

**Kapka Sno-Park Environmental Assessment (EA)**  
**Appeal Statement and Responses**  
Bend-Fort Rock Ranger District  
Deschutes National Forest  
December 2012

<b>Appellants</b>	<b>Appeal Number</b>
Nathan Boddie (NB)	13-06-01-0001-215
Winter Wildlands Alliance and Bend Backcountry Alliance (WWA)	13-06-01-0002-215
Rick Sironen (RS)	13-06-01-0004-215
Pieter Van Glederen (PV)	13-06-01-0005-215
Wild Wilderness (WW)	13-06-01-0006-215

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***User Conflicts/Increased Use***

**Appellant Statement #1:** Appellant states that alternative two is not in keeping with the stated purpose of the project, which is to improve parking safety within the involved area of the National Forest. Appellant states that “while the action alternative does increase the absolute number of parking spaces in the area, it does so in a manner that will only further congest traffic in the local forest and in doing so, further increase user conflict.” Appellant states that by placing another parking area adjacent to the Dutchman parking site, trails users will generally travel together funneling different types of forest users into the same area of forest and that adding more spaces simply increases the number of conflicts that will occur. NB at 1; WW at 19 and 20.

**Response:** I find that the selected alternative meets the stated purpose of the project, which is to improve parking safety within the involved area of the Deschutes National Forest. I find that the EA does evaluate and disclose effects to safety, traffic congestion, and user conflict.

The Code of Federal Regulations (CFR) at 36 CFR 220.7(b)(2) requires an Environmental Assessment (EA) to briefly describe the need for the project and briefly describe the proposed action and alternative(s) that meet the need for the action. Additionally, the regulation at 36 CFR 220.7b(3)(i) states that an EA “Shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). An EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.” 36 CFR 220.7b(3)(iv).

Meets the purpose and need – Safety: Alternative 2, modified was designed to meet the purpose and need and is discussed in the DN/FONSI at 4 and 8-11. The additional high elevation parking capacity will meet most of the current winter recreation demand, allowing most visitors to park safely within a sno-park on most weekends and holidays. DN/FONSI at 11. Alternative 2 proposes to build a new sno-park near Kapka Butte in order to provide more high elevation parking for winter recreationists along an established snowplowing route. This alternative is described in detail in the EA at 26-30. Comparison of the alternatives and how Alternative 2 responds to the purpose and need are found in Tables 2-7 and 2-8 in the EA at 44-47. The effects of Alternative 2 and how this alternative would provide for additional safe parking were evaluated in the EA at 86-88. Appendix F of the EA at F-22 to F-24 documents the District’s response to public comments about safety.

User Congestion and Conflict: The 2007 to 2008 Deschutes National Forest Winter Survey results indicate that many winter recreation visitors feel that increased parking capacity would not adversely affect their ability to find their desired recreation experiences. EA at 64. Further, while crowding and congestion occurs at some sno-parks, visitors said that the number and variety of trails lets people spread out: nearly half of winter survey (49%) respondents said that the existing trail system of connecting and looping trails allows for use to disperse quickly creating a safe and desirable use of the trail system. EA at 64.

The key issue, social conflict, is described in the DN/FONSI at 9-16 and the EA at 14-15, while Tables 2-9 through 2-11 (EA at 48-52) display how the action alternatives respond to the key issue of social conflict. In Chapter 3 of the EA, section 3.4.4 evaluates and discloses the effects the action alternatives have on social conflict. EA at 75-101 and 107-109. Existing conditions, capacity, changes in use levels, congestion, and effects of the proposed action are described throughout the document. DN/FONSI at 9-13; EA at iv-vii, 7-8, 77-100, and 106-107. The selected alternative addressed concerns about user conflict between motorized and non-motorized recreationists by providing an alternative parking area for vehicles and reducing competition over the current limited parking at Dutchman Sno-park. DN/FONSI at 4.

Therefore, I find that the Responsible Official's selected alternative meets the stated purpose of the project and that the EA does evaluate effects to safety, traffic congestion, and user conflict.

**Appellant Statement #2:** Appellant states that on page 6 of the Kapka EA Decision Notice (DN) there is now a Nordic ski trail that goes thru the highway underpass, and that this trail is one of the most heavily traveled snowmobile routes in the area, and at about 10 feet wide. Appellant questions if the District is going to put snowmobilers and Nordic skiers through it, which will likely be a major area of conflict and that the other alternatives do not add this traffic. RS at 1; PV at 1.

**Response:** I find that the Responsible Official properly evaluated the range of alternatives that meet the purpose and need and are within the scope of this project. Further, environmental effects, including those associated with visitor conflicts, were adequately evaluated and disclosed.

The regulation at 36 CFR 220.7(b)(2) requires an Environmental Assessment (EA) to briefly describe the need for the project and briefly describe the proposed action and alternative(s) that meet the need for the action. Additionally, the regulation at 36 CFR 220.7b(3)(i) states that an EA "Shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). An EA "May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately." 36 CFR 220.7b(3)(iv).

Scoping, a process used to determine if there are concerns with a proposed action, is required for Forest Service projects. Forest Service Handbook (FSH) 1909.15, 11. Scoping is the process through which the agency comes to understand the public's concerns. If an issue is not raised during scoping, the agency cannot respond to that unknown issue in the environmental document. FSH 1909.15, 12.4. In addition, the public was given the opportunity to comment on the Draft Environmental Impact Statement (DEIS), as required by the regulation at 36 CFR 215.6(a).

The location of the proposed new Nordic connector trail through the highway underpass was disclosed in the 2011 Kapka Butte Sno-Park DEIS at 23 and no comments were received during scoping or

comment period raising concerns of user conflict in that location. In fact, appellant's scoping comments were primarily supportive of the proposed project. Regardless, because this potential source of conflict was not brought up by appellants prior to this appeal, specific discussion of user conflict in the underpass was not expounded upon in the EA or DN/FONSI. Other design features are proposed to minimize conflict. For example, the EA at 28 states that all trails would be designed with safety in mind by incorporating techniques such as curves, turns and grade changes that discourage excessive speed. EA at 28. The EA at 32 states that the existing snowmobile trail #5 that currently uses the underpass would be improved to accommodate increased snowmobile use including removing some of the sharp turns to improve the sight distance. The typical snowmobile trail would be 20 feet wide. EA at 32.

While the issue of user conflict in the underpass was not specifically discussed, as mentioned above, how alternative 2 modified responds to the key issue of user conflict throughout the area is discussed in the DN/FONSI on pages 9-16. Effects on the quality of the human environment are discussed in the DN/FONSI at 24, EA at 6-7, 18-21, 227-228, and 237 and in Appendix F. The key issue, social conflict is described in the EA at 14-15, while Tables 2-9 through 2-11 (EA at 48-52) display how the alternatives responds to the key issue.

In Chapter 3, of the EA, section 3.4.4 evaluates the effects that the alternatives have on social conflict. EA at 75-101 and 107-109. Appendix F of the EA at F-15-F-18, F-29, and F-32-to F-34, respond to public comments about user conflict.

Thus, I find that the Responsible Official properly evaluated the alternatives and adequately evaluated and disclosed potential user conflicts.

**Appellant Statement #3:** Appellant states that the District failed to adequately consider and evaluate the extent to which the snopark will result in increased motorized usage, which will increase user conflicts by displacing other users, including non-motorized users. WWA at 3, 4, 6, 7 and 10; WW at 19, 20, 26, 29, 33, 34 and 40. Appellant states that the District didn't consider the extent of the increased displacement, the reasons for displacement, and how the displacement could be avoided while maintaining snowmobile recreation opportunities. WWA at 6 and 29. Appellant also states that the DN doesn't explain why Alternative 3 has the potential for displacement, while Alternative 2, as modified, does not. WW at 26.

**Response:** I find the Responsible Official adequately considered and evaluated the effects of the proposed project including increased motorized use, use conflicts and user displacement.

The regulation at 36 CFR 220.7b(3)(i) states that an EA "Shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). An EA "May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately." 36 CFR 220.7b(3)(iv).

Increased motorized use: The EA states that based on design capacity, the proposed Kapka Sno-park could allow for an increase in motorized use in the area on a peak use day of approximately 182 snowmobiles (Table 3-9) EA at 96 and 97. With Kapka Sno-park at capacity, a snowmobiler could encounter an estimated 1.2 additional snowmobilers per mile of snowmobile trails (153.5 miles). Encounters would be higher closer to sno-parks and fewer further from sno-parks. Once on the trail

system, there is good dispersal of use as users are able to travel in numerous directions to different trails and destinations. Both the Trail Users Group Values Workshop participants and Winter Recreation User Interview respondents indicated that the existing trail system can accommodate increased use and still allow visitors to achieve their desired experiences (USDA Forest Service, 2009). EA at 64.

Effects on non-motorized users have been discussed and disclosed and changes of use also have been described in the EA. Change in use levels or potential increased use is discussed in the DN/FONSI at 9-12 and in the EA at xii-xiii, 2, 14, 17, 19, 28, 32, 38, 57, 64, 69, 72, and 74. The potential for a change in use in the area is analyzed in the EA at 77-100, 102-106, 107-109, 115-116, 122, 125, 133, 147, 150-152, 154, 155, 158-160, 162-167, 170-171, 178-180, 182-184, 186-187, 194-195, 209-211, and 218-219.

Displacement: Appellant asserted that the DN/FONSI omitted language regarding impacts to quiet recreation. Section 3.4 Recreation of the EA at 75-109 discloses the effects to non-motorized recreation. The effects analysis of the EA acknowledges that adding parking capacity to an already contentious area may diminish some non-motorized visitors experiences and possibly displace them from the area. However, the vast majority of the Deschutes National Forest has little to no conflict issues and some visitors displaced from Dutchman Flat and Tumalo Mountain may find acceptable recreation opportunities in these other areas. Results from the 2007 and 2008 Deschutes National Forest Winter Survey found most current visitors do not feel crowded at trailheads or on trails and are able to get the experience they seek. EA at 64. The DN/FONSI again acknowledges the potential displacement of visitors due to motorized use or out of preference and discloses the opportunities for quiet recreation for all alternatives. DN/FONSI at 12.

**Appellant Statement #4:** Appellant further states that the decision ignored the most important impacts from increased snowmobile traffic, including noise, exhaust, danger, rutting, and consumption of powder snow. WWA at 6 and 10.

**Response:** I find the Responsible Official adequately considered and evaluated the environmental effects of the project.

The regulation at 36 CFR 220.7(b)(2) requires an Environmental Assessment (EA) to briefly describe the need for the project and briefly describe the proposed action and alternative(s) that meet the need for the action. Additionally, the regulation at 36 CFR 220.7b(3)(i) states that an EA "shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). An EA "May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately." 36 CFR 220.7b(3)(iv).

Effects from Noise/Quiet Recreation: Providing for quiet recreation is discussed in the DN/FONSI at 12 to 14 and in the EA at iv, 14 to 15, 49, 68, 75, 80, 83 to 85, 88 to 90, 93 to 95, 98 to 100, and 108 to 109. Effects from noise are considered in the EA at 124, 125, 127, 139, 147, 149, 151 to 154, 155, 158 to 159, 162, 164 to 167, 170, 176, 178 to 179, 181, 183, 186, 188, 190, 192, 194, and 235. Responses to comments about noise are disclosed in the EA Appendix F at F-8 to F-9 and F-16 to F-18 and 158. No significant effects from noise were identified from the project. DN/FONSI at 24.

Air quality: Air quality is discussed in the EA at xiii-xiv, 16, 114-115, and 206-211 and in Appendix F pages F-14-15. Effects to air quality have been evaluated in the EA, which states that "From an airshed perspective, Kapka Sno-park is 15 miles from the nearest area designated as potentially air quality

impaired (Bend, Oregon) and 5 miles from Three Sisters Wilderness Class 1 Airshed. Any localized impairment would be diluted to a scale that would be impractical to measure and would have no effect on the Class 1 Airshed or the airshed for the city of Bend.” EA at 210.

User conflict and safety: Existing conditions, capacity, changes in use levels, congestion, and effects of the proposed action are described throughout the document. DN/FONSI at 9-13, EA at iv-vii, 7-8, 77-100, 106-107. The selected alternative addressed concerns about user conflict between motorized and non-motorized recreationists by providing an alternative parking area for vehicles and reducing competition over the current limited parking at Dutchman Sno-park. DN/FONSI at 4. Based on the effects analysis on user conflict between motorized and non-motorized users in the Dutchman Flat and Dutchman Sno-park, the addition of Kapka Sno-park would meet the current winter recreation demand, allowing visitors to park safely within sno-parks and minimize parking in unsafe and unauthorized locations. Appendix F at F15 to F18; EA at 86-90.

Resource protection: Resource protection measures are discussed in the DN/FONSI on pages 16-18 and in the EA on pages 42-44 and in specialist reports for Botany, Invasive Plants, Fisheries/Hydrology, Scenery, Soils and Wildlife located in the project record. Effects to the basic resource values of soil, water, vegetation, air, or fish and wildlife are disclosed and determined to be localized, limited, or small in scale. DN/FONSI at 24.

Scoping, a process used to determine if there are concerns with a proposed action, is required for Forest Service projects. Forest Service Handbook (FSH) 1909.15, 11. Scoping is the process through which the agency comes to understand the public’s concerns. If an issue is not raised during scoping, the agency cannot respond to that unknown issue in the environmental document. FSH 1909.15, 12.4. In addition, the public was given the opportunity to comment on the Draft Environmental Impact Statement (DEIS), as required by the regulation at 36 CFR 215.6(a). A review of appellant’s scoping and DEIS comments did not find mention of consumption of powder snow as an issue; as such, the agency did not have the opportunity to respond to this concern prior to the appeal and it was not specifically addressed in the DEIS or EA.

**Appellant Statement #5:** Appellant states that the District failed to adequately consider the result of increased trespass (potentially into Wilderness areas) from increased usage. WWA at 3; WW at 4 and 29.

**Response:** I find that the Responsible Official adequately considered the environmental impacts of the proposed action and alternatives, specifically increased trespass, including into Congressionally Designated Wilderness, from potential increased use. EA at 25 and 89; Appendix F at 5-6.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). The regulation at 36 CFR 220.7b(3)(iv) states that an EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.”

Illegal motorized use: The Kapka Butte Sno-Park EA addresses motorized incursions into Tumalo Mountain and Dutchmen Flat designated non-motorized areas and congressionally designated wilderness areas and discloses the impacts of illegal motorized use as a result of the selected alternative. EA at 89. The EA’s effects analysis in the Recreation (section 3.4.4) and Designated

Wilderness (section 3.7.2) sections of Chapter 3 describe the effects of potential increased snowmobile use on illegal motorized use. Over time, illegal incursions may grow as snowmobile participation increases due to population growth and an overall growth in the popularity of winter sports over time, although it is a small proportion of the population. EA at 125.

**Appellant Statement #6:** Appellant states that the Forest Service's investigation of user habitats and preferences only addressed crowding and didn't address user conflicts. WWA at 7.

**Response:** I find that the Responsible Official adequately addressed user conflicts.

The regulation at 36 CFR 220.7b(3)(i) states that an EA "shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). An EA "May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately." 36 CFR 220.7b(3)(iv). Forest Service guidance on the use of best available science (June 20, 2007) was followed during project planning.

Alternative 2 modified addressed the key issue of user conflict between motorized and non-motorized users in the Dutchman Flat and Dutchman Sno-park by providing an alternative parking area for vehicles and reducing competition over limited parking at Dutchman Sno-park (overcrowding at the sno-parks was found to be a source of conflict). DN/FONSI at 4. How Alternative 2 modified responded to the key issue of user conflict is discussed in the DN/FONSI at 9-16. Although there are sometimes competing interests surrounding winter recreation, the conclusions of effects were not shown to be highly controversial. Concern for this project centered on the potential for user conflicts between motorized and non-motorized users. While some respondents wanted to see areas closed to snowmobiles or to designate Dutchman Sno-park as a non-motorized parking area, these concerns were found to be outside the scope of this project and could be evaluated later in time in another environmental document. EA at 6-7, 18-21, 227-228, and 237; Appendix F; DN/FONSI at 24.

The construction of a higher elevation sno-park at Kapka Butte would reduce congestion and conflict in the small Dutchman Sno-park during most of the winter use season. Kapka Sno-park would increase parking capacity in the area to accommodate existing demand and the continued growth in snowmobile participation that is expected in the future due to population growth and an overall growth in the popularity of the sport over time (EA at vii). The key issue, social conflict is described in the DN/FONSI at 9-16 and the EA at 14-15, while Tables 2-9 through 2-11 (EA at 48-52) display how the action alternatives respond to the key issue of social conflict. In Chapter 3 of the EA, section 3.4.4 evaluates and discloses the effects the action alternatives have on social conflict. EA at 75-101 and 107-109. Compliance with Executive Orders (EO) 11644 and 11989 is discussed in the EA at 235-236 and in Appendix F at F-8, F15-16, F-33, F-35-37. Appendix F of the EA at F-15-F-18, F-29, and F-32-F-34 respond to public comments about user conflict.

The Winter Recreation Sustainability Analysis (WSRA) created indicators to help managers determine actions to move the winter recreation program toward the desired future condition (WSRA at ii). Pages 12-13 of the WSRA identify parking capacity as a main social issue and is discussed in more detail on pages 22-24 of the EA. Strategies and recommendations on pages 30-33 in the WSRA are discussed that would meet the needs for adequate parking for winter recreation. The WSRA at 12, 13, 25-29, and 36-37 states that differences in visitors' values for recreation experiences are at the core of recreation planning and management issues. These differences in values often lead to conflict between user

groups. The Kapka Sno-park EA proposed to reduce some of that conflict by providing adequate parking such that competing interests can better disperse throughout the area.

**Appellant Statement #7:** Appellant states that the statement regarding visitor displacement from Dutchman Flat and Tumalo Mountain is “callous to the impact” and uses the false “they can go elsewhere argument” which ignores the degree that users don’t want to “go elsewhere” and lack other areas that readily access backcountry terrain. WWA at 8; WW at 30.

**Response:** I find that the Responsible Official fully evaluated the impacts of the proposed action and alternatives, including evaluating and disclosing the effects of potential displacement of users due to increased motorized use.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). An EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.” 36 CFR 220.7b(3)(iv).

Displacement: The effects analysis of the EA acknowledges that adding parking capacity to an already contentious area may diminish some non-motorized visitor’s experiences and possibly displace them from the area. However, the vast majority of the Deschutes National Forest has little to no conflict issues and some visitors displaced from Dutchman Flat and Tumalo Mountain may find acceptable recreation opportunities in these other areas. Results from the 2007 and 2008 Deschutes National Forest Winter Survey found most current visitors do not feel crowded at trailheads or on trails and are able to get the experience they seek. EA at 64. The DN/FONSI again acknowledges the potential displacement of visitors due to motorized use or out of preference. DN/FONSI at 12.

The appellant statement that the Responsible Official is “callous to the impact” is an opinion and is not substantiated by my findings in the EA and supporting documentation as described above.

**Appellant Statement #8:** Appellant states that the District “seems determined to not address the snowmobile conflict issue” when they state that the Nordic trail system needs to be expanded to meet the needs of this rapidly growing sport, but that expansion opportunities will be sought in areas that won’t reduce snowmobile opportunities and that can provide for separation of use. WWA at 9; WW at 30. Appellant states that this is unrealistic and violates Forest Service policies, goals and objectives by “drawing a line in the sand” by decreeing no reduction in snowmobile opportunities. WWA at 9.

**Response:** Reduction of snowmobile opportunities and expansion of the Nordic trail system are outside the scope of this project. However, I find the Responsible Official acted in accordance with Forest Service laws and policies when describing the purpose and need for the project and when discussing the impacts from the proposed action and alternatives from the project.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). An EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.” 36 CFR 220.7b(3)(iv).

User Conflict: In regards to addressing the issue of user conflict issues, all alternatives, including alternative 2 modified, addresses the key issue of user conflict between motorized and non-motorized users in the Dutchman Flat and Dutchman Sno-park by providing an alternative parking area for vehicles and reducing competition over limited parking at Dutchman Sno-park. DN/FONSI at 4. How Alternative 2 modified responded to the key issue of user conflict is discussed in the DN/FONSI at 9 to 16. It was determined in the DN/FONSI that based on public participation and analysis in the EA, the effects on the quality of human environment are not likely to be highly controversial (EA, Appendix F). Concern for this project centered on the potential for user conflicts between motorized and non-motorized users. Some respondents wanted to see areas closed to snowmobiles or to designate Dutchman Sno-park as a non-motorized parking area. These concerns are outside the scope of this project and could be evaluated later in time in another environmental document. EA at 6 to 7, 18 to 21, 227 to 228, and 237; and Appendix F; DN/FONSI at 24.

The construction of a higher elevation sno-park at Kapka Butte would reduce congestion and conflict in the small Dutchman Sno-park during most of the winter use season. Kapka Sno-park would increase parking capacity in the area to accommodate existing demand and the continued growth in snowmobile participation that is expected in the future due to population growth and an overall growth in the popularity of the sport over time. EA at vii.

The key issue, social conflict is described in various Kapka project documents. DN/FONSI at 9 to 16; EA at 14 to 15. Tables 2-9 through 2-11 (EA at 48 to 52) display how the action alternatives respond to the key issue of social conflict. In Chapter 3 of the EA, section 3.4.4 evaluates and discloses the effects the action alternatives have on social conflict. EA at 75 to 101 and 107 to 109. Compliance with EO 11644 and 11989 is discussed in the EA at 235 to 236 and in Appendix F at F-8, F-15-16, F-33, and F-35 to 37. Appendix F of the EA at F-15 to F-18, F-29, F-32 to F-34, documents the District's response to public comments about user conflict.

Further, the Winter Recreation Sustainability Analysis (WSRA) created indicators to help managers determine actions to move the winter recreation program toward the desired future condition (WSRA at ii). Pages 12 to 13 of the WSRA identified parking capacity as a main social issue, which is discussed in more detail at 22 to 24. Strategies and recommendations in the WSRA at 30 to 33 are discussed in order to meet the needs for adequate parking for winter recreation. The WSRA at 12, 13, 25 to 29, and 36 to 37 discusses differences in visitors' values for recreation experiences are at the core of recreation planning and management issues. These differences in values often lead to conflict between user groups.

As for appellant's assertion that the EA violates Forest Service goals, policies, and objectives, compliance and consistency with law, regulation and policy are documented throughout the EA. Consistency with the Deschutes National Forest Land and Resource Management Plan (LRMP) is disclosed throughout the EA at 7 to 8, 11 to 13, 26 to 28, 31 to 32, 36 to 38, 56, and 116; Appendix A at A-1 to A-7; Appendix F at F-9 to F-11 and F-23 to F-25. Resource area consistency determinations can be found in the EA for the following resources: Recreation - EA at 57 to 59 and 109 to 111; Scenic Quality - EA at 126 to 127; Soil Quality - EA at 128 and 132; Wildlife - EA at ix, xi, 135, 151, 154, 159 to 160, 163, 169 to 172, 176 to 177, 179 to 181, and 230; and Botany - EA at 199 to 200 and 202. The actions described for this project in the EA do not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment. Applicable laws and regulations were considered in the EA at 229 to 238 and this project is consistent with the Deschutes National Forest Land and Resource Management Plan.



DN/FONSI at 25. Consistency with the planning framework, other laws, regulations and policy can be found in the EA at 11 to 13, 18, 42, and 227 to 238.

Appellant's quote regarding no reduction in snowmobile opportunities comes directly from the 1990 Deschutes National Forest Land and Resource Management Plan; the District did not propose a change to that standard and guideline, nor was one suggested during scoping or the comment period. As such, it is outside the scope of the project.

**Appellant Statement #9:** Appellant states that the District "attempts to excuse" its lack of attention to these issues by arguing that they are outside the scope of the project, which appellant states is false and that the Forest Service must acknowledge and address the adverse effects of its decision and mitigate the consequences. WWA at 9. Appellant states that the Forest Service hasn't offered any mitigation, which they must do or abandon the project. WWA at 9; WW at 4.

**Response:** I find that the Responsible Official properly evaluated the impacts of the project, including mitigations.

The regulation at 36 CFR 220.7b(3)(i) states that an EA "shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). An EA "May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately." 36 CFR 220.7b(3)(iv).

Alternatives that considered closing certain areas to snowmobiles or designating Dutchman Sno-park as non-motorized parking area were properly considered and the Responsible Official determined that these alternatives did not meet the purpose and need or were outside the scope of the project and eliminated from detailed study. See response to Appellant Statement #66 for a description of purpose and need. See response to Appellant Statement #67 for discussion on alternatives considered.

**Appellant Statement #10:** Appellant states that the decision avoids the conflict issue and reveals an unacceptable bias by dismissing the impacts of snowmobiles on other users and the environment as "perceptions", thus ignoring the key fact that just a few snowmobiles can disrupt the experience of hundreds of other recreationists; the fact that skier and snowshoe demand exceeds snowmobile demand; and that the area can tolerate more users travelling on 'human-power' than it can tolerate users recreating by snowmobile. WWA at 10. Appellant states that the District failed to acknowledge that adventure, thrill, and challenge can go 'hand-in-hand' with quiet and solitude. WWA at 10.

**Response:** I find the Responsible Official acted in accordance with Forest Service laws and policies when describing the purpose and need for the project and when discussing the impacts from the proposed action and alternatives.

See response to Appellant Statements #1-8 for a discussion on user conflict including impacts of snowmobiles on other users.

**Appellant Statement #11:** Appellant states that the EA fails to acknowledge the increased adverse impacts and user conflict that will occur if the decision is implemented in its present form and that more conflict particularly in the high country, not less conflict, will occur. WW at 4, 13, 19 and 30.

**Response:** I find the Responsible Official adequately acknowledged the impacts to recreationists from the proposed action and alternatives and used the best available science to support the findings of effects.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives and Forest Service guidance on the use of best available science (June 20, 2007) was followed during project planning.

See response to Appellant Statements #1-8 for discussion on user conflicts.

**Appellant Statement #12:** Appellant states that the District seems to attribute a “disproportionate share of the blame for the conflict to non-motorized users” which is arbitrary and capricious. WW at 13.

**Response:** I found this statement is an opinion of the appellant. I find that the EA did not place “blame” on non-motorized users, but explained how technological advances in snowmobiles has the potential to increase conflict.

**Appellant Statement #13:** Appellant states that the District fails to explain how adding more parking capacity for snowmobiles will “minimize” conflict. WW at 30 and 35.

**Response:** I find that the Responsible Official properly discussed and evaluated a range of alternatives that meet the purpose and need, including discussing how increasing parking capacity will minimize conflict.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives. The EA explains how the construction of a higher elevation sno-park at Kapka Butte would reduce congestion and conflict in the small Dutchman Sno-park during most of the winter use season. Kapka Sno-park would increase parking capacity in the area to accommodate existing demand and the continued growth in snowmobile participation that is expected in the future due to population growth and an overall growth in the popularity of the sport over time. EA at vii.

See response to Appellant Statements #1-8 for discussion on user conflicts.

**Appellant Statement #14:** Appellant states that the DN concludes “without any real support in the record,” and without citation “that this decision will not substantially modify the recreation experience of other users and that the WSRA supposedly indicated that the existing trail system can accommodate increased use without loss of desired experiences. WW at 35.

**Response:** I find the Responsible Official used the best available science to evaluate effects to the recreation experience from the proposed action and alternatives.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives, and Forest Service guidance on the use of best available science (June 20, 2007) was followed during project planning.

Recreation Experiences: The 2007 to 2008 Deschutes National Forest Winter Survey results indicate that many winter recreation visitors feel that increased parking capacity would not adversely affect their

ability to find their desired recreation experiences. EA at 64. Further, while crowding and congestion occurs at some sno-parks, visitors said that the number and variety of trails lets people spread out: nearly half of winter survey (49%) respondents said that the existing trail system of connecting and looping trails allows for use to disperse quickly creating a safe and desirable use of the trail system. EA at 64.

### ***Cumulative and Other Impacts***

**Appellant Statement #15:** Appellant states that the analysis of impacts is incorrect and not consistent with the Forest Service study data. Appellant specifically states that the new trail and parking area construction will involve land clearing in a near alpine environment and involve significant damage to natural resources in the area. NB at 1.

**Response:** I find the Responsible Official considered the direct/indirect and cumulative effects of the selected alternative, as documented in the EA at 53-228. I also find that the analysis of potential impacts of the new trail and parking area construction would not result in significant damage to natural resources in the area. DN/FONSI at 23-25.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). The regulation at 36 CFR 220.7b(3)(iv) states that an EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.”

Forest Service Study Data: Forest Service study data includes the 2008 National Visitor Use Monitoring Study (NVUM) results (EA at 75, 77-78), and the Winter Recreation Sustainability Analysis (WRSA). EA at 61-64 and 68-69. This data was used to measure the degree to which each alternative addressed the issue of social conflict and meets the requirements of 36 CFR 220.7b(3)(i).

Direct/Indirect and Cumulative Effects to Natural Resources: All past, present and reasonably foreseeable actions that may overlap the project area are disclosed in Table 3-1 of the EA at 54-55. No significant impact to natural resources was determined as a result of implementing the selected alternative; effects are displayed in the FEIS for the following resource areas: Soil Resources: The EA states that “...Under all action alternatives, project design would include temporary erosion control measures during the initial construction phase of the parking lot facility. Application of Best Management Practices (BMPs) are considered to be routine practices that have been used on numerous similar projects (General Water Quality Best Management Practices, Pacific Northwest Region, 1988)... The types and locations of soil disturbance are not expected to cause any indirect, off-site impacts to soils in adjacent areas, such as loss or burial of productive surface soils.” EA at 131-132. The EA also states that there would be no cumulative effects to soil productivity on the growth of desired vegetation on undeveloped portions of the planning area.” EA at 133; Wildlife: A summary of effects to wildlife is found in the EA at 146-147. Cumulative actions specific to wildlife are disclosed in Table 3-29 of the EA at 138-139.; Aquatics: The DN/FONSI at 25 concludes that there are no streams within project area, therefore, there are no direct, indirect, or cumulative effects to aquatic species or their habitat. This conclusion is supported by the effects analysis in the EA at 204; Botany: The EA at 198-199 documents that there are no direct/indirect or cumulative effects. This is supported by a Biological Opinion in the project file.

New trail and parking area construction: The EA included a cumulative effects analysis for recreation use in the project area. The EA states that the “Meissner Sno-park expansion would provide 60 additional parking spaces at Meissner Sno-park.” EA at 106. The EA continues by stating that “A positive outcome would be a reduction in non-motorized users’ demand for parking and less congestion and conflict in over-crowded sno-parks. Beginning in 2013, Cascades East Transportation will provide bus service to Mt. Bachelor Ski Area and Meissner Sno-Park.” EA at 107.

Table 3-19 (EA at 108-109) describes the potential cumulative effects pertaining to user conflicts in the project area. Irreversible and irretrievable commitments of resources are also disclosed for the trails and parking area. The EA states that “The development and use of trails and a sno-park facility is considered irretrievable commitment of land to a non-vegetative state until such time that the trail system is abandoned and the disturbed sites are returned back to productive capacity.” EA at 228; DN/FONSI at 25.

Based on the disclosure found in the EA, I find the Responsible Official adequately considered the direct, indirect and cumulative effects of the selected alternative. I also find that the analysis of impacts is consistent with the Forest Service data, and that the analysis supports the conclusion that new trail and parking area construction would not result in significant impacts to natural resources in the area.

**Appellant Statement #16:** Appellant states that by increasing the number of trail users and motorized vehicles in the National Forest, ongoing cumulative impacts will increase for the foreseeable future. NB at 1.

**Response:** See response to Appellant Statement #15 for a discussion of cumulative effects.

**Appellant Statement #17:** Appellant states that the environmental changes will be profound from both immediate construction and cumulative long-term impact. NB at 1 and 2.

**Response:** See response to Appellant Statement #15 for a discussion of cumulative effects.

**Appellant Statement #18:** Appellant states that “In net balance, although parking safety may be improved by expanding the number of spaces, increased vehicle numbers will likely outweigh the benefits.” NB at 2.

**Response:** I find that the Responsible Official adequately considered the effects of the proposed action.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to describe the effects of the proposed action and any alternatives in terms of context and intensity. The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives.

Existing conditions, capacity, changes in use levels, congestion, and effects of the proposed action are described throughout the document. DN/FONSI at 9-13; EA at iv-vii, 7-8, 77-100 and 106-107. The selected alternative addressed concerns about user conflict between motorized and non-motorized recreationists by providing an alternative parking area for vehicles and reducing competition over the current limited parking at Dutchman Sno-park. DN/FONSI at 4. Based on the effects analysis on user conflict between motorized and non-motorized users in the Dutchman Flat and Dutchman Sno-park, the addition of Kapka Sno-park would meet the current winter recreation demand, allowing visitors to park

safely within sno-parks and minimize parking in unsafe and unauthorized locations. Appendix F at F15 – F18. EA at 86-90.

**Appellant Statement #19:** Appellant states that the existing environmental assessment is not a sufficient analysis of the impacts above nor does it address the fragmentation of multiple simultaneous construction projects within the Deschutes National Forest. NB at 2.

**Response:** See response to Appellant Statement #15 for a discussion of cumulative effects.

**Appellant Statement #20:** Appellant states that that the District failed to “adequately consider and evaluate the impacts of projected global warming in concentrating existing snowmobile usage in areas where there will be increased conflict with human-powered recreation.” WWA at 4.

**Response:** I find that the Responsible Official adequately considered the impacts of the project on climate change and the impacts of climate change on the project.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). The regulation at 36 CFR 220.7b(3)(iv) states that an EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.” *Climate Change Considerations in Project Level NEPA Analysis* (USDA 2009) is referenced as Forest Service guidance for analyzing the effects of climate change. EA at 211.

The EA includes a detailed analysis of the potential effects of the project on climate change, and conversely, of climate change on the project. EA at 210-211. In particular, the EA documents that the analysis focused on emissions from snowmobiles as a key factor to consider with regards to climate change. The EA documents that the EPA is implementing new standards for emissions of two stroke engines. As new engines are designed to meet EPA's standards, the potential contribution of greenhouse gasses from additional riders would be minimized. EA at 211. The EA also states that if climate change resulted in less snow than predicted, the season of use would be shortened. Therefore, the EA adequately considered the impacts of climate change.

**Appellant Statement #21:** Appellant states that the Forest Service’s analysis of trails is superficial and disregards impacts of noise and emissions, and doesn’t address the fact that many backcountry skiers and snowshoers don’t use trails. WWA at 7; WW at 16 and 28. Appellant states that the discussion of Nordic trail mileage either with or without dogs isn’t really relevant to the backcountry skier or snowshoer who explore off trail. WWA at 8.

**Response:** I find that the Responsible Official adequately considered the potential effects of noise and emissions. It also adequately considered the potential effects of the project on off trail opportunities for Nordic users. Off trail opportunities are referenced throughout the EA as “backcountry” use.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). The regulation at 36 CFR 220.7b(3)(iv) states that an EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.” The 1970 Federal Clean Air Act, as amended in 1977 and 1990 (42 U.S.C. §7401 et seq.) is a legal mandate designed to protect human health and welfare.

Effects from noise are considered in the EA at 124, 125, 127, 139, 147, 149, 151-154, 155, 158-159, 162, 164-167, 170, 176, 178-179, 181, 183, 186, 188, 190, 192, 194, and 235. The responses to comments about noise are disclosed in Appendix F of the EA at F-8-9 and F-16-18. No significant effects from noise were identified from the project. DN/FONSI at 24.

Effects on air quality are considered in the EA at 206-210, and the DN/FONSI at 24. It was determined that no significant effects from air quality would result from the project activities. "Any localized impairment would be diluted to a scale that would be impractical to measure and would have no effect on the Class 1 Airshed or the airshed for the city of Bend." EA at xiv, and 210.

Effects on backcountry use are considered in the EA at 66, 67, 68, 89 and Appendix F at F-35-36. Therefore, backcountry skiers use of off-trail areas is considered in the EA. Appellant is also concerned that the EA doesn't address the fact that many backcountry skiers and snowshoers don't use trails. The purpose and need includes a need for and provide for "safe, high elevation parking that will enhance a variety of winter recreation opportunities ...and provide access to over snow trail systems..." EA at 7. Although backcountry skiers may not use the Nordic trail system, they would use the parking area and trails to connect to the backcountry areas for off-trail skiing. The EA states that "The 0.6 mile nordic trail (new construction) links Kapka Sno-park to the nordic system to the north of the Cascade Lakes Highway via the highway underpass. Visitors may access Swampy Lakes, Meissner, Tumalo, and other backcountry destinations." EA at 28.

**Appellant Statement #22:** Appellant states that the designation of trails as non-motorized has little or no impact on the snowmobile noise and exhaust pollution encountered by these users because snowmobiles are free to play in adjoining terrain. WWA at 8.

**Response:** See response to Appellant Statement #21 for a discussion of effects of noise.

**Appellant Statement #23:** Appellant states that the decision fails to properly recognize and assess the impacts of the proposed new Kapka sno-park. WWA at 10.

**Response:** See response to Appellant Statement #15.

**Appellant Statement #24:** Appellant states that the District failed to analyze the cumulative impacts such as those associated with the projected impacts of yet another snopark (for non-motorized users such as the new dogpark), past projects such as the 2006 Kapka EA, the previous Meissner expansion, projects that involve plowing or grooming, and those that involve the fate of the Oregon State Snopark system and more, and that this will result in irrevocable impacts to forest resources. WW at 12, 15, 42 and 43.

**Response:** See response to Appellant Statement #15 for a discussion of cumulative impacts.

Based on the record I received from the District, there was no decision or final 2006 Kapka EA (only a scoping letter was sent out), therefore appellant's concern regarding that non-existent decision is outside the scope of the analysis. The Kapka project was initially scoped in 2006, and then again in 2009. Appendix F of the EA states that "In 2006, the Forest Service first proposed the development of a high elevation Sno-park at Kapka Butte. The 2006 scoping letter stated that 'increased levels of use will be based on four snowmobiles per design vehicle'. The scoping letter did not include any rationale for

basing the effects analysis on four snowmobiles per vehicle. This proposal was subsequently revised and resubmitted to the public as the proposed action in the scoping letter of January 2, 2009.” Appendix F at F-30.

The expansion of the Meissner Sno-park is specifically addressed throughout the EA at 55, 56, 63, 107, 108, and 110. No other sno-parks are proposed in the reasonably foreseeable future. EA at 55 and 56.

**Appellant Statement #25:** Appellant states that the District arbitrarily underestimated the number of snowmobilers per designed parking space, thus significantly underestimating the impact of the project and fails to explain how it will combat the problem of illegal parking. WW at 14. Appellant states that the analysis used in other snoparks used 3 to 4 snowmobiles per design space, while the Kapka analysis uses 2.6 people at one time (PAOT) and fails to explain this discrepancy. WW at 14 and 43.

**Response:** I find that the Responsible Official used best available science when considering anticipated visitor use. I also find that the analysis included adequate consideration of how to address illegal parking.

The regulation at 36 CFR 220.7(b)(3)(iv) direct the agency to discuss the impacts of the proposed action and any alternatives, while Forest Service guidance on the use of best available science (June 20, 2007) was followed during project planning.

Visitor Use: Appendix F at F-30-31 explains the updated science that supports the use of 2.6 PAOTs. Appendix F states that “The 2009 scoping letter did not define how effects on use levels would be calculated. The best source of information about recreation use on the Deschutes National Forest is the 2008 Deschutes National Forest National Visitor Use Monitoring study (USDA Forest Service, 2008. Natural Resource Information System-Human Dimensions – National Visitor Use Monitoring.). This study determined that the average group size for people participating in recreation activities on the Forest is 2.6 people. Footnotes throughout the EA cite that use level calculations were based on the average group size of 2.6 people. The EA has been updated to include the following clarification of this assumption on page 53: *The 2008 National Visitor Use Monitoring Study results determined that the average group size for people recreating on the Deschutes National Forest is 2.6 people. This average will be used to estimate the number of skiers and the number of snowmobiles based on the design capacity of each sno-park (estimating 2.6 people per vehicle and one snowmobile per person) (USDA Forest Service, 2008. Natural Resource Information System-Human Dimensions – National Visitor Use Monitoring).*

While an estimate of 3.0 snowmobiles per vehicle was used in the 2009 Deschutes National Forest Sustainability Analysis, the best science available is the use estimate based on the 2008 Deschutes National Forest National Visitor Use Monitoring study. The description of sno-parks on the Deschutes National Forest in Table 3-5 on page 64 has been updated using the average of 2.6 people per vehicle as determined in that study.” Appendix F at F-30 to F-31.

Illegal Parking: The EA at 70 explains that the Oregon Department of Transportation (ODOT) administers the sno-park program at winter recreation trailheads, and that the responsibility for the Kapka Sno-park remains with the Forest Service.

The affected environment section of the recreation analysis includes a detailed description of the user education and safety, and the levels of parking enforcement that would occur by the Forest Service. EA

at 73-74. The effects analysis for Alternative 2 concludes that “Education and enforcement would continue as described under the affected environment in the Recreation section of Chapter 3.” EA at 89.

Appendix F at F-5 and F-6 provides a detailed description of education and enforcement techniques used in the area, including: winter recreation maps with information on snowmobile regulations; winter trails that are well marked and maintained; information signs; use of Forest orders restricting motorized and non-motorized use; and patrolling by law enforcement.

Therefore, I find that the Responsible Official adequately considered the best available science for visitor use and enforcement of illegal parking.

**Appellant Statement #26:** Appellant states that the problem of congestion and unlawful parking is a failure of the District’s enforcement of existing laws and regulations. WW at 14. Appellant states that the District admits it doesn’t have the resources to adequately enforce existing restrictions and that the statements in the EA regarding successful enforcement is at odds with the 2009 Winter Recreation Sustainability Analysis (WRSA) and the 1996 decision not to expand at Dutchman Flats. WW at 31, 38 and 39.

**Response:** I find that the Responsible Official considered the issue of unlawful parking and successful enforcement.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s).

The EA does not state that the District doesn’t have the resources to adequately enforce existing restrictions. The EA acknowledges that “enforcement of motorized closures continues to be a management challenge at Dutchman Flat and Tumalo Mountain.” EA at 67. Enforcement of motorized closures was not an issue that was raised during the comment period, nor is it related to meeting the purpose and need for the Kapka project. See also response to Appellant Statement #25 for a discussion on illegal parking.

The 1996 Dutchman and Wanoga Sno-park Expansion Decision Notice/FONSI discloses that several alternatives were considered in detail to expand Dutchman and Wanoga sno-parks, but they were not selected because they would not resolve existing user conflicts. See 1996 Dutchman/Wanoga DN/FONSI at 2.

The EA states that “Recommendations from the 2009 Winter Recreation Sustainability Analysis (WRSA) report was to provide adequate parking along Cascade Lakes corridor and other areas of the forest. Alternatives 2, 3 and 4 analyze proposed sno-parks along the Cascade Lakes corridor. The Kapka Sno-park project is responsive to the increased use and need for additional, safe high elevation parking capacity in the winter.” EA at 110. The 2009 WRSA found that conflict on the Deschutes National Forest is relatively low but does occur in providing adequate parking for all users. EA at vi. The EA did not state that successful enforcement was an issue.

The affected environment section of the recreation analysis includes a detailed description of the user education and safety, and the levels of parking enforcement that would occur by the Forest Service. EA at 73-74. The effects analysis for Alternative 2 concludes that “Education and enforcement would continue as described under the affected environment in the Recreation section of Chapter 3.” EA at 89.



Appendix F at F-5 and F-6 provides a detailed description of education and enforcement techniques used in the area, including: winter recreation maps with information on snowmobile regulations; winter trails that are well marked and maintained; information signs; use of Forest orders restricting motorized and non-motorized use; and patrolling by law enforcement. Therefore, I find that the Responsible Official adequately considered the effects disclosed in the 1996 Dutchman and Wanoga Sno-park EA and the 2009 WRSA and concluded that 1996 decision and WRSA is not at odds with statements in the Kapka EA regarding successful enforcement.

**Appellant Statement #27:** Appellant states that the benefits of this project overwhelmingly benefits snowmobilers, whose riding increases the danger to non-motorized users. WW at 14. Appellant also states that the District fails to address present safety concerns to non-motorized users. WW at 15.

**Response:** See response to Appellant Statement #1, #3, #5, and #25 regarding education, safety, and law enforcement.

**Appellant Statement #28:** Appellant states that with respect to soil, the DN didn't consider the impacts of snowmobile tracks upon the fragile environment and useage of machines during low snow-cover that tear up the soils; increased incursions into the Bend Watershed; denuding (topping) of trees in the Dutchman area as trees are run over; and the lingering haze and stench of snowmobile exhaust. WW at 18.

**Response:** See response to Appellant Statement #15 regarding impacts to soils and response to Appellant Statement #4 and #21 regarding air quality. Motorized winter trails are not prohibited in the Bend watershed, as documented in the EA at 112-117. The response to comments in Appendix F at F-3 and F-4 addressed appellant's concerns regarding topping of small trees, many of which are encroaching on an open meadow. These small trees are primarily lodgepole pine or mountain hemlock, neither of which is a species of concern. Appendix F at F-4.

**Appellant Statement #29:** Appellant states that the DN and EA fail to consider and protect untracked snow as an important resource. WW at 28.

**Response:** I find that the purpose and need for the project adequately addresses the potential impact to undisturbed snow.

The regulation at 36 CFR 220.7b(3)(i) states that an EA "shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). Appellant cites their comments on the DEIS, which I have reviewed. Appellant states that "Similarly, the DEIS makes a special attempt to accommodate the needs of those few who engage in "snowmobile-assisted skiing." Participants use snowmobiles to transport themselves to the Wilderness boundary in order to gain first access to untracked snow. By using a snowmobile for access, they deny those who must first ski under their own power to the Wilderness boundary equal opportunity to experience undisturbed snow, solitude and wild nature." Appeal Record, appellant comment letter at 72.

Appellant's comment implies that untracked snow in the Wilderness would somehow be denied to those who do not use a snowmobile to first access the Wilderness boundary. While non-motorized users may not get to the Wilderness area first, I find that the project may provide non-motorized users with a better opportunity to access untracked snow. The overall purpose and need includes a need for and provide for "safe, high elevation parking that will enhance a variety of winter recreation

opportunities ...and provide access to over snow trail systems...” EA at 7. Non-motorized users would be provided with the opportunity to park at either Kapka or at a sno-park in the area. As stated in the EA at 62, parking is at capacity at Dutchman Sno-park; adding parking at Kapka would encourage users with trailers to park there instead of at Dutchman, thus freeing up space at Dutchman for non-motorized users. A review of the map in the EA at 6 shows that Dutchman sno-park is the closest sno-park to the Three Sisters Wilderness. Therefore, I find that freeing up parking at Dutchman would provide better access to the Wilderness for non-motorized users.

See also response to Appellant Statement #21 regarding use of the backcountry.

**Appellant Statement #30:** Appellant states that the approved alternative doesn’t maintain opportunities for recreating with dogs. WW at 28.

**Response:** I find the Responsible Official adequately acknowledged that the need for recreating with dogs was not incorporated into the decision.

The DN at 4 states “The other element of this project's purpose and need for permanent groomed trails that allow for skiers to recreate with dogs and without dogs is continuing to be analyzed and will not be incorporated into this decision.” In making his decision, the Responsible Official must make a decision within the range of alternatives analyzed. 36 CFR 220.4(c). Alternative 3 of the EA did not include additional winter trail opportunities for visitors to recreate with their dogs. EA at 95. Thus, by selecting Alternative 2, modified, the Responsible Official made a decision within the range of alternatives presented in the EA.

**Appellant Statement #31:** Appellant states that the EA doesn’t attempt to disclose or analyze the impacts that would occur if non-compliance and user conflict increases as the number of snowmobiles in the area increases. WW at 32.

**Response:** See response to Appellant Statement #25 regarding law enforcement for the concern about “non-compliance”. See response to Appellant Statement #1 and #3 regarding increases in user conflicts.

### ***Consideration of Comments***

**Appellant Statement #32:** Appellant states that they were told that the project would occur regardless of their objection, which does not indicate that the Forest has an open mind. Appellant states that 961 signers of a petition were submitted as comment to the DEIS but were not counted because they came from one source, which was all the local users, snowshoe enthusiasts, backcountry skiers, snowmobilers, etc. Appellant states that these people believe that the Dutchman Snopark should be expanded before Kapka is built. RS at 1. Appellant questions why the 961 comments not considered along with the 28 direct comments and that a total of 989 comments from local users that this project affects were not considered in violation of 40 CFR 1503.1. RS at 1. Appellant states that they found nothing to suggest that the over 500 comments received during scoping were considered in the DEIS or the EA. WW at 33

**Response:** I find the Responsible Official appropriately reviewed the comments for the Kapka project. In addition, he appropriately considered various alternatives, including expanding the Dutchman Sno-park.

The regulation at 36 CFR 215.6(b)(1) states that the Responsible Official shall consider all substantive written and oral comments submitted in compliance with the regulatory requirements. All written comments received shall be placed in the project file and shall become a matter of public record. 36 CFR 215.6(b)(2).

The regulation at 40 CFR 1503.1 states that comments need to be obtained from appropriate government agencies, including state and local agencies, and from interested publics. The responsible official needs to assess and consider comments both individually and collectively, and shall respond by altering the environmental impact statement accordingly or respond why the alteration is not appropriate, stating its response in the final statement. 40 CFR 1503.4.

The appeal record indicates that all comments submitted to the Responsible Official were considered as required by regulation. Comments were responded to within the EA and the DN, specifically in Appendix F of the EA. EA at 16 to 17, 240 to 244; DN at 22-23; DN Appendix F at F-1 to F-37. In addition, the Responsible Official addressed how and where the comments affected his decision throughout the DN and EA. EA at vii and 14; DN at 1, 19, and 30.

All petitions received were considered during the preparation of the Draft Environmental Impact Statement (DEIS) and were reviewed after the DEIS comment period closed. The Kapka record holds these petitions and the DEISs response to comments. These documents demonstrate that the Responsible Official considered the petition prior to making his decision. Appeal Record, DEIS Comment Period Content Analysis at 37.

Expanding the Dutchman Sno-park was considered as an alternative that was not considered in detail. EA at 2 to 3, 19 to 20; EA Appendix F at F-32 to F-33 and F-35 to F-37. The Kapka EA states the reasoning the Responsible Official did not consider this alternative further. The EA documents that the expansion would likely require development within the Bend Watershed Inventoried Roadless Area, and it would not meet visual standards along the Cascade Lake Scenic Byway. As such, the Responsible Official determined that expansion at Dutchman Sno-park at this time would like increase user impacts to the area, so it was dismissed front detailed study. EA at 20.

With regards to the adverse viewpoints submitted by the appellant concerning the project, the no action alternative fully responds to these viewpoints and this was considered in detail within chapters 2 and 3 of the EA. EA at 22 to 25; EA at 53-238.

In conclusion, I find the Responsible Official appropriately reviewed all comments for the Kapka project and that he considered various alternatives, including expanding the Dutchman Sno-park.

**Appellant Statement #33:** Appellant states that he submitted comments to the Kapka DEIS to the e-mail address listed in the DEIS and that the e-mail was undelivered. Appellant states that he informed Ms. Amy Tinderholt (FS) of this situation and also forwarded his comments to her. Appellant states that he was told by her that she would forward his comments for inclusion but upon receipt of the list of comments as requested under Freedom of Information Act (FOIA), he was not included. Appellant states that his wife's comments are included but not his. PV at 1. Appellant states that on page1 of the 2012 Kapka Butte Sno-Park Project Decision Notice (DN) and Finding of No Significant Impact (FONSI), the last sentence states "All comments submitted during the comment period for the DEIS and throughout the planning process have been evaluated" but that is not true as he stated previously and

that a review of the comments received under FOIA shows over 900 signatures lumped into one line entry called petition. PV at 1.

**Response:** On behalf of the Forest Service, I apologize for not including appellant's name in the list of commenters in the FOIA requests. Nonetheless, I find that the Responsible Official did receive and consider the appellant's comments prior to making his decision. Appellant's comment and discussion of his issues in sending his comments are documented in the Kapka Project Record. Upon review of the public comments that were received, I feel the appellant's comments were addressed. In addition, the no-action alternative, which the appellant supported in his comment, was analyzed in detail in the EA. EA at 22 to 25.

Please see response to Appellant Statement #32 for regulations and evidence that the Responsible Official appropriately addressed comments for the Kapka EA, including receiving and properly addressing the petitions.

**Appellant Statement #34:** Appellant states that the conclusions reached through a study of the indicators are contradicted by the comments received from the public and by the Forest Service's own analysis. WWA at 7.

**Response:** I find the Responsible Official responded to the comments received for the Kapka project and explained his rationale for his decision clearly within the Kapka Decision Notice and Finding of No Significant Impacts.

Please see response to Appellant Statement #32 for regulations and evidence that the Responsible Official appropriately addressed comments for the Kapka EA.

The regulation at 36 CFR 220.7b(3)(i) states that an EA "shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). The regulation at 36 CFR 220.7b(3)(iv) states that an EA "may discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately."

The regulation at 36 CFR 220.7(c)(5) directs a DN to include "Findings required by other laws and regulations applicable to the decision at the time of decision." Compliance with the Forest Plan is required under the National Forest Management Act of 1976.

The analysis and framework for the Responsible Official's decision is outlined in the EA at 11 to 13. How the EA developed and utilized issues and indicators is outlined in the EA at 14 to 16. The Kapka EA details how the indicators were addressed and analyzed within Chapter 3. EA at 53 to 228.

The Responsible Official's decision may or may not address all of the issue indicators; however, his decision may need to balance the issues raised by utilizing the environmental analysis, and taking into consideration the comments received from interested publics. The Responsible Official's rationale behind his decision for the Kapka Projects is addressed within the DN. DN at 1 and 4.

**Appellant Statement #35:** Appellant states that the response to comments in the EA ignore or fail to adequately respond to their comments, including failure to acknowledge appellant's 2009 submission of

over 200 pages of comments and the over 500 scoping comments that were submitted. WW at 6, 29 and 33.

**Response:** I find the Responsible Official appropriately reviewed the comments that were received on the Kapka project.

See response to Appellant Statement #32 and #35 for a detailed response as to how comments were considered.

**Appellant Statement #36:** Appellant states that the District’s response to comments regarding how the minimization criteria were applied in compliance with Executive Order 11644 was “woefully inadequate.” WW at 27 and 29.

**Response:** I find the Responsible Official appropriately reviewed the comments for the Kapka project.

See response to Appellant Statement #55 which addresses Executive Order 11644 and how it was address in the analysis. See response to Appellant Statement #32 and #35 for a detailed response as to how other comments were considered.

### ***Visual Standards***

**Appellant Statement #37:** Appellant states that F-33 of Appendix F says that expanding Dutchman Sno-park would not meet the visual standards along the Cascade Lakes National Scenic Byway, and would require development within the Bend Watershed Inventoried Roadless Area, but that this is completely false. RS at 1. Appellant states that the Bend Watershed and roadless area is 500 feet from the shoulder of the road per the Forest’s own GIS maps, which is “more than enough room to expand and meet visual standards.” RS at 1. Appellant states that this area is already a commercial area with the ski area being across the street, just like many other National Scenic Byways and to say that an expanded Dutchman snopark will not meet visual standards is just not true. RS at 1.

**Response:** I find that the Responsible Official did assess the feasibility of expanding the Dutchman Sno-park.

The regulation at 40 CFR 1502.14(a) states that for alternatives eliminated from detailed study, the agency must briefly discuss the reasons for their having been eliminated.

Expanding the Dutchman Sno-park was considered as an alternative that was not considered in detail. EA at 2 to 3, 19 to 20; EA Appendix F at F-32 to F-33 and F-35 to F-37. The Kapka EA states the reasoning the Responsible Official did not considered this alternative further. The EA documents that the expansion would likely require development within the Bend Watershed Inventoried Roadless Area, and it would not meet visual standards along the Cascade Lake Scenic Byway. As such, the Responsible Official determined that expansion at Dutchman Sno-park at this time would like increase user impacts to the area, so it was dismissed from detailed study. EA at 20. The EA states that the boundary of the IRA lies 200 to 500 feet from the road shoulder. Appellant presents no evidence that expansion of Dutchman would not intrude upon the IRA. As such, I find that the EA appropriately analyzed and dismissed from detailed study an alternative that would expand the Dutchman Sno-park.

### ***Best Science/Opposing Viewpoints***

**Appellant Statement #38:** Appellant states that some of the reference documents go back to 1996, specifically the 1996 Sno-park expansion EA and that a lot has changed since then. Appellant states that backcountry skiers are now using snowmobiles to access the back country, which wasn't happening even 5 years ago. Appellant states that current studies that reflect the current times and government spending are needed, as required by NEPA. RS at 1.

**Response:** I find that the Responsible Official used the best available science in considering the effects of the project.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives, while Forest Service guidance on the use of best available science (June 20, 2007) was followed during project planning.

The Deschutes National Forest completed a winter recreation sustainability analysis in 2009 (USDA Forest Service, 2009). The data included in the 2009 WRSA is considered best available science used for this project. The analysis considers the social, environmental and managerial components of providing winter recreation opportunities that meet visitor's needs, protect resources and are within the forest's management capacity. EA at 59. Appellant's claim that a lot has changed since the 1996 Sno-park expansion is responded to by use of the 2009 WRSA in the 2012 Kapka Sno-park analysis.

**Appellant Statement #39:** Appellant states that the District failed to adequately discuss the District's legal obligations under Executive Orders 11644 and 11989 by abandoning the EIS, thus abandoning its obligation to discuss and respond to appellant's reasonable opposing view regarding these executive orders in violation of 40 CFR 1502.9(b). WW at 10, 11, 19, 27, 28, 33, 44 and 45. Appellant states that the EA is the functional equivalent of an EIS and as such, as an obligation to discuss and respond to responsible opposing views. WW at 11.

**Response:** I find that the Responsible Official adequately considered and responded to responsible opposing views.

See response to Appellant Statement #55 regarding Executive Orders 11644 and 11989.

The regulation at 40 CFR 1502.9(b) states that "...The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised."

While appellant repeatedly asserts that reasonable opposing viewpoints weren't addressed, I find that the consideration of alternatives and impacts did address the public's "opposing views" and that consideration of the no action alternative documents the majority of the opposing views that were received.

**Appellant Statement #40:** Appellant states that the DN and EA rely on inaccurate and misleading data and information in the WSR and that the analysis and conclusions about capacity and its impact on increased use "grossly" underestimate capacity and the resulting increased use. WW at 43.

**Response:** See response to Appellant Statement #25 regarding visitor use numbers that the District used to determine capacity and increased use.

### ***Versions of the Document***

**Appellant Statement #41:** Appellant states that there was more than one version of the DEIS published on the FS web site and that this was found when he referenced a page, paragraph and sentence line number to an acquaintance asking for his understanding/interpretation, which his acquaintance could not correlate to his version. Appellant determined that the DEIS changed by 5 pages with no indication that this was a changed document and questioned how comments are collected on a document that is changed during the comment period. PV at 1.

**Response:** I find that the Responsible Official did not violate laws, regulation or policy by making typographical corrections to the DEIS during the comment period.

The regulation at 40 CFR 1503.4(c) allows agencies to make minor changes to an EIS without recirculating the DEIS.

The appeal record includes an email from Jill Jolly to Amy Tinderholt on May 2, 2011 that verified that Jill Jolly made corrections to the DEIS as requested by Amy Tinderholt. One specific error noted as needing correction was the email address for the electronic inbox for comments. Appeal Record, see 2011\_0511\_CORRECTED\_Kapka\_DEIS\_For\_Website.pdf.

**Appellant Statement #42:** Appellant states that the Kapka Butte Sno-park effort seems to have a few problems, including how to manage documents, how to manage, collect and analyze all requested user community inputs, supporting goal and mission statements for the task, and taking responsibility for the accuracy of the documents before releasing it for comments, all of which tarnishes the management review process for documents. PV at 2.

**Response:** I find that the Responsible Official followed the appropriate laws, regulations and policies for documentation in an EA.

The District released a DEIS on April 15, 2011 for a 45-day public comment period that was extended an additional 30 days. EA at 17. Responses to comments on the DEIS are included in Appendix F of the EA. "Following review of the environmental effects analysis and consideration of public comments, it was determined there would be no significant environmental effects from the project. Therefore it has been decided to document this project in an environmental assessment rather than a Final EIS." EA at 243. This decision was supported by the finding of no significant impact in the DN/FONSI at 1 and 23-25.

I do recognize that there were some typographical mistakes related to the DEIS and DN/FONSI, however, the District has worked to correct these and has taken responsibility for any errors that were made.

### ***Ingress and Egress***

**Appellant Statement #43:** Appellant states that on page 6 of the DN the map shows an off ramp from road 45, which is a county road, but that no place in the document is there any mention of: a) Who will design, engineer and mark road 45 so that the south bound traffic can safely make a left turn into the

proposed Kapka Sno-park; and b) Who will design, engineer and mark road 45 so that the North bound lane has an acceleration lane for vehicles with trailers as they merge onto the road. PV at 1. Appellant states that on page 8 of the DN it states that “[t]here is a need to provide additional safe, high elevation parking that will enhance a variety of winter recreation opportunities . . .” but that the EA or DN does not address entering and exiting considerations of the proposed new Kapka Sno-park and does not support the goal statement of safety. Appellant states that there is no mention of who has stepped up to clear snow on the road and parking area of the proposed Kapka Butte Sno-park. PV at 1 and 2.

**Response:** I find that public safety is addressed throughout the Kapka Butte Sno-park EA, DN/FONSI and analysis file.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives, while Forest Service guidance on the use of best available science (June 20, 2007) was followed during project planning.

With respect to specific issues concerning vehicles making a left turn into the proposed Kapka Sno-park and an acceleration lane for vehicles towing trailers merging into the north bound lane on road 45, these issues were not raised during the public scoping or comment period. Scoping was initiated on January 9, 2009 and ended on Feb 1, 2009. No comments were received concerning ingress and egress into the proposed Kapka Sno-park. The 45-day comment period for the DEIS began on April 15, 2011 and was extended beyond the 45 days to end on June 30, 2011. No comments were received concerning ingress and egress into the proposed Kapka Sno-park. If comments are not brought up during scoping or the formal comment period, the District does not have an opportunity to discuss them.

Regardless, it is common engineering practice that the final design will be completed after the NEPA requirements are met. Appendix F at F-20. The final design would consider County design features for ingress and egress for road 45. If the final design is within the area analyzed and within the scope of this analysis then implementation can begin. If the final design is outside the area analyzed or outside the scope of this analysis, then additional analysis may be needed.

Snow plowing of a sno-park is the responsibility of the Oregon Department of Transportation (ODOT). As stated in Appendix F at F-20 to F-22, “As governed under Oregon Statutes – Chapter 810 – Section 810.170 – Winter Recreation Parking Locations; Plowing; Priorities; Enforcement: (1) The Oregon Transportation Commission shall designate winter recreation parking locations throughout this state where parking is prohibited under ORS 811.590 except for vehicles exempted under that section and vehicles with winter recreation parking permits issued under ORS 811.595. The commission may identify access roads to winter recreation facilities, roadside plow-outs and other areas as winter recreation parking locations under this section. The commission shall designate winter recreation parking locations under this section after consultation with the Winter Recreation Advisory Committee established under ORS 802.350 and with land management agencies managing adjacent land. (2) The commission shall establish priorities for plowing the winter recreation parking locations established under this section. The commission shall establish priorities under this section after consultation with the Winter Recreation Advisory Committee established under ORS 802.350. The Department of Transportation shall provide for the removal of snow accumulating on winter recreation parking locations established under this section according to the priorities established by the commission under this section. Snow removal provided for under this subsection may be performed by any of the following: (a) By the department itself; (b) By persons with whom the department contracts. If the department contracts with persons for



the removal of snow under this paragraph payments under the contracts shall be made from funds designated for that purpose under ORS 802.110.”

The addition of the proposed Kapka Butte Sno-park to the Oregon Sno-park programs was presented to the Winter Recreation Advisory Committee in 2011 and the commission has approved adding the new sno-park to the program, subject to completing the NEPA process. As such, the District appropriately documented that snow removal for sno-parks along Cascade Lakes Highway is completed by ODOT. Appendix F at 20-22.

### ***Air Quality***

**Appellant Statement #44:** Appellant states that the increased vehicle traffic on nearby roads caused by users accessing the proposed parking area will cause congestion and impact air quality. NB at 1.

**Response:** See response to Appellant Statement #1 regarding user conflict. See response to Appellant Statement #4, #21 and #45 regarding air quality.

**Appellant Statement #45:** Appellant states that the health impacts from snowmobile traffic are “well known and that by increasing the number of snowmobile engines operating in the forest at any given time, air quality will be further diminished.” NB at 1. Appellant states that the District failed to adequately consider impacts of snowmobile exhaust on ambient air quality and effects to wildlife at trailheads and other heavily used locations and that the analysis is merely an acknowledgment that the problem exists. WWA at 3 and 5.

**Response:** I find that the Responsible Official adequately evaluated the potential impacts of additional snowmobile exhaust resulting from the project, on wildlife.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). The regulation at 36 CFR 220.7b(3)(iv) states that an EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.” The 1970 Federal Clean Air Act, as amended in 1977 and 1990 (42 U.S.C. §7401 et seq) is a legal mandate designed to protect human health and welfare.

The EA states that “The proposed snow park is 15 miles from the nearest area designated as potentially air quality impaired and 5 miles from a Class 1 Airshed. Any localized air quality impairment would be diluted to a scale that would be impractical to measure and would have no effect on Class 1 airsheds or airsheds designated as potentially impaired.” Appendix F at F-14.

The EA also states that “Newer snowmobile technology (i.e. 4-stroke engines) emits less exhaust than the previous 2-stroke snowmobiles. The EPA sets exhaust emission standards for snowmobiles (40 CFR Part 1051). As snowmobile technology improves and older models are phased out, emissions in the form of exhaust should decrease.” Appendix F at F-14.

In addition to the above disclosure, the EA states that “The District will begin monitoring for visual indicators of reduced air quality at sno-parks and in high-use areas this winter. If needed, mitigation measures would be developed to address public safety.” Appendix F at F-14.

The wildlife section of the EA fully documents current and expected impacts to wildlife throughout the area. The EA at 133-195 documents the presence or absence and potential effects to over 80 vertebrate and invertebrate species, thus providing a complete and thorough analysis of wildlife species.

**Appellant Statement #46:** Appellant states that there will be a “significant human health and safety impact both from increased road and trail vehicle use and ensuing danger from trauma as well as from worsened air quality.” NB at 2.

**Response:** I find that the Responsible Official adequately considered effects on public health and safety.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to describe the effects of the proposed action and any alternatives in terms of context and intensity. The 1970 Federal Clean Air Act, as amended in 1977 and 1990 (42 U.S.C. §7401 et seq.) is a legal mandate designed to protect human health and welfare.

Based on the effects analysis on user conflict between motorized and non-motorized users in the Dutchman Flat and Dutchman Sno-park, the addition of Kapka Sno-park would meet the current winter recreation demand, allowing visitors to park safely within sno-parks and minimize parking in unsafe and unauthorized locations. Appendix F at F-15 to F-18; EA at 86-90. It is unclear from appellant’s statement what type of ‘trauma’ to humans would occur. A review of appellant’s comments on the DEIS show that this topic was not brought up and as such, the District could not respond in a meaningful way to appellant’s concern in the EA.

As documented in response to Appellant Statement #4, #21 and #45, any effects to air quality would be small, temporary and localized. DN/FONSI at 24; EA at 206-210; Appendix F at F-14.

#### ***Noise Related Impacts/Impacts to ‘Quiet’ and Other Recreation Users***

**Appellant Statement #47:** Appellant states that the increase in snowmobile traffic in the Century Drive corridor will substantially displace backcountry skiers and snowshoers from the area, particularly near Tumalo Mountain and Dutchman Flat, and that the District failed to acknowledge this impact and explain why it was justified. WWA at 2, 3, 6, 7, 8 and 10. Appellant states that the analysis of areas managed for quiet recreation is “fanciful”. WWA at 5.

**Response:** I find the Responsible Official adequately considered the potential effects of noise. I also find the Responsible Official adequately considered the potential effects of increased snowmobile traffic on backcountry use.

See responses to Appellant Statement #4, #21, #55 and #73.

**Appellant Statement #48:** Appellant states that the District failed to “adequately consider the Deschutes National Forest Land and Resource Management Plan (LRMP) goal of providing a wide variety of quality winter recreation opportunities, especially as the relevant issues were further considered in the 2009 Deschutes National Forest Sustainability Analysis.” WWA at 2.

**Response:** I find that the Responsible Official has adequately considered Deschutes National Forest Land and Resource Management Plan goals within the scope of the project’s purpose and need.

The regulation at 36 CFR 220.7(c)(5) directs a decision notice to include “Findings required by other laws and regulations applicable to the decision at the time of decision.” Compliance with the Forest Plan is required under the National Forest Management Act of 1976. The regulations at 36 CFR 220.7(b)(1) directs the agency to include in the Environmental Assessment the need for the project.

The Deschutes National Forest LRMP goals for dispersed recreation and winter recreation are discussed in the EA at 11-13. Direction in the LRMP was used in analyzing project effects (EA at 7, 11 to 13, 26 to 28, 31 to 32, 36 to 38), throughout the effects analysis in Chapter 3, and in the DN/FONSI at 23 to 25. Overall, the EA documents consistency with the Deschutes LRMP.

The District included relevant issues and information from the Winter Recreation Sustainability Analysis (EA at vi, 61 to 64 and 68 to 69), which considers the social, environmental and managerial components of providing winter recreation opportunities that meet visitor’s needs, protect resources and are within the forest’s management capacity. EA at 59. Thus, I find that the District did consider the LRMPs goals and relevant issues from the WRSA.

**Appellant Statement #49:** Appellant states that the District failed to implement mitigation measures that would protect areas for clean and quiet recreation, thus addressing the impacts of the proposed sno-park. WWA at 3.

**Response:** See response to Appellant Statement #59.

**Appellant Statement #50:** Appellant states that the District failed to adequately consider, evaluate and address the impacts of snowmobile noise on other users and wildlife. WWA at 3; WW at 18. Appellant states that there is no analysis of the increase in noise or mapping of noise impacts, as they had requested. WWA at 4.

**Response:** I find the Responsible Official adequately evaluated the potential impacts of additional noise from snowmobiles on wildlife and other users.

The regulation at 36 CFR 220.7b(3)(i) states that an EA “shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). The regulation at 36 CFR 220.7b(3)(iv) states that an EA “May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately.”

With regards to impacts to wildlife, the EA incorporated wildlife protection measures that are intended to route new trails on the landscape “...in a manner where the least amount of habitat would be impacted (i.e. more open areas on the ground). To help retain habitat for species that need large trees, snags, or coarse woody material (CWM) habitat, avoid as much as possible cutting large trees and snags (greater than 18 inches dbh) or cutting through large single snags (greater than 18 inches dbh) or large piles of CWM (place trails on outer edges, not through the middle of them). Try to route trails around this type of habitat.” EA at 42. This measure is intended to limit the potential adverse effects from snowmobile noise to these biological “hot spots” for wildlife.

Noise is adequately considered in the effects analysis and determinations for the potentially affected wildlife species. EA at 150 to 195; Appendix F at F-7 to F-9, F-11 to F-12. No significant effects from noise were identified from the project. DN/FONSI at 24.

Also see response to Appellant Statements #4, #21, #55, #59 and #73.

**Appellant Statement #51:** Appellant states that the analysis of impacts of snowmobiles is “callously dismissed as unsightly “tracks” and “smells,” when the real impacts include noise at the top end of the human-produced noise and poisonous exhaust.” WWA at 8.

**Response:** See response to Appellant Statement #4, #21, #45, and #46.

#### ***Violation of Law/Regulation/Policy/Executive Order***

**Appellant Statement #52:** Appellant states that the Finding of No Significant Impact (FONSI) “conclusion that there will be no significant environmental impact from nearly doubling (or more than doubling) the snowmobile capacity in the Century Drive corridor simply is contrary to the substantial evidence in the Record, arbitrary, capricious and an abuse of discretion, as well as short-sighted Forest Service management.” WWA at 2.

**Response:** See responses to Appellant Statements #55, #73 and #75.

**Appellant Statement #53:** Appellant states that the District failed to “adequately consider Forest Service policy on sustainability, as expressed, for instance in 36 CFR 219.8.” WWA at 2.

**Response:** I find that the Responsible Official adequately considered sustainability with regards to regulation.

The regulation at 36 CFR 219.8 is specific to regional planning procedures for implementation of the National Forest Management Act, which guides forests in developing Land and Resource Management Plans (LRMP). Direction in the Deschutes National Forest LRMP was used in analyzing project effects, such as described in the EA at 7, 11, 12, 13, 26-28, 31, 32, 36-38, and throughout the effects analysis in Chapter 3, as well as in the DN/FONSI at 23 and 24. Therefore, the analysis is consistent with the regulation at 36 CFR 219.8.

**Appellant Statement #54:** Appellant states that the District failed to “adequately consider Forest Service policy on multiple use, as expressed, for instance in 36 CFR 219.10.” WWA at 2.

**Response:** I find that the Responsible Official adequately considered the regulation at 36 CFR 219.10.

The regulation at 36 CFR 219.10 is specific to process for developing, adopting, and revising land and resource management plans for the National Forest in implementation of the National Forest Management Act, which guides forests in developing LRMPs. Direction in the Deschutes National Forest LRMP was used in analyzing project effects, such as described in the EA at 7, 11, 12, 13, 26 to 28, 31, 32, 36 to 38, and throughout the effects analysis in Chapter 3, as well as in the DN/FONSI at 23 and 24. Therefore, the analysis is consistent with the regulation at 36 CFR 219.10.

**Appellant Statement #55:** Appellant states that the District failed to address the requirements of Executive Orders 11644 and 11989, which direct federal managers to manage off-road vehicles and close areas to motorized vehicles when considerable adverse effects are occurring, as well as avoid and minimize user conflict. WWA at 3; WW at 5; WW at 27, 28 and 30. Appellant states that the DN avoids

discussing mitigation measures to address and prevent user conflict, as required by Executive Orders 11644 and 11989. WW at 9, 12, 19, and 25. Appellant states that the District fails to explain how “adding parking capacity to an already contentious area so that it could possibly displace non-motorized recreation visitors” complies with the Executive Orders. WW at 25.

**Response:** I find the Responsible Official adequately considered and addressed Executive Orders 11644 and 11989.

Executive Order 11644 and Executive Order 11989 establish policies and provide for procedures that ensure the use of off-road vehicles on public lands will be controlled and directed to protect the resources, promote safety of all users, and minimize conflicts among the various users.

While there is a motorized use corridor (motorized trail #7) between two designated areas of non-motorized use, the selected alternative does not change the motorized or non-motorized designations within the project area, and allows the public to separate themselves from activities that are in conflict with their desired recreation activities and experience. Existing conditions, capacity, changes in use levels, congestion, and effects of the proposed action are described throughout the document. DN/FONSI at 9-13, EA at iv-vii, 7-8, 77-100, 106-107. The selected alternative addressed concerns about user conflict between motorized and non-motorized recreationists by providing an alternative parking area for vehicles and reducing competition over the current limited parking at Dutchman Sno-park. DN/FONSI at 4. Based on the effects analysis on user conflict between motorized and non-motorized users in the Dutchman Flat and Dutchman Sno-park, the addition of Kapka Sno-park would meet the current winter recreation demand, allowing visitors to park safely within sno-parks and minimize parking in unsafe and unauthorized locations. EA at 86-90; Appendix F at F-15-F-18. Trails are located to minimize conflict between users, as required by EO 11644. EA at 235.

Resource protection measures are outlined in Chapter 2 of the EA. Project design features and mitigation measures were included to protect Inventoried Roadless Areas, wildlife, cultural resources, soils, and scenery. Prevention measures were prescribed to reduce the potential for invasive plant introduction and spread. EA at 42- 44.

Consistency with Executive Orders 11644 and 11989 and the Deschutes Forest Land and Resource Management Plan standards and guidelines for winter recreation were also addressed in the EA at 235-236, in Appendix F at F-8 to F-9, F-15 to F18, and F-33, and in the DN/FONSI at 25.

**Appellant Statement #56:** Appellant states that the decision violates NEPA by adopting a modified alternative 2 that was not considered in the EA and that these modifications were substantial. Appellant states that the decision fails to explain why this substantial change is allowed under NEPA. WWA at 4.

**Response:** I find the Responsible Official adequately considered the effects of the selected alternative. All components of the selected of alternative were analyzed in the EA.

The regulation at 36 CFR 220.4(3)(c)(5) directs the responsible official to make a decision encompassed within the range of alternatives analyzed in the environmental documents.

The DN described why alternative 2 was modified from what was described in the EA. The DN/FONSI at 19 explains why Alternative 2 as described in the EA was not selected. The Responsible Official stated that he did not include 40 additional parking spaces after he considered public comments about the

proposed dog trails, access to the trails and the safety of dogs and users. He also stated that little interest or support was demonstrated for the proposed snowshoe trail and as such, he did not include it in his decision. He also stated that the public comments received indicated concern about the size of the proposed Kapka Sno-park and that by reducing the size, the long-term impacts to the site would be minimized. DN/FONSI at 19 and 20.

Because Alternative 3 did not include the Nordic ski trails that would be open to dogs or the snowshoe trail, the impacts of Alternative 2 as modified are included within the range of alternatives that were presented in the EA and the Responsible Official's decision was within that range.

**Appellant Statement #57:** Appellant states that the project threatens a violation of Executive Order 11644 and 11989 as well as the 2005 Travel Management Rule and the Forest Plan. WW at 20-28 43 and 44. Specifically, appellant states that the EA doesn't explain how the "minimization criteria were applied in the route designation decisions" and "fails to minimize conflict between off-road vehicle use and those seeking quiet recreation experiences." WW at 23 and 27. Appellant states that the EAs proposal of minor adjustments that reduce conflict isn't the same as minimizing conflict, which the Forest Service has a legal obligation to do. WW at 27.

**Response:** I find the Responsible Official adequately considered and addressed Executive Orders 11644 and 11989, the Forest Plan, and the Travel Management Rule.

The EA at 234 summarizes the Travel Management Rule , which is described at 36 CFR 212. Specifically, the regulation at 36 CFR 212.81(c) discusses the establishment of restrictions and prohibitions on over the snow vehicles. This part of the Travel Management Rule gives the agency the option of limiting winter motorized recreation to routes and areas designated on a winter travel motorized vehicle use map. No new restrictions or prohibitions under this subpart are proposed in the Kapka Sno-park project. The Forest has not identified a timeline for completing a large scale assessment for winter recreation. Timelines for large scale planning efforts are affected by other forest priorities such as implementation of summer Travel Management and Forest Plan Revision. EA at 234; Appendix F at F16.

See also response to Appellant Statement #55.

**Appellant Statement #58:** Appellant states that considering all three action alternatives that all contemplate the possible displacement of non-motorized recreation users stands Executive Order 11644 on its head. WW at 25.

**Response:** See response to Appellant Statement #55.

**Appellant Statement #59:** Appellant states that the process the District used to reach its decision was flawed and violates NEPA. WW at 6. Appellant states that the District "stands the NEPA process on its head" because the District first determined that significance existed up front by publishing a draft environmental impact statement (DEIS), then without notice, opportunity to comment, or plausible explanation published an EA and finding of no significant impact (FONSI). WW at 6, 7, 12, 17, 18 and 19. By doing this, appellant states that this raises serious concerns about an agency's motive to perhaps avoid enforceable mitigation measures and avoid compliance with 40 CFR 1505.2. WW at 8 and 12.

**Response:** I find the Responsible Official followed the NEPA process appropriately and that mitigation measures were considered, analyzed and applied in the EA.

The regulation at 36 CFR 220.5 describes the classes of actions normally requiring environmental impact statements. These include: “(1) Class 1: Proposals to carry out or to approve aerial application of chemical pesticides on an operational basis. Examples include but are not limited to: (i) Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss; (ii) Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation; (iii) Applying herbicides by fixed wing aircraft on an area to release trees from competing vegetation; and, (2) Class 2: Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area. Examples include but are not limited to: (i) Constructing roads and harvesting timber in an inventoried roadless area where the proposed road and harvest units impact a substantial part of the inventoried roadless area; (ii) Constructing or reconstructing water reservoir facilities in a potential wilderness area where flow regimens may be substantially altered; (iii) Approving a plan of operations for a mine that would cause considerable surface disturbance in a potential wilderness area.”

The Kapka project does not fall into either class of action that would require an EIS. However, based on the initial scoping letter, the Responsible Official believed that he would document this project in an EIS. Appeal Record, Scoping Letter at 2. A Notice of Intent to prepare an EIS was submitted to the Federal Register and the District prepared and circulated the DEIS. DN/FONSI at 22 and 23.

Upon completion of the analysis, the District Ranger determined that there were no significant impacts (DN/FONSI at 1; Appeal Record, Public Notification Letter), documented his findings in an EA and prepared and circulated his decision in a DN/FONSI. He also withdrew the Notice of Intent to prepare an EIS (FR (FR Vol. 77, No. 184, 58540), as required by the regulation at 36 CFR 220.5(c), which states that a withdrawal notice must be published in the **Federal Register**, if, after publication of the notice of intent or notice of availability, an EIS is no longer necessary. Thus, the regulation allows for withdrawal of an EIS and subsequent preparation of an EA.

Mitigation measures were incorporated into the EA and DN/FONSI. The EA at 42-44 describes project design features and specific mitigation measures for wildlife and other resources. Finally, the DN/FONSI at 16 states that “Mitigation measures are site-specific and are used to avoid, minimize, rectify, reduce, or compensate an impact (40 CFR 1508.20)” and the DN at 16-18 incorporates those measures into the final decision.

**Appellant Statement #60:** Appellant states that the EA and DN use non-enforceable words such as “as much as possible” and “try” with regards to mitigations and seasonal restrictions, and that this type of language is “the antithesis of enforceable mitigation.” WW at 9 and 12.

**Response:** See response to Appellant Statement #59.

**Appellant Statement #61:** Appellant states that the District failed to provide the public with an opportunity to review the EA and FONSI, which is inconsistent with the Council on Environmental Quality’s (CEQ) interpretation of the NEPA regulations and renders the FONSI inadequate. WW at 9, 10, 11, 12 and 13.

**Response:** I find that the Responsible Official met the requirements of NEPA by providing the public an opportunity to review the analysis, which is consistent with CEQ’s interpretation of NEPA, and that the FONSI is adequate.

The regulations at 40 CFR 1502.9 (b) states that "... The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised."

The District released a DEIS on April 15, 2011 for a 45-day public comment period. EA at 17. That public comment period was extended an additional 30 days. DN/FONSI at 23. Responses to comments on the DEIS are included in Appendix F of the EA. Because the public had an extended opportunity to comment on the DEIS, the requirements of NEPA were met.

**Appellant Statement #62:** Appellant states that the project violates the 1982 regulations implementing the National Forest Management Act (NFMA) by failing to contemplate conflicts between off-road vehicles and other users. WW at 19.

**Response:** I find that the Responsible Official adequately considered the 1982 regulations implementing the National Forest Management Act (NFMA) by contemplating conflicts between off-road vehicles and other users. See response to Appellant Statement #1 regarding user conflicts.

The National Forest Management Act of 1976 (NFMA) requires the Secretary of Agriculture to assess forest lands, develop a management program based on multiple-use, sustained-yield principles, and implement a resource management plan for each unit of the National Forest System. It is the primary statute governing the administration of national forests.

NFMA guides forests in developing LRMPs. Direction in the Deschutes National Forest LRMP was used in analyzing project effects, as documented in the EA at 7, 11, 12, 13, 26-28, 31, 32, 36-38, and throughout the effects analysis in Chapter 3, and in the DN/FONSI at 23 and 24. As such, the analysis is consistent with NFMA.

**Appellant Statement #63:** Appellant states that the project violates the Multiple-Use Sustained-Yield Act (MUSYA) and NFMA by failing to avoid and minimize user conflicts since the Forest Service is not ensuring that the Forest is being managed in a way that "best meet[s] the needs of the American people." WW at 27.

**Response:** I find that the Responsible Official considered the MUYSYA and NFMA in the analysis of the effects of this project.

The MUYSYA of 1960 authorizes and directs that the national forests be managed under principles of multiple-use and to produce a sustained yield of products and services, and for other purposes.

The NFMA of 1976 amended Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as re-designated by section 2 of NFMA as follows: "(e) In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans "(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use, Sustained-Yield Act of 1960, and in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and timber, watershed, wildlife and fish, and wilderness..."



The MUYSA was considered in preparation of the EA. Chapter 3 and the specialist reports prepared for the Kapka EA are consistent with the MUYSA (and therefore NFMA) by providing the required disclosure of effects from anticipated use associated with the motorized and non-motorized winter recreation allowed under the current condition (Alternative 1) and as modified by Alternatives 2 through 4. EA at 227.

### ***Range of Alternatives/Purpose and Need***

**Appellant Statement #64:** Appellant states that the District failed to consider an adequate range of alternatives under NEPA. WWA at 3; WW at 25 and 39. Appellant states that the District offered “no serious alternative but a large and disruptive snowmobile snopark that would displace all non-motorized recreationalist who currently use the area.” WW at 16; WW at 25.

**Response:** I find that the Responsible Official considered a range of alternative that was adequate to respond to the Purpose and Need and the issues identified during scoping. As documented in the DN and EA, eleven alternatives were considered, four of which were analyzed in detail, while seven were eliminated from detailed study because they were outside the scope of the project and did not meet the purpose and need.

The regulation at CFR 36 220.7 (2) directs the agency to describe the proposed action and alternatives(s) that meet the need for action. No specific number of alternatives is required or prescribed.

The Responsible Official’s proposed action was clearly described in the January 2, 2009 scoping letter. From the scoping comments, issues, alternatives and effects were identified and disclosed in the DEIS. The EA considered four alternatives, including the no action, that were analyzed in detail study and seven alternatives considered but eliminated from detail study with the rationale why they were eliminated from detail study. EA at 18 to 41.

The purpose and need of the project was to provide additional high elevation parking for a variety of winter recreation opportunities and to provide access to over snow trail systems near the Cascade Lakes Highway corridor. The appellant’s statement that this sno-park would displace all non-motorized users is an opinion that is not substantiated by current use of the area’s sno-parks, which are used by both motorized and non-motorized users.

**Appellant Statement #65:** Appellant states that the EA repeatedly cites to the 1996 ROD for the Dutchman EA as a reason for not considering alternatives that might have offered non-motorized users some mitigation, but then ignores the same ROD when the District explains their contrary decision to greatly expand snowmobile parking only five miles away. WW at 5, 16, 33 and 40.

**Response:** I find that the EA appropriately cites the 1996 DN/FONSI and Environmental Assessment as previous analysis for the Dutchman sno-park. I did not find and any analysis or decision in the Kapka Butte Sno-park project Decision Notice/FONSI, EA or Appendices contrary to the 1996 analysis and decision.

The regulation at CFR 36 220.7 (2) directs the agency to describe the proposed action and alternatives(s) that meet the need for action. No specific number of alternatives is required or prescribed.

The 1996 Environmental Assessment (1996 EA) states the proposed new construction is north of the existing lot (Dutchman sno-park) in the area known as the “Y” and would share the same exit road. 1996 EA at 14 to 15. In the effects section for the preferred alternative of the 1996 EA, it states that the expansion of the sno-park would cause a potential safety hazard as vehicles try to leave the sno-park at the end of the day. 1996 EA at 30.

According to the Kapka EA, increasing the parking capacity of Dutchman Sno-park to accommodate 70 to 110 vehicles would only exacerbate the current situation. The 1996 Sno-Park Expansions Environmental Analysis evaluated the effects of enlarging Dutchman Sno-park and concluded that significantly increasing the capacity of the existing site or constructing a new sno-park near Dutchman Flat would increase use and the potential for user conflicts. Appendix F at 32 and 33. Those conclusions from the 1996 EA are still valid and no new circumstances exist that would trigger a change to that direction. However, the Forest will continue to assess all sno-parks and may recommend changes in the future to improve the efficiency, capacity and safety of facilities. EA at 20.

The 1996 Sno-Park Expansions EA evaluated an alternative for closing Tumalo Mountain to motorized use and it was not selected because restrictions on motorized use of Tumalo Mountain and Dutchman Flat were deemed too severe and inequitable at the time the decision was made. In addition, a motorized closure, such as that proposed, requires a large-scale assessment and cannot be accomplished within the scope of the proposed sno-park. EA at 19.

Two possible alternatives were considered that would establish a seasonal parking restriction to either exclude snowmobile users or exclude vehicles and vehicle/trailer combinations over 24 feet in length within Dutchman Sno-park during the “core” winter season, generally expected to be from January 1 to March 1. These alternatives were considered to be an inequitable restriction to motorized users. Similar alternatives were evaluated in the 1996 Sno-Park Expansions Environmental Analysis and the same determination was made. EA at 21.

Based on public participation and analysis in the EA, the effects on the quality of human environment are not likely to be highly controversial (EA, Appendix F). Although there are sometimes competing interests surrounding winter recreation, the conclusions of effects were not shown to be highly controversial. Concern for this project centered on the potential for user conflicts between motorized and non-motorized users. Some respondents wanted to see areas closed to snowmobiles or to designate Dutchman Sno-park as a non-motorized parking area. These concerns are outside the scope of this project and could be evaluated later in time in another environmental document. EA at 6-7, 18-21; Appendix F; FONSI at 24.

**Appellant Statement #66:** Appellant states that the purpose and need statement is illegally narrow and that the District attempts to side step the issue of conflict by leaning on the purpose and need. WW at 13.

**Response:** I find that the agency properly used the “gap” between the existing winter recreation condition and its desired condition based on Forest Plan management direction to generate the purpose and need for action. EA at 7 and 8.

The regulation at 36 CFR 220.7(b)(1) directs the agency to include in the Environmental Assessment must briefly describe the need for the project.

See response to Appellant Statement #1 with respect to the issue of user conflict.

The purpose and need for action is represented by the difference or “gap” between the Cascade Lakes Highway area existing winter recreation existing condition and its desired condition based on Forest Plan management direction. The overarching purpose of the proposed action is to implement direction in the Forest Plan; specifically the proposed action would assist in the following:

- “Providing safe, efficient access for the movement of people and materials involved in the use of the National Forest Lands” (LRMP at 4-2);
- “Provide a range of quality recreation opportunities in an undeveloped forest environment” (LRMP at 4-2); and
- “Provide a full range of quality outdoor recreation opportunities within a forest environment that can be modified for visitor use, visitor satisfaction, or to accommodate large numbers of visitors” (LRMP at 4-2).

Additional Forest Plan management direction can be found in Appendix A of the EA.

In terms of the need statements, the District identified the need as *“The Deschutes National Forest sees a need to provide additional safe, high elevation parking that will enhance a variety of winter recreation opportunities and provide access to over snow trail systems near the Cascade Lakes Highway corridor.”* EA at 7.

The agency has the discretion to define the purpose and need. Forest Service Handbook (FSH) at 1909.15, 11.21. According to case law, the agency must not define its purpose and need so narrow as to preclude reasonable alternatives. *EPIC v. USFS*, D.C. No. CV04-01705-GEB (9<sup>th</sup> Circ. 2006). Appellant claims that the narrow purpose and need is illegal, however, the EA analyzed two additional action alternatives that met the purpose and need and responded to issues, thus demonstrating that the purpose and need was not so narrow as to preclude reasonable alternatives. EA at 22-41. The EA also analyzed the alternative to not construct a sno-park (No Action alternative). EA at 22 and 23. The EA also describes five alternatives that were eliminated from detailed study. These alternatives were considered in Section 2.2 of Chapter 2 and include: putting the sno-park in different locations, such as between Forest Service roads 45 and 46; putting the snow park past the Dutchman Sno-park intersection on Forest Service road 46; putting the sno-park below the proposed Kapka Sno-park location (lower in elevation); utilizing the Mt. Bachelor Ski Area parking; and enlarging the Dutchman Sno-park. EA at 18-20.

**Appellant Statement #67:** Appellant states that it was improper for the District to claim that considering closing certain areas to snowmobiles or designating Dutchman Sno-park as a non-motorized parking area were outside the scope of the project. WW at 16.

**Response:** I find that the Responsible Official properly evaluated the range of alternatives and analyzed which alternatives met or did not meet the purpose and need. Alternatives that considered closing certain areas to snowmobiles or designating Dutchman Sno-park as non-motorized parking area were properly considered and determined unable to meet the purpose and need or outside the scope of the project and as such, were eliminated from detailed study.

The regulation at 36 CFR 220.7(b)(1) directs the agency to briefly describe the need for the project in the Environmental Assessment.

See response to Appellant Statement #66 for further detail about the Kapka Project's purpose and need and alternatives analyzed.

An alternative to close Tumalo Mountain to winter motorized use was considered. EA at 19-20. This alternative was considered but eliminated from detailed study because it is outside the scope of this project and does not meet the purpose and need. A motorized closure, such as that proposed by appellant, would require a large-scale assessment and cannot be accomplished within the scope of the Kapka project's proposal. EA at 19; Appendix F at F-26.

It is outside the scope of this project to delegate a change in the type of use or delegate type of parking occurring at Dutchman. The proposed location of the Kapka Sno-park is already in an area where motorized use occurs and trail connectors will connect into existing trails which provide access for both motorized and non-motorized uses. Any new trail construction (not accounting for trail connectors) proposed is for non-motorized use. Appendix F at F-29.

**Appellant Statement #68:** Appellant states that the District arbitrarily changed the purpose and need from scoping by excluding conflict resolution from the purpose and need. WW at 32.

**Response:** I find that the agency properly stated the purpose and need and did not substantially change it from the January 2, 2009 letter to the DN/FONSI.

The regulation at 36 CFR 220.7 (b)(1) directs the agency to briefly describe the need for the project in the EA. Below are citations of the purpose and need as it proceeded through the project.

"The Deschutes National Forest (DNF) sees a need to provide high elevation parking that will enhance a variety of winter recreation opportunities near the Cascade Lakes Highway corridor." (Scoping Letter at 1, January 2, 2009.

"The DNF sees a need to provide additional safe, high elevation parking that will enhance a variety of winter recreation opportunities and provide access to over snow trail systems near the Cascade Lakes Highway corridor." Draft EIS at 7 and EA at 7.

"There is a need to provide additional safe, high elevation parking that will enhance a variety of winter recreational opportunities and provide access to over snow trail systems near the Cascade Lakes Highway corridor." DN/FONSI at 8.

In looking at how the Kapka Project's purpose and need progressed through the project, I conclude that the substance of the statement has stayed the same even if the particular wording has been refined.

**Appellant Statement #69:** Appellant states that the DN and EA "employ a ridiculously narrow purpose and need statement that improperly focuses only on providing additional safe, high elevation parking" and fails to address the "real" needs for good management and sustainable winter recreation. WW at 34, 35 and 39.

**Response:** See response to Appellant Statement #66.

**Appellant Statement #70:** Appellant states that the agency cannot switch from a DEIS to an EA to justify the unreasonably narrow range of alternatives in the EA. WW at 39. Appellant outlines how the three

action alternatives are similar and that the decision was already made before the EA or DEIS was ever written. WW at 40-42.

**Response:** I find that the Responsible Official appropriately documented and stated the justification of preparing an EA versus an EIS. See response to Appellant Statement #59.

The regulations at 36 CFR 220.7 (b)(3) (i) directs the agency to briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s), to determine whether to prepare either an EIS or a FONSI.

### ***Socio-Economics***

**Appellant Statement #71:** Appellant states that the District failed to adequately consider and evaluate the socio-economic impact of increasing snowmobile traffic (which would result in reduced skier and snowshoe recreationist visits) in the Century Drive corridor. WWA at 3 and 4.

**Response:** I find that the Responsible Official appropriately completed an economic analysis (EA at 212 to 227) and appropriately disclosed the use of managerial judgment and reasonable assumptions regarding additional use.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to describe the effects of the proposed action and any alternatives in terms of context and intensity.

The EA included a detailed economic analysis that documented the role both motorized and non-motorized user play in the economics of the area. The EA based the analysis on visitation data from the National Visitor User Monitoring (NVUM) process. EA at 213. Economic indicators included number of visits, average expenditure by visit, and the multiplier effects generated by visitor expenditures. EA at 213.

The EA states that “using NVUM 2008 data and a study area of central Oregon (Deschutes, Crook, and Jefferson counties), it is estimated that all recreation on the Deschutes NF generates output of \$95 million, income of \$30 million, and employment of 1,063 jobs. In 2008, the Deschutes County accommodation and food services sector (NAICS 72) had 8,036 jobs and \$133 million in covered wages. In that context, these winter recreation activities generated a relatively small proportion of regional totals associated with recreation and tourism. Nonetheless, they make a substantial contribution. In addition, these recreation activities provide jobs during the winter season, thereby contributing to year-round employment opportunities in a region with high seasonality.” EA at 225 and 226.

Appellant’s statement that increased snowmobile use would result in a decrease in non-motorized use. No data was presented to support this and as such, I find it to be the opinion of the appellant.

### ***Decision Already Made***

**Appellant Statement #72:** Appellant states that the Forest has already secured \$500,000 for the construction of the Kapka Snopark, which indicates that a decision has already been made, thus defeating the purpose and goals of NEPA, and that belatedly disclosing these funds in the EA doesn’t cure the violation of NEPA. WW at 5, 6, 12, and 17.

**Response:** I find that the Responsible Official did not make a decision prior to NEPA being complete; therefore, there was no violation of NEPA.

The regulation at 36 CFR 220.7(b)(4)(c) outlines that a Responsible Official “must document the conclusions drawn and the decision(s) made based on the supporting record, including the EA and FONSI.” This regulation further outlines what is necessary in the Responsible Officials decision.

The Forest has neither requested nor received funds for completing final engineering design or construction because the NEPA process is not complete. If the no action alternative were selected, the Forest would not accept funds for final engineering design and construction, and the agreement with WFLHD would be modified to reflect this change. Appendix F at F-19 and F-20.

The Responsible Official’s rationale for making this decision is logically stated within the DN/FONSI. DN/FONSI at 4.

### ***Inadequate FONSI***

**Appellant Statement #73:** Appellant states that the FONSI claims that there will be no significant effects on public health and safety, but that the FONSI limits the focus on public health and safety focuses almost exclusively on safety concerns of inappropriate parking, but that building more parking will induce more traffic and congestion and that the EA failed to consider this indirect impact. WW at 14.

**Response:** I find that the Responsible Official adequately considered the effects of Alternative 2 modified to conclude there were no significant effects on public health and safety of implementing the Kapka Project.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to describe the effects of the proposed action and any alternatives in terms of context and intensity, while Forest Service guidance on the use of best available science (June 20, 2007) was followed during project planning.

In April of 2004, the Forest held what was termed as the “Dutchman Summit” with some initial agreement between motorized and non-motorized user groups that congestion in the Dutchman Sno-park area could be relieved by creating a new sno-park at a higher elevation than Edison or Wanoga primarily for motorized use. Appeal Record, 2004 Dutchman Summit pdf.

In addition, the agency used responses from the Trail Users Guide Values Workshop, Winter Recreation User Interview along with the Winter Recreation Sustainability Analysis to help set context for the analysis. EA at Appendix C. Within that context, traffic and congestion was thoroughly discussed throughout the Kapka EA.

As part of the existing condition, issues of traffic and congestion is ongoing, especially at Dutchman Sno-park which does not accommodate head-in or pull-through parking for vehicles with trailers. When Dutchman Sno-park reaches capacity, visitors park in “no parking” zones within the sno-park, along the highway and in chain-up areas. EA at 61. Change in user patterns would initially lead to a decrease in motorized parking demand at Dutchman, Edison, Vista Butte and Wanoga sno-parks. Use of all sno-parks would remain high and is expected to increase over time assuming population and participation in winter sports in central Oregon continues to grow. EA at 88.

Additional parking capacity with the implementation of Alternative 2 modified will alleviate parking congestion at the Dutchman Sno-park. Because the new sno-park serves existing winter recreation trails and areas and does not change Forest Plan Management Allocations or managed recreation uses within the area, it will not substantially modify the recreation experience of other users. DN/FONSI at 10.

Existing conditions, capacity, changes in use levels, congestion, and effects of the proposed action are described throughout the document. DN/FONSI at 9 to 13; EA at iv to vii, 7 to 8, 77 to 100, and 106 to 107. The selected alternative addressed concerns about user conflict between motorized and non-motorized recreationists by providing an alternative parking area for vehicles and reducing competition over the current limited parking at Dutchman Sno-park. DN/FONSI at 4. Based on the effects analysis of user conflict between motorized and non-motorized users in the Dutchman Flat and Dutchman Sno-park, the addition of the Kapka Sno-park would meet the current winter recreation demand, allowing visitors to park safely within sno-parks and minimize parking in unsafe and unauthorized locations. Appendix F at F15 to F18; EA at 86 to 90.

The 1970 Federal Clean Air Act, as amended in 1977 and 1990 (42 USC 7401 et seq.) is a legal mandate designed to protect human health and welfare. Within the Kapka EA, it explains that the air quality effects would be small, temporary and localized. DN/FONSI at 24; EA at 206 to 210; Appendix F at F-14.

Based on the disclosure documented throughout the EA, I find that the Responsible Official logically explained, through the resource effects sections of the Kapka EA, their resource effects.

**Appellant Statement #74:** Appellant states that the FONSI's claim that the action is not likely to set a precedent for future actions is not the case and violates NEPA because every time a parking area reaches capacity, the "Forest Service will respond in a similar capacity and seek to expand capacity rather than looking at alternatives to better address winter recreation issues." WW at 17.

**Response:** I find that the Responsible Official considered the context and intensity of the effects of the selected alternative beyond any influence of past precedent of activities. In addition, the Responsible Official used the best available science rather than past precedence to drive his decision, demonstrating that past actions do not drive future decisions in this case.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives, and Forest Service guidance on the use of best available science (June 20, 2007) was followed during project planning.

The agency used responses from the Trail Users Guide Values Workshop, Winter Recreation User Interview along with the Winter Recreation Sustainability Analysis to help set context for the analysis. EA at 61. Within that context and initial agreement between motorized and non-motorized user groups from the Dutchman Summit, the purpose and need was developed to implement direction in the Forest Plan with the need described as: (1) to provide additional safe, high elevation parking that will enhance a variety of winter recreation opportunities and provide access to over snow trail systems near the Cascade Lakes Highway corridor; and, (2) for permanent groomed Nordic trails that allow for skiers to recreate with dogs while also providing areas for recreation closed to dogs. EA at 7.

The agency is required to follow the National Environmental Policy Act (NEPA) requirements for any federal action. Future analysis for actions will be governed by that policy. The agency recognized there may be a future need to respond to concerns such as closing areas to snowmobiles or to designate

Dutchman Sno-park as a non-motorized parking area, however these concerns are outside the scope of this project. DN at 24. In addition, closing an area to motorized use, or expanding an area for that matter, would need to be assessed in a large scale assessment that could assess issues, alternatives, trade-offs and effects to a change of use. Appendix F at F-32.

The most recent sno-park expansion project in the Kapka area is the Meissner Sno-Park and Nordic Trails EA of 2008. Within the Meissner Sno-Park and Nordic Trails EA it explains that none of the local sno-parks have been expanded since their construction in the 1970s and 1980s. Meissner Sno-Park and Nordic Trails EA at 2. Within the reasonably foreseeable future actions sections of the Kapka EA, it states nothing about future sno-park expansion projects, outside of the implementation of the past decision of the Meissner Sno-Park expansion. EA at 53 to 56.

Therefore, I find that the Responsible Official conclusions that the Kapka Projects will not set precedence is correct due to the evidence that past sno-park expansions have not set precedence for future actions and that it has been over 30 years since the sno-parks were built and only one expansion has occurred during that time.

**Appellant Statement #75:** Appellant states that the FONSI's characterization that the effects are not likely to be highly controversial stands "in stark contrast to the EA" and that the only "key issue" revealed by the scoping process was user conflict between motorized and non-motorized users, which Alternative 2, modified, does not address. WW at 15, 16, 23 and 32.

**Response:** I find that the Responsible Official adequately evaluated the effects of the proposed action and appropriately determined the key issue to be evaluated. I also find that in the selected alternative, the Responsible Official considered the user conflict between motorized and non-motorized users.

The regulation at 40 CFR 1501.7 directs the agency, in using scoping, to determine issues to be analyzed. The regulation at 36 CFR 220.7b(3)(iv) states that an EA "May discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately."

A proposed agency action is "highly controversial," and may require preparation of environmental impact statement (EIS) under NEPA when there is substantial dispute about size, nature, or effect of major federal action, rather than existence of opposition to use. National Environmental Policy Act of 1969, 2 et seq., 42 USCA 4321 et seq.; 40 CFR 1508.27(b)(4). *Anderson v. Evans*, C.A.9 (Wash.)2002, 314 F.3d 1006, opinion amended on denial of rehearing 350 F.3d 815, amended and superseded on denial of rehearing 371 F.3d 475. *Environmental Law* 593. Courts have consistently specified that disagreement must be with respect to the character of the effects on the quality of the human environment in order to be considered to be "controversial" within the meaning of NEPA, rather than a mere matter of the unpopularity of a proposal. See *Como-Falcon Coalition, Inc. v. U.S. Dept. of Labor*, 609 F.2d 342 (8th Cir. 1978), cert. denied, 446 US 936 ("Mere opposition to federal project does not make project controversial so as to require environmental impact statement.")

The purpose and need of the project is to "provide additional safe, high elevation parking that will enhance a variety of winter recreation opportunities and provide access to over snow trail systems near the Cascade Lakes Highway corridor." EA at 7 and Appendix F at F-16 to F-18. The Kapka Sno-Park EA analyzed the resource effects which supports the conclusion that these effects are non-significant and not "highly controversial." DN/FONSI at 24; EA at 53 to 228.



Also see responses to Appellant Statement #15 and Appellant Statement #73.

### ***Impacts to Wildlife***

**Appellant Statement #76:** Appellant states that use of the higher, more likely true PAOT will lead to the potential for more adverse effects on wolverine and fisher. WW at 14 and 44. Appellant states that the EA failed to address the cumulative impacts to wildlife and the analysis area doesn't begin to assess the potential overall impact and that the finding of no significant impact on the viability of wolverine and fisher is "inexplicable." WW at 18 and 44.

**Response:** I find that the Responsible Official adequately addressed the potential cumulative effects of the project to wildlife, as well as impacts to the viability of wolverine and fisher across the Deschutes National Forest.

The regulation at 36 CFR 220.7b(3)(i) states that an EA "[s]hall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s). The regulation at 36 CFR 220.7b(3)(iv) states that an EA "[m]ay discuss the direct, indirect, and cumulative impact(s) of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately."

In analyzing the resource, the wildlife biologist used her professional judgment in considering direct and indirect effects on the environment that were expected or likely to result from the alternatives when combined with past, present and reasonably foreseeable future actions. She also considered effects of past actions on the resource in considering overall effects. EA at 139 to 195.

A discussion of the effects to viability of wolverine and fisher are located in Chapter 3 and in Appendix F of the EA at 160, 163, and 164 and in Appendix F at F-11 and F-12. A discussion of direct, indirect, and cumulative effects of the project area to forest wildlife is included in Chapter 3 of the EA at 133 to 195. With regards to fisher, the wildlife biologist determined that viability would not be affected because none of the alternatives would remove suitable habitat. EA at 158. An unconfirmed sighting of a fisher occurred in 2003 approximately 3 miles from the project area. EA at 157. For wolverine, the wildlife biologist determined that denning habitat would not be disturbed. In addition, the last verifiable sighting of a wolverine was in 1992. A survey by the Oregon Department of Fish and Wildlife in 1998 did not locate any den sites in the Three Sisters Wilderness. EA at 161. Thus, based on the lack of presence and the lack of direct disturbance to either species, the wildlife biologist concluded that the viability of either species would not be affected. EA at 160 and 164.