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Original Via U.S. Mail

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Re: Mammoth Motocross Racetrack EA

Dear Ms. Keil,

On behalf of my client, the Off Road Business Association (ORBA), we respectfully submit the following comments with regard to the Environmental Assessment ("EA") prepared by your office.

The Off-Road Business Association is a non-profit trade association organized under 26 USC 501(c)(6), with its office located in Santee, California. ORBA represents the interests of numerous of off-road related businesses nationwide that are concerned with the continued accessibility of public lands for off-road recreation. Continued OHV access to public lands is extremely important to ORBA Members, recreationists and the public at large.

We strongly support the Racetrack Facilities Action Alternative, and oppose the proposed closure and restoration of the racetrack, as well as the No Action alternative. Should the Forest Service wish to proceed with restoration of the racetrack, we firmly believe that an Environmental Impact Statement should be prepared to address the significant negative economic impact the loss of this facility will have on the surrounding businesses, and the loss of an important social event which adversely affects the quality of the human environment. The EA will now be addressed on its merits below.

I. Purpose and need for action.

The proposed action (restoration) is based on four assumptions: (1) use of the racetrack is not consistent with current agency policy; (2) it is inconsistent with the Inyo National Forest Resource Management Plan ("INF LRMP"); (3) the racetrack creates a largely urban appearing recreational setting and experience inconsistent with adjacent land uses; and (4) the racetrack presents a potential public safety hazard.

With regard to current agency policy, the restoration team (IDT) did not consider multiple sections of the Forest Service Manual that provide for the continued operation of a motocross track at Mammoth Mountain. For example, the IDT failed to consider the following:

- Enhance and encourage public accessibility to recreational opportunities. [FSM 2302.2-3)]. The IDT *only* considered FSM 2302.5(a)-(b) in its analysis;
- Provide a reasonably safe and healthy recreational experience [FSM 2303.5];
- Encourage compatible off-season use of recreation areas [FSM 2303.6].
- The track creates a confined area for off-road vehicle (OHV) use. By its very nature, a confined area means a controlled area that minimizes the need for extensive law enforcement and regulation [FSM 2303.7].
- The operation of the motocross track would be a minor part of the overall park [FSM 2303.2];
- The Forest Services' ability to shift the operational cost of managing the motocross track by leasing the area to private organizations for certain events [FSM 2303.9], thus negating the issue of whether the Forest Service could afford to operate the racetrack.

We believe that, with the proper waiver obtained from the Chief of the Forest Service, the racetrack would otherwise be consistent with the above agency policies that were not considered by the IDT.

With regard to the INF LRMP, The EA states that the operation of the motocross track is inconsistent with Rx 13; specifically, page 138 provides that "no OHV use" shall be permitted in areas within the ROS class. The EA *does* state that Alternative 3 would require a revision of the INF LRMP. We wholeheartedly support an amendment of the INF LRMP, as it is entirely inconsistent with the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 et seq. The FLPMA expresses an explicit policy in favor of retaining public lands for multiple use management, and that management of public land is to be "on the basis of multiple use and sustained yield unless otherwise specified by law." 43 U.S.C. 1701(a)(1). Section 1732 of the FLPMA encourages the revision of land management plans when it is appropriate to do so. Because of the overwhelming public support of and need for the continued success of the Mammoth Mountain MX park, it is imperative that the INF LRMP be amended to allow for this activity to continue.

Contrary to the assertions of the EA, we believe that OHV activity is not an "urbanized" recreational experience, and its application of FSM §2303 is selective. FSM §2303 provides that:

2303 - POLICY.

1. Public use facilities provided by the Forest Service must contrast with urbanization and harmonize and complement the natural environment. Facilities provided by the private sector should meet this policy as much as possible.

Subsection 2 of FSM 2303, however, gives the Forest Service examples of what "urbanized sports" means in applying this policy:

2. Do not provide facilities for urban-type sports, such as *swimming pools, tennis courts, playground equipment, and golf courses* on National Forest System lands with public funds.

OHV recreation does not take place in "urbanized areas" - quite to the contrary, the reason millions of people ride OHVs on public lands is to get *away* from urban areas and enjoy the great outdoors in a natural setting. This is why the Mammoth MX track is so sacred - it provides a beautiful setting for OHV enthusiasts to hone their skills, exercise and enjoy public lands in a natural setting. Tennis courts, golf courses, and swimming pools all involve permanent destruction of the natural environment, and golf courses in particular are tremendous "around-the-clock" environmental polluters due to pesticide and fertilizer runoff, as well as being notorious water hogs. In contrast, the race track is a "natural terrain" type track, and any environmental damage caused by OHV use is temporary and easily mitigated with prudent conservation measures and sound land management policies.

We are extremely disturbed to learn that a land exchange may occur involving land adjacent to the MX track which would result in the construction of a *golf course* and *club house* at (or near) the racetrack location! [EA, p. 14]. This is *exactly* the kind of urbanized facility the FSM tells the Forest Service to avoid. Any environmental damage caused by two MX races a year pales in comparison to the problems created by an 18 hole golf course causes to the environment. The hypocrisy here is inescapable.

The EA's assertion that restoration of the motocross track is necessary because it presents a potential public safety hazard we believe is disingenuous, and sets a dangerous precedent in land management policy. We cannot think of one outdoor activity that does not involve some degree of risk to the participant. Horseback riding, mountain biking, cross-country skiing, mountain climbing, and hiking all take place on public lands and all activities have unfortunately resulted in death and injury at one point or another. Frankly, if our federal land managers allow people to climb the face of El Capitan without ropes in Yosemite National Park or allow hikers to wander around in Death Valley in the middle of the summer, it is a double standard indeed for the Forest Service to claim that dirt bike racing in a heavily regulated and supervised setting should be prohibited due to public safety concerns. All that is required by FS policy is that the recreational experience be "reasonably safe". [FSM 2303.5]. Nothing in the EA demonstrates that this objective could not be accomplished if Alternative Three were chosen.

II. Alternatives Considered but not in Detail.

We believe the EA improperly fails to address these proposed alternatives in detail, as they would all provide a reasonable alternative to restoration or abandonment of the racetrack site.

1. Establishment of Designated Open Riding Area. As we understand it, designating the racetrack as a "limited use" area under 43 CFR 83400.0-5(g) would require an amendment of INF LMRP because Rx #13 prohibits the use of OHVs with the ROS class of lands. Because Alternative Three (Developed Facilities) is being considered as a viable option (which would also involve amendment of the INF LMRP) we feel that redesignation of the lands upon which the racetrack is located to a limited use area should be considered as one of the options to be included for the area in any INF LMRP amendment. Thus, redesignation of the area as a limited use area is one of the "tools" the Forest Service has at its disposal to continue allowing OHV use at the facility. In that vein, an analysis of whether this area could properly be classified as a limited use area under the FLPMA regulations should have been studied.

2. Other Racetrack Locations. Over 4 million Californians choose to recreate on OHVs every year, and use has doubled over the past 20 years. OHV recreation is a 3 billion dollar a year industry in California. Despite this, state lands available for OHV use have decreased 48% in the last 20 years. As of the year 2001, there were 489,380 registered OHVs in California, a 108% increase from 1980.¹ On the federal level, OHV use has increased 700% over the last 30 years, topping 30 million users in 2002.²

In spite of this, the EA states that it is not consistent with Forest Service policy to relocate the racetrack (no agency policy is cited for this statement). It is obvious that with the ever increasing demand for OHV accessible areas, the Forest Service should actively be looking to expand OHV recreation opportunities, not stifle them. Contrary to the assertion that relocating the racetrack is against Forest Service policy, we feel that relocating the track to another area is consistent with the sections of the FSM cited in Part I above, and that the EA failed to adequately assess this alternative. If it truly is against agency policy to relocate the racetrack, perhaps the Forest Service should be asking itself why this is the case when so many people choose to recreate on OHVs and have very few places left to go.

3. Racetrack Use Authorized Events Only/For Riding Only and No Events Alternative. Our arguments under section II(2) apply equally here. It is not against Forest Service policy to provide a place for OHV recreation. If the INF RLMP needs to be updated to provide for this alternative, then this should be explored. In addition, the elimination of non-event riding days would dramatically reduce the number of OHVs frequenting the area and any potentially negative effects on wildlife and its habitat from OHV use would be reduced down to just *two days* per year. This alternative should have been given detailed consideration in the EA.

¹ Source: Taking the High Road, California Dept. of Parks & Recreation (2001).

² Source: USFS Press Release 0418 (July 7, 2004).

IV. Comment on Section 3.8.1 Direct & Indirect Effects - Recreation & Public Safety.

Under the section "Recreation Opportunities", we believe it is improper to place the racetrack area (a "closed course" racetrack) in the same category as other "open use" and "limited use" areas identified in Poleta Canyon that do not include a racetrack. If the Mammoth Mountain racetrack is closed, it will result in a 50% reduction in the lands available to OHVs for operation on a closed course racetrack - a significant direct effect. It is not simply a single wide trail meandering through the forest, which is what one finds in other "open" OHV areas. Motocross is a sport. The racetrack attracts an entirely different type of user, one that prefers friendly competition over challenging man made and natural terrain obstacles.

The only other racetrack identified in the EA is the Reata Racetrack in Poleta Canyon. This is contrary to the EA's assertion that the loss of the 18 acre closed course would result in a loss of less than 1% of lands open to OHV use. The motocross track is truly unique and irreplaceable primarily because it is a *racetrack* - the EA must recognize this fact. While some motocross riders will occasionally trail ride in open areas, most prefer to do the majority of their riding on closed motocross tracks (this author included). Thus, the Forest Service can expect that almost all of the riders displaced by the closure of the racetrack will be forced to ride at the Reata Racetrack instead. This is a point not addressed by the EA. What are the direct effects this will have on the Reata Racetrack? The EA simply states that these riders will instead go riding on open lands in the Inyo National Forest. This is an incorrect assumption to make, just as it would be wrong to assume that all cross country skiers would automatically switch to downhill skiing if they lost access to their cross-country skiing area.

III. An EIS should be prepared if restoration or the No Action Alternative is chosen.

A. NEPA Requirements. Under NEPA, an agency is required to provide an Environmental Impact Statement ("EIS") if it will be undertaking a "major Federal action, which "significantly affects the quality of the human environment." [42 U.S.C. § 4332(2)(C)]. Under applicable CEQ regulations, "major Federal action" is defined to "include actions with effects that may be major and which are potentially subject to Federal control and responsibility." Major Federal actions include approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities. [40 CFR § 1508.18(b)(4)].

"Effects" is defined to include: (a) Direct effects, which are caused by the action and occur at the same time and place," and "(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. "Effects" includes *historic*, cultural, *economic*, *social* considerations, whether direct, indirect, or cumulative. [40 CFR 1508.8]. In turn, the "Human Environment" includes the natural and physical environment *and the relationship of*

people with that environment. [40 CFR 1508.14]. While it is true that economic or social effects are not intended *by themselves* to require preparation of an environmental impact statement, these factors combined should justify the preparation of an EIS. Last of all, the word "significantly" in the context of NEPA regulations requires an analysis of both the context - in terms of society as a whole, the affected region, the affected interests, and the locality - and intensity of the proposed action, including the degree to which the effects on the quality of the human environment are likely to be highly controversial, or the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. [40 CFR 1508.27].

A. The proposed restoration and No Action alternative is a major federal action that significantly affects the quality of the human environment.

The EA recognizes the fact that the Mammoth Mountain MX race has been in existence since 1968. While the EA states that in 1987 attendance was poor, no mention is given of the attendance records for any of the years besides 2002. In fact, there were nearly 5000 rider entries at the most recent race held at Mammoth Mountain this past June, generating an estimated 12 million dollars in revenue for the local economy. Forty-five vendors were present at the event, and the organizer had to turn away nearly 30 others due to space limitations.³ We believe that the discontinuation of this historic social event - spanning nearly four decades and contributing heavily to the local economy, significantly affects the quality of the human environment in both context (locality of affected region and interests, 40 CFR 1508.27(a)) and intensity (controversial, precedential in value as racetrack stated to be "no longer consistent with agency policy", 40 CFR 1508.27(b)(4),(6)).⁴ As referenced in the EA, five of the top nine employers in Mono County directly benefit from the operation of the racetrack.

In addition, preparation of an EIS would provide an important informational benefit to members of the public. The "informational role" of an EIS is to "give the public the assurance that the agency 'has indeed considered environmental concerns in its decision making process,' [Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97,(1983)], and, perhaps more significantly, provide a springboard for public comment' in the agency decision making process itself."

In summary, we strongly support Alternative Three, the Developed Facilities Alternative. Should the Forest Service opt for Alternatives one or two, we believe that the loss of this historic social event and the negative economic impact on the local economy to be a major federal action significantly affecting the quality of the human environment. Accordingly, a full EIS should be prepared in that case.

³ Discussion with event coordinator M. Colbert dated July 21, 2004 (mcolbert@mammothmtn.com).

⁴ In this vein, the "cumulative economic effects" for operation of the racetrack under Alternative Three was \$603,848 in total labor income. We believe this figure is artificially low, based on our conversation with the event coordinator.

We appreciate the opportunity to comment on this most important issue.

Respectfully submitted,

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cc: Jim McGarvie, ORBA