



November 23, 2016

USDA Forest Service
Region 2 Rocky Mountain Region
Attn: Objection Reviewing Officer
40 Simms Street
Golden, CO 80401-4720

**RE: Objections to the Badger Flats Management Project
Environmental Assessment
South Park Ranger District, Pike & San Isabel National Forest
October 2016**

Dear Objection Reviewing Officer:

The following objections are submitted in regards to the Badger Flats Management Project, Environmental Assessment (EA) on behalf of the Trails Preservation Alliance ("TPA") and the Colorado Off-Highway Vehicle Coalition ("COHVCO"). The TPA is a volunteer organization created to be a viable partner to public lands managers, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate for the sport and takes the necessary action to insure that the USFS and BLM allocate a fair and equitable percentage of public lands access to diverse trail riding opportunities. COHVCO is a grassroots advocacy organization representing approximately 170,000 registered off-highway vehicle ("OHV") users in Colorado seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations. The TPA and COHVCO are referred to collectively in this correspondence as "The Organizations." The Organizations generally support the Proposed Action Alternative included in the Environmental Assessment (EA), however we present the following objections to the EA prepared for the Badger Flats Management Project.

1. **Page 23 of 109, Socioeconomic Impacts:** The Organizations applaud consideration of the "Socioeconomic Impacts" of the three alternatives, however, the Organizations disagree that *"All of the alternatives considered would have little positive or negative affect on the local economies because it would not result in substantial increases or decrease in revenue spent in the local area, or increases or decreases in population, wages, or employment."* **The standard of review for economic**

analysis is a de novo standard as the Courts have consistently substituted their judgment regarding the accuracy of economic analysis. The Organizations feel this same standard would similarly apply to this EA. Courts have consistently held agencies to a much tighter level of review of economic analysis when compared to other issues within the agency expertise in the NEPA process as the court makes their own conclusions regarding the accuracy of review without deference to agency findings. Relevant court rulings addressing economic analysis in NEPA have concluded: *“an EIS serves two functions. First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public so that they may play a role in the decision making process. Robertson, 490 U.S. at 349, 109 S.Ct. at 1845. For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions.”*¹ The Court then discussed the significance of economic analysis in planning as follows: *“Misleading economic assumptions can defeat the first function of an EIS by impairing the agency’s consideration of the adverse environmental effects of a proposed project. See, South La. Envtl. Council, Inc. v. Sand, 629 F.2d 1005, 1011-12 (5th Cir.1980). NEPA requires agencies to balance a project’s economic benefits against its adverse environmental effects. Calvert Cliffs’ Coordinating Comm. v. United States Atomic Energy Comm’n, 449 F.2d 1109, 1113 (D.C.Cir.1971). The use of inflated economic benefits in this balancing process may result in approval of a project that otherwise would not have been approved because of its adverse environmental effects. Similarly, misleading economic assumptions can also defeat the second function of an EIS by skewing the public’s evaluation of a project.”*² The level of accuracy of the hard look at economic analysis applied by the Court in the Hughes River decision is significant as the Hughes River Court invalidated an EIS based on an error in economic contribution calculations of approximately 32%.³ The TPA and COHVCO submit that without the creation of a comparison between current usage and usage after implementation of the EA would be a violation of the Hughes River decision. No baseline of visitation to the area is provided to attempt to apply economic analysis of recreational usage. In the Proposed Action, it simply states *“All of the alternatives considered would have little positive or negative affect on the local economies...”*. The TPA and COHVCO submit that the economic analysis of the EA is facially insufficient and the determination that there will be no impacts to recreational spending as a result of the proposal simply lacks any factual basis. The TPA and COHVCO submits that this failure to provide even basic information is a per se violation of NEPA as there is a large range of user spending profiles and a wide range of recreational activities relying on the network of routes in the planning area to achieve their recreational objectives. The importance of economic impacts of recreation within the Badger Flats area was raised in the project’s scoping comments previously submitted by the TPA and COHVCO. The EA does not address the issue, but rather dismisses any economic impacts. This position is a per se violation of NEPA and the Hughes River decision.

In the past, the Forest Service has clearly identified the economic benefits that can accrue to a local community as the result of a multiple use trail network as follows:

“RECREATION AND TOURISM ARE VITAL TO MOST RURAL COMMUNITIES: This is true for virtually all rural communities but especially important to counties with high percentages of

¹ Hughes River Watershed Conservancy v. Glickman; (4th Circ 1996) 81 F3d 437 at pg. 442; 42 ERC 1594, 26 Envtl. L. Rep 21276.

² Hughes River Supra note 1 at pg. 447

³ Hughes River Supra note 1 at pg. 447

public land. Actions by public agencies to reduce or limit access to recreation on public lands have a direct impact on the local economy. Limiting access by closing roads, campgrounds, RV parking, and trails impact the surrounding communities. Visitors to public lands utilize nearby communities for food, lodging and support facilities. Interests include hiking, photography, horseback riding, biking, climbing, backpacking, birding, hunting, sport fishing, and many more. Public land agencies' communication with community businesses is essential to job creation and stable rural communities.”⁴

The Organizations would also contend that the total estimated economic contribution from motorized recreation in the Central Colorado region (which includes Park and Teller Counties) during the 2014-2105 season, was well over \$318,000,000.00⁵. That Badger Flats is indeed recognized as one of the primary motorized recreational areas within the Central Colorado region. That any change in available motorized recreational opportunities in the Badger Flats area will indeed result in measurable economic impacts to the region, especially to the counties and communities in close proximity to the Badger Flats area.

2. **Page 11 of 109, Proposed Action Alternative:** The Organizations question the statement that “*There would be a net loss of 1% of existing motorized NFSRs and NFSTs*”. When reviewing Table 2-1, Comparison of Alternatives, (page 13 of 109) and the values of the **Total Motorized NFSR & NFST Open to the Public**, The Proposed Action Alternative (108.7 mi), proposes a reduction of 9.9 miles over the No Action Alternative (118.6 mi). The loss of 9.9 miles of routes open to the public represents a loss of over 8% from the No Action Alternative. We contend that the citing of a 1% loss is either incorrect or a misrepresentation of the values shown in Table 2-1.

3. **Pages 86 & 87 of 109, Birds of Conservation Concern:** The EA proposes a need to close NFSR 44 (along with NFSRs 44.2C, 44.2B and NFSR 280) on the west side of La Salle Pass due to encroachment to known cliff-nesting raptor nesting locations. The Organizations would contend that only NFSRs 44.2C, 44.2B and 280 may need consideration for restriction of access. That NFSR 44 should remain open to public access, or if absolutely necessary that the alignment of NFSR 44 be adjusted slightly or offset in select locations to gain additional separation from possible nesting sites. The Organizations contend that a substantial portion of the existing centerline of NFSR is already ½ mile or more from the terrain suitable for cliff-nesting raptors. NFSR 44 is the primary, and often the preferred route, for travel over La Salle Pass. That NFSR 44 and NFSR 44.2A together provide a loop opportunity, and an opportunity to disperse recreational uses on the west side of La Salle Pass. Closure of NFSR 44 (the primary route to La Salle Pass) to public access will concentrate all use onto 44.2A (the secondary route to La Salle Pass) completely eliminating the unique experiences to travel through the center and northern portions of the open meadow landscape and will create a situation that will be difficult to enforce. Additionally, NFSR 44.2A is the more difficult route and includes rock obstacles that some users may not desire to traverse. The Organizations ask that NFSR 44 remain open to public, motorized, multiple use access.

⁴ USDA Forest Service – Office of Rural Development; Dr. Glenda Humiston; Jobs, Economic Development and Sustainable Communities Strategizing Policy Needs and Program Delivery for Rural California; Feb 2010 at pg. 48

⁵ DRAFT Economic Contribution of Off-Highway Vehicle Recreation in Colorado, July 2016

4. The EA failed to include any consideration for an “Open Area” specifically for motorized trials bike riding (AKA Moto Trials). Historically the Rocky Mountain Trials Association (RMTA) has worked with the South Park Ranger District to obtain land use permits for observed moto trials riding in the Thorpe Gulch and other areas. During the scoping process, multiple public comments were submitted requesting a designated open area for the purpose of moto trials riding so enthusiasts could use/practice/ride in a designated area at any time. The EA failed to include any consideration of an open moto trails riding area in the vicinity of Thorpe Gulch or anywhere else with the Badger Flats Management Project Area. It should be noted that per the American Motorcyclist Association, moto trials riding produces almost no noticeable environmental impact. This is due to the extremely slow speeds, lack of intentional wheel spin, low-air-pressure tires, soft compound tires, extremely quiet exhausts and the increasing use of electric powered trials bikes. The Organizations appeal that the South Park Ranger District confer with the RMTA and that the EA be revised to include a suitable designated area specifically for open moto trials riding (i.e., without a special use or other permit and open for use year round).
5. **Proposed Action Alternative Map:** The EA proposes to decommission NFSR 214.B, a connecting segment that the Organization’s previously submitted scoping comments specifically requested remain open to public use. The EA provides no justification for the decommissioning of NFSR 214.B. NFSR 214.B provides a direct connection between two proposed designated dispersed camping areas, and failure to keep access open on NFSR 214.B results in a dead-end, no direct connection between the two proposed designated dispersed camping areas and completely eliminates a popular looped recreational opportunity. The Organizations ask that NFSR 214.B remain open to public, motorized, multiple use access.
6. **Proposed Action Alternative Map:** The EA proposes to decommission NFSR 255. The Organizations ask that the decommissioning of NFSR 255 be reconsidered and that NFSR 255 remains open to public, motorized, multiple use access. This route provides an east to west connection between Park County Road 31 and NFSR 225. This route also provides additional variety for the Badger Flats Area north of Round Mountain Campground and provides a moderate level of challenge for those users that desire that experience. The Organizations would support conversion of NFSR 255 to a Full Size Trail. We would also ask that consideration be given to a route parallel to Park County Road 31, on the eastern side of Park County Road 31 to connect NFSR 255 and NFSR 216 to provide connectivity of these two routes for unlicensed vehicles. By keeping NFSR 255 open and adding the proposed parallel connection, together these routes will provide an enhanced loop opportunity and additional recreational options.
7. **Proposed Action Alternative Map:** The Organizations generally support the construction of the proposed two Staging/Day-Use areas and the one Day-Use Parking area. We would hope and assume that each of these areas will include informational kiosks that would display area maps along with appropriate rules and regulations for all users.
8. In summary, the Organizations generally support the Proposed Action Alternative, with consideration and inclusion of the comments/objections provided above. The Organizations support the Forest Service in proposing a network/system of sustainable multi-use roads and trails that strive to improve

the motorized recreational experience, facilitate loop opportunities and avoid areas of sensitive resource concerns. We support the conversion of select segments of “non-system roads and trails” to Forest “System”, motorized roads and trails. We support the conversion of NFSRs to NFSTs and certainly support the construction of new NFSRs and NFSTs as necessary (e.g., the proposed new NFST in the China Wall area). Finally, we also support and recognize the need to realign select segments of roads and trails to address erosion and reduce the movement of sediment into sensitive streams and wetlands.

9. The Organizations would welcome a discussion of these objections at your convenience. Our point of contact for this project will be William Alspach, P.E. at 675 Pembroke Dr., Woodland Park, CO, cell 719-660-1259, e-mail: williamalspach@gmail.com.

Sincerely,



D.E. Riggle, Director of Operations
Trail Preservation Alliance

cc Scott Jones, COHVCO
Josh Voorhis, District Ranger, South Park District Ranger