November 29, 2016

Subject: Request for Reconsideration of Over Snow Vehicle (OSV) Grooming Decision and Decision to Continue Managing Forest Trail 31E14 as a Road

Sequoia ForestKeeper (SFK) and the Kern-Kaweah Chapter of the Sierra Club (SC) believe the Forest Service is in error in allowing grooming and snowmobile use over a section of the Summit National Recreation Trail (31E14) between Quaking Aspen Campground and Quaker Meadow Road (21S78). The Decision Memorandum (DM) does not respond to our concerns, and so we request a formal response to this letter.

On February 19, 2016, SFK and SC submitted extensive comments, including several historic maps, that clearly show that the section of Summit Trail in that location has been considered for decades a trail and not a road, and that the recent ad hoc addition of this route to the road system in the Giant Sequoia National Monument is unjustified and in violation of the Monument Proclamation, the Monument Plan, and the Travel Management rules. Moreover, the Forest Service’s distinction between snowmobiles and summer off-highway motorized vehicles is inconsistent with the Monument Proclamation’s prohibition of motorized vehicles on trails and even Maintenance Level 1 roads.

1. MAINTENANCE LEVEL 1 ROAD (NOT ML2)

The September 26, 2016 DM fails to address our concerns and does not directly respond to our assertions and evidence that this section of trail is not a road. The only possible relationship to this controversy is the following statement:

[I]nternal review shows that the roads not shown on the MVUM are in fact Maintenance Level 2 roads which have been used as roads prior to the creation of the GSNM but have since been managed as seasonally closed roads open during the winter season.

DM, page 2 of 7. We believe this to be in error. Contrary to the evidence we have provided, showing that this has been designated and managed as a trail for over 20 years even before creation of the GSNM, the Forest Service has provided no actual evidence to contradict this, even with its assertion that this route is a road based on an “internal review.”
First, the “internal review” contradicts that the disputed road segments are “Maintenance Level 2” roads, and instead states that both 21S61A and 21S79A are “currently described in INFRA as a maintenance level 1 road[s], meaning [they are] not available for motor vehicle use.” OSVroutesEngineeringInput_2016_05_25.pdf at PDF p. 4 (see Exhibit A, attached) (emphasis added). Moreover, the GSNM plan clearly states that while being maintained at level 1, they are closed to motorized traffic. GSNM Plan, p. 128. There is no exception for OSVs or groomers.

And while the internal NEPA checklist recommends a change from ML1 to ML2, the DM does nothing to actually make this change, as it erroneously refers to the “internal input” to claim that these roads were ML2 in the past. This is not what the “internal input” states.

The Motor Vehicle Use Map (MVUM) for this area, which is incorporated into the GSNM Plan, does not show this trail as a road. Instead, the GSNM Plan states: “The road system in the Monument that is currently designated for motorized use is shown on the MVUMs for the Hume Lake and Western Divide Ranger Districts…” and “motor vehicle use maps (MVUMs) were published in 2008 to reflect this management of the transportation system in the Monument.” GSNM Plan, pp. 127 & 129; see GSNM Plan, p. 106 (“Limit over-snow vehicles to designated roads.”). There has been no amendment to the GSNM Plan or the MVUMs that allows the Forest Service to add this section of trail to the road system.

Further, it does not matter that “MVUM, by its own terms, exempts OSVs from complying with the vehicle use restrictions shown on the MVUM” (DM, p. 2 of 7), because the MVUM cannot override the GSNM Plan, which clearly states that OSV use is limited to designated roads, and the only roads legally designated are those shown on the MVUM. It is also of no help to assert that “pursuant to federal regulations, Over Snow Vehicles must be exempted from the ‘Designation of Roads, Trails, and Areas for Motor Vehicle Use’ described under the Travel Management Subpart B regulations as 36 CFR 212.51(a)” (id), because the GSNM Plan takes precedence. And until OSV routes have been designated under Subpart C and incorporated by amendment into the plan, the current GSNM Plan governs all motorized use on and off designated roads, including snowmobiles and groomers.

Because the GSNM Plan only allows OSVs on designated roads, by issuing the DM to allow grooming and snowmobile use on this trail section, the Forest Service has issued a plan amendment without following proper procedure, in violation of the NFMA, its NFMA regulations, and NEPA. See GSNM Plan, p. 127 (“Changes to the existing transportation system will only be made after appropriate site-specific environmental analysis.”). At the very least, the authorization of grooming or snowmobile use off an MVUM designated road is a violation of the GSNM Plan.

2. EVIDENCE SHOWS THAT THE SUMMIT TRAIL IS ACTUALLY NOT A ROAD

In addition to the maps and other evidence we have already provided in our comments, we provide the following set of photographs, which are geo-referenced to locations along the section of disputed trail, which can also be accessed and downloaded from the following link:
https://goo.gl/photos/AMBU3QBAzqHC3fSA8 (Summit Trail between 21S78 & Quaking Aspen Campground, photographs from August 15, 2016)

Start of Trail at 21S78, moving north

Continuing north, trail gets more narrow and is clearly a single track

At points, the trail is no more than 18-24 inches wide
Continuing north…

And further north…

And descending towards Quaking Aspen Meadow
Adjacent to Quaking Aspen Meadow

Approaching lower end of Quaking Aspen Meadow

Lower end of Quaking Aspen Meadow at stream crossing (note that ruts are from hikers & bikers trying to avoid muddy tract during wet conditions, not motorized vehicles)
Same crossing, looking south, showing old road sign near stream crossing below Quaking Aspen Meadow.

Decades-old road sign, looking south; then trail ascending into Quaking Aspen Campground to the north.

Compare these photographs with the travel management regulations, which provide the following definitions:

**Road.** A motor vehicle route over 50 inches wide, unless identified and managed as a trail.

**Trail.** A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail.

36 C.F.R. § 212.1. It is easy enough to determine from these photographs and on-the-ground site visits that this trail is less than 50 inches wide at most points, and is therefore not a road but a trail. Moreover, management of the route as a trail (identified as the Summit Trail), makes this route a trail and not a road. Just because it was once considered a road does not change the fact that it is no longer being maintained or managed as a road. And changing the maintenance level does nothing to change the on-the-ground status of this trail, which is not a road.
3. STREAM CROSSING BELOW QUAKING ASPEN MEADOW

One further concern regarding snowmobile use or grooming in this area is the stream crossing below Quaking Aspen Meadow. The distinction between this stream crossing and the others (shown in the various stream crossing files you provided) is that most (if not all) other stream crossing exist on roads with culverts or bridges. The stream crossing below Quaking Aspen Meadow does not have a culvert or bridge, and both OSV grooming equipment and snowmobiles will cross directly through the stream, which could cause substantial erosion or other environmental damage. According to the BA at p. 13, “since most roads contain culverts that allow motorized crossing both in winter and summer, impacts to the highly aquatic MYLF is expected to be extremely unlikely to occur.” That, however, is not the case with this particular crossing and stream, if mountain yellow-legged frogs (MYLF) are found in this area in the future.

4. GROOMING SHOULD NOT OCCUR UNTIL THERE IS AT LEAST 18 INCHES OF SNOW

The DM is inconsistent with the Biological Assessment, which states that “Grooming would only occur on snow that is at least 18 inches deep.” BA, pp. 1 & 5. Yet the DM states that grooming can “occur if at least 12 to 18 inches or more of snow is present.” DM, p. 2 of 7. There is no explanation for this change in the DM. The BA’s analysis is based on a minimum of 18 inches of snow and not 12 to 18 inches.

We, therefore, request that the DM be modified to be consistent with the conservation measures proposed in the BA to allow OSV grooming only if there are at least 18 inches of snow.

SUMMARY

We ask the Forest Service for a specific formal response to this letter. We also request that the Forest Service amend its OSV grooming decision to not allow grooming and snowmobile use on the Summit Trail (also referred to as 21S61A), and not to allow grooming until there are at least 18 inches of snow.

As an alternative, we suggest that the Forest Service provide an OSV grooming on Highway 107 between 21S61 and where 21S09 rejoins the highway, similar to the grooming it already proposes to do on Highway 107 south of 21S09.

For Sequoia ForestKeeper and the Kern-Kaweah Chapter of the Sierra Club,

René Voss – Attorney at Law
renepvoss@gmail.com