

**WildEarth Guardians, Grand Canyon Trust, Grand Canyon Wildlands Council,
Great Old Broads for Wilderness,**

February 9, 2015

Attn: Powell Travel Management
Paul Hancock, District Ranger
Dixie National Forest
225 E. Center Street
Panguitch, Utah 84759

Dear Mr. Hancock,

Each organization that is a signatory on this letter appreciates this opportunity to provide scoping comments in response to your scoping solicitation letter for the Powell Travel Management Project #44203. Each of our organizations is an interested party with concerns and recommendations with the proposed action as well as the scope of the environmental analysis for this major federal action. Please add and maintain all four of our organizations to all of the interested party and contact lists for this and all related proposed actions on this Ranger District and National Forest.

Public Scoping Due Date is February 20, 2015

We are submitting these comments in response to the Forest's 10 page scoping solicitation letter, which was mailed to each of our offices. Page nine of the letter explains "comments need to be received by the end of the 30 day comment period or February 20, 2015, whichever is later." We are aware that the January 8, 2015 Federal Register Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) named a 32-day scoping due date, February 9th, 2015. To date, no legal notices have been published, which is what would be needed to trigger the only formal 30 day comment period contemplated under the 36 CFR 218 objection regulations. In addition, we have received emails and voicemails from the relevant line officers and follow-up telephone conversations with pertinent Supervisor's Office staff, confirming the February 20th due date. Thus, one may only conclude that the due date is February 20, 2015.

However, we cannot ignore several recent efforts by people well informed of the project but not employed by the Forest Service to contact our offices and alert us to high probabilities of collusion between U.S. Forest Service staff that reside close to this Ranger District and activists inclined towards Anti-Federalism¹ amongst cooperating agencies. In light of these dynamics that

¹ E.g. see <http://en.wikipedia.org/wiki/Anti-Federalism>

people say are in motion, please consider this our respectfully-submitted, early scoping comment letter. A second more detailed scoping comment letter will be submitted by February 20, 2015.

Robust Public Involvement Supports 2009 MTP ROD

With few minor exceptions, the proposed action constitutes knowing government intent to violate legal commitments for road decommissioning made in the 2009 Motorized Travel Plan (MTP) ROD. More important in terms of this specific comment, it also constitutes agency planning to reverse on social commitments made to the Americans involved in the much more robust and prolonged NEPA process that supports the 2009 MTP ROD. By more robust we refer to temporal and spatial factors that are easily one or several orders of magnitude greater than what is presently unfolding.

For example, Kevin Mueller recalls numerous clarifications by the District Ranger, Forest Supervisor, and S.O. NEPA staff at the many public meetings held for the 2009 MTP ROD along the Wasatch Front that roads to be decommissioned in the MTP ROD would not be confused or conflated in future years with ML 1 or administratively closed classified roads. Most often the concern at that time was most focused on the many miles of decommissioned roads on Boulder Top that were being denoted on (then) draft GIS and hard-copy map printouts with designations such as “classified – c – closed-natural” (as a generic example). Line Officers and SO staff were insistent that in such coding, “classified” (the first part) would always be understood to be the legal status prior to the 2009 MPT, and that the “-c-” in the middle would always be understood to mean that the action proposed in the 2009 MPT is to equal ‘remove from systems forever as a (road) decommissioned, and the third or final part would always be understood to be commitment for additional clarification or action, such as how each instance of (road or route) decommissioning would be treated on the ground (e.g. via natural means, or via literal obliteration with heavy equipment). The proposed action the USFS just pitched in this scoping process is in clear violation of these written and personal professional assurances.

The current process involved in proposing significant reversals of the 2009 MTP ROD is a tiny pro-forma nod to involve the general public when it’s compared to the significantly more robust public process by which broad public agreement was reached for the 2009 MTP ROD.

Fixing the few minor mapping oversights made in the 2009 Dixie National Forest MTP ROD on this one Ranger District need not be done via this relatively expensive and labored EIS and ROD process. There are Categorical Exclusion authorities and Environmental Assessment options for touching up minor changes due to mapping oversights or errors.

Failure to Make Basic Showing of Intent to Meet 2009 ROD Commitments

At 36 CFR 1505.2 through 36 CFR 1505.3 NEPA mandates that the lead and cooperating agencies “shall” ensure that all ROD-level commitments, mitigation measures, and monitoring are implemented and completed. The 2009 MTP ROD, as well as the ROD that approves the Dixie LRMP, each include commitments and mitigation measures to which our (American) government has already committed. The proposed action presently originating from the Powell Ranger District constitutes written intent to violate such commitments. We urge abandoning this EIS process via Federal Register withdrawal.

Failure to Show Good Faith Intent to Comply with Appeal Resolution Agreement

Since 2009, the Forest Service has made substantial showing that it has failed to make good faith effort to implement and live up to our appeal resolution agreement. Further example is that the proposed action, scoping solicitation letter and corresponding NOI published in the Federal Register, together, constitute substantial evidence that the Forest intends to violate commitments outlined in the appeal resolution agreement (enclosed).

Incorporation of Entire 2009 Dixie MTP Project Record and Appeal Claims

In light of the section above, all issues raised in our 2009 appeal may now become ripe for review. To the extent that the Dixie National Forest has described and supported the new proposed action demonstrates intent to violate the terms of the appeal resolution agreement ... our appeal is not withdrawn. The 2009 MTP project record is incorporated into these comments, and our 2009 MTP appeal is enclosed for your convenience.

Misleading Conflation of Closed Roads and Decommissioned Roads

We request that the Forest Service confirm that the 2009 GIS layer titled mtp_pawm is already in the project record. The proposed action includes proposals to undo dozens of road decommissioning that have been accomplished by administrative, natural and/or physical methods. If not, we can add it to our February 20 scoping comments. The mtp_pawn GIS layer is central to facts and issues at hand, as it reflects decisions and commitments made in the 2009 MTP ROD, many of which have been implemented and the consequences of undoing these decisions must be fully evaluated and disclosed.

Of importance is that it details (1) the legal status of each route/road prior to or in the absence of the 2009 MTP ROD; (2) the action the MTP ROD took or imposed upon each; (3) the new legal status of each route/road with the signing of the 2009 MTP ROD; and (4) often, but not in every instance, it also noted the commitments made for types of decommissioning to be done (e.g. via natural processes or via physical shovels in the dirt obliteration).

In both the general *Federal Register* mileage figures, and more specifically in the Forest Service's scoping comment solicitation letter, the presentation of the post 2009 MTP ROD legal status of routes is under question. It is under question because it does not seem to match the road decommissioning decisions made in the 2009 ROD. Terms such as "closed road" and "decommissioned road" are carelessly conflated. At times we cannot see how this is not knowingly done to confuse and mislead the public.

This has to do with sloppy conflation of what is in the mtp_pawn GIS layer and the supporting MTP ROD and what they presented as the pre-2009 ROD legal status of each road/route ... with the post 2009 MTP ROD legal status of each route. The pattern, specifically, has to do with a misleading presentation of the legal status (e.g. formally on the road system be it open or closed to public use) prior to the 2009 ROD with the post 2009 ROD legal status of each route (e.g. decommissioned and/or decided to remove or never add to the transportation system as a formal road facility). Instances of this happening are evident on the maps in appendix A and some of the tables in appendix B to the scoping solicitation letter. The legal status of roads in the scoping notice for this project should be identical to the decisions made in the mtp_pawn, as adjusted in light of appeal resolution agreement (unless there has been a subsequent NEPA decision to change that status). There should be no ambiguity about the existing road status on the National Forest transportation system, since that was resolved with the 2009 ROD and resolution of our appeal.

Additionally, Appendix B adds more misleading obfuscations. Examples #1 and #2 are described briefly below. Note that the Appendix B table consists of 7 columns going from left to right. Columns 1 and 2 denote the route and the 'locator map' on which it's found. Column 3 inaccurately notes the 2009 MTP ROD designation of each route. Column 4 inaccurately notes the 2009 MTP ROD "Operational Maintenance Level" of each route. Column 5 is the number of miles of each route (we have not yet verified whether this column accurately presents mileage). Columns 6 and 7 present, respectively, the proposed action's desired "Proposed Route Designation" and "Proposed Maintenance Level"

Misleading presentation #1

Please look to the last two columns (farthest to the right) on page 2 of Appendix B. Column 6 is the proposed new route designation and column 7 is the proposed new maintenance level. For all 22 routes on the page the proposed route designation is "Closed Classified" and the proposed maintenance level is "0- Decommissioned." This has the appearance of knowing bureaucratic obfuscation, and here's why.

The conflation of "closed classified" with "ML 0 Decommissioned" constitutes knowing confusion of differing terminology utilized in the 2001 Roads Policy and corresponding Roadless

Area Conservation Rule (RACR) on the one end ... and the different terminology employed in the 2005 OHV Rule. Under the 2001 Roads Policy and the RACR a “closed classified” road IS a recognized system road that is on the roads atlas and is a National Forest facility. In other words, it’s a gated road. It could be paved, or it could be a faint 2-track in a meadow of waist high wildflowers. Either way, it’s a system road. It’s just not open to general public motorized travel.

Now let’s contrast that with the proposed maintenance level of “0-Decommissioned.” Pursuant to the Code of Federal Regulations (CFR) implementing the aforementioned 2001 USFS policies a “decommissioned” route or road is something that either (1) was a (classified) road and therefore a National Forest transportation facility that was on the roads atlas that *has been removed forever* from the roads atlas and from the National Forest transportation system. Now, if it was a faint 2-track cutting through an alpine wildflower meadow it may have been decommissioned naturally ... that is, decommissioning was a mere matter of making sure it was not on the roads atlas as a classified/system road; perhaps a carsonite sign and some rocks were put in place along with ripping within line of sight, but that wasn’t necessary. What was necessary was the administrative decision to decommission (remove from the formal system). Or in another example let’s say it was a paved or graveled road: in such case the administrative decommissioning decision would be accompanied by shovels in the dirt and heavy equipment.

Either way, “maintenance level 0- decommissioned” can only read under any framework in the CFR that employs classified verses unclassified road dichotomies as an unclassified route/road ... and most certainly never shall be legally equated as similar ‘in any way whatsoever’ to a closed classified road. A “closed classified road” is literally an administratively gated road. Conversely, a “decommissioned road” must be coupled with “unclassified” road and never with a “closed classified”². That the Ranger District chose such an illogical conflation of incompatible terms suggests even its presentation of the proposed road statuses is openly misleading.

If the Forest insists upon continuing with this ill-conceived project, then a new scoping notice, with the correct baseline of system routes, using current and correct terminology, must be issued so the public can more fully understand the impacts of what is being proposed.

Misleading presentation #2

Columns 3 and 4 in the tables in appendix B misstate 2009 MTP ROD designations and commitments. An example is columns 3 and 4 on table 2, page 3. See map ID 17. The table suggests to the reader in column 3 that the 2009 MTP ROD decision was to designate this as a “closed classified” road. Classified roads are by definition a part of the National Forest transportation system and have been assigned a Maintenance Level and road maintenance objectives. “Classified road” is a concept rooted in the 2001 transportation policy and the

² If one must force such correlations.

corresponding 2001 RACR. The 2009 MTP ROD designations are based on the 2005 OHV rule and therefore could not have intended to designate this route as a “closed classified” road. A “closed classified” road would be more accurately referred to as a Maintenance Level 1 road (aka administratively gated or closed to public use) under current Forest Service management direction.

In reality, the 2009 MTP ROD decision included coding that stated what the prior status of each route was (e.g. it was a “classified road”). That was followed by an action in the form of a new designation (e.g. that it was “decommissioned”), and sometimes additional action specifying how to follow up on things such as that decommissioning decision (in this case, take it off all the inventories and the road atlas as a NFS transportation facility and allow it to revegetate on its own, e.g. by natural means). This is so important we emphasize and repeat: the mtp_pawm GIS attached to the ROD shows that the route was “classified” route, and the ROD decision was to have it “decommissioned,” and that was to be done by “natural” methods.

A decommissioned road cannot by definition have a (Operational) Maintenance Level and should not be treated as part of the transportation system in future projects.

This brings us to column 4 for this route, as it states the 2009 MTP ROD assigned this same classified road an Operational Maintenance Level of “0- Decommissioned.” This is incorrect. First of all, there is no such thing as a “Maintenance Level 0” road. We double checked the CFR and Directives that implement roads and OHV transportation planning and it does not and never has existed.³ Secondly, it would be illogical –indeed impossible- to suppose that the 2009 MTP ROD made the decision to designate a route as “classified⁴” (be it open or closed) while also making the decision to decommission the same route. We clearly need more light and outside observation applied to whatever unclear USFS decisionmaking process is unfolding.

Finally and in case we haven’t made our point, it wasn’t lost on us that Appendix B also throws around a proposed “Maintenance Level 6 – Seasonal Road.” There is no basis in applicable laws, rules, or regulations for a ML 6 designation. We know the Forest Service knows its own rules and regulations, and in light of that we must assume that the Forest knows there is no such thing as “Maintenance Level 6 – Seasonal Road.” There are only Maintenance Levels 1 through 5, which may also have seasonal designations, but those designations do not change the actual maintenance level objective that the road should meet.

³ There is one exception in the USFS Directives, but it is specific to USFS Region 1 and narrowly applies to specific trails for temporary periods (when they are not maintained in any one given year). Specifically it states:

2353.26 - Maintenance Management Process 2. Definitions. Following are definitions of trail maintenance levels for application in Region 1:a. Trail Maintenance - Level 0. All available and usable system trails included in National Activity Structure Handbook Code AT12 that are not maintained in a given year (such as not included in Code AT23).

⁴ Remember, 2009 was 4 years after the 2005 OHV rule, not before.

The items raised above demonstrate why the public cannot make reasonable sense of the appendices to the scoping solicitation letter. The geospatial and tabular representations in Appendices A and B incorrectly present the current status quo due to commitments made in the 2009 MTP ROD. Further, the description of status quo doesn't make sense when it starts to use federal OHV and transportation policy definitions that don't exist.

If the Forest persists in proposing to reverse much of the 2009 ROD commitments, at the very least, a new Notice of Intent needs to be published that is legally adequate. This one is not, because the public cannot provide meaningful comments when terms are made up and incompatible designations are displayed.

2001 Roadless Area Conservation Rule

Confusion created in association with concerns raised above appears to result in an obscuring of the fact that the proposed action would, when explained in the correct policy context and in light of factually correct statement of the 2009 MTP ROD decision, result in systematic violations of the 2001 RACR, which is codified at 36 CFR 212. However, the scoping solicitation letter obfuscates this central and significant matter.

At page 5, we see what could constitute a clever and well thought through attempt to hide what constitutes dozens of miles of new road construction inside Inventoried Roadless Areas (IRAs), which is illegal under the RACR. Various definitions of "trails," "roads," "classified road," "unclassified road," "authorized OHV routes," and "unauthorized roads and trails" are systematically conflated in nonsensical patterns. Throw in false and illogical assertions about road decommissioning commitments made in the 2009 MTP ROD, and couple that with made up concepts and definitions based in rules and regulations that don't exist ... and actions that constitute new road construction in IRAs that violates the RACR are hidden from fair and honest disclosure to the public. Throughout this all is pattern and practice that repeatedly indicate this Ranger District is proposing an end run around the agency's own rules and regulations in a manner that amounts to violation of (our) own American government's policies and laws mandating preservation of Inventoried Roadless Areas.

Segment-By-Segment Critique of Federal Government Proposed Action

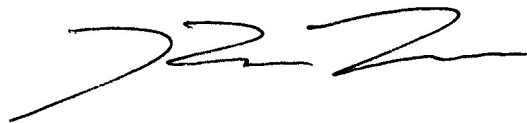
Scoping feedback on individual segments will be included in our second, February 20 scoping comments. This will include input made in light of review of project-specific documents requested via FOIA and not yet publically available, as well as a more comprehensive study of the actual status quo resulting from the 2009 MTP ROD contrasted to the proposed action. While

fleshing out this section, we may develop a detailed action alternative that addresses key and significant issues that we are concerned the proposed action does not address.

Conclusion

It is our hope that the preliminary concerns we raise in this early scoping letter may help reset this process such that it may travel along more open, constructive, and positive paths. Please do anticipate receipt of a significantly more robust scoping comment letter by the 20th of this month. We do hope that background supporting materials that we requested via FOIA on January 13, 2015 will be made timely available during this comment period. We hope that is well before the 20th of this month. In the meantime, we thank you for making sure that each of us are added and maintained on all contact, mailing, interested party, and all other contact lists for this and all associated proposed actions. We look forward to a more robust and candid dialogue with the Forest on issues of concern in this project in the near future. Perhaps an in-person meeting after the scoping input has been reviewed is indicated. Each of our organizations would welcome such opportunity

Sincerely,



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