I have reviewed the appeal record regarding the June 14, 2010 appeal of the decision of Forest Supervisor Jane Darnell concerning the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) by Robert Kobza. My review of the appeal as submitted by the eligible Appellant focused on the decision documentation developed by the Forest Supervisor in reaching her decision. Pursuant to 36 CFR §215.13(f)(2), this will constitute my written recommendation concerning the disposition of the appeal, and I am forwarding the appeal record to you.

DECISION BEING APPEALED
The Forest Service released the FEIS and ROD for travel management on the Nebraska National Forest, Buffalo Gap National Grassland, Oglala National Grassland and Samuel R. McKelvie National Forest and the legal notice was published on April 30, 2010. The FEIS and ROD analyzes and implements a motorized vehicle system to improve management of motorized vehicle use on National Forest System lands within the Nebraska National Forest and Grasslands in accordance with regulations at 36 CFR Parts 212, 251, 261 and 295 and described in the Travel Management; Designated Routes and Areas for Motor Vehicle Use; Final Rule. The Forest Supervisor selected a modification of Alternative 2 for the Pine Ridge and Bessey Ranger District of the Nebraska National Forest, the Samuel R. McKelvie National Forest, the Oglala National Grassland and the Fall River Ranger District portion of the Buffalo Gap National Grassland. The Forest Supervisor selected a modification of Alternative 3 for the Wall Ranger District portion of the Buffalo Gap National Grassland.

The Project area consists of federal public lands managed by the Nebraska National Forests and Grasslands comprising approximately 948,018 acres in southwestern South Dakota and northwester Nebraska.

APPEAL SUMMARY
Forest Supervisor Darnell signed the ROD on April 13, 2010 and the legal notice was published on April 30, 2010. Mr. Kobza submitted comments during the comment period and has eligibility to appeal. The notice of appeal was filed on June 14, 2010 within the 45-day appeal period that ended on June 14, 2010.
Mr. Kobza requested the following relief:

- The appellant requests that Trails 217 and 218 on the Pine Ridge Ranger District be eliminated from the travel management decision.
- The appellant requests that the US Forest Service not implement the travel management plan decision (trails 217 and 218 and/or Forest-wide) until a comprehensive enforcement plan is in place with adequate personnel (number and training) to address the issues of concern.

ISSUES AND DISCUSSION
The appellant asserts that a number of concerns were not fully addressed in the FEIS. Each area of concern is discussed below:

A. An establishing herd of elk within a mile of trails 217 and 218

**Discussion:** Elk are addressed in the Project Record on pages 52, 59, and 101-102 of the FEIS, and page 21 in the ROD. Information about identified important elk habitat areas, as well as current population trend is presented on page 59. Potential impacts to elk from motorized and other recreation and the environmental consequences of the alternatives to elk are presented on pages 101 and 102, using miles of open road and motorized trail as the measure. It is concluded that the proposed alternatives would not likely affect populations of elk because populations are currently increasing under the existing road and motorized trail management system. On page 21 of the ROD, it is recognized that some road and motorized trail miles are designated in identified elk use areas. However, it was concluded that the decision reaches a balance between designated roads and motorized trails and maintaining elk habitat and populations. Additionally, public comments regarding elk and the alternatives were addressed in Appendix D (Response to Comments on the DEIS) of the FEIS (p. 119-122).

B. Bighorn sheep within one mile of trails 217 and 218

**Discussion:** Bighorn sheep primarily are addressed in the Project Record on pages 56-57 and 97 of the FEIS, as well as other locations. The unit of measure for impacts to sheep is miles of open roads and motorized trails in bighorn sheep habitat. Information about identified sheep use areas is presented on pages 56-57. Potential impacts to bighorn sheep from roads and motorized trails and the environmental consequences of the alternatives to sheep are presented on page 97.

Additionally, the complete analysis for bighorn sheep, including existing habitat conditions, population information, and the effects of the alternatives, is provided in the Biological Assessment and Evaluation (BA/BE, p. 40-44). The determinations are the same for all alternatives (“may adversely impact individuals, but not likely to result in a loss of viability in the planning area, nor cause a trend toward federal listing”). However, estimated impacts to bighorn vary by alternative by amounts of unrestricted travel (i.e. Alternative 1) or miles of designated open roads or motorized trails in bighorn sheep habitat. As with elk, it is noted that the sheep population is stable or slightly increasing, even with the current system of
unrestricted motorized travel. It is concluded that the risk from vehicle collisions to sheep is very rare, and that disease transmission from domestic sheep is the biggest threat for sheep.

C. Breeding and rearing mountain lion within one mile of trails 217 and 218

**Discussion:** Mountain lion is not a federally listed, Forest Service sensitive, or Forest Service management indicator species, nor are they identified in the Forest Plan as a species of concern or management issue. Consequently, this species was not specifically analyzed for in the EIS analysis process. However, potential lion habitat on the NNF was identified and potential impacts of the proposed alternatives are briefly addressed in Appendix D (Response to Comments on the DEIS) of the FEIS (p. 78-79). It was concluded that it is unlikely that a population of lions exists, and also that all action alternatives would have positive effects on lions that may pass through the area, because all action alternatives would have substantially reduced open road and motorized trail densities than the existing condition.

D. Nesting of northern goshawk, red tail hawk, Cooper’s hawk, sharp shinned hawk, pygmy nuthatches within one mile of trails 217 and 218

**Discussion:** Goshawk is a Forest Service sensitive species, and is addressed in the BA/BE (p. 33-34), but occurrence on or near planning units is highly incidental or limited to migrants. Additionally, potential nesting habitat within the planning area does not exist or is negligible. Because of this, goshawk was eliminated from detailed analysis in the BA/BE, and it was determined that all alternatives would have no impact to goshawk (p. 73, BA/BE).

Pygmy nuthatch is an NNF management indicator species and is addressed in the FEIS (p. 13 (miles of designated roads and motorized trails in nuthatch habitat), p. 30 (Table 7 – Comparison of alternatives by issue), and p. 58, where habitat preferences and habitat distribution on the Pine Ridge Ranger District are described for this MIS species. Potential impacts to pygmy nuthatch from roads and motorized trails and the environmental consequences of the alternatives to nuthatches are presented on pages 100-101 of the FEIS.

Red-tailed hawk, Cooper’s hawk, and sharp-shinned hawk are not federally-listed species, or Forest Service sensitive or management indicator species, and they are not specifically mentioned in the Forest Plan for special management consideration. Consequently, the NNF is not required to analyze for these species during the NEPA process by any law, Forest Service policy, or regulation. Standards 51 and 52 and Guideline 53 in the NNF Forest Plan do mention protection of any active raptor nest or winter roost site for site-specific project activities. Additionally, it is stated in the FEIS (p.25, last bullet) under Features Common to All Action Alternatives that the Forest Supervisor can implement special orders to restrict public use of roads, trails, or areas to protect resources (e.g. active raptor nests).

In making her decision, I find that the responsible official appropriately considered effects of the FEIS alternatives to goshawk and pygmy nuthatch on the NNF. For red-tailed hawk, Cooper’s hawk, and sharp-shinned hawk, there is no legal or Forest Service policy requirement or regulation that requires that these species be specifically addressed during the
NNF Travel Management Planning analysis process. However, there is Forest Plan direction and an action alternative feature that would allow for the protection of active raptor nests.

E. Proximity to neighbors; specifically Chadron Creek State Wildlife Management Area is within 1/8 of a mile from trail 217. This is an already establishing public area dedicated to wildlife and designated as a walk-in area leading users to the expectation of a quiet experience

Discussion: The appellant does not refer to any law or regulation that would prohibit the NNF from designating motorized trails in the identified area of concern. Potential noise impacts are addressed in the FEIS (p. S-3, 13), with the unit of measure identified as miles of road and motorized trails near noise sensitive areas. A maximum sound emission limit of 96 dB(A) for all action alternatives is identified for OHVs on NNF roads and trails. This level was selected to mitigate for sound impacts from OHV use. It is a maximum level mandated by several states, and also is thought to be an adequate limit by the EPA and motorcycle manufacturers (FEIS, p. 27, 2nd bullet). Sound level impacts (i.e. noise disturbance) are discussed and areas potentially sensitive to noise impacts on the NNF or identified by commentors are identified on p. 46 of the FEIS, including the Chadron State Park area. Environmental consequences of noise impacts and alternatives comparison are discussed on p. 84-85 in the FEIS. The sound levels analysis area for the Chadron State Park area is described as NNF lands within about 3 miles of the park (p. 84), which would include the Chadron Creek State Wildlife Area and trail 217 near to the wildlife area. Response to comments on the DEIS regarding noise impacts also are located in Appendix D of the FEIS (p. 59, 60, 61). Sound levels would be measured based on the Society of Automotive Engineers (SAE) stationary test standard J1287, which can be conducted in the field with a portable sound level measurement instrument (FEIS, p.27). It states in the ROD (p. 10) that routes designated in this decision may change over time based on monitoring results and other criteria, and that monitoring may include noise. In the ROD (p. 23 – Decibel Limits), this information is summarized. Also, the responsible official states that the 96 dB(A) sound limit would allow most stock vehicles to use the motorized system, and that it can provide a reasonable limit on vehicle noise close to lands of other ownership. In the ROD (p. 23), the decision limits sound levels to 96 dB(A) for vehicles manufactured on or after January 1, 1998, with a sound level limit of 99 dB(A) for vehicles manufactured prior to January 1, 1998. The state of Colorado has passed legislation limiting sound levels to 96 dB(A) (99 dB(A) for vehicles manufactured prior to 1998), and the Rocky Mountain Region of the Forest Service has an established limit of 99 dB(A) that is now under review and expected to change to 96 dB(A) in keeping with national standards (ROD, p. 23).

In making her decision, I find that the responsible official appropriately considered sound level effects from OHVs on motorized trails in the FEIS alternatives balanced by the consideration for providing designated motorized trails for public recreation, and also in consideration of sound level limits set or recommended by other entities, including National Forest Service standards.

F. Proximity to neighbors; specifically in response to comments concerned with sound limits it is stated” No routes go through residential areas” however the area in which
the proposed trails 217/218 are located on a small tract of USFS land surrounded by numerous private, rural residences.

Discussion: The response to the DEIS comment noted in the appeal issue is accurate in that trails 217 and 218 are located on NNF lands and do not go through residential areas. With regard to sound level impacts analysis in the identified area (near proposed motorized trails 217 and 218), refer to the discussion above for Appeal Issue E, which indicates where this issue was addressed in the FEIS and ROD, as well as rationale for the decision.

G. Enforcement of designated routes only; how will the FS prevent off-trail use?

And

H. Enforcement of designated routes only; how will the FS prevent use beyond its boundaries

Discussion: The appellant questions how the Forest Service would prevent off-trail use and use beyond Forest Service lands onto adjacent non-Forest Service lands. As stated in the ROD (p. 33), the NNF Travel Management Plan was developed to meet the requirements of the Travel Management Rule, which requires publication of a motor vehicle use map. This map identifies all designated open roads and motorized trails and will be the tool for public education and enforcement regarding where the public can legally drive or use OHVs. On p.16 (FEIS), it was concluded that implementation of the action alternatives (“closed unless designated open” policy for off-road motor vehicle use) may result in additional violations, but would not cause an untenable burden on law enforcement. In the Response to DEIS Comments (FEIS Appendix D, p. 22-24, in response to “Enforcement Challenges” and “Enforcement – Suggestions” Comment Focus), it is explained that the Motor Vehicle Use Map and supplemental signage are expected to educate the public and to help minimize travel off of designated routes. Additionally, user education and relationships with user groups would promote compliance, as well as working with neighboring landowners and citizens regarding reporting violations (i.e. off-trail use or use of non-designated routes). The NNF will use current law enforcement and forest protection officers, as well as coordinating with County sheriffs and other local law enforcement to enforce the designated route system from this decision.

Regulations covering designation of roads, trails, and areas for motor vehicle use include general criteria that the responsible official must consider when making those designations, including the need and availability of resources for maintenance and administration. See 36 CFR 212.55(a). Forest Service directives acknowledge these same considerations and further direct, “While important, the scarcity or abundance of resources to maintain and administer designated roads, trails, and areas should not be the only consideration in developing travel management proposals” (FSM 7715.5(1)(c)).

There is no requirement that the responsible official demonstrate an ability to fund enforcement of designations made as part of a travel management decision. The requirement is to consider those factors. I find that the responsible official complied with the applicable regulation and policy by considering the availability of resources for enforcement and administration of the designated route system.
I. **Sound emission limits: the limits are not reasonable in a residential area and in close proximity to the State Wildlife Management Area.**

**Discussion:** The discussion for Appeal Issues E and F responds to this appeal issue.

Based on the discussion for Appeal Issues E and F, which include the same issue of noise levels adjacent to the identified areas, I find that the responsible official appropriately considered sound level effects from OHVs on motorized trails in the FEIS alternatives balanced by the consideration for providing designated motorized trails for public recreation, and also in consideration of sound level limits set or recommended by other entities, including National Forest Service standards.

J. **Sound emission limits: the limits are not enforceable on the small tracts where trails 217/218 are located, far from the law enforcement base of operations.**

**Discussion:** The discussion for Appeal Issues G and H responds to this appeal issue regarding enforcement.

Based on the discussion for Appeal Issues G and H, which include the same issue of enforcement, I find that the responsible official complied with the applicable regulation and policy by considering the availability of resources for enforcement and administration of the designated route system in the FEIS action alternatives balanced by the consideration for providing designated motorized trails for public recreation.

**RECOMMENDATION**
I have reviewed and considered the appeal record, FEIS, ROD and notice of appeal pursuant to and in accordance with 36 CFR 215.19. I find no violation of law, regulation, or policy. However, currently there is no mechanism for enforcing the sound level limit. As Forest Supervisor Darnell noted on page 8 of the ROD, Forest orders necessary for implementation of the ROD will be issued. I recommend the decision of the Forest Supervisor be affirmed with the instruction to issue a Forest order to address enforcement of the sound level limit.

**Bill Bass**
Appeal Reviewing Officer
Forest Supervisor, Bighorn National Forest