ways (i.e., other than exclusion in OHV system designation) in which routes or off-route use areas will be removed or decommissioned...". What is missing is acknowledgement that OHV "impacts" are broader than just motorized activities. What is indicated is that "OHV activities" will trigger a Section 106 consultation (36 CFR 800) UNLESS the activity will lead to the removal or decommissioning of a route. A major problem arises when the definition of "OHV activity" is reviewed. As noted, it is inclusive of "wheeled vehicles" (including mountain bikes). And yet, subsequent statements indicate the mountain bicycles are not included. Overall, the document has a lack of consistent definitions and policy direction that renders it a useless document and subject to judicial review.

Page 48, Documentation Standards, Line 15

Comment:

This section notes that historic properties identified during inventories will be documented meeting current USDA-Forest Service (Region 4 or 5) requirements and California SHPO standards, as specified in the OHVPA.

This statement is problematic and subject to confusion: What is the REQUIRED criteria for documenting historic properties according to the law? Is it an arbitrary description developed by Region 4? Or, Is it an arbitrary description Region 5? Or, is it federal law subservient to a state developed "standard"? Documentation standards are either supported by a segment of the Code of Federal Regulations or they are arbitrary and subject to a wide range of interpretation. A statement requiring documentation to a vague or undefined "standard" not defined in CFR invites future judicial review. Recommend the language of this section be modified to reflect that historic properties will be documented in accordance with standards as identified in CFRs.

Evaluation of Historic Properties, Page 49, lines 5-8

"NRHP evaluation is required at sites where physical damage from past OHV use is noted, and Forests cannot or will not protect properties from new or ongoing effects using prescribed

protection or treatment measures listed in this strategy, the OHV PA, or other measures identified in consultation with the SHPO."

Comment:

This statement is problematic in that it is a prejudicial assumption that any physical damage is from OHV use. As previously noted, OHV users are estimated to be 2-8 percent of forest visitors. As such, it is prejudicial to assume that OHV use caused previous damage. That assumption is further suspect when the lack of consistency of definition for OHV use is considered. Lacking definitive evidence, ASSUMING that OHV use is responsible for damage to historical properties invites future judicial review.

Effects on Historic Properties, Page 50, lines 25-26

"...only those roads, trails, and off-route use areas inventoried and mapped by June 2006 will be considered under this strategy..."

Comment:

The paragraph does indicate the public can identify existing roads, trails, or off-route use areas that were missed during the inventory process. It is unclear as to whether the strategy defined in this document (OHV PA) will apply to the "missed during inventory" routes or some other undefined process will apply. In addition, this invites the question of applicability to existing routes within the Forest Transportation Plan where a new discovery of historic (or pre-historic) significance is documented along side the existing route.

In all evaluations, application of the law and consistent interpretations of words and phrases is critical to avoiding conflict and potential litigation. A lack of clarity of the route designation process invites future judicial review.

OHV Strategy Appendix B, Prepare Forest Order Maps, Page 64, line 17-18

Comment:

The paragraph includes the phrase "... closed until adverse affects have been eliminated and measures have been implemented to prevent future recurrence..."

One of the governing documents referenced in developing this OHV PA is Executive Order 11644. It is noted in EO 11644 (and subsequent executive direction and development of CFRs) the concept of mitigation or reduction of adverse impacts is acceptable for management of an OHV route system. This OHV PA exceeds the legally required measure of "mitigated or reduced impacts" with a significantly greater measure of "eliminated and ... prevent future recurrence".

As previously noted, the vague definition of OHV use leads to a question as to what (or who) is responsible for presumed damage to historic areas. Of note, the class of "OHV use" (by Forest Service numbers) is estimated to be less than 8 percent of overall forest visitors. As noted, this arbitrary assumption invites future judicial review.

OHV Strategy Appendix B, Prepare Forest Order Maps, Page 64, line 29-30

MOI (Appendix B, clause B.2.d), non-motorized wheeled vehicles are to be prohibited off roads, trails, and specifically defined areas.

Comment:

I am unable to cross-reference this statement to the specific Appendix B, Clause B.2.d. As such, it is a questionable statement that does not appear to be valid within the context presented. Please provide the correct Appendix (valid justification) for this statement.

OHV Strategy Appendix B, Issue Temporary Forest Orders, Page 64, line 38

Comment:

Reference is made to Appendix K. I am unable to cross-reference this statement to a specific section within the OHV PA. As such, it is a questionable statement that does not appear to be valid within the context presented. Please provide the correct Appendix (valid justification) for this statement.

OHV Strategy Appendix B, Page 65

Comment:

There are numerous references on this line that indicate CFR 295 is a controlling legal value. In July 2004, Forest Service released a proposed National OHV Policy that eliminates a majority of CFR 295. Assuming the proposed rulemaking is adopted, CFR 295 will be eliminated. As such, references to CFR 295 within this document will become null and void.

As previously noted, this ambiguity of definitions and legal references in establishing a management policy is an invitation to future judicial review.

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Cc:

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