Cyndi Tuell  
Center for Biological Diversity  
P.O. Box 710  
Tucson, AZ 85702

RE: Appeal #09-03-00-0030-A215, Tusayan Ranger District Travel Management Plan, Kaibab National Forest

Dear Ms. Tuell (lead appellant):

This is our decision on your appeal filed electronically on June 15 of the Decision Notice and Finding of No Significant Impact (DN/FONSI) made by Mike R. Williams, Kaibab Forest Supervisor, to designate a system of roads for public access and motorized recreation travel. The appeal was filed on behalf of the Center for Biological Diversity, Grand Canyon Wildlands Council, Sierra Club-Grand Canyon Chapter, Public Employees for Environmental Responsibility, WildEarth Guardians, and Liz Boussard.

The Forest Supervisor’s April 18 decision prohibits motorized cross-country travel off the designated system on the Tusayan Ranger District. The selected Alternative three removes about 143 miles of roads from the existing forest system, adds 6 miles of currently unauthorized routes to the designated system, prohibits use of 160 miles of other unauthorized routes, and allows for limited use of motorized vehicles for dispersed camping in designated camping corridors and big game retrieval for elk during elk hunting seasons.

The decision includes a non-significant Forest Plan amendment. The decision will result in the publication of a Motor Vehicle Use Map (MVUM). After the map has been released, travel off the designated system will be prohibited unless authorized by permit or other authorization. Your appeal was filed pursuant to 36 CFR 215.

BACKGROUND

The legal notice of the decision was published on May 1. Two timely notices of appeal were received under the 36 CFR 215 appeal regulations. Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of the appeals. The record indicates that informal resolution was not reached on either appeal. The lead appellant made an email request on July 27 to add an additional document regarding the informal disposition meeting to the record for review. Based on the regulations (36 CFR215.15(a)), which state that any appeal attachment must be submitted by the end of the 45-day appeal filing period, my staff advised the appellant that this attachment could not be accepted.
We have reviewed the appeal record, including the two appeals and timely attachments, the Decision Notice and Finding of No Significant Impact (FONSI), EA, and supporting documentation in the electronic project record. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's Recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer found that: a) the actions to be taken and the purpose and need are clearly described; b) the selected alternative should accomplish the purpose and need of the project; and c) there was ample opportunity for public participation. However, the range of alternatives did not address the main public issue of motorized big game retrieval, and the analysis of the effects from big game retrieval was not based on a consistent set of facts. Additionally, the reasons presented for dropping an alternative comprised of the wet weather system are not supported in the analysis. A copy of this recommendation letter is enclosed.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer’s Recommendation, I reverse the Responsible Official’s Decision on the Tusayan Ranger District Travel Management Plan Project.

The technical review and findings attachment explains the points that need to be addressed before a new decision can be issued. A new analysis, including an alternative without motorized big game retrieval, must be evaluated in a new project decision. The new decision must fully comply with notice, comment, and appeal provisions of 36 CFR 215.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)]. A copy of this letter will be posted on the national appeals web page at http://www.fs.fed.us/appeals.

Sincerely,

/s/ Donald G. Delorenzo
DONALD G. DELORENZO
Acting Deputy Regional Forester
Appeal Deciding Officer

Enclosure

cc: Mike R Williams
Liz M Schuppert
Stu Lovejoy
Angela D Parker
Ruth Doyle
Mailroom R3
Mailroom R3 Kaibab
Daniel Jiron
Alvin R Brown
Danny R Montoya
Marjorie Apodaca
REVIEW AND FINDINGS

of

Center for Biological Diversity et al’s

Appeal #09-03-00-0030-A215 of

Tusayan Ranger District Travel Management Project, Kaibab NF

For the purposes of this review, contentions have been re-arranged from the original appeal order so that they are addressed in the context of applicable laws, regulation and directives.

ISSUE 1: The project does not meet the requirements of the 36 CFR 212 Travel Management Rule.

Contention A: None of the alternatives including the selected Alternative 3 prohibit cross-country travel in violation of the Travel Management Rule because motorized game retrieval would continue to be allowed throughout almost the entire district and there would be unlimited cross-country travel for this purpose (appeal pp. 4, 9).

Allowing motorized game retrieval does not address the need to prohibit motorized off-road travel into areas currently closed to off-road travel, and does not meet the requirement that the Forest must apply the retrieval and dispersed camping provision “sparingly” as detailed in FS Manual 7703.11 direction and Federal Register notice (appeal p. 6).

Response: 36 CFR 212.51(b) allows the responsible official to include in the designation “the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of retrieval of a downed big game animal…” The determination of providing motorized big game retrieval is at the discretion of the responsible official to ensure that local needs are taken into account (Travel Management Final Rule, PR #48, November 9, 2005 published Volume 70 Federal Register p.68274, hereafter referenced as Volume# FR page#).

Forest Service policy at FSM 7703.11 (4) allows for limited use of motor vehicles within a specified distance. This provision is to be applied sparingly after conducting travel analysis and appropriate site-specific environmental analysis and public involvement (PR #462, p.13).

The project decision prohibits motorized cross country travel on the Tusayan Ranger District, and vehicular travel will be restricted to the designated system of forest roads identified under Alternative 3. Provisions have been included for limited motorized travel off the designated system for dispersed camping and elk retrieval during elk seasons (DN, PR #582, p.4).

The existing areas closed to motor vehicle use in the Kaibab Forest Plan (Red Butte and Coconino Rim) are retained, and these areas would not be open to motorized game retrieval (EA, PR #581, pp.22, 25; DN, PR #582, p. 5). However, this statement is not supported by the motorized big game retrieval opportunity maps (EA, PR #581, figs. 6 and 8, pp. 23, 26) which
indicate that use by motor vehicles in Red Butte and Coconino Rim would be permitted for the purposes of elk retrieval.

The responsible official decided to allow motorized travel off the designated system for dispersed camping and big game retrieval after a review of comments from the public and Arizona Game and Fish Department, consideration of specialist input and preliminary plant and watershed/soil erosion surveys, and review of the potential size and weight of antelope, deer and elk (DN, PR #582, pp. 6, 14, 16 - 17).

Consistent with 36 CFR 212 Travel Management Rule, these provisions for motorized travel off the designated system have been applied sparingly. Out of a designated system of 566 miles of road, dispersed camping corridors will be designated along 17 miles; the actual designation of corridors may be reduced upon completion of the resource surveys. Motorized big game retrieval is limited to retrieving legally harvested elk during all elk seasons, whereas under existing conditions motorized vehicles are used to scout for and retrieve all species during all hunt seasons (DN, PR #582, pp.6-7; EA, PR #581, p. 37).

Finding: Alternatives 2 and 3 prohibit cross-country travel and are thus consistent with the 36 CFR 212 Travel Management Rule. Dispersed camping corridors would be limited to no more than 17 miles of system roads. Motorized big game retrieval, which is allowed under the Rule, is limited to retrieving elk during all elk seasons. Red Butte and Coconino Rim would remain closed to motor vehicle use, including motorized dispersed camping and motorized big game retrieval; however, Figs. 6 and 8 indicate use of motor vehicles in these areas would be allowed for elk retrieval.

Figs. 6 and 8 need to be revised to prohibit motorized game retrieval from Red Butte and Coconino Rim Inventoried Roadless Area per Final EA p. 22.

Contention B: The decision does not adopt a minimum road system as described in the Travel Analysis Report (TAP) which is contrary to the Travel Management Rule. The open route network does not comply with the motorized recreation designation criteria set forth in Executive Order 11644 and 36 CFR 212.55. The decision retains low value/high risk routes and an unaffordable road system that will result in continued resource damage without justification (appeal pp.4, 5).

Response: Per 36 CFR 212.5(b)(1), the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. It does not require the minimum road system to be adopted in the decision to roads, trails, and areas for motor vehicle use. It is noted that this particular project listed identification of a minimum road system as part of the purpose and need statement, which is discussed under the NEPA issue response.

Forest Service regulation 36 CFR 212.51 establishes the requirement to designate routes and areas. At FSH 7709.55, Chapter 20 is titled “travel analysis” to reflect its purpose of informing travel management decisions regarding motor vehicle use on NFS roads, trails and areas, as well as identification of the minimum road system. FSM 7712 was revised to provide that travel analysis for purposes of 36 CFR 212.5(b)(1) and 36 CFR 212.51 may be conducted separately or simultaneously with the designation of motorized recreation uses.
E.O. 11644 and 36 CFR 212.55 require that routes designated for motor vehicle use be located to minimize damage to natural and cultural resources, harassment of wildlife, conflicts between motor vehicle use and existing or proposed recreational uses and among different classes of motor vehicle uses. It is the intent of E.O. 11644 that motor vehicle use be managed to address environmental and other impacts, but that motor vehicle use continue in appropriate locations (TMR at PR #48, 70FR page 68281).

The TAP rated 249 miles of existing roads as High Risk/Low Value; of these, approximately 111 miles were identified to be closed to public use. For the remaining miles of road in this category, recommendations were developed to mitigate risk and reduce maintenance costs (PR #580, pp. 48–55).

As stated in the Travel Analysis, “a completely affordable road system may not meet all objectives of a minimum road system including access for administration, utilization, and protection of National Forest System lands.” “The minimum road system needs to balance both the cost to maintain the system and provision of a road system that meets the needs of users and forest management”. The alternative the responsible official chose would increase the number of Forest roads retained on the designated system by 20 miles as compared to the “Preliminary Road System” proposed in the Travel Analysis (TA Report, PR #580, p. 49)

A risk/value analysis helped inform the evaluation that was made. The TAP matrix places roads into 4 categories: high value-high risk, high value-low risk, low value-high risk, low value-low risk. The TAP matrix was incorporated into this analysis as background information to identify priorities for road maintenance and for road decommissioning (EA, PR #581, p. 155).

Finding: Travel Management Rule does not require the minimum road system be adopted in the designation of roads, trails, and areas for motor vehicle use.

Contention C: The Travel Management Rule requires the FS to consider the need for maintenance and administration. The additions to the road system are unreasonable because the FS lacks the resources to manage and enforce its current road system (appeal p.5).

Response: Per 36 CFR 212.55(a), the availability of resources for maintenance and administration should be considered in the designation of routes and areas for motor vehicle use. Six miles of unauthorized routes are being added to the designated system to provide access for recreation activities (DN/FONSI, PR #582, p.3)

While TMR includes as a criterion for designation as the need for maintenance and administration of roads, trails and areas; and it is noted that the availability of resources for maintenance and administration is important. However, FSM 7715.5 clarifies that scarcity or abundance of resources to maintain and administer designated roads, trails, and areas should not be the only consideration in developing travel management proposals (FSM 7715.5 at PR #463).

Alternative 3 reduces the number of roads while meeting the needs of resource management and recreation activities and makes progress towards reducing road maintenance costs (EA, PR #581, p. 39) as compared to the no action alternative.
The EA discloses current maintenance levels for roads (EA pp.11-12, 33-34). The costs of maintenance by alternative are shown. The no action alternative is the most costly because of road maintenance and the backlog of deferred maintenance. Action Alternatives 2 and 3 show a difference of removing 20 percent of the roads in Alternative 2, and 19 percent of the roads in Alternative 3, which is a very slight difference.

Monitoring and mitigation measures have been developed to manage the designated system (EA, PR #581, pp. 28 – 30).

Enforcement of the travel management decision will be a cooperative effort between forest users and the Forest Service. Further, Forest Service patrol officers and law enforcement officers will enforce the travel management decision, and will work with the Arizona Game and Fish Department, Grand Canyon National Park, Navajo Nation and Hualapai Tribes to provide effective compliance (DN/FONSI, PR #582, pp 5 – 6).

Finding: The project meets the requirements of 35 CFR Travel Management Rule in that it considers the need for maintenance and administration. The additions to the road system were considered in the decision made.

Contention D: The decision to designate temporary roads as part of the minimum road system is a violation of the TMR as described in the Federal Register notice. New NEPA analysis is required because previous environmental reviews assumed that temporary roads would be closed and obliterated. Forest Service should not legitimize such routes or reward OHV users for their illegal and destructive behavior by designating such routes (appeal p.10).

Response: The appellant is confusing terms that define roads being managed by the Forest. Temporary roads are not National Forest System roads and may not be designated (70FR68281). Temporary roads are allowed under contract for certain authorized uses such as timber sales, but then they are to be closed and obliterated normally under the same contract (EA PR #581 pp.86, 87). These roads are not included in any of the alternatives as a proposed part of the designated road system on the district. OHV-created or user–created routes are addressed separately below.

Finding: No temporary roads are included in the designated system.

Contention E: The environmental impacts of user-created routes have not been assessed and inclusion of them in the project is arbitrary and capricious. A site-specific environmental review is needed to make user-created routes permanent. Before adding user-created routes to the designated system, the FS must ensure they are constructed according to engineering standards to be in compliance with road Best Management Practices and prevent resource degradation (appeal pp.33-34).

Response: 36 CFR 212 Preamble states that after public consideration and appropriate site-specific environmental analysis, some user-created routes may be designated for motor vehicle use pursuant to 36 CFR 212.51 (PR #48, 70 FR p.68277). Forest Service policy at FSM 7715.78 states that unauthorized roads and trails may be identified through travel analysis and considered in making travel management decisions. If designated these routes can be included in the applicable forest transportation atlas and identified on the applicable MVUM.
The final number of acres disturbed is dependent upon completion of resource clearances (soils, wildlife, heritage), as some access routes may be eliminated (EA, pp. 14, 16, 81). About six miles of existing unauthorized routes would be added to the open road system unless resource clearances identify them as unsuitable for motorized use. Existing motorized routes will be selected that correspond to the observed patterns of use. The road segments, up to 300 feet long, may be used to park on for dispersed recreation such as camping or day-use activities. The responsible official intends to conduct site-specific heritage clearance and surveys on these existing unauthorized routes before adding them to the system and designating them on the MVUM for motor vehicle use per 36 CFR 212.51 (DN/FONSI, PR #582, pp.6, 20).

**Finding:** The inclusion of up to six miles of user-created routes in the project is not arbitrary and capricious. The project meets the requirements of 36 CFR 212 Travel Management Rule.

**Contention F:** The project does not have budget analysis for monitoring and enforcement of the designated system which violates NEPA and the TMR. A specific cost estimate of monitoring and enforcement for each alternative must be provided (appeal p.34).

**Response:** 36 CFR 212 Travel Management Rule requires the responsible official to consider monitoring and enforcement in the designation of roads, trails, and areas for motor vehicle use.

Specifically, the responsible official shall monitor the effects of motor vehicle use on designated routes and areas, consistent with the applicable land management plan, as appropriate and feasible (36 CFR 212.57, PR #48, p. 68290). This direction is reinforced by Forest Service policy at FSM 7717.1 requiring the responsible official to use the applicable criteria in 36 CFR 212.55 as the basis for identifying effects to monitor (PR #463, pp. 37).

Enforcement is addressed under 36 CFR 212.50 which provides for a system of roads, trails, and areas to be designated for motor vehicle use. Once the system has been designated, motor vehicle use not in accordance with these designations is prohibited by 36 CFR 261.13 (PR # 48, p.68289).

Forest Service policy at FSM 7716.54 identifies the Motor Vehicle Use Map as the primary tool to enforce restrictions and prohibitions established under 36 CFR 212.51 (PR #463, p. 36). In addition, Forest Service policy recognizes that implementation of travel management decisions will require effective public education, enforcement, and monitoring (FSH 7709.55 (16), PR #460, p. 11).

The project record indicates that both monitoring and enforcement of travel management decision were addressed by the responsible official and specific measures are included and will be implemented with the decision. Strategies have been developed that address the need for and funding of public information and education, the role of Forest Protection Officers and Law Enforcement, and the continuation of cooperative law enforcement agreements with sister agencies (Final EA, PR #581, pp. 28 – 30, 44; DN, PR #582, pp. 7 – 9).

**Finding:** The project is consistent with 36 CFR 212 Travel Management Rule in that monitoring and enforcement have been considered and will be addressed as part of implementing the decision. Specific cost estimates and budget analyses for monitoring and enforcement are not required by NEPA or the Rule.
ISSUE 2: The project does not meet the requirements of National Historic Preservation Act (NHPA) and Travel Management Rule.

Contention A: The Forest cannot rely on the pre-existing programmatic SHPO consultation to cover consultation for big game retrieval areas. Current NHPA Section 106 compliance for travel management is limited to designated routes and closure of unmanaged cross-country travel (appeal p.7).

Response: The existing Region’s First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities signed in 2003 governs how the FS consults with SHPO in meeting its Section 106 responsibilities.

The allowable game retrieval will consist of a limited number of single entry events spread out across a very large area. This type of limited dispersed activity is exempt from further consultation under exemption “Q” of the Region’s Programmatic Agreement as an example of “Activities not involving ground or surface disturbance (e.g., timber stand improvement and pre-commercial thinning by hand).”

Section 106 compliance for travel management is not limited to designated routes and the closure of unmanaged cross-country travel. Compliance addresses the designation of routes, corridors and areas. Physical road closures or decommissioning will be subject to separate Section 106 consultation.

Finding: The big game retrieval activity meets Section 106 consultation requirements under NHPA.

Contention B: Allowing motorized big game retrieval for up to 1 mile from any road in the forest will place nearly every heritage resource on the Tusayan Ranger District in jeopardy, which is a significant effect requiring an EIS. Management Areas 8, 9 and 10 contain cultural resources and the big game retrieval strategy will not protect these resources as required under the Travel Management Rule (appeal p.25).

Response: Motorized big game retrieval will be greatly reduced from the almost unrestricted motorized use allowed presently. Big game retrieval is further limited to elk only. The allowable game retrieval will consist of a limited number of single entry events spread out across a very large area. This type of activity is exempt from further consultation under exemption “Q” of the Region’s First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities as an example of “Activities not involving ground or surface disturbance (e.g., timber stand improvement and pre-commercial thinning by hand).” Motorized game retrieval will be monitored and if site damage is identified, appropriate measures will be taken. Furthermore, cross-country travel for the purposes of retrieving a downed elk will be prohibited when it will result in soil damage or excessive damage to vegetation (PR #581 p. 29).

Finding: Big game retrieval strategy has been designed to be limited and will be monitored to protect heritage resources.

ISSUE 3: The project does not meet the requirements of Endangered Species Act (ESA).
Contention: Use of motorized vehicle big-game retrieval will increase motorized access to secure areas to the detriment of wildlife, and requires analysis for each area of big game retrieval under Section 7 of the ESA. The entire forest must be subject to consultation (appeal p.9).

Response: The Forest Service is required to consult with the U.S. Fish and Wildlife Service (FWS) on any project which may affect a species listed under the Endangered Species Act of 1973 (as Amended; hereafter ESA), and is also required to consult on any project which the Forest Service has determined may jeopardize the continued existence of any species proposed for listing or which is designated a non-essential experimental population under Section 10(j) of the ESA. Both the Act itself and Forest Service policy (FSM 2670) determine procedures through which interagency cooperation occurs with respect to listed species. Forest Service policy requires the completion of a Biological Evaluation (BE) to determine if the project affects any listed species or designated critical habitat for a listed species.

If a determination of “may affect” is made for a listed species, or if a “likely to jeopardize” determination is made for a proposed or non-essential, experimental species, then the Forest Service initiates consultation with the FWS. A Biological Assessment (BA) is prepared which contains the information used by the Forest Service in determining the effect and is sent to the FWS with a request for concurrence with the determination. If the Forest Service determines that the effects to listed species or designated critical habitat are insignificant and/or discountable, then a determination of “may affect, not likely to adversely affect” is made.

If the FWS does not concur with a determination of “not likely to adversely affect”, the Forest Service enters into formal consultation for the project and species and the FWS issues a biological opinion (BO). If the FWS concurs with the determination of “not likely to adversely affect” then consultation is concluded. Concurrence is dependent upon the species status and project impacts as described in the BA. If the project is modified, or if the status of the species in the project area changes, then consultation may need to be re-initiated so the new circumstances can be evaluated.

Federal projects which undergo consultation become part of the environmental baseline used by the USFWS for evaluation of the status of listed species ((50 CFR 402.02; “The environmental baseline includes the past and present impacts of all Federal, State, or private actions..., the anticipated impacts of all proposed Federal project in the action area that have already undergone formal or early section 7 consultation...”). Since all federal projects affecting listed species become part of the USFWS baseline, the scope of the project consulted on is determined by the action agency

The scope of this project is the Tusayan Ranger District (EA PR# 581 pp. 5, 9; also DN/FONSI PR #582, p. 2). Forest Service procedures were followed during the Tusayan Ranger District Travel Management Project planning process. The Tusayan Ranger District prepared a BE (PR #575, document 2) in compliance with FSM 2670. A determination of “not likely to jeopardize” was made for the California condor, and a determination of “No Effect” was made for all other listed species. This information was summarized in the EA (PR#581, pp. 59-71). The USFWS reviewed and commented on the EA (PR# 556).
**Finding:** The Tusayan Ranger District Travel Management Project complies with the Endangered Species Act of 1973 (as Amended).

**ISSUE 4: The project does not meet the requirements of NEPA.**

**Contention A:** The Forest Service failed to consider an adequate range of alternatives in the EA. The deficient purpose and need statement resulted in the lack of an adequate no action alternative and the lack of a reasonable range of alternatives. The two alternatives finally considered were nearly identical as shown in the effects discussion, with the only difference being longer distance routes for the motorized community. The alternatives fail to sharply define the issues and fail to provide a clear basis for choice among options by the decision maker and public as required by CEQ regulations for NEPA (appeal pp.27-33).

1. **Big Game Retrieval:** An alternative that does not make allowances for cross-country travel to retrieve downed game should be analyzed (appeal p. 10). The alternatives described for non-motorized game retrieval for deer in the Decision Notice should have been applied to game retrieval for elk in the project. Alternatives such as packing the game out on horses or mules, hiring an outfitter, use of non-motorized game carts, or asking friends for help should have been considered (appeal p.8).

2. **Wet Weather System:** Appellants asked the FS to develop an alternative that incorporate recommendations to balance the needs of wildlife with the desire to improve quality motorized trail opportunities. The appellant’s alternative (Alternative 4), which proposed designating the Wet Weather Road system, was inappropriately rejected for not providing access to private parcels and not complying with the TMR for the minimum road system. However the TAP points out that access to private lands could be accomplished through special use permits, and emergency fire vehicles could use any road, open or closed.

3. **Minimum Road System:** No alternative was presented or analyzed which would have provided the FS or public with a road system based on the minimum system needed for administration or use, nor a road system based on the best available science (such as one that would reduce route density to 1mi/square mile or less).

4. **Camp Site Designation:** The District proposed to designate existing campsites to accommodate camping demand but no alternative was developed for analysis or public comment on this option. The FS only analyzed alternatives that included designated camping corridors despite appellants’ recommendation that the FS analyze the designated campsite method.

**Response:** No specific number of alternatives is required or prescribed (36 CFR 220.7 (b)(2). In determining a range of reasonable alternatives, “[A]n agency must look at every reasonable alternative, within the range dictated by the ‘nature and scope of the proposed action’ and ‘sufficient to permit a reasoned choice.’” *Idaho Conservation League v. Mumma,* 956 F. 2d 1508, 1520 (9th Cir. 1992). The National Environmental Policy Act requires federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources (NEPA, Section 102 (2)(E)). Forest Service NEPA procedures codified at 36 CFR 220.7 (b)(2)(i) note: when there are no unresolved conflicts concerning alternative uses of available resources, an EA need only analyze the proposed action and proceed without consideration of additional
alternatives. For an alternative to be reasonable, it must meet the stated purpose and need and address one or more issues.

The Purpose and Need clearly states there is a need for complying with 36 CFR part 261.13 which requires that Forest prohibit motor vehicle use off the system of designated roads, trails and area. Furthermore, the EA states a need for complying with 36 CFR 212.5, which requires that Forests identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System Lands (PR # 581, p. 10).

The Forest Service sent out a general proposed action for scoping on May 3, 2006 (PR #56). The proposed action consisted of several maps of roads proposed for public use, including a “back bone” system that would be the only routes open during wet weather. A description of how the forest would manage motorized big game retrieval and motorized dispersed camping was not included in the information that went out for public scoping. Responses to scoping were primarily related to having more roads or fewer roads. Several letters suggested using the 160-mile wet weather system as the proposal (PR # 76, 77, 79, 82, 83, 86, 87, 88, 90, 93, 94, 96, 98, and 99). Although information on motorized big game retrieval had not been included in the material sent out for scoping, the Center for Biological Diversity noted they did not support cross-country travel for big game retrieval except in the case of disabled users (PR # 73).

The record does not show how scoping comments were used to develop issues. Following scoping, the Forest Service developed four alternatives and provided additional detail on how dispersed camping and motorized big game retrieval would be managed under each alternative. The alternatives included: 1) no action, 2) proposed action, 3) an alternative that incorporated additional routes, and 4) an alternative with fewer routes (the wet weather system). The No Action alternative appropriately reflects the current condition where cross-country travel is permitted under the Kaibab Land and Resource Management Plan. Alternatives 2 and 3 are similar with the only change being an addition of about 20 miles of road in Alternative 3. Both allow for motorized cross-country big game retrieval for elk up to one mile from designated routes.

The environmental effects chapter confirms that the anticipated effects of Alternatives 2 and 3 are very similar (PR #581, pp. 30-32, 39, 48, 50, 58, 75, 85, 87, 88, 91, and 96).

Alternative 4 consisted of considerably fewer routes and would have prohibited cross-country motorized game retrieval. A description of the four alternatives was included in a 3-page “Summary of Scoping Effort” and sent to the public for 30-day comment under the Notice, Comment and Appeal Regulations at 36 CFR 215 (PR #110 and 111) in September 2006.

Per the legal notice in the newspaper of record, the official 30-day comment period ended on October 18, 2006 (PR # 113); however, the record shows that many additional comments were received over the subsequent months. The official 30-day comments as well as comments received after the close of the comment period are summarized in Appendix 2 of the Final EA as “scoping comments” (PR # 581). Included are comments from Grand Canyon Wildlands Council expressing their opposition to motorized big game retrieval with the exception of allowing it for disabled hunters (PR #581, pp. 109-111 and PR #156, p.4).
In December 2008, the Forest released a Draft EA (PR # 372) to the public for another comment period under the Notice, Comment and Appeal Regulations at 36 CFR 215. The Draft EA identified two issues: 1) Designating a minimum road system would restrict motorized recreation opportunities and 2) Wildlife habitat and migration corridors would be negatively impacted unless a minimal road system is designated. Motorized big game retrieval was not identified as an issue (PR #372, p. 15-16). While the Draft EA notes that comments received during the scoping period were used to develop issues (PR #372, p. 15), the record does not contain information describing how the scoping responses (from May 2006) and/or comments (from September 2006) were used to identify issues.

**Big Game Retrieval:** Appendix 3 of the Final EA (PR #581) summarizes the comments received during this second comment period. Pertaining to motorized big game retrieval, some comments supported the activity while many others opposed it (PR # 415, 438, 487, 495, 502, 503, 504, 516, 521, 524, 528, 550, 554, 566, and multiple comments under 568). The Center for Biological Diversity submitted a letter in support of the proposed action with a few changes: no game retrieval and no camping corridors (PR # 569).

The Draft EA analyzed three alternatives in detail. Alternative 4, which had been sent out during the initial 30-day comment period in September 2006, had been dropped from detailed consideration for reasons stated in the Draft EA and unrelated to motorized game retrieval (PR # 372, p. 24). The EA and project record do not explain why an alternative prohibiting cross-country motorized game retrieval was not analyzed.

The DN (page 14) includes a discussion about how the decisionmaker considered eliminating big game retrieval entirely but did not choose this option, and the reasons given are to protect and enhance elk habitat, and input from the State wildlife agency. Positive resource impacts of motorized big game retrieval of elk carcasses in the record include reduction of possible condor lead poisoning (EA PR #581 pp.60, 64, 68-69); and to reduce impact on forage and browse plant species especially near wildlife watering structures by helping hunter success (EA PR #581 pp. 66, 70). Other effects on habitat from motorized cross-country travel are mainly negative (EA PR #581pp. 62-68). The DN rationale is also responsive to Arizona Dept of Game and Fish input to maintain big game retrieval, but only for elk. The State agency consistently requested motorized big game retrieval for both elk and mule deer (PR #147, #551, #556, and #616). It is shown in the record that elk retrieval trips are the majority of motorized big game retrieval trips (EA p.68), but this was not a reason identified in the decision.

**Wet Weather/ Minimum Road System:** The appellant also contends that an alternative minimizing effects to wildlife through designation of a minimum road system (such as the wet weather system) was not analyzed. Furthermore, the reasons for dropping a wet weather system from detailed analysis were inappropriate, as access to private lands could be accomplished through special use permits, and emergency fire vehicles could use any road, open or closed.

The EA and Decision Notice explain that the wet weather system (formerly Alternative 4) was dropped from detailed analysis because it would not provide required access to private land parcels. Furthermore, it was determined that it would not comply with the travel management rule 36 CFR 212.5 which requires designating a minimum road system. Additional reasons for
dropping this alternative were related to resource concerns including recreation, fire, and vegetation management. It was noted that designating the wet weather road system would limit recreation opportunities and many recreation sites would not have road access. And, concentrating all users on less than 100 miles of road could lead to an increase in user conflicts (EA PR #581 p. 27 and PR #582, p. 18).

With respect to designating a minimum road system, the EA does not explain why Alternative 4 would not have met this requirement. Nor does it explain how the alternatives ultimately analyzed meet the requirement for designating a minimum road system. Furthermore, it is not required that the responsible official designate a minimum road system (see Issue 1, Contention B). Pertaining to the other reasons this alternative was dropped, the Travel Management Rule identifies those uses that are exempt from the rule, they include: limited administrative use by the Forest Service; use of any fire, military, emergency, or law enforcement vehicle for emergency purposes; and motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations (36 CFR 212.51 (a)(4)(5) and (8)). It is not clear why recreation sites would not have access under this alternative. Also, it is not clear that this alternative would limit use to less than 100 miles of road. The record indicates the “wet weather” system was comprised of 160 miles of road in addition to 52 miles of highway (PR #74, p. 4).

**Camp sites:** All alternatives provide for some level of motorized dispersed camping. The appellants expressed preference with designation of actual campsites over corridors and noted that the draft EA (pp. 15 – 16) proposed designating existing campsites as a means of accommodating most recreation demand for camping, yet did not develop an alternative that would have allowed analysis or public comment on this option (appeal p. 31). The draft EA did not propose designating dispersed campsites. Rather, the draft and final EA retained the same wording for the section on motorized dispersed camping. Proposed actions included: 1) Camping Corridors; and, 2) Designate Routes to Access Dispersed Recreation Opportunities (PR #581, pp. 18 – 19).

Because the travel management rule requires designation of routes, not camp sites, the appropriate step for identifying a “camp site” is to designate the route to the site as a road, not the site itself. This was the intent of the Forest Service when they proposed a total of 6 miles of user-created routes be added to the system as described in the Decision Notice (PR #582, p. 6). The rule also gives the responsible official the authority to “…include in the designation the limited use of motor vehicles within a specified distance of certain designated routes…solely for the purposes of dispersed camping…” 36 CFR 212.51(b). The Forest Service used a combination of designating short spur routes to camp sites as well as a few corridors. Of the 572 mile designated system, just 17 miles has been identified as potentially available for motorized dispersed camping along a 300 foot wide road corridor (PR #581, p. 13 and PR #582, p. 6).

**Finding:** The Final EA and Decision Notice do not demonstrate that a range of reasonable alternatives was analyzed. Throughout the planning process comments were received both in support of and against cross-country motorized big game retrieval. The Decision Notice acknowledges that “of the concerns expressed through public comment, motorized game retrieval was the most controversial and the most polarizing topic” (PR #582, p. 14). Yet, despite this controversy, an alternative prohibiting cross-country motorized big game retrieval was not analyzed. Furthermore, the reasons presented for dropping an alternative comprised of the wet weather system (previously Alternative 4) are not supported by the
travel management rule. The analysis in the EA and record does not support the DN rationale that big game retrieval would protect and enhance elk habitat. If the decision rationale is based on cooperating with the State, the reasoning is arbitrary because both elk and mule deer game retrieval were requested equally in every letter from the State.

Contention B: Impacts from dispersed camping were enough to cause the FS to avoid locating designated camping sites and corridors along the Grand Canyon National Park boundary, however motorized big game retrieval is allowed throughout the forest. The response to comments from the Grand Canyon National Park that a one-mile buffer for game retrieval was not reasonable around the park boundary shows that there was a predetermination for big game retrieval despite impacts in the EA (appeal p.10).

Response: The Notice, Comment, and Appeal Rule at 36 CFR 215 requires the Responsible Official to consider comments prior to making a decision (36 CFR 215.6 (b)). For the Tusayan Travel Management Project, the Responsible Official demonstrated consideration of all comments (including those submitted by Grand Canyon National Park) by responding to each comment (PR # 581, Appendix 3).

On January 30, 2009, Grand Canyon National Park submitted comments, including the following: “we suggest that the Forest Service institute a buffer zone of 1-mile along the park boundary for any purpose (emphasis added) including big-game retrieval, fuel-wood gathering, cross-country travel, etc.” (PR # 567). The forest responded to this comment in the EA, explaining that instituting a 1-mile buffer for any purpose was not reasonable (PR # 581, p. 147). The Responsible Official also responded directly to Grand Canyon National Park in a letter dated April 24, 2009. The letter explained that many management actions would need to extend to the Forest Service-National Park boundary, thus instituting a one-mile buffer zone was not proposed (PR # 588).

Finding: The Responsible Official appropriately considered comments submitted by Grand Canyon National Park.

Contention C: An EIS is required. The complexity of the route designation process and the long-term consequences of designating a huge network of routes across the district require an EIS. The Finding of No Significant Effect justification is flawed because:

1) The project area is adjacent to the Grand Canyon National Park making the district “unique” and the project has statewide importance because of its geographic location and proximity to sensitive public lands (appeal pp.11-13). Other unique areas that will be impacted include tribal lands and the Grand Canyon National Park (appeal p.14).

2) The conclusions that the EA has no uncertain impacts and no significant impacts are not supported. Animal mortality from vehicle collisions is described as unlikely which is not supported. The EA acknowledges that it is difficult to distinguish effects of big game retrieval from those of general motorized cross-country use, but the Decision Notice states that impacts are not uncertain (appeal p.20). The unauthorized route damage that is expected to continue is described as isolated.
3) The project facilitates future expansion of motorized recreation opportunities such as creating additional routes, and sets a precedent for future actions for other forests and districts (appeal p.14).

4) The FS failed to analyze possible significant cumulative effects of past, present and future illegal motorized recreational use (appeal p.13). The Forest Service offers no support for its conclusion that the project’s impacts will not be cumulatively significant. Rather, it simply asserts that the cumulative impacts have been discussed in the EA (appeal p. 13). The EA contains inadequate analysis of impacts to support a FONSI determination (appeal p. 15). Cumulative effects to wildlife are contained in one paragraph which is no analysis. The 10-year timeframe used for the cumulative impacts analysis is arbitrary and capricious and not supported with science. The impacts may not be insignificant and are based on unsubstantiated conclusions (appeal pp.23-24).

Response on Legal Requirement: Preparation of an EIS is not required or necessary to demonstrate an agency has taken a requisite “hard look” at the environmental consequences of a proposal. The CEQ regulations provide direction for agencies to use when determining whether to prepare an EIS. Agencies may initially prepare an Environmental Assessment (EA) and if the analysis supports a Finding of No Significant Impact (FONSI), the action is exempt from the requirements to prepare an EIS (40 CFR 1500.4 (q)). In preparing a FONSI, the agency considers both the context and intensity of effects related to several significance factors (40 CFR 1508.27). The appellant questions the significance determinations pertaining to the following items in the FONSI:

1) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas (40 CFR 1508.27 (b)(3)). The Appellant contends the project is adjacent to the Grand Canyon National Park and other sensitive lands making the district “unique.”

Response to 1): Regarding historic or cultural resources, the FONSI indicates that measures have been incorporated to protect cultural resources that exist near roads and in designated camping corridors.

The Decision Notice identifies the Coconino Rim as an Inventoried Roadless Area (PR # 582, p. 2) and the FONSI notes there would be no change to the Inventoried Roadless Area (PR # 582, p. 19). The EA supports this determination; clarifying that the existing motorized travel closures covering Red Butte and Coconino Rim would continue and these areas would not be open to cross-country motorized game retrieval for elk (PR # 581, p. 22). However, the map, “Motorized Big Game Retrieval Opportunities with One-mile Buffer” does not identify the roadless area, implying cross-country game retrieval would be allowed (PR #581, p. 23 and 26).

The EA describes the proximity of the Tusayan Ranger District to Grand Canyon National Park and acknowledges that recreation users on the district often travel to the park. It is also noted that a portion of the district crosses the Great Western Trail (PR # 581, pp. 5, 7, 40, 43, 45, 49, and 54). Additionally, the DN notes that the district is
located just south of Grand Canyon National Park and borders the Navajo and Havasupai Indian Reservations (PR # 582, p. 2), the FONSI however neglects to mention these areas, noting that no other unique characteristics or ecologically critical areas exist in the area.

2) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks (40 CFR 1508.27 (b)(5)). The appellant notes that the EA describes animal mortality from vehicle collisions as unlikely, yet this determination is not supported in the EA. Additionally, the EA acknowledges that it is difficult to distinguish effects of big game retrieval from those of general motorized cross-country use

Response to 2): The FONSI states “The effects analysis shows the effects are not uncertain, and do not involve unique or unknown risks, and therefore are not significant” (PR # 582, p. 19). The EA describes estimated existing animal mortality due to vehicle collisions under the no action alternative (PR # 581, p. 63) and notes that frequency of animal-vehicle collisions is low likely due to low traffic volumes and low vehicle speeds. For the action alternatives, mortality is estimated to be less than existing due to fewer roads and the elimination of all public cross-country motorized travel with the exception of seasonal elk retrieval (PR # 581, p. 69).

3) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration (40 CFR 1508.27 (b)(6)). The appellant contends that the project facilitates future expansion of motorized recreation opportunities such as creating additional routes, and sets a precedent for future actions for other forests and districts (appeal p.14).

Response to 3): The FONSI notes that designating “a national forest system of roads does not establish precedent for future actions with significant effects or represent a decision in principle about a future consideration” (PR # 582, p 19). Where the majority of the district is currently open to motorized cross-country use for any purpose, the decision restricts such use to seasonal motorized big game retrieval for elk and limits motorized dispersed camping to select areas along designated routes. Additionally, 19% fewer system roads are identified for public use than are currently available. Thus, the selected alternative does not expand motorized recreation opportunities, rather, it restricts them.

4) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts (40 CFR 1508.27 (b)(7)). The appellant contends that the FS failed to analyze possible significant cumulative effects of past, present and future illegal motorized recreational use. Further, the appellant says the EA contains inadequate analysis of impacts to support a FONSI determination and is particularly deficient with respect to cumulative impacts, air, soils, watersheds, climate change, wildlife, invasive plants, and heritage resources

Response to 4): Cumulative effects result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Where there are no
direct and indirect effects associated with the proposed action, there are no cumulative effects associated with the project.

The FONSI determined the action would not have significant cumulative effects based on the discussion of cumulative effects in Chapter 3 of the EA (PR #582, p.20). Each resource section in the EA presents a discussion on cumulative effects. Other past, present, and reasonably foreseeable projects that were considered in the cumulative effects analysis are identified. The record provides additional information on cumulative effects pertaining to soil, water, air, rare plants, and invasive weeds (PR # 578) to support this determination.

**Finding:** The analysis in the project record and in the EA does not provide enough information to support whether a finding of no significant impact can be made pertaining 40 CFR 1508.27 (b)(3), unique characteristics of the geographic area.

Correct map on p. 23 and 26 of EA to display Red Butte and Coconino Rim as closed to motorized use. The FONSI needs to explicitly describe the unique areas of Grand Canyon National Park nearby and Great Western Trail and how they were addressed to support the finding that an EIS is not required.

**Contention D:** The project decision improperly dismisses impacts to the Coconino Rim Inventoried Roadless Area from illegal use or continued cross-country big-game retrieval (appeal p. 14).

The TAP Recreation, Scenery and Access Report notes an increase in motorized use in both Red Butte and Coconino Rim areas resulting in conflicts and reduced opportunities for primitive, non-motorized experiences. The specialist report for the EA does not address these conflicts and states that recreationists desiring semi-primitive non-motorized opportunities will continue to be able to engage in these at Red Butte and Coconino Rim. There is no reference in the EA or FEA about the impact of motorized big game retrieval (appeal p.35).

There is no analysis of the impacts big game retrieval will have on the more than 8,000 acres of land classified as semi-primitive non-motorized in the Recreation Opportunity Spectrum nor how this will impact the additional proposed 13,000 acres of semi-primitive non-motorized acres on the Tusayan district. (See Proposed Forest Plan Amendment for South Zone Recreation Opportunity Spectrum and Scenery Management version 1.0 pp. 4, 6 and 8) (appeal pp.25, 36).

**Response to Semi-Primitive Non-Motorized Areas:** The Decision Notice identifies two areas on the Tusayan District as closed to off-road vehicles: Red Butte Semi-Primitive Non-Motorized Area and Coconino Rim Inventoried Roadless Area (PR # 582, p. 2). The FONSI notes there would be no change to the Inventoried Roadless Area (PR # 582, p.19), and the Final EA and Decision Notice support this determination. The existing motorized travel closures covering Red Butte and Coconino Rim would continue, these areas would not be open to cross-country motorized game retrieval for elk, and no new roads are designated for these areas (PR # 581, pp. 21, 22 24, 25; PR #582, p. 5). However, the map, “Motorized Big Game Retrieval Opportunities with One-mile Buffer” does not identify the semi-primitive non motorized or inventoried roadless areas, implying cross-country game retrieval would be allowed (PR #581, p. 23, 26).
The TAP Recreation, Scenery and Access report notes evidence of both cross-country motorized use and motorized dispersed camping in Red Butte and Coconino Rim. This reduces opportunities for more primitive non-motorized recreation activities and results in conflicts between motorized and non-motorized users. The TAP further identifies roads adjacent to or crossing semi-primitive non-motorized areas as one of the risks to the non-motorized character (PR #580, pp. 21 - 22). Roads that pose potential threats to these areas were identified and, in most cases, recommended for removal from the designated system (Final EA, PR #581, p. 45). Concerns identified in the TAP about motorized use in Red Butte and Coconino Rim were not carried forward into the Final EA. The recreation analysis of the No Action Alternative notes the increasing potential for non-motorized users to be displaced or concentrated in the designated non-motorized areas as a result of unmanaged cross-country travel; however, no further analysis of the effects of motorized use on the non-motorized areas is provided (PR #581, pp. 40 – 43, 46-47, 49).

Motorized big game retrieval would not be permitted in Red Butte and Coconino Rim under Alternatives 2 and 3. Likewise, dispersed camping corridors would not be designated in these areas. Therefore, there was no need to address the impacts of motorized travel in the designated non-motorized areas. The Final EA concludes that Recreation Opportunity Spectrum classes would be maintained and existing recreation settings would not change under Alternatives 2 and 3 (PR #581, pp. 47 – 49).

2) Plan Amendment Response: The Appellants cite “Proposed Forest Plan Amendment for South Zone Recreation Opportunity Spectrum and Scenery Management Version 1.0” (source, date and author not provided) to support the contention that the project record does not analyze impacts of motorized big game retrieval on the “additional proposed 13,000 acres of SPNM acres.” This Proposed Amendment is not part of the Project Record; however, a copy was obtained from the internet for the purposes of the appeal review. It appears that the referenced amendment proposes to increase the Semi-Primitive Non-Motorized (SPNM) designation on the Tusayan District from 8,155 acres to 21,359 acres. However, the EA also lists 9,695 acres as administrative closures for motorized cross-country travel at Coconino Rim and Red Butte (EA PR #581 pp.14, 35)

The project record does include the Kaibab National Forest Land Management Plan, as amended, which references an Amendment 6 of October 21, 2004. This amendment adopts new programmatic Recreation Opportunity Spectrum and Scenery Management System classifications and standards within the Tusayan and Williams Range District (South Zone) from Environmental Assessment for Amendment of the Kaibab National Forest Management Plan – Recreation and Scenery Management (PR #39, no page number). The summary included in the record of the amendment does not explain total acres or if cross-country motorized travel is affected. It can not be determined if these two areas comprise the 21,359 acres referenced in the proposed amendment, as no copy exists in the record to review.

Finding: Impacts on the semi-primitive non-motorized and inventoried roadless areas are not clear. The project decision does not designate any new roads in the areas managed for non-motorized uses. The designated non-motorized areas of Red Butte and Coconino Rim would not be open to motorized game retrieval for elk. As stated previously, the maps on p. 23 and 26 of
the EA need to be corrected to show the Coconino Rim roadless area and Red Butte area as closed to cross-country motorized big game retrieval.

An analysis of existing motorized uses in these areas under the No Action Alternative to reflect issue identified in TAP needs to be done. The total acres included in Coconino Rim and Red Butte closed to cross-country motorized big game retrieval should be clarified in view of this amendment. A copy of the Kaibab Plan Amendment #6 (2004) description needs to be added to the record to clarify the acres and the impacts on semi-primitive non-motorized acres.

Contention E: The magnitude of impacts from big-game retrieval and current levels of motorized vehicle use has not been disclosed and may be significant requiring an EIS. Site specific NEPA analysis is needed for effects to all the areas covered by the big game retrieval and dispersed camping provision (appeal p.6). Each route designation requires a detailed analysis of the effect of that designation on factors listed in 36 CFR 212.55(b). The FS does not indicate how many hunters use motorized vehicles for game retrieval under current conditions and therefore cannot make an educated comparison of effects with the proposed action (appeal pp.15-17, 20). The impacts of motorized big game retrieval are purely speculative and not based on scientific research as to the nature of the habits of off-road motorized vehicle users. Appellants provided the FS with scientific research on habits of motorized vehicle users and asked the FS to rely upon these studies rather than upon FS estimates based upon Arizona Game and Fish Dept estimates (appeal p.25).

Response: The appellant contends that the magnitude of impacts from big game retrieval and current levels of motor vehicle use has not been disclosed and are purely speculative. The EA acknowledges that the majority of the Tusayan Ranger District is currently open to cross-country travel (PR #581, pp. 7, 10, 35) and that cross-country uses span a variety of activities from various forms of recreation, to antler collection, to hunting and game retrieval. The no action alternative in the EA acknowledges that the existing cross-country use can disturb wildlife and damage resources (PR #581 p. 35, 37, 41, 45, 55, 62).

The selected alternative will represent a change from current management by eliminating all cross-country use on the Tusayan District with the exception of motorized big game retrieval for elk and for dispersed camping in select corridors. The EA notes that closing the District to motorized cross-country use will result in substantial reductions in damage to resources; however, there still may be isolated occurrences of resource damage from limited access associated with motorized dispersed camping and retrieval of elk (PR # 581, p. 38).

Monitoring of dispersed camping corridors and cross-country elk retrieval areas will be conducted and if resource damage is discovered the Forest Service may temporarily or permanently close specific dispersed camping corridors or cross-country elk retrieval areas to motorized vehicle use (PR # 581, p. 28). A mitigation clarifies that cross-country travel for the purposes of dispersed camping and tagged elk retrieval is prohibited when it will result in resource damage (PR # 581, p. 29) and motorized big game retrieval for elk would only be authorized for hunters taking a relatively direct and safe route that minimizes resource effects, using a minimum number of trips to accomplish game retrieval (PR # 581, p. 42).
Furthermore, the Tusayan District has an existing wet weather policy that can be implemented on an as-needed basis in order to be responsive to conditions on the forest. Cross-country travel is prohibited in all cases when the wet-weather system is implemented (PR # 581, p. 36 and 57).

In January 2009, the appellants submitted comments on the draft EA (PR #569). An appendix to their comment letter described a decision to discontinue cross-country motorized game retrieval on the Grand Mesa National Forest. The decision to discontinue this activity was based on monitoring over a 10-year period. The Tusayan Travel Management decision also includes a monitoring component, and if monitoring indicates a need to change management, the responsible official can consider such a change in the future.

None of the comment attachments submitted by appellants included peer reviewed published scientific papers related to motorized cross-country big game retrieval use patterns in Arizona.

In the absence of specific information on the number of hunters that use motorized vehicles for game retrieval, the Forest Service consulted with and used data from the Arizona Game and Fish Department (AGFD). However, the wildlife, heritage, and range analysis used different assumptions based on data sets for different years (PR # 307, p. 63 and PR # 367). Some estimated 50% of hunters would travel off-road, others estimated 90%. Some resources estimated hunters would travel ¼ mile off road while others estimated 1 mile (PR # 581, pp. 68, 83, 91).

**Finding:** The EA disclosed the effects of motorized big game retrieval and dispersed camping. Pertaining to game retrieval; however, different assumptions were made by different resource specialists. **The analysis of effects from various specialists should be based on the same set of assumptions and the source data for those assumptions should be cited in the record.** Despite the different assumptions, the selected alternative represents a reduction of use over the no action alternative. No science was presented by appellants that would change the analysis.

**Contention F:** The existing routes have been placed outside of the analysis which is contrary to how cumulative effects should be analyzed. Also illegal motorized recreational use impacts have not been analyzed. Cumulative impacts should have looked at the pre-existing routes, the added impacts of illegal user-created routes, the impact of the complete set of routes on the landscape, and impacts from past, present and reasonably foreseeable future actions. Approximately 125 miles of user-created routes will remain on the ground with no plans for decommissioning, and these are part of the cumulative effects. Other ongoing and expected Travel Management Plans on other forests in Arizona also should have been considered under NEPA (appeal pp.17-19).

**Response:** The EA and Decision Notice acknowledge that the majority of the Tusayan Ranger District is currently open to cross-country travel (PR #581, pp. 7, 10, 35; PR #582, p. 2). As such, it is not illegal for motorized users to travel cross-country. Effects of the no action alternative were analyzed (See contention E). Future illegal use is speculative and appropriate action will be taken if monitoring identifies illegal use (PR # 582, p. 7).

As to user created routes remaining on the ground, these routes will not be identified on the Motor Vehicle Use Map and public motorized travel on them will be prohibited. The Decision Notice explains that these routes will be allowed to revegetate naturally over time and if necessary may be seeded with native grass seed. Additionally, the Forest will use monitoring
information to determine the need for future site specific projects for road decommissioning (PR # 582, p. 13).

The Appellant’s contention regarding cumulative effects is addressed under NEPA Contention C (FONSI).

Finding: Existing user-created routes were appropriately analyzed as part of the no action alternative. If these routes do not return to a natural state on their own, additional site-specific NEPA will be conducted for ground disturbing decommissioning activities, as needed.

Contention G: Effects to soils should be analyzed and disclosed to the public. About 39 miles of frequently used roads are located on soils with severe erosion hazard and one-quarter of the district has soils with low bearing strength when wet. Failure to decommission these routes will result in continuation of the same impacts (appeal pp.19-20).

Response: The status of soils in the project area and the effects proposed actions could have on those soils is discussed in the Tusayan Final Environmental Assessment (EA) (PR 581, pg. 50-59). It is acknowledged in the EA that 39 miles of frequently used roads are located on soils with severe erosion hazard and that one-quarter of the district has soils with low bearing strength when wet. It is stated in the EA that most road damage and risk to natural resources occurs during periods when moisture is received and roads are wet (PR 581, pg. 53). For the project area, this is in general November through April and July through September. To address this issue, the Kaibab NF enacted a Wet Weather Roads Policy several years ago that restricts wet weather travel to improved roads with hard surfaces and adequate drainage. The policy may be enacted by each District Ranger as conditions occur that could damage roads. The closure is temporary in nature, and is lifted when weather conditions change and improve, and the risk for road damage is decreased. This Wet Weather Roads Policy would remain under the Travel Management decision (EA pp.28, 57).

Under the selected Alternative 3; 143 miles of Forest Service System Roads and most of the user-created unauthorized roads would be closed. This would mean 20% fewer roads to maintain for public use (PR #581, pp.56-57). It might even be possible for the forest to make some improvements to the remaining road system (i.e., hard surfaces and/or drainage enhancements). The smaller public road system would be in better condition, so there would be less erosion and sedimentation.

Neither Alternative 2 or 3 would close all problem roads (PR 581, pp.57-58). Some of the roads that would remain open could be located on soils with unsatisfactory conditions. These roads could be evaluated for possible closure and/or relocation in the future as part of other projects. If the roads are important for management or recreation access, they could be improved with hard surfaces and enhanced drainage features.

Finding: The effects of Alternative 3 on soils are disclosed in the Final Environmental Assessment. Roads located on soils with severe erosion hazard and on soils with low bearing strength when wet would be addressed with temporary and/or permanent closure and relocation. The Forest acknowledges that decommissioning is an option to pursue for some roads in the future.
**Contention H:** The EA did not address environmental effects of fugitive dust from off-road vehicle routes. The emissions from vehicle engines was not addressed or quantified. The FS must address possible increased air pollution from increased use on the existing road system from increased off-road vehicle use (appeal p.21).

**Response:** The EA does address the environmental effects of fugitive dust from off-road vehicles. The Regional Haze State Implementation Plan (40 CFR 51.309(d)(7)) for the State of Arizona from December 23, 2003, states that “road dust is not a measurable contributor on a regional level to visibility impairment in the 16 Class I areas. Due to this finding, no additional road dust control strategies are needed…” (See EA at PR #581 p.54, and DN at PR #582 p.13).

A review of air pollution from vehicular emissions from potential increases in off-road vehicle use is not required for the project as the Tusayan Ranger District is in attainment of national air quality standards, and is not located in or near a non-attainment or maintenance area, as shown in the Arizona Dept of Env‘l Quality web site map (May 27, 2008. http://www.azdeq.gov/environ/air/plan/images/notmeet.jpg, PR #582 p.16). Therefore the impacts of vehicular emissions were not found to be significant (DN at PR #582 pp.13-14).

**Finding:** The project adequately addresses the issues of air pollution, emissions and fugitive dust and meets requirements of the law.

**Contention I:** The EA should have analyzed contributions to regional climate change from the project. Without acknowledging the threat of climate change and building this threat into the impact analysis and consideration of alternatives, the FS cannot make a reasoned and informed decision pertaining to motorized recreation (appeal p.22).

**Response:** The EA considered the potential effects of climate change and explained that the state of knowledge needed to address climate change at the forest scale is still evolving and most global climate change models are not yet suitable to apply to land management at the forest scale (PR # 581, p. 36). Thus, the climate change effects of implementing the travel management rule through designating a system of routes on a Motor Vehicle Use Map cannot be quantified. However, a comparison can be made between the motorized activities permitted under the no action alternative (essentially unlimited motorized cross-country use) and the action alternatives that limited cross-country use and reduce the number of routes available for public travel. Comparatively, the action alternatives with limitations on motorized use would have fewer potential effects than the no action.

**Finding:** The Forest appropriately considered the threat of climate change related to the scale of the project.

**Contention J:** The Forest Service did not analyze the current and on-going impacts of motorized use on wildlife. Effects to wildlife from unlimited motorized access to the forest during elk hunting season were not considered. Big game retrieval is not prohibited in Management Areas 8, 9 and 10 for mule deer fawning and elk calving habitat, or in Game Areas 8 and 9 which provide winter and transitional range for mule deer and elk. Effects to pronghorn and wild turkey are not analyzed. The impacts may not be insignificant and are based on unsubstantiated conclusions (appeal pp.23-24).
Response: The Forest Service is required to analyze and disclose the effects of all action alternatives using the No Action alternative as the environmental baseline (40 CFR 1502.14(d)); the intent of disclosure of environmental consequences is to contrast the effects of alternatives. As per CEQ 40 Most Asked Questions: “This [the no action alternative] analysis provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives.”). In addition, the Forest Service is required to analyze impacts to Federally listed species, Southwestern Region Sensitive Species, Management Indicator Species (MIS) for the Kaibab NF, and the Forest Service is required to disclose unintentional take of migratory birds.

The analysis of effects to listed and sensitive species are found in the BE (PR# 575, document 2). Analysis of MIS and disclosure of effects to migratory birds are found in the MIS and Migratory Bird Report (PR #575, document 3). In addition, the MIS and Migratory Bird Report incorporate information from the Kaibab NF MIS Report (PR#309). The effects to mule deer, pronghorn, and turkey are detailed in the MIS and Migratory Bird Report (PR #575, document 3, pp. 11-13). The analyses in the above reports are summarized in the EA (PR #581, pp. 59-71).

In the above documents, the miles of roads by alternative are disclosed. As summarized in the EA, for all action alternatives the total miles of roads is less than in the no-action alternative (PR#581, pp. 69-71). Therefore impacts from vehicular travel on roads are less than under the no action alternative. The number of times hunters utilize motorized big game retrieval is disclosed quantitatively by alternative (PR #575, BE at document 2, pp. 2-3; MIS and Migratory Bird Report at document 3, pp. 2-3). As summarized in the EA, for all action alternatives motorized big game retrieval is restricted to elk only, while in the no-action alternative motorized big game retrieval is open for elk, deer, and pronghorn (PR #581, pp. 68-69). Therefore impacts from motorized big game retrieval are less in the action alternatives than under the no-action alternative.

Finding: The effects to wildlife were analyzed and disclosed in compliance with NEPA.

Contention K: The impact of the spread of invasive weeds was not adequately addressed in the EA and must be addressed in an EIS (appeal p.24).

Response: The appellant contends that the potential impact of the spread of invasive weeds was not addressed. The EA notes that most weed infestations have been found near roads and vehicles are the most common cause of weed introduction and spread. Additionally, many weed seeds and plant parts are spread by muddy vehicle tires and a dense road network increases the risk of weed introduction and spread (PR # 581, p. 71-72).

The action alternatives reduce the number of roads open for public motorized travel and eliminate cross-country motorized travel with the exception of seasonal elk retrieval. These changes will reduce the number of opportunities for weed introduction and spread (PR # 578 and PR # 581, p. 74). Furthermore, annual invasive weed inventory and monitoring in conjunction with other projects or management activities will continue under all alternatives. The Kaibab previously analyzed methods to treat weeds in a FEIS for Integrated Treatment of Noxious or Invasive Weeds on forests in Arizona (PR # 582, p. 9) and if weed populations are discovered, appropriate action will be taken (PR # 581, p. 28 and PR # 582, p. 8).
Finding: The potential impact of the spread of invasive weeds was disclosed in the EA and no significant effects were identified. As such, an EIS is not required.

Contention L: The FS failed to consider its own data for growth of off-road vehicle use over the past 5 years. That data is from the National Visitor Use Monitoring Results (NVUM Report 2006) and the Northern Arizona University Recreation Use Study (commissioned by the FS in 2002). The FS needs to inform the public as to which studies it used instead to determine the number of off-road vehicle users on the Kaibab NF. The FS cannot claim that the NVUM is valid for dispersed camping decisions but not for other off-road vehicle decisions (appeal p.26).

Response: The project record includes the National Visitor Use Monitoring Results for the Kaibab National Forest September 2006 and the Northern Arizona University Recreation Use Study as references (Final EA, PR #581, pp. 164 and 166). It also included and cited the Arizona Statewide Comprehensive Outdoor Recreation Plan (SCORP) in the Recreation and Scenic Resources report for off-highway vehicle use (Final EA, PR #581, pp. 41, 164).

Finding: NEPA does not require the use of specific reference material, only that the material used be disclosed to the public. Therefore, since it clearly identifies the Arizona SCORP as the study used to determine off-highway vehicle use statistics, this project meets the requirement of NEPA.

ISSUE 5: The project violates the National Forest Management Act and the Forest Plan.

Contention A: The designation of camping areas and corridors to motorized use does not follow Forest Plan standards and guidelines that are included in Outdoor Recreation goals for the Kaibab National Forest. Off-road vehicle closures must be established as needed to protect resources and minimize conflicts with other uses (Plan page 15). Off-road vehicle use is to be monitored and managed, and the ORV plan updated to prevent resource damage. Additionally, the Kaibab National Forest must formulate and execute measures to close, revegetate, and obliterate roads not needed for resource actions (Plan pages 7, 39, 104, 110, 116 for MAs 8, 9 and 10) (From appeal pp.34-35).

Response: The project decision amends the Kaibab Forest Plan to implement the Travel Management Rule on the Tusayan Ranger District and restricts motorized use to designated roads, trails, and limited open areas (DN, PR #582, pp. 9 - 12).

Camping corridors will not be located in Red Butte and Coconino Rim, within ¼ mile of a water source, or in locations with heritage soil/watershed, or rare plant concerns in compliance with the Outdoor Recreation goal in the Forest Plan to provide off-highway vehicle opportunities, protect resources and minimize conflicts with other users (PR #39, p.18; Final EA, PR #581, p. 30).

Consistent with the Kaibab Forest Plan, the project decision implements monitoring requirements and mitigation measures to manage motorized use and protect resources, including enforcement of the Wet Weather Roads Policy. Cross-country travel for elk retrieval and within dispersed camping corridors is prohibited when it will result in soil damage or excessive damage to vegetation (DN, PR #582, pp. 7 - 9).
The decision does not adopt 160 miles of user-created routes. These routes will be monitored to determine decommissioning needs that will not affect resource management objectives; future decommissioning of roads will also be guided by recommendations included in the Travel Analysis Process (DN, PR #582, p. 13). These actions respond to the Management Direction for Soil and Water Resources (Kaibab Forest Plan, PR #39, pp. 56, 60).

Finding: The project decision is consistent with the National Forest Management Act and the Forest Plan, as amended. The designation of camping corridors and management of motorized uses follow the Outdoor Recreation goals and Management Direction for Soil and Water Resources.

Contention B: There are no provisions in the EA for decommissioning or obliterating unnecessary system roads as required by the Forest Plan (appeal p. 36).

Response: The requirement to identify the minimum road system was established in regulations (the roads rule) and directives (the roads policy) published on January 12, 2001 (66 FR 3216), before promulgation of the travel management rule in November 2005. This earlier rule requires responsible officials to review NFS roads on each national forest and national grassland and identify those that are no longer needed to meet forest resource management objectives and that therefore should be considered for decommissioning or other uses, such as trails (36 CFR 212.5(b)(2)). See discussion at Issue 1 Contention B, per the Travel Management Rule of 2005 at 36 CFR 212.5(b)(1), the identification of this minimum road system does not need to be adopted simultaneously with the designation of roads, trails, and areas for motor vehicle use.

Further guidance on road decommissioning is provided in FSM 7734. Identification of the minimum road system and decisions regarding when and how to decommission roads, are left to the discretion of the responsible official (see 73 FR p. 74696).

The EA describes decommissioning or closure as one option for protection of resources where open roads are monitored and found to have erosion problems, or where motorized travel has potential to harm rare plants, and closed roads can be considered for decommissioning in future (EA PR #581 pp. 28-29, 56, 142). The EA also notes that several decisions to close roads on the District have been signed during the past 10 years; and in 2003 and 2004 approximately 73 miles of Forest Service roads on the western part of the district were closed and obliterated (EA PR #581 p. 67).

Finding: The EA appropriately discusses future decommissioning or obliteration of roads after the designation of the travel management system.
This is my recommendation on the disposition of the two appeals filed by June 15, 2009, of the Decision Notice and Finding of No Significant Impact (DN/FONSI) made by Mike R. Williams, Kaibab Forest Supervisor, to designate a system of roads for public access and motorized recreation travel. One appeal was filed by Randy Schaal and a second appeal was filed on behalf of the Center for Biological Diversity, Grand Canyon Wildlands Council, Sierra Club - Grand Canyon Chapter, Public Employees for Environmental Responsibility, WildEarth Guardians and Liz Boussard.

The Forest Supervisor's April 18, 2009 decision prohibits motorized cross-country travel off the designated system on the Tusayan Ranger District. The selected Alternative 3 removes about 143 miles of roads from the existing forest system, adds 6 miles of currently unauthorized routes to the designated system, prohibits use of 160 miles of other unauthorized routes, and allows for limited use of motorized vehicles for dispersed camping in designated camping corridors and big game retrieval for elk during elk hunting seasons.

The decision includes a non-significant Forest Plan amendment. The decision will result in the publication of a Motor Vehicle Use Map (MVUM). After the map has been released, travel off the designated system will be prohibited unless authorized by permit or other authorization.

The legal notice of the decision was published on May 1, 2009. Two timely notices of appeal were received under the 36 CFR 215 appeal regulations. Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of the appeals. The record indicates that informal resolution was not reached on either appeal.

**Review and Findings**

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, polices, and orders. The appeal records, including the appellants' issues and requests for relief have been thoroughly reviewed. Having reviewed the Environmental Assessment (EA), decision, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

1) The decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.

2) The selected alternative should accomplish the purpose and need established.
3) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official’s efforts enabled interested publics the opportunity to comment.

4) However the range of alternatives did not address the main public issue of motorized big game retrieval, and the analysis of the effects from big game retrieval was not based on a consistent set of facts.

5) Additionally, the reasons presented for dropping an alternative comprised of the wet weather system are not supported in the analysis.

**Recommendation**

I understand the complex nature of these types of decisions and feel that the Forest invested a great deal of work into the analysis. Nonetheless based on the review, I recommend that the Responsible Official’s decision relating to this appeal be reversed and new analysis completed.

Signed,

**DANIEL J. JIRÓN**

Forest Supervisor

Appeals Reviewing Officer

Hard copy of this letter to be attached to ADO letter sent to appellants.

cc:

Constance J Smith